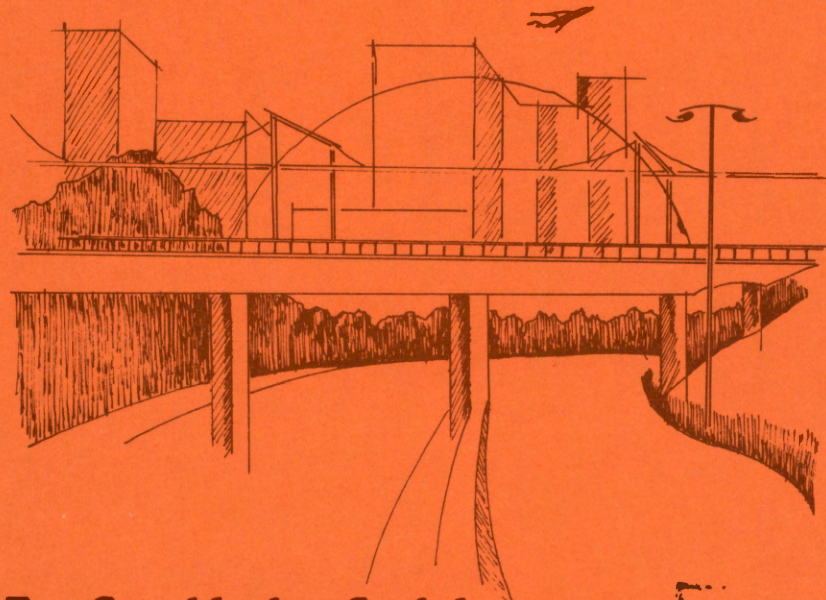


90
R628
1982d

NEW JERSEY ACTION PLAN 1982



**For Considering Social,
Economic, and Environmental
Effects of Federally Funded
Highway Projects**

RECEIVED

SEP 17 1982

N.J.D.T. LIBRARY



New Jersey Department of Transportation

Supersedes 1975 Action Plan

New Jersey State Library

New Jersey's **ACTION PLAN**

**For Considering Social, Economic,
and Environmental Effects of
Federally Funded Highway Projects**

Revised 1982

RECEIVED

SEP 17 1982

N.J.D.T. LIBRARY.

Approved:

March 26, 1982

Date



Anne P. Canby
Commissioner
New Jersey Department
of Transportation

Approved:

March 26, 1982

Date



John J. Kessler, Jr.
Division Administrator
Federal Highway
Administration

**This ACTION PLAN revision supersedes the original issue of April 1975
The revised document was prepared by the New Jersey Department of
Transportation's Office of Planning and Research in cooperation with other
NJDOT organizational units and the Federal Highway Administration's New
Jersey Division Office**

Copies of this ACTION PLAN may be obtained from:

Office of Community Involvement
New Jersey Department of Transportation
1035 Parkway Avenue
CN600
Trenton, NJ 08625

ACTION PLAN

TABLE OF CONTENTS

	PAGE
Chart and Maps	ii
I. Purpose of the Action Plan	I-1
II. Organization	II-1
III. Community Involvement	III-1
1. Public Participation Programs	III-1
2. Public Hearings	III-4
IV. The Development Process	IV-1
V. Transportation Systems Planning	V-1
VI. Prioritization and Programming	VI-1
VII. Considering the Human and Natural Environment	VII-1
1. Social Economic, Environmental Studies	VII-1
2. Levels of Action Procedure	VII-11
VIII. Location Study	VIII-1
IX. Design Study	IX-1
X. Right of Way	X-1
Appendix	
Appendix - Table of Contents	a-i
Glossary	A
Acronyms Used in the Action Plan	B
Urban Transportation Planning FHWA/UMTA Regulations	C
Pre-Design Assessment-NJDOT	D
Environmental Impact and Related Procedures - FHWA/UMTA	E
Environmental Procedures - NJDOT	F
Summary of Selected Environmental Legislation-FHWA	G
Memorandum of Understanding - FHWA/USCG	H
Memorandum of Agreement - USDOT/USACE	I

CHARTS AND MAPS

		PAGE
Chart	II-A Organization Chart of the State of New Jersey	II-2
Chart	II-B NJDOT Functional Organization Chart	II-3
Chart	IV-A The Development Process	IV-8
Chart	IV-B The Development Process Participants	IV-10
Chart	V-A The Transportation Systems Planning Process	V-2
Map	V-B Metropolitan Planning Organizations - Delimitation of Study Areas	V-4
Map	V-C New Jersey A-95 Clearing House Representatives	V-8
Chart	V-D A-95 Notification & Review Procedure	V-9
Chart	VI-A Project Prioritization and Programming Flow Chart	VI-2
Chart	VIII-A Bureau of Project Location General Study Process	VIII-2
Map	IX-A State System Design Regions	IX-3
Map	IX-B Bureau of Local Aid Design Districts	IX-5
Chart	IX-C Design Process Flow Chart	IX-9
Chart	X-A Right of Way Work Flow Diagram	X-5

CHAPTER I

PURPOSE OF THE ACTION PLAN

Purpose

This New Jersey Department of Transportation (NJDOT) ACTION PLAN* has been prepared to show the highway project development process, particularly with respect to Federal-aid highway projects. The ACTION PLAN aims to provide a better understanding of the process by all who need to know the process and relate to it; to demonstrate how social, economic, and environmental effects (the so called SEE factors) of proposed highway projects are considered; to show how opportunity for public and community involvement is provided for throughout the process; to provide for a data and information base on which project decisions can be made in the best overall public interest.

Background

In the Federal-Aid Highway Act of 1970 Congress directed** that the Secretary of Transportation "promulgate guidelines designed to assure that possible adverse, economic, social, and environmental effects relating to any proposed project on any Federal-aid system have been fully considered in developing such project, and that the final decisions on the project are made in the best overall public interest, taking into consideration the need for fast, safe and efficient transportation, public services, and the costs of eliminating or minimizing such adverse effects as the following:

- 1). air, noise and water pollution;
- 2). destruction or disruption of man-made and natural resources, aesthetic values, community cohesion and the availability of public facilities and services;
- 3). adverse employment effects, and tax and property value losses;
- 4). injurious displacement of people, businesses and farms; and
- 5). disruption of desirable community and regional growth."

* See Glossary (Appendix A) for terms used in this ACTION PLAN

** 23 USC 109(h)

In response, the Federal Highway Administration (FHWA) issued its "Process Guidelines" regulation FHPM 7.7.1.* Reference to this regulation throughout this ACTION PLAN will be in this form.

The regulations aim at assuring full consideration of the social, economic and environmental effects of Federal-aid highway projects by influencing the methods by which these projects are developed rather than by detailed project supervision or control.

This ACTION PLAN describes the organization to be utilized and the processes to be followed in the development of Federal-aid highway projects from initial systems planning through construction.

ACTION PLAN Development

In 1975 NJDOT developed an ACTION PLAN which had been submitted for public review before a final plan was adopted. Comments by the general public, government agencies, special interest groups, and elected officials were considered. The present updated plan which follows reflects revised Federal regulations and developments in NJDOT organization and procedure.

Changes in This 1982 Revision

Principal changes reflected in the 1982 revision are: NJDOT organization completed in 1981; Federal and State policies for urban transportation planning; NJDOT procedures for prioritizing and programming projects; NJDOT public involvement techniques and procedures; the Council on Environmental Quality (CEQ) Regulations; changes in NJDOT Levels of Action (LOA) procedure for determining the nature and extent of environmental study required in connection with each project.

Implementation and Revisions

Final review approval authority of all ACTION PLAN revisions will rest with The Commissioner of Transportation. The Deputy Commissioner is responsible for insuring and monitoring implementation of the ACTION PLAN. Implementation of this 1982 Revision will be effective on the date FHWA approves the revised plan.

* FHWA Federal-Aid Highway Program Manual, (FHPM) Vol. 7, Chap. 7, Sec. 1

Proposals for ACTION PLAN revisions will be directed to the Deputy Commissioner who will coordinate revisions with FHWA. Opportunity for public review and comment will be provided where major revisions are proposed before proposed revisions are implemented. Depending on degree, the following may be classified as major revisions: Substantial changes in public involvement; substantial change in NJDOT's treatment of social, economic, and environmental (SEE) factors and related NJDOT reorganization; substantial changes in the project development process.

Changes that occur as a direct result of new or revised FHWA direction will not necessarily require formal revision of this plan, as set forth above, prior to implementation of such changes.

Title VI Policy

It is the policy of NJDOT to effectuate Title VI of the Civil Rights Act of 1964 as amended which requires that no person in the United States shall on the grounds of race, color, creed, religion, national origin, physical handicap or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

CHAPTER II

ORGANIZATION

State Of New Jersey Organization

New Jersey State government is organized in 20 Departments shown on Chart II-A. State agencies referred to in the ACTION PLAN will be found on this chart.

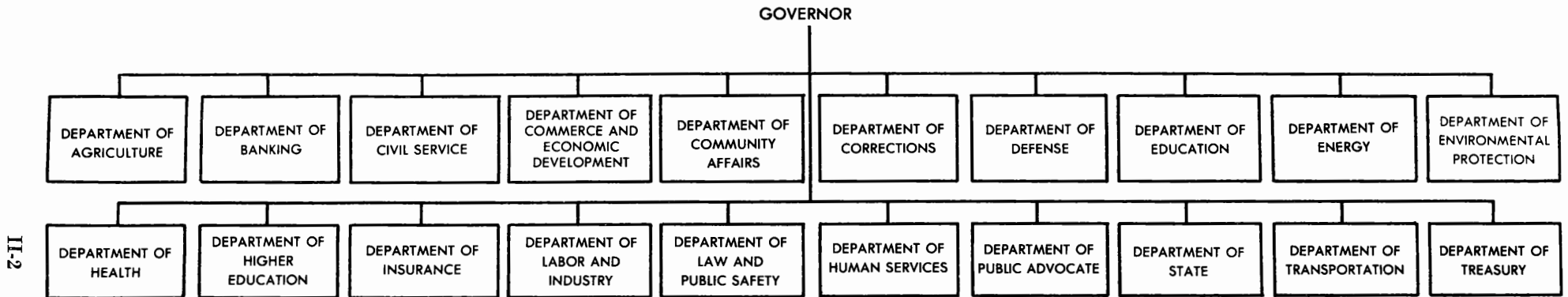
Department of Transportation Organization

The New Jersey Department of Transportation organization is shown on Chart II-B. Two Assistant Commissioners lead the functional areas in NJDOT. Transportation Services encompasses needs assessment, policy analysis, planning, program development, regulatory and public communication aspects of NJDOT. The areas under Management are the implementing functions of engineering and operations, and the financial and employee support services.

This structure incorporates organization changes adopted in early 1981 resulting from: (1) NJDOT's evolving role from a highway agency to a multi-modal transportation responsibility; (2) Creation of the New Jersey Transit Corporation which removed from the NJDOT certain responsibilities for short-range public transportation planning, systems development, and operations; (3) Need for staff support to provide assessment of all modal needs, project planning and development; (4) Major enhancement of ability to gather and supply public information and to involve the public in NJDOT's planning and decision-making; (5) Recognition of the need for more priority setting and internal efficiency efforts because of increasing public demands in the face of diminishing resources.

Creation in 1971 of the Bureau of Environmental Analysis (BEA) established an organizational unit with a multi-discipline staff capable of assessing SEE factors in project development, carrying out environmental studies, and preparing environmental impact documents. (See Chapter VII). This bureau is now located in the Division of Project Development in the Engineering and Operations area. The Division of Project Development is the link to the pre-design activities after the planning stage, and undertakes detailed project definition steps through feasibility and location studies during which SEE factors are assessed and studied. Outcome of these studies sets the stage for advancing the project to design.

ORGANIZATION CHART OF THE STATE OF NEW JERSEY



II-2

INTERSTATE AGENCIES

Palisades Interstate Park Commission
 Interstate Sanitation Commission
 Port Authority of New York & New Jersey
 Waterfront Commission of New York Harbor
 Tri State Regional Planning Commission
 Delaware River Basin Commission

Delaware River Joint Toll Bridge Commission
 Delaware River Port Authority
 Delaware River and Bay Authority
 Delaware Valley Regional Planning Commission
 Wilmington Metropolitan Area Planning
 Coordinating Council

**CHART II-A
ACTION PLAN
NJDOT**



The Office of Community Involvement (OCI) created in 1975, now embraced within the Division of Communications and Community Relations, administers a program for insuring public, community, and agency involvement through all stages of project planning and development (See Chapter III). Community Involvement placement within Communications and Community Relations allows more effective policy guidance and coordination of all information collection and dissemination to the public on specific projects.

Department work in planning, design, right of way, and construction is primarily assigned to specialized functional bureaus and offices. For administration, bureaus are grouped in divisions.

Organization Units Involved In ACTION PLAN

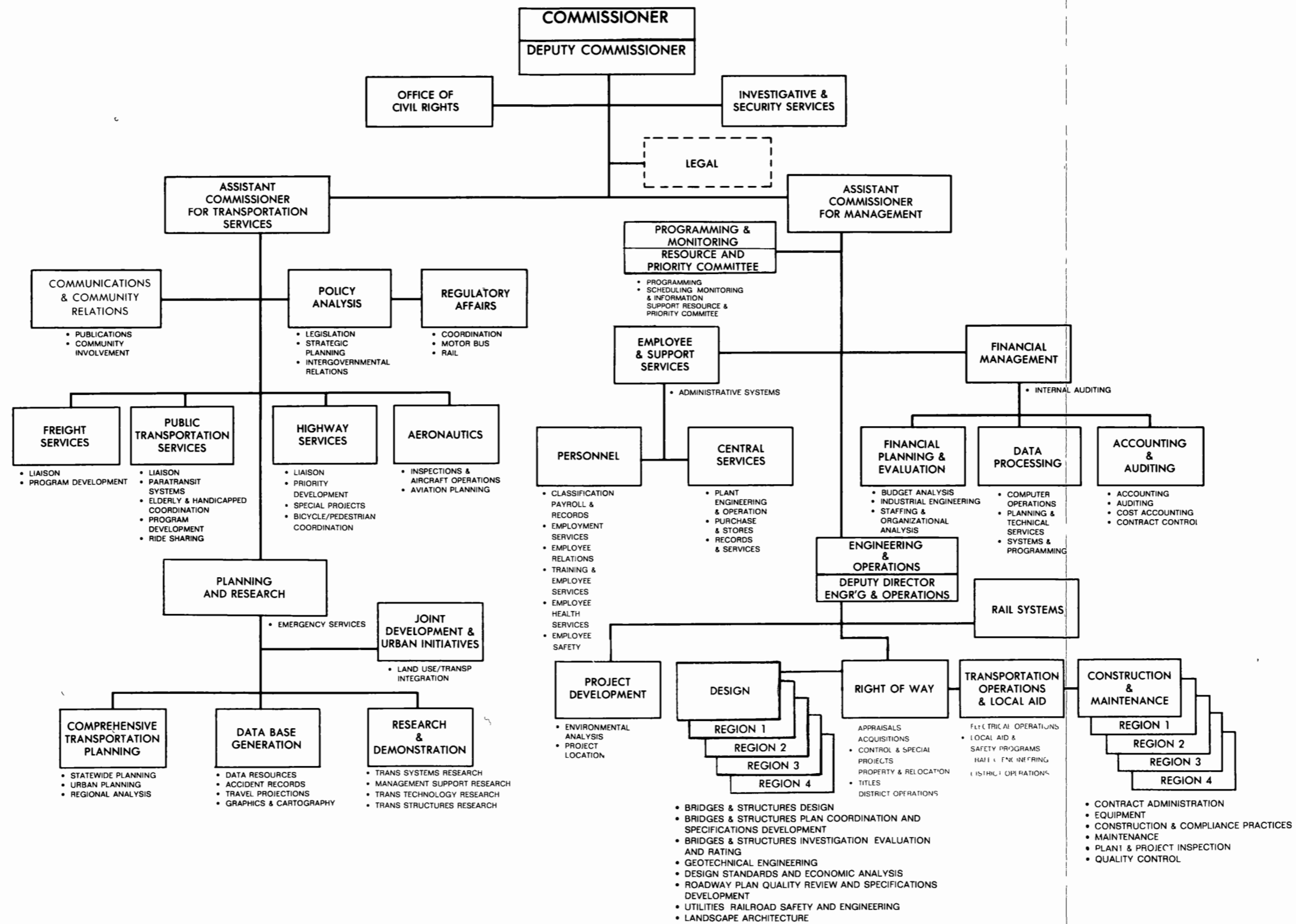
Many NJDOT divisions, bureaus, offices, and committees are required to perform functional responsibilities for planning, public involvement, engineering, environmental study, design, and right-of-way acquisition to accomplish project development under this ACTION PLAN. Assigned functions of these units and the oversight Resource and Priority (RAP) Committee are described here. Acronyms used to facilitate reference are listed in Appendix B.

RESOURCE AND PRIORITY COMMITTEE

Resource and Priority (RAP) Committee. Assesses NJDOT's program and project needs in terms of financial, staff, and equipment resources; oversees preparation of capital funding programs; recommends program and project priorities; coordinates joint programs and funding with authorities and developers; recommends preferred alternatives, subject to the Commissioner's approval. Committee members are:

- Deputy Commissioner
- Assistant Commissioner for Transportation Services
- Assistant Commissioner for Management
- Director of Planning and Research
- Director of Engineering and Operations
- Director of Financial Management
- Director, Office of Programming and Monitoring
- Executive Director, NJ Transit

NJDOT FUNCTIONAL ORGANIZATION CHART



**CHART II-B
ACTION PLAN
NJDOT**

OFFICE OF CIVIL RIGHTS

Office of Civil Rights (OCR). Investigates NJDOT internal complaints relative to Equal Opportunity and Affirmative Action; establishes Minority Business Enterprise (MBE) goals for NJDOT contracts; implements federal Title VI and Title VIII compliance program; verifies no discrimination under programs subscribed to by NJDOT and its contractors.

DIVISION OF COMMUNICATIONS AND COMMUNITY RELATIONS

Office Of Community Involvement (OCI). Provides for public participation in the NJDOT planning and project development process; identifies appropriate stages for community participation; arranges and conducts community meetings; prepares mailings, media announcements; conducts and records public hearings; serves as liaison with public, private concerns, and public officials; provides answers to questions from the public.

Bureau of Publications (BPN). Prepares newsletters, brochures, pamphlets, maps, graphics, charts, displays, slide presentations for public meetings and hearings; publishes NJDOT's annual report and employee newsletter; reviews all publications before public release; assists other state units in printed and graphic materials preparation.

OFFICE OF HIGHWAY SERVICES

Office of Highway Services (OHS). Serves as liaison between NJDOT and the general public, government agencies, transportation authorities/commissions on highway matters, representing NJDOT's policy and program views. Evaluates state and local highway needs and their priorities, and provides these assessments to the Resource and Priority (RAP) Committee. Assembles highway and bridge project justifications; recommends project priorities to the RAP Committee; provides direction and follow-up on external activities affecting delivery of policy projects.

OFFICE OF PLANNING AND RESEARCH

Office of Joint Development/Urban Initiatives (OJD). Evaluates joint development potential of state transportation facilities; coordinates local development goals with those of the State; initiates and coordinates joint development projects; solicits developer interest; represents NJDOT joint development interests.

DIVISION OF COMPREHENSIVE TRANSPORTATION PLANNING

Bureau of Statewide Planning (BSP). Develops a Statewide Transportation Plan for passenger and goods movement; reviews project proposals for consistency with the Statewide Transportation Plan; identifies transportation deficient corridors and participates in priority determining efforts; maintains data of traffic distribution network.

Bureau of Urban Planning (BUP). Coordinates transportation planning between the Metropolitan Planning Organizations (MPO's) and NJDOT; provides technical assistance to county and municipal planning agencies; determines effects of current and proposed networks in major urban areas; administers the A-95 Notification and Review Program.

Bureau of Regional Analysis (BRA). Performs multimodal/area/corridor analyzes at transportation-service-deficient locations; coordinates analysis of low cost improvements to transportation systems; reviews major land development proposals for impact on transportation systems; administers railroad rehabilitation projects and operating contracts for freight rail service.

DIVISION OF DATA BASE GENERATION

Bureau of Travel Projections (BTP). Projects travel count data to estimate future traffic volume data for design and environmental studies; conducts travel traffic studies for various transportation modes; provides to NJDOT units traffic data on public transportation, park and ride lots, ridesharing, and multimodal transportation.

Bureau of Data Resources (BDR). Inventories physical characteristics of highways including mapping and photologging; maintains continuous counting stations to measure traffic volumes; prepares statistical reports on road mileage, motor vehicles, vehicle speeds, fuel consumption, and other data relevant to highway usage; locates milepost placement on Interstate, State and County highways and roads.

Bureau of Accident Records (BAR). Collects, analyzes, and summarizes traffic accident data; publishes summaries of statewide highway accident statistics; supplies statistical data and reports to federal, state, and local governments.

Bureau of Graphics and Cartography (BGC). Provides to NJDOT graphics services including design layout, cartography, photography, and typography; designs official state transportation map and guide; maintains general highway atlas of state and county maps; supplies information services to NJDOT, public agencies, and the public.

OFFICE OF PROGRAMMING AND MONITORING

Bureau of Programming (BOP). Develops and monitors Federal-Aid Work Program, Annual Construction Programs and 7-Year Capital Improvement Program; develops periodic plans for obligation of programmed funds. Includes Federal Aid Coordination Section (FACS) which processes and monitors documentation for FHWA project approvals and federal-aid funding authorization.

Bureau of Scheduling, Monitoring, and Information (BSMI). Operates preconstruction scheduling system; monitors critical projects for schedule maintenance; prepares progress reports for management information.

DIVISION OF PROJECT DEVELOPMENT

Bureau of Environmental Analysis (BEA). Identifies environmental sensitivities and identifies constraints and impacts for project development studies; prepares technical reports on aesthetics, noise, air, and water quality; land use, socioeconomics and cultural resources; prepares environmental documents to comply with Federal and State laws and regulations; develops measures to mitigate adverse impacts; establishes NJDOT environmental performance standards; reviews citizens's environmental complaints.

Bureau of Project Location (BPL). Conducts feasibility studies to assess project needs, alternatives, complexity, and public acceptance; conducts location studies and alternatives analysis to develop a preferred alternative for design work; performs design concept studies to minimize impact and costs.

DESIGN

Bureau of Bridges and Structures Design (BBSD). Develops design and construction plans and specifications for highway and railroad bridges and other structures.

Bureau of Bridges and Structures Plan Coordination and Specifications Development (BSPC). Prepares construction and procurement specifications for bridges and structures; reviews and processes plans and specifications for advertisement for construction; coordinates plan review among NJDOT units.

Bureau of Bridges and Structures Investigation, Evaluation and Rating (BSIR). Conducts bridge safety inspection program.

Bureau of Geotechnical Engineering (BGE). Performs subsurface exploration; prepares soil mechanics specifications for roadway design; recommends structural design of pavements; reviews structures foundation designs; reviews engineering and geological recommendations for design of rock slopes and embankments, and rock foundations for structures; reviews blasting methods and specifications.

Bureau of Design Standards and Economic Design Analysis (BDS). Establishes geometric and drainage standards. Reviews Design Phase I plans for standards conformity. Reviews Phase I plans for determination of most cost effective solutions.

Bureau of Roadway Plan Quality Review and Specifications Development (BRPR). Formulates and prepares NJDOT standard roadway construction and procurement specifications; reviews and processes plans and specifications for advertisement for construction; coordinates roadway plan review among NJDOT units.

Bureau of Utilities, Railroad Safety and Engineering (BURS). Prepares for rearrangement of utilities necessitated by highway construction; prepares and negotiates agreements for utility rearrangements; administers statewide survey to determine needs for railroad grade crossing improvements and elimination; negotiates with railroads on grade crossing elimination; inspects railroad facilities and equipment for conformance to safety requirements; investigates railroad accidents.

Bureau of Landscape Architecture (BLSA). Prepares landscape design and construction plans; inspects landscape construction work; develops recommendations for legislation concerning roadside development and control of outdoor advertising and junkyards; researches means of preserving and restoring pre-construction environment through use of vegetation, erosion control, and other devices.

Regional Design Office (RDO). Administers design work program for one of four state regions; develops design schemes for roadway construction; makes field surveys and construction stakeouts; prepares construction plans; initiates recommendations for improvements to the existing highway system; monitors work of engineering consultants.

TRANSPORTATION OPERATIONS AND LOCAL AID

Bureau of Electrical Operations (BEO). Designs highway lighting, traffic signals, and other electrical components of the highway system; prepares and administers electrical contracts; installs and maintains electrical equipment; negotiates cost sharing agreements for installation of traffic signals and administers State-owned and reimbursed lighting programs; operates and maintains movable bridges.

Bureau of Local Aid and Safety Programs (BLA). Administers State and Federal aid transportation programs to local governments on county and municipal road systems; maintains surveillance of local road projects during construction for specifications conformance; administers highway safety programs; identifies projects eligible for safety spot improvement program. Maintains four district offices throughout state for liaison with local governments.

Bureau of Traffic Engineering (BTE). Investigates need for and drafts traffic regulations; evaluates requests from counties and municipalities for traffic signals; designs highway signs; reviews design of traffic control devices in construction plans; develops corrective measures for hazardous locations; reviews geometric design, signs, and pavement marking for municipal and county projects; designs "park and ride" access and exit patterns.

DIVISION OF RIGHT OF WAY

Bureau of Appraisals (BOAP). Plans appraisal schedule for each right of way acquisition project; arranges for appraisals by staff and fee appraisers; establishes final values for purchase offers; maintains follow up procedures to ensure schedule maintenance and quality control.

Bureau of Acquisitions (BOAC). Plans property acquisition in relation to construction schedules; negotiates with property owners for property acquisition; prepares condemnation process documents; processes agreements to owners and Bureau of Titles.

Bureau of Property and Relocation (BPR). Provides relocation assistance to property occupants being displaced by highway construction; provides replacement housing and lease rental occupancies, manages acquired properties until construction or disposal of properties remaining excess after construction.

Bureau of Titles (BOT). Provides title searches, closings, recording of title certifications, deed preparation, and condemnation title memos; arranges for down and final payments to owners; holds title closings; prepares title documentation for condemnation cases.

Bureau of Control and Special Projects (BCSP). Handles administrative matters of the division; assigns projects to bureaus and district offices; prepares advance notices to owners of pending acquisitions; maintains division master records; supervises household arrangements and facilities.

CONSTRUCTION AND MAINTENANCE

Bureau of Contract Administration (BCA). Provides for classification of prospective bidders for construction contracts; advertises for bids for NJDOT construction projects; receives bids, prepares certificates of award, executes and distributes contracts; administers subletting provisions; furnishes contracting information to the construction industry and the public.

Bureau of Quality Control (BQC). Establishes and maintains a program of materials engineering and quality control testing; provides central laboratory for materials inspection testing; provides testing and monitoring of air, noise, and water quality.

Bureau of Maintenance (BOM). Develops standards, methods, and long-range plans for highway maintenance activities; determines personnel, equipment, and materials requirements; administers maintenance contracts; provides central emergency operations coordination; develops maintenance betterments programs; drafts rules and regulations for control of highway right of way, pavement openings, outdoor advertising, and junkyards.

CHAPTER III

COMMUNITY INVOLVEMENT

- Part 1. Public Participation Programs
- Part 2. Public Hearings

PART 1. PUBLIC PARTICIPATION PROGRAMS

Public Involvement

Public input throughout the course of the project development process is vital to the harmonious implementation of projects. Public input is intended to identify community values and concerns which must be understood to safeguard the public interest. The degree of public input may vary with project type, complexity, environmental sensitivity, and public interest. For example, projects involving considerable highway improvement or rehabilitation within existing right of way may not warrant a public participation program. Projects on new location may require a maximum degree of public input.

It is NJDOT's policy to seek this input as early as practicable so that suggestions can be sought with respect to the scope and nature of the alternatives and the concerns and constraints that need to be accounted for. As a project progresses and alternatives are defined and environmental effects identified, public meetings provide the opportunity for bringing study findings to the interested public for information and comment. As NJDOT staff and the public (used in the fullest sense of individuals, officials, organizations, and agencies) become more informed about the study parameters, alternatives, constraints, and potential impacts, all parties are in position to formulate conclusions which become the basis for individual and agency decision making.

NJDOT's normal means of implementing meaningful public participation is to use meetings, newsletters, media news releases, paid advertisements, radio, or other commercial means. The Office of Community Involvement (OCI) is the channel through which the public is kept informed and heard.

Public Participation Role of Participating NJDOT Units

Technical data for OCI is provided by the NJDOT's planning, engineering, environmental, and legal staffs. The project manager in the lead unit is responsible for coordinating with OCI the community participation for the

project. The project manager's views are brought to OCI and a jointly agreed upon program is sought, with OCI ultimately responsible for decision and program. OCI in turn provides appropriate behavioral and sensitivity training programs to NJDOT staff in order to develop the self-confidence, discipline, public speaking, and leadership skills needed for an effective community involvement program.

Office of Community Involvement

The Office of Community Involvement (OCI) is responsible for ensuring the opportunity for public participation in all phases of developing a transportation project.

OCI coordinates an NJDOT interdisciplinary public participation program and is responsible for coordinating all NJDOT community involvement activities and providing support for NJDOT's planning and engineering staffs. In this role, OCI serves as a focal point for initiating, conducting, coordinating, and completing the initiative, consolidation, and final sign-off on all public participation activities.

OCI develops procedures for communicating with officials and the general public; designs appropriate project public participation programs; develops procedures for public meetings, public hearings, information centers, and workshops; conducts public meetings and hearings, information centers, workshops; coordinates NJDOT public participation activities, and ensures that public comment is integrated into the decision making process where possible.

To provide a systematic approach to public meetings, OCI prepares form letters for meeting invitations, develops mailing lists, drafts standard informational letters which can be easily edited to describe a particular project, prepares press releases and paid advertisements. OCI also reviews and approves graphics displays prepared by lead units or others.

OCI in consultation with NJDOT lead units establishes project development stages at which community participation should be encouraged. An appropriate number of community meetings and their timing is established. Arrangements are made for project engineering, social, economic, and environmental study documents to be made available to the public.

In addition, OCI decides the scheduling of public hearings and then develops the public hearing plan, conducts prehearing information centers, and conducts the hearings. The Commissioner must approve the holding of the hearings.

Public Participation Procedures

OCI has developed guidelines and procedures for preparing for and conducting public meetings, information centers, and public hearings. These procedures include:

1. Techniques and procedures for preparing technical material, so that it can be presented to a lay audience in a logical and coherent manner; suggestions for approaching an audience in a manner that will encourage participation and minimize mistrust and hostility; and ground rules for structuring a meeting to provide ample opportunity for both individual and group dialogue following a formal presentation.
2. Descriptions of the functions of departmental representatives and consultants at community meetings, that clearly define the role that each NJDOT representative and consultant is to play at community meetings, and designation of an appropriate individual to chair the meetings.
3. Procedures and guidelines for setting up in-house work sessions prior to each community meeting, to coordinate the activities of all NJDOT units and consultants involved in the project.
4. Suggestions for determining when to use and how to prepare effective visual aids.
5. Guidelines for determining when to tape public meetings.
6. Procedures for meeting notification and group identification discussed above.

PART 2. PUBLIC HEARINGS

Purpose

The purpose of the public hearing is to ensure adequate public participation on the need for a proposed project; alternative courses of action; alternative project locations; major design features; social, economic, and environmental effects of the alternatives; and the consistency of the project with local planning goals and objectives. It is intended public participation take place early in the project development.

Requirements*

NJDOT normally utilizes a one-hearing process. A public hearing or the opportunity for a public hearing is required for any project which:

1. requires acquisition of significant amounts of right of way,
2. substantially changes the layout or function of connecting roadways or of the facility being improved,
3. has a significant adverse impact on abutting real property, or
4. has a significant social, economic, environmental or other effect.

Projects which meet the above warrants are generally major in scope. The public hearing is held early in the project development process prior to any decision or commitment on project alternatives, during either the location phase or the design phase depending on where the project originates. For projects which originate in location studies another hearing may be held during the design phase if preliminary design information was not available during the prior hearing.

An additional public hearing may also be held for any project at any time at the discretion of the Commissioner. The following factors however will require providing the opportunity for another hearing:

1. substantial change in the proposal,
2. substantial unanticipated development in the area affected by the proposal,

* FHWA in its regulation FHPM 7.7.1 "Process Guidelines" permits a state highway agency to substitute its Action Plan public involvement/public hearing provisions for those contained in FHPM 7.7.5 "Public Hearings and Location/Design Approval." When FHWA approves an Action Plan with provisions for public hearings, the public hearing requirements of 7.7.5 need no longer be followed. Instead, the public involvement/public hearing procedures outlined in the Action Plan govern.

3. change due to an unusually long lapse of time since the last hearing, or
4. identification of significant social, economic, or environmental effects not previously considered at earlier hearings.

Responsibility

The Office of Community Involvement (OCI) has responsibility for initiating and implementing the public hearing process and procedures to insure compliance therewith. OCI after consultation with the NJDOT project lead unit and FHWA on the need for a hearing initiates a recommendation to the Commissioner for approval. Subsequent to those actions implementation begins.

Notice of Hearing

The public is advised of a public hearing or the opportunity for a public hearing through a Public Notice.

The Public Notice is published in a newspaper having general circulation in the vicinity of the project. The notice may also be published in any foreign language and local community newspaper having a substantial circulation in the project area. In addition, notice may be provided to interested agencies, groups, and individuals through other forms of communication such as newsletters and radio announcements.

If the Public Notice is for a scheduled public hearing there are two announcements. The initial Public Notice is published at least 30 days before the hearing. The second publication is made 5 to 12 days before the hearing.

If the Public Notice is for the opportunity for a public hearing a subsequent notice is provided of any scheduled hearing if a request for one is made. Any such request may be withdrawn if the requesting party requests withdrawal in writing.

Each Public Notice presents, as appropriate, a description of the proposal; date, time, and place of the hearing; procedures to be followed for making comments or requests; visual aids and engineering, social, economic and environmental reports available for review; and right of way acquisition and relocation information.

Information Center

An information center is generally set up at a convenient location in the vicinity of the proposed improvement. Purpose of this center is to facilitate closer communications with the general public and to provide information of NJDOT's proposal either in advance of a scheduled hearing or at the time of the hearing.

The information center displays and provides information on the following:

1. description of what information will be presented or made available to the public at the hearing,
2. procedures for receiving verbal and written commentary,
3. alternates studied and the potential effects of each, and
4. engineering, social, economic and environmental data including various reports such as: Environmental Impact Statement, Environmental Assessment, Land Acquisition and Relocation Assistance Studies.

The location of the center and its operating hours are specified in the public hearing notice. The center is attended by a public hearing officer assigned by OCI. There is scheduled attendance by the Project or Regional Design Engineer and representatives from other offices such as the Bureau of Environmental Analysis (BEA) and the Division of Right of Way (ROW).

Conduct of Hearing

The public hearing is held at a place and time generally convenient for persons affected by the proposed undertaking.

The hearing officer and department representatives at the hearing are determined by OCI in coordination with the regional or project engineer. Generally, representatives of BEA and ROW accompany engineering and community involvement personnel at each hearing.

NJDOT's representatives and the content of presentations at the hearing are intended to provide the public with clear, concise, and comprehensive information on such concerns as:

1. scope and location of the proposal,
2. description and potential impact of each alternate studied,
3. social, economic and environmental studies and reports,
4. land acquisition and relocation assistance programs,
5. governing legislation and administrative directives, and
6. the procedure for submitting written statements and exhibits.

Comments from Public Agencies and Organizations

The public hearing provides a full opportunity for interested citizens, organizations, and public officials to review and comment on NJDOT's proposal. Comments, both written and oral, are received and recorded.

Those in attendance are verbally advised of the following departmental policy.

1. All written comments and exhibits will be accepted by the Department. The due date for the submission will be determined prior to the hearing by OCI and the Project Engineer and the due date will be announced. In any case the due date shall be not less than 10 calendar days nor more than 30 calendar days after the hearing.
2. A verbatim written transcript of the oral proceedings at the hearing will be made.

Disposition of Comments

All comments received at the hearing receive interdisciplinary review and evaluation by NJDOT staff, including engineering personnel and representatives of BEA, ROW, and other units as appropriate. NJDOT's proposal is modified and supplemented, where reasonable and prudent, to reflect comments received.

A summary and disposition of substantive social, economic, environmental and other comments made at the hearing is provided in the Final Environmental Impact Statement (FEIS) as well as in any major report involving the project.

Public Hearing Transcript and Certification

NJDOT furnishes the FHWA division administrator with a transcript of the hearing, if held, and the certifications required by 23 USC 128.

CHAPTER IV

THE DEVELOPMENT PROCESS

Introduction

How are highway projects conceived, and how do they progress towards implementation? In this chapter, the development process is defined, and the reader is directed to other chapters of the ACTION PLAN for further elaboration of specific steps or elements of this process.

There are four essential stages in the development process (see Chart IV-A): The planning stage where foreseeable transportation problems are identified, prospective improvements are formulated, and the gravity of the need is assessed in light of prevailing State transportation goals and objectives; the prioritization/programming stage, where priorities are assigned to each project in light of the gravity of the need, and where projects are programmed for further action based on priority assignment and resource restraints; the project development stage, where the location and design plans of specific projects are developed based on analysis of alternatives in light of social, economic, and environmental (SEE) concerns; and the implementation stage, during which right of way is acquired (if necessary), engineering plans are finalized, and construction is undertaken. The steps associated with each of these stages are the subject of the subsequent sections of this chapter.

The project development process described here is applicable to all Federal-aid highway systems in New Jersey, whether under state, county, or municipal jurisdiction. County and municipal projects are initiated and coordinated through the NJDOT's Bureau of Local Aid and Safety Programs (BLA) and may involve other NJDOT functional units. State projects are initiated through the Office of Highway Services and coordinated mainly through Bureau of Project Location (BPL) and Regional Design Engineers (RDE) as lead units. See Chapter IX for a listing of other design lead units.

Planning Stage

Foreseeable problems and prospective improvements are identified by a continuing analysis process referred to as "transportation systems planning", and by continuing monitoring of the existing transportation system to define rehabilitation, safety, drainage, and other needs (Step 1). * This process is a collective undertaking by municipalities, counties, metropolitan planning organizations (MPO's) and NJDOT. The products of this process are the transportation plans of each participant and physical plant inventories maintained by NJDOT and numerous local government entities for their

* See Chapter V for a fuller description of the Transportation Systems Planning process.

respective facilities (Step 2). The plans and inventories are subject to periodic updating to keep them current. In the case of the NJDOT Statewide Transportation Plan, updating is statutorily required.

Problems identified in NJDOT's Statewide Transportation Plan usually require further planning refinement before prospective improvements can be specifically identified and progressed to the next step in the process. This is often the case if the problem is area-wide or corridor-wide in scope, and multiple or multimodal improvements are likely to be necessary. This planning refinement work is done by NJDOT's Bureau of Regional Analysis (BRA). Also referred to as preliminary alternatives analysis, the work determines the type of improvement (or combination of improvements) that best meets on a multi-modal basis an identified transportation deficiency. The recommendations growing out of preliminary alternatives analysis are subject to more in-depth definition work in the next phase of the process.

Not all problems are foreseeable, however; so needs can materialize quickly when unforeseen problems arise. Any one of the planning stage participants may identify an unforeseen problem, whereupon necessary adjustments to plans/inventories are made and problem remedies are sought.

In light of State transportation goals and objectives, problems must be remedied according to their immediacy and gravity. The immediacy and gravity of each problem and its prospective remedies are determined by means of a problem assessment (Step 3). A problem assessment states the problem, develops information about the prospective solutions, and delineates the limits of reasonable answers. This assessment is the responsibility of NJDOT's Office of Highway Services (OHS) for all state facility related problems, with support from the Division of Comprehensive Transportation Planning and other NJDOT units, and is the responsibility of the affected local/county entity for problems on local/county roads. For certain types of projects these assessments are the responsibility of NJDOT's Engineering and Operations units (e.g. bridge rehabilitation, pavement resurfacing, etc.). These project problem assessments for the purpose of priority and program development are not to be confused with project environmental assessments described in Chapter VII.

Problem assessments are necessary for new projects generated by in-house monitoring of the State transportation system, as well as projects conceived in plans. As a result of in-house monitoring, needs for projects to repair, reconstruct, or enlarge existing facilities are routinely identified. These needs, usually discovered during maintenance or during design studies, are reported back to Office of Highway Services and are acted on for interim priority and program action.

To ensure consistency in problem assessments by localities/counties, NJDOT has developed advisory guidance on how such assessments should be conducted.* A comparable methodology is employed by NJDOT on state transportation assessments.

* For a more detailed discussion of these assessments see Chapter VI.

Prioritization/Programming Stage

These problem assessments provide a basis for priority determinations by localities/counties and NJDOT (Step 4) on an annual basis (with on-going adjustments during the course of the year as circumstances dictate). There need to be reviews of project scopes as planning and development progress. Priority determinations, in turn, set the stage for programming actions and the formulation of transportation improvement programs developed each year (Step 5). Localities, counties, and various units in NJDOT are responsible for the development of these programs.

Priority recommendations by NJDOT are the responsibility of the Office of Highway Services (OHS). Determinations from these recommendations are then made by the Resource and Priority (RAP) Committee. RAP is comprised of senior management within NJDOT. These determinations govern allocation of available staff and financial resources. The RAP Committee may also see fit to "bound" the prospective remedies for a particular problem, and to stipulate that the problem priority be reconsidered in the event the anticipated cost escalates beyond a certain amount or other related problems are identified.

Project Development Stage

Upon completion of the prioritization/programming stage the RAP Committee directs the appropriate NJDOT units to undertake the necessary project development work. Chart IV-A shows several tracks along which a project may move depending on its scope and the applicable environmental category under FHWA regulations (23 CFR Part 771). Chart IV-A also shows where consultation with local officials, government agencies, and the public will occur at critical steps throughout the project development phase.

At the outset of the project development stage, it may be necessary to undertake a single first stage project analysis, a "feasibility study". Projects with major feasibility concerns as to whether there are workable, acceptable, and fundable solutions (conceivably ranging from modest transportation system management (TSM) type improvements to more capital intensive major highway improvements) require feasibility study, while projects with strong public support and well defined scopes at the outset of the project development stage do not require such study. The aim of the feasibility study is to narrow the choice of solutions to those that are workable, fundable, acceptable, and worthy of comprehensive examination.

Thus the threshold question at the outset of the project development stage is: "Is it readily apparent what solutions are feasible and worthy of comprehensive examination?" If it is, then the project proceeds directly to Step 9 for preliminary engineering by the appropriate lead unit and environmental analysis by the Bureau of Environmental Analysis (BEA).* At

* See Chapter VII, Part 1 for a description of social, economic, environmental study procedure.

Step 9 a design unit is responsible for projects limited to design alternatives confined practically to the same location. On the other hand, projects involving new locations, dualizations that may include bypass sections, and proposals causing significant SEE concerns, are assigned to BPL. Most projects are of the design alternative type. The latter type of analysis is undertaken to the extent necessary for a "levels of action" (LOA) determination (Step 10), which is a determination of the overall extent of environmental analysis necessary to properly address attendant environmental issues.* More on the various possible LOA determinations momentarily.

Returning to the threshold question at the outset of the project development stage, if it is not readily apparent that there are feasible solutions worthy of comprehensive examination, then a feasibility study (Step 6) as a single project must be undertaken. Here alternatives are developed, public acceptance tested, possible engineering solutions studied, environmental constraints identified, and funding needs estimated. This type of study is performed by the BPL.

Given the findings of the feasibility study, BPL defines the project scope (Step 7) for reappraisal and programming (Step 8) by the RAP Committee. If it is decided to continue with the project, then the project is advanced to Step 9--the engineering and environmental analysis necessary to make an LOA determination.

There are three possible LOA determinations or paths that a project can take beginning with Step 10: (1) "Class I", which is a project requiring the preparation of an environmental impact statement (EIS); (2) "Class II, or a categorical exclusion", which is a project not requiring detailed environmental analysis; and (3) "Class III", which is a project in which the significance of the environmental impact is not clearly established. All actions not Class I or II are Class III. All actions in this class require preparation of an Environmental Assessment (EA) to determine appropriate level of environmental documentation required. Class I projects require the most extensive environmental study, and thus require the longest time to complete. Class II projects generally require the least time to complete since detailed environmental analysis is not necessary; most projects are classified as Class II (categorical exclusion).

Thus the LOA step (Step 10) represents another threshold question: "How much environmental analysis is required?" Projects qualifying as categorical exclusions move directly to Step 20, Design Approval, once the engineering analysis (Step 9) has been completed and evaluated for public hearing criteria. Hearings are usually unnecessary. See Chapter III - Community Involvement for public hearing requirements.

* For a description of project classification through Levels of Action procedure see Chapter VII, Part 2.

Class III projects require an added degree of processing, requiring limited environmental study and preparation of an Environmental Assessment (EA) document which in turn leads to either a "finding of no significant impact" (FONSI), or a finding that an EIS is required. In the former case, if the project meets criteria for a public hearing, offer of an opportunity for a public hearing is made (Step 14). After responses to this offer are in a reappraisal (Step 15) is made by the RAP Committee to confirm the project's desirability. Then FHWA is requested to concur in the FONSI determination (Step 17). Following a FONSI the project is ready for NJDOT Design Approval (Step 20).

If the LOA does determine need for an EIS (or the need for an EIS is determined as a result of a completed EA), the project is reappraised (Step 11) by the RAP Committee for continuation. If continuation is authorized, the project is advanced to Alternatives Analysis Study (Step 12), also known as Location Study. The Location Study is an in-depth investigation of all alternatives and their environmental impacts.* It begins after prerequisite programming actions have taken place. BPL as lead unit continues the project in this step. In cooperation with FHWA, BEA begins an early coordination and scoping program with other federal, state and local agencies. This program is designed to identify significant environmental issues early in the project development stage and to involve those agencies whose concerns may be affected by the project. This agency involvement process is described in detail in Chapter VII. BEA carries out detailed environmental studies and prepares the Draft EIS (DEIS) (Step 13) which must be completed and available before a public hearing can be held.

The location study step is generally required where new highways on new alignment are being contemplated, or where major improvements on existing highways are under consideration. The purpose of this step is to comparatively analyze and evaluate alternative improvements in terms of costs and benefits, accounting for traffic operation, engineering, social, environmental, and economic considerations as well as community attitudes. Alternatives considered almost invariably include low cost TSM remedies, to confirm whether more costly construction alternatives are indeed necessary. If as a result of the study findings a change in LOA classification is judged to be needed the project will again be referred to BEA for a new LOA decision.

As a result of the alternatives' analysis, one or more of the alternatives may be determined as the most acceptable based on the above evaluation criteria and the results of agency consultation and public meetings. Prior to the Public Hearing the RAP Committee will review the project and may identify a preferred alternative or alternatives if one or more exists. The preferred alternative(s) will be described as such in the DEIS and at the Public Hearing.

Since location studies usually meet criteria for a public hearing, at the conclusion of Step 13 a public hearing (Step 14) is scheduled or opportunity for a hearing advertised. Before the hearing the DEIS is distributed and an informational program presented. Comments received at the hearing or in comment on the DEIS are evaluated following which another

* For a more thorough description of Location Studies, see Chapter VIII.

reappraisal by the RAP Committee takes place (Step 15) to reaffirm the project's feasibility and desirability. Continuing the project, a preferred alternative is selected (Step 16) and recommended to the RAP Committee for approval. If RAP approves, the recommendation is sent to FHWA for concurrence. The Final EIS (FEIS) (Step 17) is prepared based on the preferred alignment. The FEIS is then forwarded to FHWA for approval. FHWA's approval is recorded in an FHWA Record of Decision.

Following a Record of Decision (ROD) or Finding of No Significant Impact (FONSI) the project moves from BPL to a Design Services lead unit for preparation of design schemes (Step 18). For complex projects much of this design development may have been accomplished at Steps 9 and 12 and been available at the public hearing held at Step 14. If so no further public hearing is generally necessary, and the Design Report so documents. If development of design detail has not been accomplished earlier a second public hearing (Step 19) may be necessary to present design features and alternatives. Design Approval (Step 20) by the Director of Engineering and Operations clears the project for development of contract construction plans and specifications.

Detailed design up to and including right-of-way plans and appraisals may be permitted before approval of a Final EIS providing the following four conditions are met:

1. The DEIS identifies a preferred alternative, all elements of USDOT have commented on this alternative and adverse comments of offices above the Division have been resolved with those offices.
2. Comments from both the circulated DEIS and the required hearings have been received and considered by FHWA.
3. Continued design development is needed to refine abatement measures, mitigation plan, or property acquisition needs, or to meet requirements of environmental status, orders, or regulations which must be satisfied prior to PS&E approval.
4. FHWA concurrence.

Local aid projects administered through the Bureau of Local Aid and Safety Programs (BLA) are developed through a processing sequence similar to that described above for State-system projects.

As noted earlier the progression of a Class I project is manifestly the longest project development path. A much shorter path applies for Class II and Class III projects, and the vast majority of projects fall into these two classes.

Similarly, with regard to public hearings, if no great interest in a hearing is anticipated and an opportunity for a hearing is first advertised and no interest is expressed, no hearing need be held, shortening the development process time.

With design approval the project development stage is complete.*

Implementation Stage

This concluding stage entails another programming step (Step 21); development of contract plans, right of way acquisition, and environmental reevaluation (Step 22); advertisement and award of contract (Step 23); and construction (Step 24).

The initial step in this stage is a contingent one - additional programming for major projects which because their development extends in time may be funded by work steps. Additional funding may at this point need to be provided to carry out their implementation. Smaller projects usually do not need reprogramming because their development and implementation funding would have been done at the same time.

Development of contract plans based on engineering and environmental criteria is begun, and preparation of right-of-way plans is started. This work is designated Phase I in the preparation of contract plans and specifications.

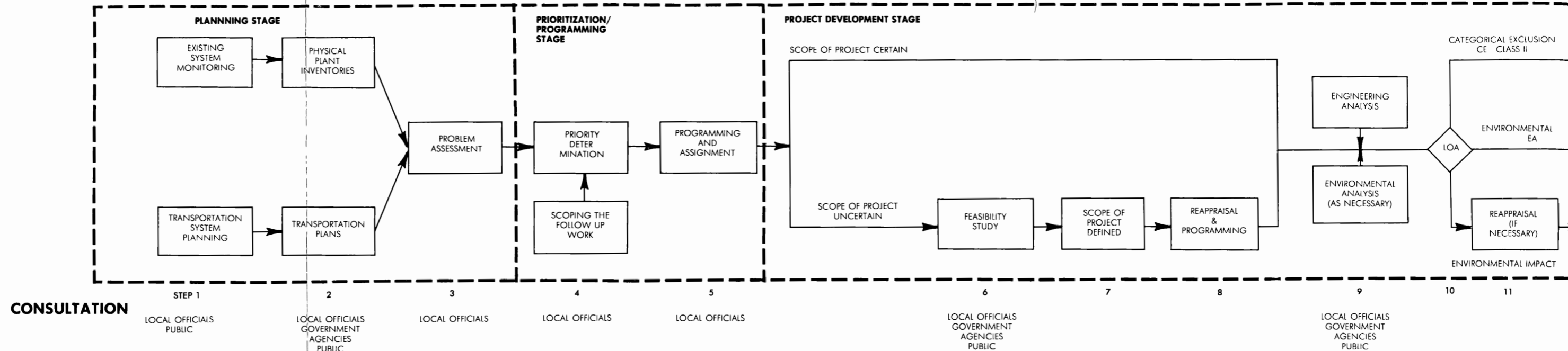
In Phase II, State and Federal agencies with jurisdictional and permit granting responsibilities are consulted. Utility and jurisdictional agreements are started. Right of way plans and proposal are completed and sent along with an environmental evaluation to FHWA for approval and authorization. These plans must be supplemented by submittal of (1) a satisfactory relocation plan for displaced residents and business, and (2) an environmental reevaluation report to show adequacy of environmental planning and design. After FHWA approval and authorization the right of way plans are sent to the Right of Way Division for right of way acquisition.** Following this step, Phase III design completes construction plans and specifications, and construction contract documents are prepared.

The next step is Final Design, Phase IV. During this step, final construction plans and specifications and contract documents are completed and submitted to FHWA for final approval. FHWA's final approval sets the stage for contract advertisement and award (Step 23). Normally construction is by competitive bidding. The concluding step, construction, (Step 24) follows. Major construction projects are preceded by a Preconstruction Program during which the public is informed of construction timing, stages, detours, etc. During construction coordination and monitoring are necessary to assure compliance with plans, specifications, and environmental commitments. As previously discussed there are circumstances which allow completion of detailed design and right-of-way plans and appraisals prior to approval of the Final EIS (Step 17).

* For a more thorough description of design engineering steps see Chapter IX.

** Right of Way acquisition procedures are discussed at greater length in Chapter X.

THE DEVELOPMENT PROCESS



CONSULTATION

Consultation with local officials, the public, and government agencies is provided at these steps through formal notification, newsletters, news media releases, meetings, or hearings

REAPPRAISAL AND PROGRAMMING

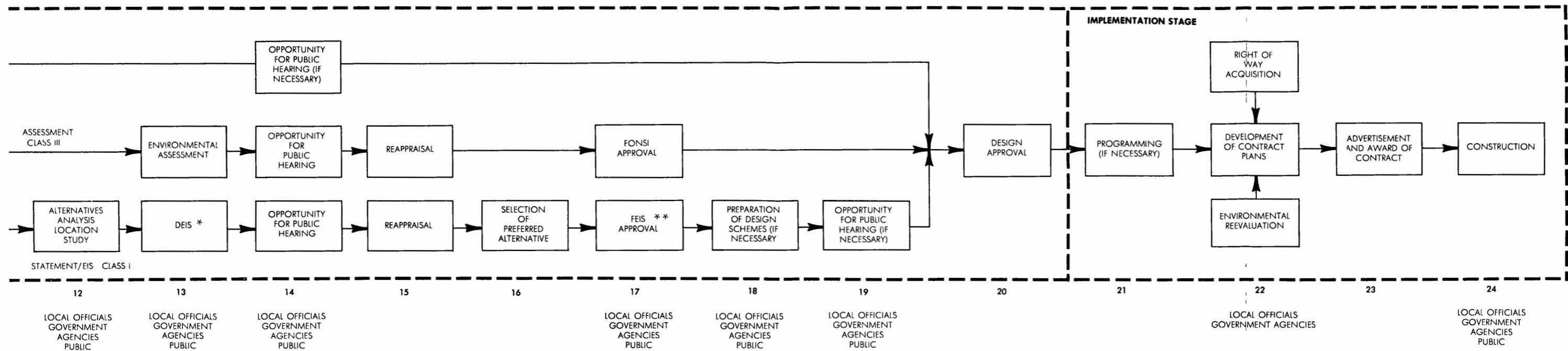
Programmed projects are reviewed after designated steps in the development process to confirm or revise project priority, or to provide supplemental funding of sequential project steps in accordance with the annual construction program. If this reappraisal results in change of project priority, future action on the project will likely need to be reprogrammed

ENVIRONMENTAL CLASSIFICATION

LOA (Levels of Action) - an assessment procedure to evaluate and classify the degree of environmental study a project requires

CE (Categorical Exclusion) - CLASS II - a project exempt from preparation of an Environmental Assessment (EA) or Environmental Impact Statement (EIS) under CEQ regulations

EA (Environmental Assessment) - CLASS III - a concise document summarizing environmental studies which provide sufficient analysis for determining whether to prepare an EIS or FONSI



PUBLIC HEARINGS

FONSI (Finding of No Significant Impact) - a separate written statement, prepared by FHWA, that a project will not have a significant impact on the quality of the human environment. The FONSI accompanies the EA and any other support materials.

EIS (Environmental Impact Statement) - CLASS I - a document supplying information on a project that may cause significant impacts on the environment, showing what the impacts are expected to be and measures to be taken to mitigate negative impacts.

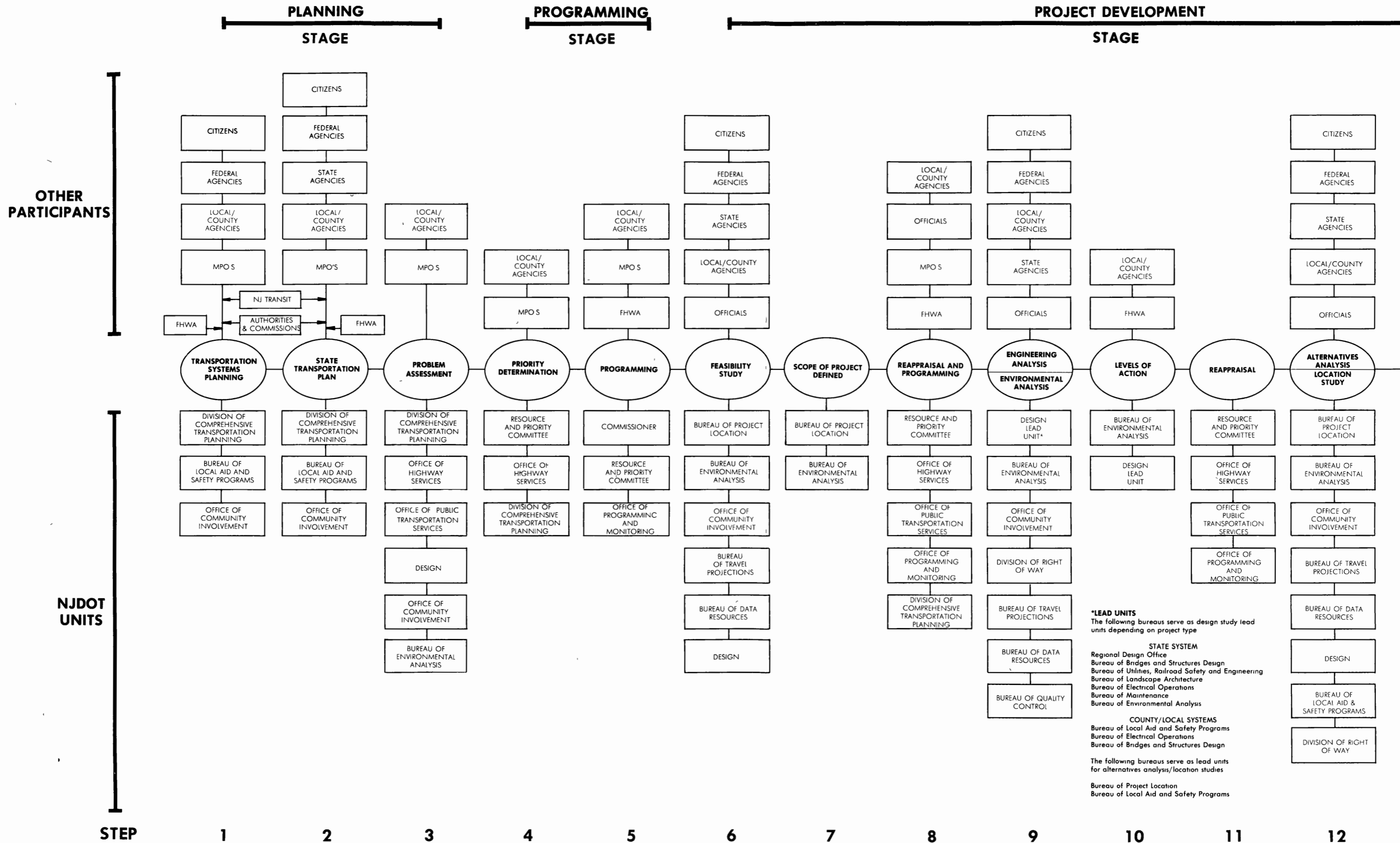
Opportunity for a public hearing is offered when a project: (1) requires acquisition of significant amounts of right of way, (2) substantially changes the layout or function of connecting roadways or of the facility being improved, (3) has a significant adverse impact on abutting real property, or (4) otherwise has a significant social, economic, environmental, or other effect. Projects which meet these warrants are usually major in scope.

The public hearing is held early in the project development process prior to any decision or commitment on project alternatives,* during either the location phase or the design phase depending on where the project originates. For projects which originate in location studies another hearing may be held during the design phase if preliminary design information was not available during the prior hearing.

*A preferred alternative may be identified in the DEIS based on early coordination and detailed SEE and engineering studies (See Chapter IV)

**Preparation of detailed design including right of way engineering may be permitted prior to approval of the FEIS (See Chapter IV)

**CHART IV-A
ACTION PLAN
NJDOT**



Time Required and Reponsibilities for Each Step

The first stage of the development process (i.e. Planning) is a continuing one, so time required for processing projects is most straight-forwardly described in terms of the time lapse beginning with the second phase.

The second stage, Prioritization/Programming, while not continuous for a specific project, may hold a project in abeyance due to resource limitations and priority considerations. Once programmed the project's progress through stages three (Project Development) and four (Implementation) can be expected to be steady with total time requirements depending on project type, complexity, environmental sensitivity, community attitudes, funding and manpower resources, right of way requirements, and extent of construction involved.

Representative time for different types of projects through stages three and four are as follow:

Intersection improvements (without right of way aquisition)	6 to 15 months
Intersection improvements (with right of way aquisition)	15 to 24 months
Widening within existing right of way	12 to 24 months
Widening requiring additional right of way	18 to 60 months
Expressway on new Location	60 to 108 months

The specific NDJOT units and outside participants involved in each step of the process are shown in Chart IV-B.

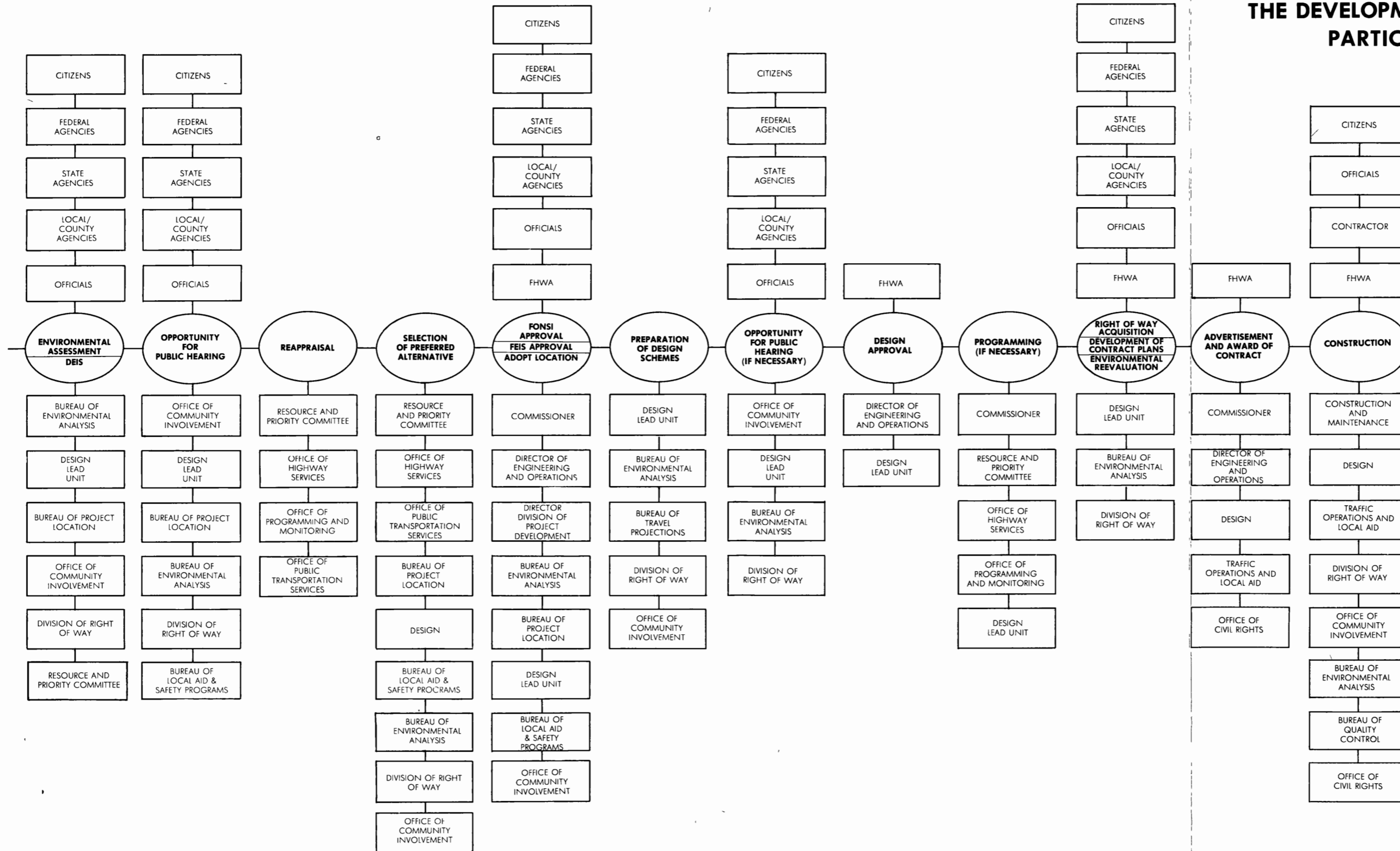
PROJECT DEVELOPMENT

IMPLEMENTATION

STAGE

STAGE

THE DEVELOPMENT PROCESS PARTICIPANTS



13

14

15

16

17

18

19

20

21

22

23

24

IV-11

CHAPTER V

TRANSPORTATION SYSTEMS PLANNING

Introduction

Transportation Systems Planning is a comprehensive, coordinated and continuing process by which foreseeable transportation needs are analyzed from state, regional and local viewpoints. The process involves activities by state, county and municipal agencies, public authorities, citizen organizations, regional transportation planning agencies, and others.

Transportation systems planning is concerned with the identification of potential social, economic, energy and environmental considerations, and those courses of action necessary to develop transportation systems truly reflective of the needs of the people.

Formal products of this dynamic process include development and maintenance of long and short-range transportation plans, and submittal of an annual program for implementing projects described in these plans. The general process is shown graphically in Chart V-A.

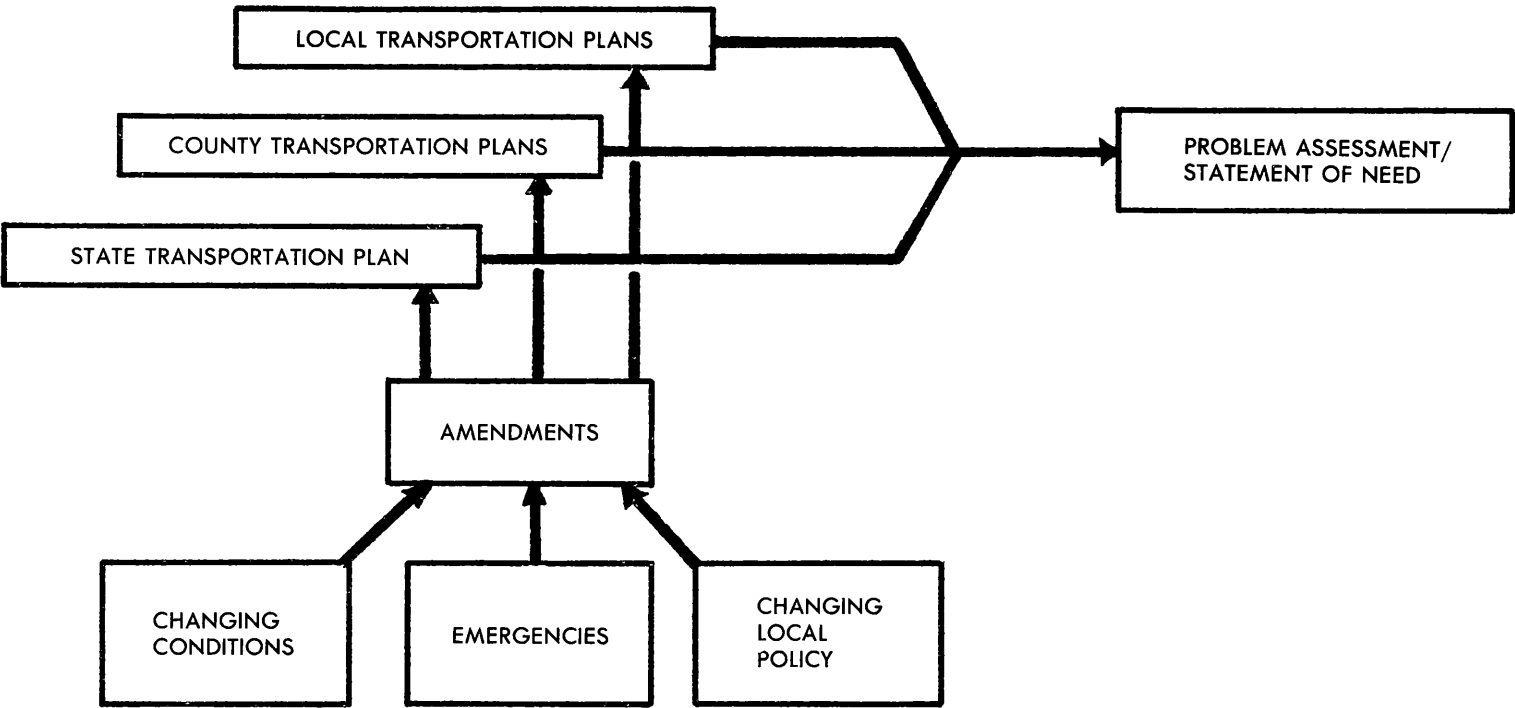
Each partner in the transportation systems planning process has a distinct and interrelated role in the overall process. Following is a description of those agencies and their relative responsibilities.

County and Municipal Planning

Because of social, economic, and environmental constraints, there is a clear trend toward management and maintenance of the existing transportation system. This emphasis has led to development of projects which are smaller in scope and less regional in nature. Their impacts are principally local, and therefore, the municipal and county agencies must play an important role in planning and implementing these projects.

There is an active principally federally funded transportation planning program in 19 of New Jersey's counties and its two largest municipalities, Newark and Jersey City. The level of planning activity differs from area to area; however, organization and primary objectives are quite similar. The areas usually have in place a Transportation Coordinating Committee (TCC), consisting of local officials and private citizens supported by a local technical staff, which addresses transportation issues affecting the area and develops, plans, and adopts their locally oriented portion of the Transportation Improvement Program (TIP).

THE TRANSPORTATION SYSTEMS PLANNING PROCESS



V-2

Metropolitan Planning Organizations (MPO's)

As mandated by federal regulations (23 CFR 450), MPO's are to serve urbanized areas of 50,000 or more, and provide "the forum for cooperative decision making by locally elected officials of general purpose governments." The strong local planning programs in New Jersey have, however, resulted in a process, whereby the MPO's concentrate on development of regional plans, address regional issues, and adopt a composite TIP. Additionally, the larger MPO's (Tri-State Regional Planning Commission and Delaware Valley Regional Planning Commission) provide technical assistance upon request to their member governments. Map V-B shows the MPO study areas in New Jersey.

The six MPO's in New Jersey vary widely in their size, organizational makeup, and emphasis. A short description of each follows.

Tri-State Regional Planning Commission

The largest of the MPO's is the Tri-State Regional Planning Commission (TRI-STATE), which is made up of representatives from Connecticut, New York, New Jersey, and Federal agencies (non-voting). Currently (March, 1982) the composition of TRI-STATE is under review by the three state governors and is subject to change.

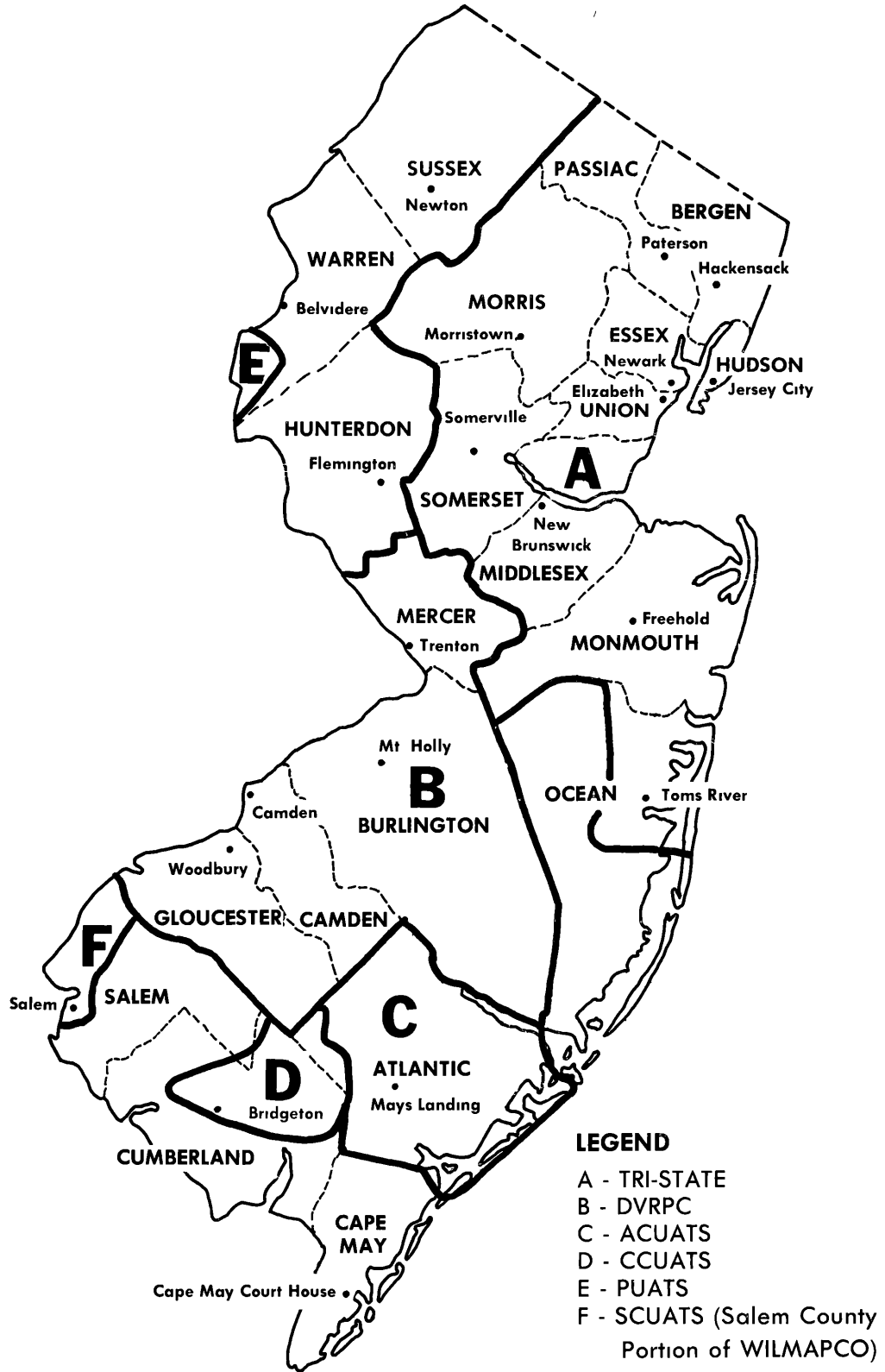
The Commission receives technical support from its own staff, and advisory support from its standing committees and a Technical Advisory Group. In New Jersey a Coordinating Committee of the principal elected officials of general purpose, local governments and operators of public mass transit has been formed to offer proposals for inclusion in the regional program. This committee is the Northeast New Jersey Transportation Coordinating Committee (NENJTCC).

In TRI-STATE, the Commission concentrates on regional issues. Although the Commission is officially the MPO, it has formally delegated many functions of a non-regional scope to the NENJTCC and local governments. The NENJTCC acts on plans, programs, and issues subarea in scope affecting New Jersey. As indicated before, many non-regional issues are primarily the responsibility of the local governments.

Delaware Valley Regional Planning Commission

The Delaware Valley Regional Planning Commission (DVRPC) is somewhat similar in organizational structure to TRI-STATE. The DVRPC Board makes decisions on a regional basis for both the New Jersey and Pennsylvania sectors of the MPO. The Planning Coordinating Committee makes recommendations to the Board, based on proposals of the various Technical Advisory Committees. There is no New Jersey-based policy group in DVRPC similar to the NENJTCC. However, the DVRPC counties and major municipalities play a strong role in the planning process through membership in DVRPC committees.

METROPOLITAN PLANNING ORGANIZATIONS Delimitation of Study Areas



Wilmington Metropolitan Area Planning And Coordinating Council (WILMAPCO)

The organization of WILMAPCO, the MPO which encompasses the urbanized area of Salem County, is somewhat different. NJDOT, Salem County, and a representative from the urbanized municipalities are represented on WILMAPCO's three committees: the Technical Advisory Committee, the Technical Coordinating Committee, and the Coordinating Council. Input to these committees, regarding issues unique to New Jersey, is also furnished by the Salem County Technical Advisory Committee (TAC).

In this area, the local planning mechanism is the Salem County TAC. Staff support is provided by the Salem County Planning Board and NJDOT staff. All MPO responsibilities remain with the WILMAPCO Council. However, the Salem County TAC has responsibility for initial development and approval of the New Jersey plans and programs.

Atlantic County Urban Area Transportation Study (ACUATS)

The MPO for the Atlantic County urbanized area is the Policy Committee (PC) of ACUATS. This committee consists of elected officials of member counties and municipalities, a representative of the Atlantic County Transportation Authority, a representative of the Department of Community Affairs, a NJDOT representative, and on a non-voting basis federal representatives.

ACUATS has a Transportation Coordinating Committee (TCC), which serves to oversee work program activities and planning coordination as a permanent subcommittee of the PC to advise them on planning issues. ACUATS also has a Technical Advisory Committee, composed of engineers and planners, which provide technical input to the PC and TCC.

The ACUATS has its own small staff, which provides administrative support to the MPO, and coordinates the technical planning activity of member governments.

Cumberland County Urban Area Transportation Study (CCUATS)

The MPO for the Cumberland County urbanized area is the Policy Committee of the Transportation study in that area. This committee consists of elected officials of Cumberland County, member municipalities, and a NJDOT representative. FHWA is represented with non-voting status. The Technical Committee is composed of engineers and planners, and supplies technical support to the Policy Committee with staff assistance being provided by County Planning Board and NJDOT staff. Because of its relatively small size, this MPO and the county transportation planning agency are in effect substantially the same.

Phillipsburg Urban Area Transportation Study (PUATS)

The Allentown-Bethlehem-Easton-Phillipsburg urbanized area has two MPO's: the Lehigh Valley Transportation Study (LVTS) in Pennsylvania and PUATS on the New Jersey side. By formal agreement LVTS and PUATS closely coordinate their transportation planning activities. Specifically PUATS and LVTS cross-adopt their plans and programs, develop a joint Unified Planning Work Program and participate in each other's meetings.

The MPO for the New Jersey portion of the urbanized area is the PUATS Policy Committee. This committee consists of locally elected officials, NJDOT, FHWA (non-voting), and a citizens's representative. The Technical Advisory Committee consists of engineers and planners of the respective member agencies. Staff is provided by the Warren County Planning Board and NJDOT.

Citizens Involvement in the MPO Process

The transportation planning process involves not only all levels of government - state, county and local, but also, an informed and involved citizenry and interested organizations as well. To facilitate the communication between the citizen and the relevant MPO, various mechanisms have been set up within each MPO. This includes public participation at the MPO, local and state levels. The Federal transportation agencies are represented as non-voting members.

State of New Jersey

Transportation systems planning at NJDOT includes three interrelated major activities: Development and maintenance of the State Transportation Plan, plan refinement through subarea and corridor analysis, and coordination with MPO and local planning agency activities.

The development and maintenance of the State Transportation Plan is a responsibility of the Bureau of Statewide Planning (BSP), with input from virtually all NJDOT units. The plan is a multi-section document encompassing goals and objectives, program policies, short range and long range plans.

Area and corridor analysis is the responsibility of the Bureau of Regional Analysis (BRA), with support from other NJDOT units. The prime purpose of this activity is to further refine specific transportation strategies outlined in the State Transportation Plan. As an example, a corridor identified in the Long-Range Plan as having severe transportation deficiencies, would be analyzed by BRA, and an appropriate strategy or package of strategies would be defined and recommended for more in-depth investigation in the project development phase.

As indicated previously, transportation systems planning occurs at three government levels: State, Regional and Local (County/Municipal). Each agency must integrate and coordinate the plans of the others with its own activity. At NJDOT, this link is provided at staff level by the Bureau of Urban Transportation Planning (BUP). This Bureau provides NJDOT representation and technical support to the county and major municipal planning agencies, administers the funding contract for the staff activities of Tri-State and DVRPC, provides staff support to the small MPO's (CCUATS, PUATS, and the Salem County portion of WILMAPCO), and provides NJDOT representation on the appropriate MPO committees.

The interfaces between NJ TRANSIT and NJDOT in the transportation systems planning process is detailed in a formal agreement. Generally, NJDOT is responsible for long-range multimodal transportation planning on a state-wide basis. Additionally, NJDOT is responsible for regional and corridor planning with special emphasis being placed on coordination of transit systems development and highway planning. NJDOT is also the State's formal liaison with the MPO's and local planning agencies. NJ TRANSIT is primarily responsible for operations of its transit system and related planning, including bus and rail facility development and improvement.

Although the agreement defines specific responsibilities for each agency, it is also clear in defining a responsibility for each agency to coordinate all transportation systems planning activity.

A-95 Review

In addition to coordination efforts of BUP, an additional mechanism is in place to assure coordination and consistency in planning and project implementation. This is the A-95 Review system established under Federal Office of Management and Budget (OMB) Circular A-95. Basically, it provides local county and state governments the opportunity to review all federally aided planning and capital improvement projects prior to applications for federal funds and approval.

A-95 Review requests originating from NJDOT functional units go to BUP which is responsible for submitting the notification and review request simultaneously to the State Clearinghouse and to the appropriate metropolitan or regional clearinghouse. Map V-C shows clearing houses and their areas. Chart V-D outlines the review procedure information flow for both NJDOT initiated projects and projects initiated by other agencies and transmitted to NJDOT for review. Projects received by NJDOT for review--- usually for housing, water supply, sewer, open space and recreation projects---are routed by BUP to appropriate functional units within NJDOT for evaluation and comment.

NEW JERSEY A-95 CLEARINGHOUSE REPRESENTATIVES

STATE CLEARINGHOUSE (STATEWIDE)

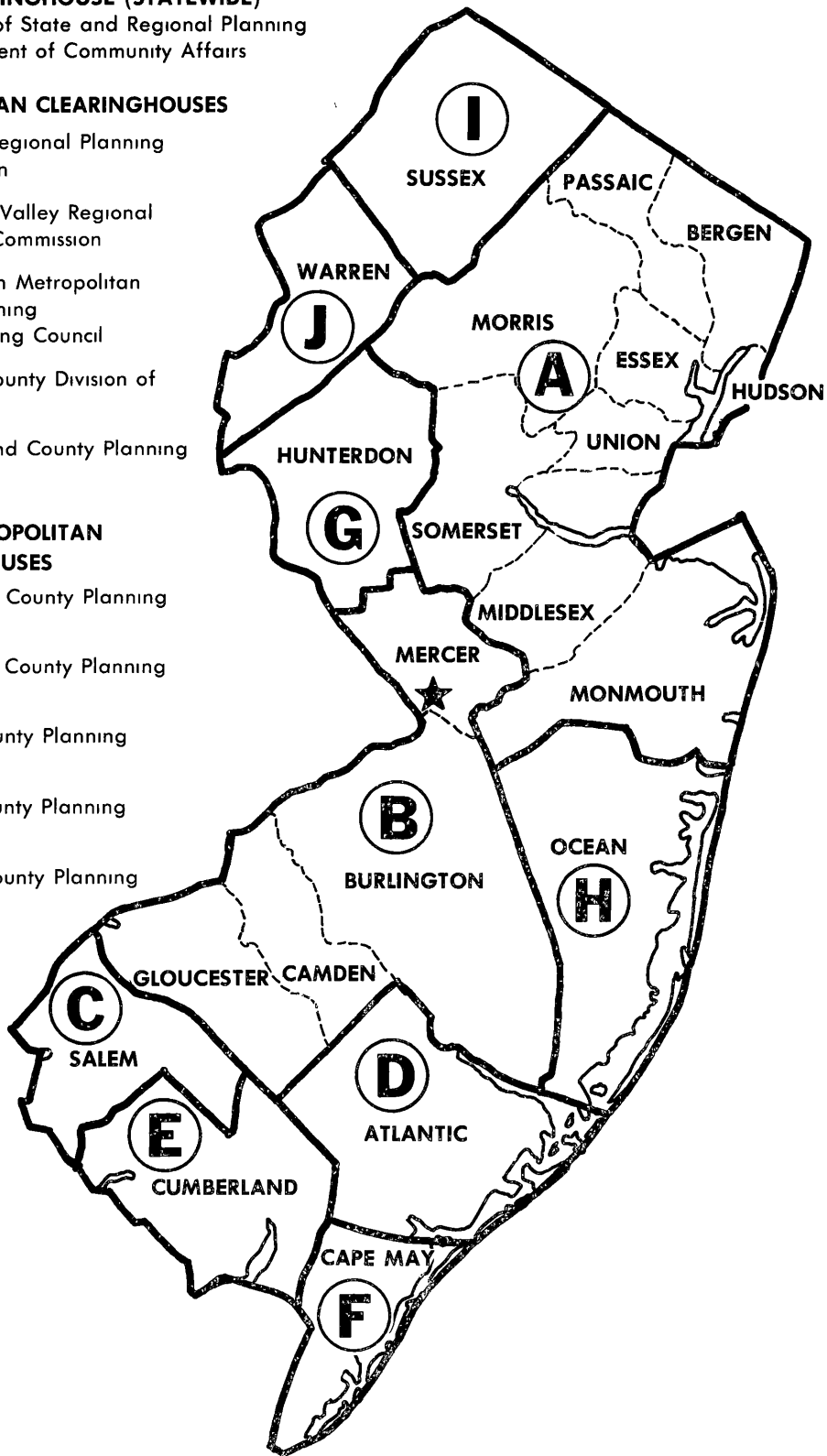
- ★ Division of State and Regional Planning
Department of Community Affairs

METROPOLITAN CLEARINGHOUSES

- A Tri-State Regional Planning Commission
- B Delaware Valley Regional Planning Commission
- C Wilmington Metropolitan Area Planning Coordinating Council
- D Atlantic County Division of Planning
- E Cumberland County Planning Board

NON - METROPOLITAN CLEARINGHOUSES

- F Cape May County Planning Board
- G Hunterdon County Planning Board
- H Ocean County Planning Board
- I Sussex County Planning Board
- J Warren County Planning Board



A-95 NOTIFICATION & REVIEW PROCEDURE

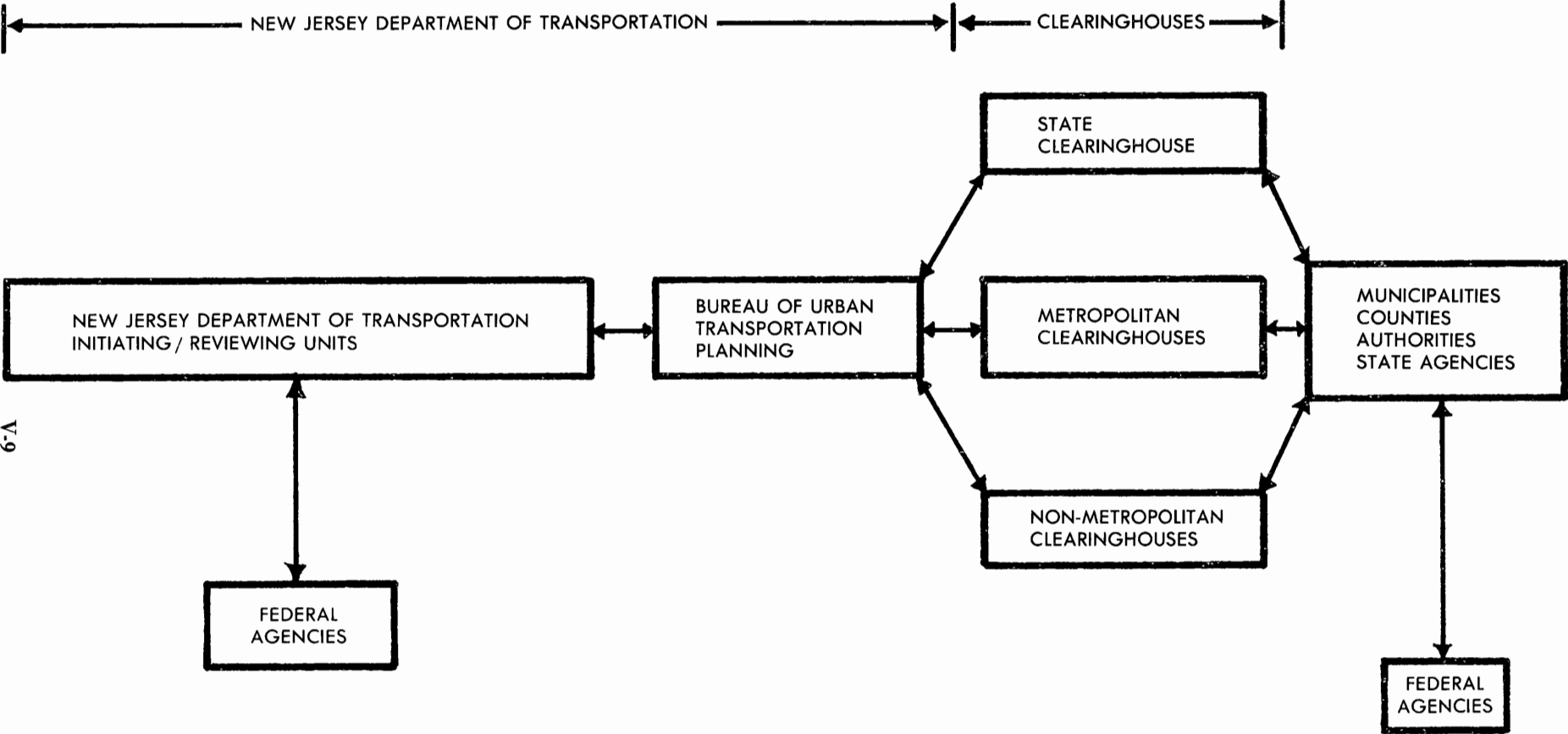


CHART V-D
ACTION PLAN
 NJDOT

In the early planning phase, NJDOT notifies clearinghouses of the type and general location of the proposed project, preliminary cost estimates, expected funding sources, plan from which the project originated, and other pertinent information. If the clearinghouses request additional project information for distribution as the project develops such information is sent to them after the location study phase has established alternatives. If continued interest exists in the design features of a project after the location study, design data is later resubmitted to the clearinghouses for another review.

The A-95 Review process must be completed before the responsible federal agency will grant funding approval of the project application.

CHAPTER VI

PRIORITIZATION & PROGRAMMING

The Basis for Setting Priorities and Establishing Programs

Projects must be prioritized and programmed at established milestones throughout the development process beginning between the planning and project development stages of the process. Prioritization ensures that available resources are devoted to projects that best implement the goals and objectives presented in the Transportation Plan. Programming applies these resources to priority projects in recognition of their schedule needs and eligibility for available funding.

Both of these steps involve continuing activities and annual programming. Project priorities and project delivery restraints constitute the basis for the 7-year capital program submitted annually to the New Jersey Commission on Capital Budgeting and Planning and a 5-year Transportation Improvement Program (TIP) developed for the urban areas and submitted to FHWA and UMTA. This, in turn, serves as a framework for specific programming documents and capital funding requests.

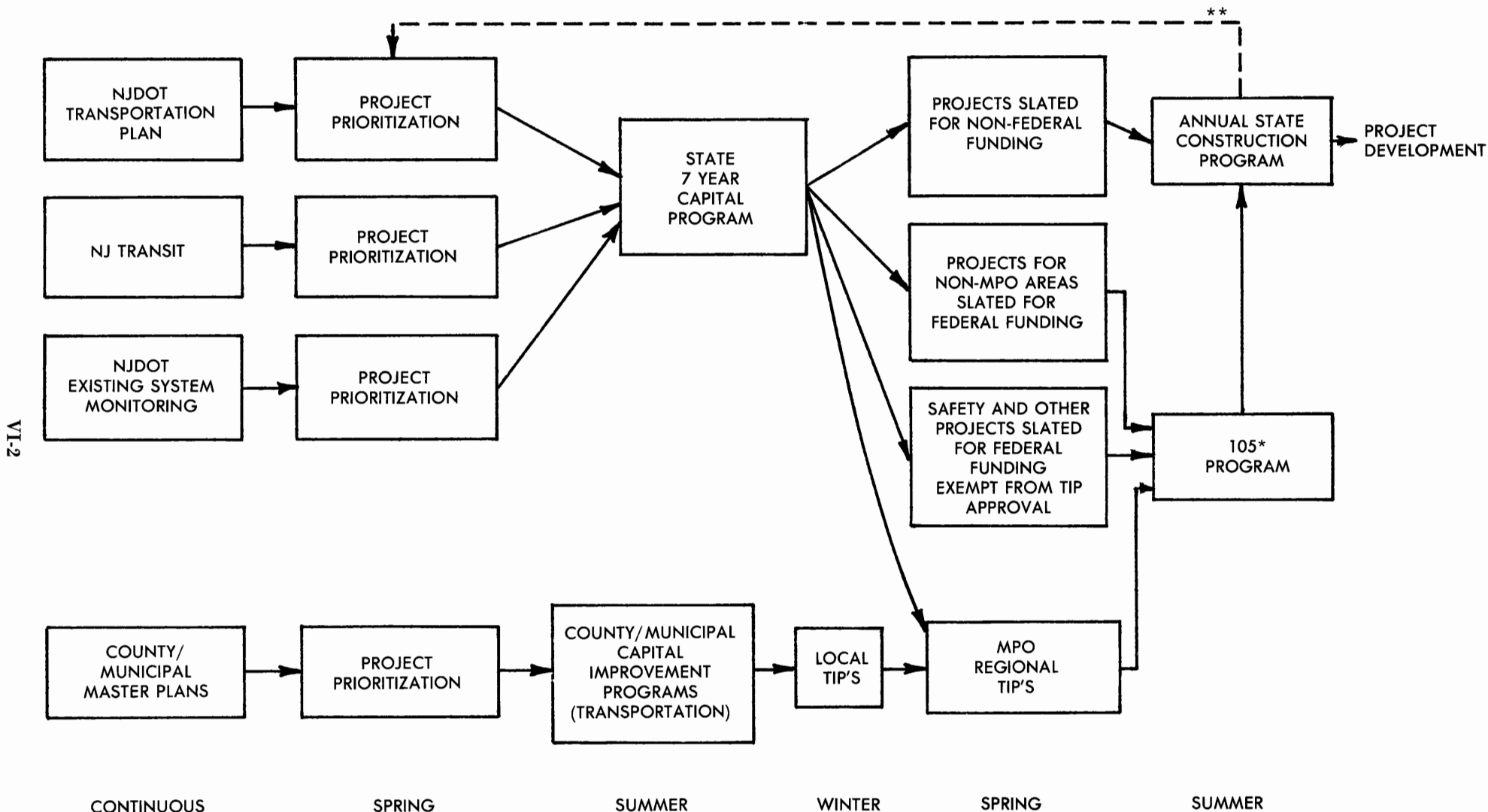
Chart VI-A "Project Prioritization and Programming Flow Chart" shows flow through Prioritization (Step 4) and Programming (Step 5).

Prioritization

Project priorities on State facilities are established by NJDOT while county and local project (local aid) priorities are established by municipal, county, and regional representatives. In both cases, initial priorities are based upon project assessments which summarize: the problem being addressed, the solution(s) being considered, the preliminary cost estimates, and benefits expected from implementation. NJDOT employs a "PRE-DESIGN Assessment" procedure (see Appendix D) as an aid in establishing priorities. In the case of all local aid projects, NJDOT encourages counties and localities to prepare Pre-TIP Assessments to facilitate priority and program action.

The local aid projects are prioritized during the development of a Metropolitan Area TIP. Each county enters this process with its projects ranked by anticipated implementation year. Through a process of negotiation, the regional body adjusts the overall list to account for anticipated resources.

PROJECT PRIORITIZATION AND PROGRAMMING FLOW CHART



*LOCAL PROJECTS WITH NO STATE MATCHING FUNDS NEED NOT APPEAR ON THE 105 PROGRAM
 **PROJECTS NOT INCLUDED ON THE CONSTRUCTION PROGRAM ARE RETURNED FOR PRIORITIZATION OTHERS PROCEED AS APPROPRIATE

**CHART VI-A
 ACTION PLAN
 NJDOT**



Prospective State highway projects are grouped by type and cost as follows:

1. Projects under \$1 million
 - a) Safety
 - b) Resurfacing
 - c) Drainage
 - d) TSM
 - e) Other
2. Projects over \$1 million
 - a) Safety
 - b) Highway Reconstruction
 - c) Bridge Reconstruction
 - d) Resurfacing
 - e) Major Capacity Increases
 - f) Highways on New Alignment (Non-Interstate)
 - g) Interstate Highways
 - h) Other
3. Projects requiring funds for feasibility or alternatives analysis.
4. New starts not clearly defined as to scope.
5. Contingency funds to cover overruns, escalation due to inflation, unusual costs associated with the above projects.

Priorities are then established within each group. Consistent with NJDOT's goals and objectives, certain groups of projects are accorded greater importance than others. State project assessments are made by the Office of Highway Services (OHS) with support from Planning and Research and Engineering and Operations units, depending upon the nature of the project. The resultant assessment and recommended priorities for projects over \$1 million are brought before NJDOT's Resource and Priority (RAP) Committee, which renders decisions subject to the Commissioner's approval. The Committee is comprised of senior managers of NJDOT and the Executive Director of NJ TRANSIT. The principal function of this committee is to assure that resources are allocated in accordance with priorities.

To establish recommended priorities, projects are appraised in terms of: conformance with the transportation systems plan, engineering assessment, environmental constraints, community support and policy implications. These appraisals necessarily involve several organizational units on account of the various types of expertise required to undertake a comprehensive appraisal.

Project prioritization is done on an annual basis. The RAP Committee may at any time however see fit to amend previously established priorities in order to accommodate new developments, subject to the Commissioner's and funding agency's approval.

Programming

The highway project programming process involves merging two parallel procedures, one for implementing State highway projects, another for local projects. This process is a joint effort of local governments, planning organizations (MPO's), NJDOT, NJ TRANSIT, and Federal transportation administrations that partially fund these projects, namely the Federal Highway Administration (FHWA) and the Urban Mass Transportation Administration (UMTA).

The major products of this process include the State's transportation element of the 7-year Capital Budgeting and Planning Commission Report, Regional (MPO) TIP's, the Annual Federal-Aid Highway Program (105 Program), and the NJDOT Annual Construction Program.

Seven-Year Capital Program

As described under prioritization above, NJDOT reviews those projects from the previous year programs that were not included on the construction program and new projects from the transportation plan to develop the list of priority projects from which the annual submission to the State Capital Commission on Budgeting and Planning is developed. In addition to laying out the proposed program for the following State fiscal year and six subsequent years, this document serves as a statement of overall needs. As such this report is available to the Commission for recommending to the Governor a level of funding for the capital activities of the Department.

While this report only presents state highway and public transportation projects specifically, it generally includes an identification of the proposed and needed local aid funding levels.

Transportation Improvement Program

Each urbanized area within the State is mandated by Federal agencies to develop a Transportation Improvement Program (TIP). This document is intended to ensure that an MPO's Transportation Plan is implemented in an orderly, efficient manner by setting priorities for the use of Federal funds. The TIP has two parts: a multi-year element covering at least three and not more than five years which describes the general aspects of the program, and the annual element which identifies the projects to be implemented during the first program year.

The TIP is really a composite document which includes projects developed by local governments and those of NJDOT, NJ TRANSIT, and other transit authorities. The sponsoring partners develop the basic priority and realistic estimates of total costs. The final product represents the comprehensive and coordinated statement of project priorities for a geographical area. The TIP is required to identify projects utilizing federal-aid funding from major categorical programs. Also, 100% state-funded projects and other federally funded projects (bridge replacement, safety, etc.) are included for information.

Actual development of the TIP differs among the six MPO's because of MPO size and organizational complexity. In all cases, projects are initially considered at the local level. For the MPO's having multi-state responsibilities the process then involves interim committee reviews before submittal to the MPO's regional policy board for adoption. The MPO's for the Atlantic City, Cumberland County and Phillipsburg urban areas develop their priorities directly at the Technical Committee level and submit them to the policy board.

When adopted, each regional TIP is submitted to the Governor, FHWA, and UMTA.

Annual Federal Aid Program

NJDOT is required to submit annually to the FHWA Division Administrator a list of projects for which federal funds will be sought during the coming year. This report, which takes its common name from 23 U.S. Code Section 105, includes projects outside the urban areas as well as those presented on the MPO TIP's. The list includes those phases of projects expected to be initiated during the program period.

Annual Construction Program

Final step in the project programming process is development of the Annual Construction Program. This program allocates state and federal capital funds to specific projects. The Annual Construction Program is approved by the Commissioner of Transportation and the Governor.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

CHAPTER VII

CONSIDERING THE HUMAN AND NATURAL ENVIRONMENT

- Part 1. Social, Economic, Environmental Studies
- Part 2. Levels of Action Procedure

PART 1. SOCIAL, ECONOMIC, ENVIRONMENTAL STUDIES

A. Systematic Interdisciplinary Approach

NJDOT employs a systematic interdisciplinary approach in all phases of the project development process in accordance with national policy set forth in Section 102 of the National Environmental Policy Act of 1969.* The aim of this approach is to bring together expertise in the natural and social sciences, environmental design arts, and engineering technology in a joint effort to identify impacts of construction or other action on the human environment and to advise the best possible means to minimize adverse impacts.

NJDOT has effected this interdisciplinary approach through the Bureau of Environmental Analysis (BEA) which is staffed with a variety of specialists having training and expertise in:

Aesthetics	Engineering
Acoustics	Geography
Air Pollution Technology	Sociology
Archeology	Transportation Planning
Historic Architecture	Urban & Regional Planning
Ecology	Water Resources
Economics	

BEA staff forms the nucleus of an interdisciplinary team which includes disciplines employed in the many NJDOT units participating in project development.

The Interdisciplinary Team

To accomplish interdisciplinary social, economic, environmental (SEE) studies, a project manager, assigned from within BEA for each project, coordinates efforts of BEA staff members, staff from other NJDOT units, and consultants. The project manager is responsible for assuring procedural compliance, quality control, and completeness of SEE analysis and report.

* 42 USC 4332

The interdisciplinary team works with Bureau of Quality Control (BQC), Division of Right of Way and other units which provide expertise as necessary. For example, the BQC at BEA's request monitors air, noise, and water quality to gather data on existing conditions. Division of Right of Way supplies conceptual stage relocation studies, right of way cost estimates, business relocation studies, and other information as requested.

Responsibilities and Activities

The responsibilities and related activities of BEA include:

1. Determining the Levels of Action for NJDOT projects.
2. Initiating and pursuing early coordination and scoping with federal and state agencies to identify the range of alternatives, impacts, and significant issues for discussion in the EA or EIS.
3. Conducting environmental studies and recommending measures to mitigate environmental impacts.
4. Negotiating with state and federal agencies regarding environmental conflicts identified during project development.
5. Preparing, reviewing, and approving environmental documents.
6. Providing environmental reevaluations.
7. Monitoring construction projects for compliance with environmental performance standards.
8. Providing assistance and technical guidance to other units engaged in applying SEE considerations to project development.
9. Participating in program and plan development and reviews through all project development stages.
10. Establishing NJDOT performance standards for environmental specifications to be incorporated into project design and maintenance.
11. Establishing guidelines and controls for developing and processing environmental documents.
12. Reviewing citizen concerns regarding SEE considerations for completed projects; recommending corrective action as appropriate.

13. Selecting and contracting with professional environmental consultants.
14. Acting as NJDOT clearinghouse for SEE related technology.

Assistance From Other Agencies

Reviews of projects impacts on the environment are accomplished by BEA in close coordination and consultation with appropriate state and federal agencies.

NJDOT maintains active lines of communication with the New Jersey Departments of Environmental Protection, Agriculture, Education, and Community Affairs as well as federal agencies such as Environmental Protection, Agriculture, Interior, Coast Guard, Army Corps of Engineers, Commerce, and the Advisory Council on Historic Preservation. Contact is also maintained with regional planning and environmental organizations such as the Hackensack Meadowlands Development Commission, Pinelands Commission, Delaware & Raritan Canal Commission.

The formal Process for coordination with other agencies is accomplished through the following activities:

Notice of Intent

BEA prepares a Notice of Intent for any project requiring an EIS. This notice describes the proposed action and possible alternatives, proposed scoping process, and name and address of responsible person in FHWA. FHWA reviews this notice and forwards it to the Federal Register for publication.

Early Coordination

Identification and evaluation of the social, economic and environmental effects of a proposed action and the identification of all reasonable measures to mitigate adverse impacts is initiated in the early planning stages of the action.

After FHWA concurrence in an LOA determination of an EA or EIS, BEA circulates a Notice of Planned Action (NOPA) to state, federal and those agencies whose interests may be affected by the proposed action. This NOPA requests the agency to review the proposed action and provide comments in order that the agency's concerns may be addressed during development of the environmental studies. The NOPA also invites participation in a formal scoping meeting which will be held if sufficient interest is shown.

Scoping

When a decision to prepare an EIS or EA is made NJDOT initiates a scoping process to (1) identify significant issues to be analyzed in depth, (2) eliminate issues which are not significant, (3) involve agencies which might not be in accord with the action on environmental grounds, and (4) define roles among lead and cooperating agencies.

This scoping may be accomplished by (1) soliciting the views of federal, state, and local agencies through the Notice of Planned Action circulated by BEA; (2) responses to the Notice of Intent which is placed in the Federal Register by FHWA; (3) responses by the local communities resulting from the community involvement program prepared by OCI. Depending on the complexity of the proposed action either individual scoping meetings may be held with concerned agencies or a formal scoping meeting may be held jointly for all agencies involved.

Cooperating Agencies

Upon request of FHWA, any other federal agency which has jurisdiction by law shall be a cooperating agency. In addition any other federal agency which has special expertise with respect to any environmental issue that should be addressed in the statement may be a cooperating agency upon request of FHWA. An agency may request FHWA to designate it a cooperating agency.

Cooperating agencies are normally identified (1) by BEA as part of the Levels of Action Assessment, (2) by responses to the Notice of Intent in the Federal Register, or (3) by responses to the Notice of Planned Action circulated by BEA.

Consultants

Consultants are used when appropriate to supplement NJDOT manpower or expertise. Their employment is particularly useful when BEA is working toward several project deadlines at the same time.

Environmental Training

Essential for the success of a department-wide interdisciplinary study approach are increased awareness and additional training for all personnel. These are accomplished through: (1) dissemination of environmental studies, reports, and other information; (2) formal training sessions conducted by FHWA, National Highway Institute, Bureau of Environmental Analysis, universities and colleges and other agencies; and (3) informal meetings and seminars.

B. Environmental Documents and Reports

The following environmental documents and reports are prepared by BEA in close and continuous cooperation with FHWA.

Draft Environmental Impact Statement (DEIS)

A public document prepared for actions which may cause significant impacts on the environment. An Environmental Impact Statement (EIS) provides discussion of significant environmental impacts and informs decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment.

The DEIS is prepared by BEA in conjunction with FHWA. The DEIS is approved for NJDOT by the Director, Division of Project Development, and submitted to FHWA. FHWA, when satisfied that the DEIS complies with NEPA requirements, approves the DEIS for circulation by signing and dating the title page. A preferred alternative may be identified in the DEIS based on early coordination and detailed SEE and engineering studies.

Final Environmental Impact Statement (FEIS)

After circulation of a DEIS a FEIS is prepared by BEA in cooperation with FHWA. The FEIS identifies the preferred alternative, discusses substantive comments received on the DEIS and all reasonable alternatives considered, summarizes citizen involvement, and includes environmental mitigation measures. The FEIS is approved for NJDOT by the Director, Division of Project Development, and submitted to FHWA. FHWA indicates approval of the FEIS by signing and dating the title page.

Environmental Assessment (EA)

A public document prepared for actions which are not a Categorical Exclusion and do not clearly require the preparation of an EIS. An Environmental Assessment (EA) provides the means for determining the significance of the impacts of the action on the environment.

The EA is prepared by BEA in conjunction with FHWA. The Director, Division of Project Development, approves the EA for NJDOT and submits it to FHWA for approval. FHWA signifies approval of the EA by signing and dating the title page.

Finding of No Significant Impact (FONSI)

A separate written statement, prepared by FHWA, that a project will not have a significant impact on the quality of the human environment. If no significant impacts are identified in the EA, or as a result of public comment, the Director, Division of Project Development, recommends a FONSI to FHWA. The FONSI accompanies the EA and any other support materials.

Categorical Exclusion (CE)

Actions that do not individually or cumulatively have a significant effect on the environment and do not require an Environmental Impact Statement or Environmental Assessment.

Categorical Exclusions are identified by NJDOT and submitted to FHWA for concurrence.

List of Commitments

When an environmental document (EIS or EA) is prepared a list of environmental commitments is separately prepared and submitted with the document to FHWA. The list is a compilation of commitments made in the EA or EIS to mitigate or avoid adverse effects associated with the project. These commitments will be observed by NJDOT throughout project development and implementation. The final list of commitments is included with the environmental documentation furnished to Design, Right of Way, Landscape Architecture, Community Involvement, Construction and Maintenance personnel.

Section 4(f) Evaluations

A public document required for any federally funded transportation project which will use land from a publicly-owned park, recreation area, wildlife and waterfowl refuge, or from historic sites on or eligible for the National Register. Section 4(f) Evaluations, required by Section 4(f) of the DOT Act of 1966 and subsequent implementing federal regulations, must document the fact that (1) there is no feasible and prudent alternative to the use of land protected under Section 4(f), and (2) the action includes all possible planning to minimize harm resulting from use of said lands. In addition, coordination with certain concerned agencies is also documented.

The Section 4(f) Evaluation is prepared by BEA in conjunction with FHWA. It is usually a separate section in an EIS or EA, or a separate document for Categorical Exclusions with minimal effect on lands covered under Section 4(f). The Section 4(f) Evaluation is submitted to FHWA by the Director, Division of Project Development. FHWA's separately written "Section 4(f) Determination" signifies their approval of the two previously described requirements of Section 4 (f), and permits the action to proceed.

Preliminary Case Report

Where it is determined that a project will have an adverse effect on cultural resources, a Preliminary Case Report is prepared by BEA after an EA/DEIS has been published and a preferred alternative has been selected by NJDOT and FHWA. This document is a

detailed summary of cultural resource studies and coordination efforts with the State Historic Preservation Officer (SHPO), and the Department of Interior. In addition it includes documentation regarding alternatives to avoid or lessen impacts to the resources under consideration and outlines a plan of impact mitigation which will become the basis for a Memorandum of Agreement among NJDOT, FHWA, the SHPO, and the Advisory Council on Historic Preservation.

Processing of this document involves submittal to the FHWA for approval and forwarding to the Advisory Council for use in developing the Memorandum of Agreement.

Wetland/Floodplain Finding

For any project requiring an EA or EIS, which entails new construction located in a wetland/floodplain, a specific finding is made by BEA for adoption by FHWA that (1) there is no practicable alternative to construction in the wetland/floodplain, and (2) that all practicable measures to minimize harm have been included. The finding is made in the form of a separate submittal to the FHWA for adoption. It is then included by BEA in the FONSI or FEIS.

Final Noise Study Report

A final Noise Study Report is prepared by BEA for all projects that required noise studies wherein noise levels were predicted to have a significant impact or be above FHWA Design Noise Levels. The report includes noise impact evaluations, proposed noise abatement measures, and noise exception requests. The report is submitted to FHWA for approval after the FEIS is approved and prior to approval of plans and specifications.

Environmental Reevaluation

An Environmental Reevaluation is required with any request for a major federal action before FHWA. For example, before federal funds are authorized for right of way acquisition or for project construction, an environmental reevaluation is made to insure that environmental studies are satisfactory. The reevaluation is done prior to authorization of right of way acquisition and submittal to FHWA of final PS&E (construction plans, specifications, and cost estimates). Items to be reevaluated include any changes in project scope, land use, SEE effects, regulations; also adequacy of the levels of action classification, environmental documents, list of commitments.

BEA is responsible for reevaluations for Environmental Impact Statements, Environmental Assessments, Non-Major Actions (under an earlier classification plan), and Categorical Exclusions that were originally classified by BEA. The lead units are responsible for reevaluations for Categorical Exclusions which were originally classified by the lead unit. As part of the reevaluation BEA or the lead unit seeks input from other units, including OCI which supplies current status of community reaction to the proposed project. The reevaluation is processed to FHWA in support of NJDOT's request for Federal-aid authorization of funds for the next processing step. Details of this procedure are in Appendix F.

C. Environmental Studies in Project Development

Environmental studies by BEA are required in each stage of project development.

1. Systems Planning

At this earliest stage of the Planning process identification and evaluation of broad SEE issues as they relate to systems planning are needed. An initiating or lead bureau within the Planning divisions advises BEA when work on a new corridor or area study is started. BEA then provides guidance and direction regarding early consideration of broad SEE issues.

2. Location Studies

Social, economic, and environmental factors are considered in greater detail during the location phase of project development. Detailed social, economic, and environmental studies begin then, interdisciplinary involvement is at its peak, and requisite environmental documentation is prepared.

It is the responsibility of the initiating unit to keep BEA, Office of Community Involvement, Division of Right of Way, and others informed of project findings, and the status of project meetings throughout the study.

BEA takes the lead in developing and processing all environmental documents and assumes responsibility for their technical quality and content. BEA determines the level of detail and scope of all SEE studies and requests input from other units within NJDOT. BEA insures that all feasible and prudent alternatives including the "no-build" and public transportation alternatives are assessed and included in the project plans. Further discussion is provided in Chapter VIII "Location Studies."

3. Design

Projects at the Design stage have clearly defined objectives which can be readily achieved by application of established design standards. BEA studies, in the design stage, basically consist of the identification of environmental constraints and sensitive areas in the immediate vicinity of existing highway facilities. These environmental studies thus serve a twofold purpose of (1) providing the basis for the appropriate environmental document and (2) assisting the engineering units in avoiding adverse environmental impacts through proper engineering design strategies. Environmental and community involvement procedures are applied in a manner similar to that discussed above for projects developed in the location phase.

Environmental analysis in the design phase for those projects which have passed through location study is primarily one of insuring through BEA input to design and plan reviews that SEE considerations and commitments made previously are incorporated in project plans and specifications and that design related studies in such areas as noise and water quality are accomplished.

4. Construction

Prior to construction of environmentally sensitive projects, BQC monitors air, water, noise quality existing conditions. BEA conducts other environmental monitoring to establish base conditions to be used in evaluating construction related impacts. BEA also monitors construction compliance with environmental commitments and special environmental problems in selected projects during both construction and operation phases. Examples include archeological salvage, erosion control, wetlands replacement, water quality and noise abatement measures. Whenever special problems are discovered, the resident construction engineer is notified so that corrective steps may be taken.

When the contractor's excavating operations encounter pre-historic remains or artifacts of historical or archaeological significance, the operations must be suspended in that area. The Resident Engineer consults with BEA to determine appropriate action. BEA determines whether the site is eligible for the Register of Historic Places and whether the site warrants further consideration. If it is determined that the resources are intact and eligible for the Register, established procedures used during the EIS phase are followed to mitigate impacts.

Other construction related environmental problems including noise complaints, damages to wildlife or fisheries resources, water quality and air quality, will be referred directly by the Resident Engineer to the Chief, BEA, or his designee. BEA immediately evaluates the problem and works directly with the Resident Engineer to correct it. If monitoring of air, noise or water parameters is required, BEA will request assistance from the Bureau of Quality Control (BQC).

For those projects recognized as environmentally sensitive, the data from monitoring is incorporated into a post-construction report. Post-construction monitoring on certain projects is also conducted to calibrate certain predictive technologies. Findings are utilized in future project development and in formal training sessions. BEA also assists the Office of Community Involvement (OCI) in investigating complaints relative to environmental concerns for ongoing or completed projects. Where appropriate, the results of such investigations include recommendations for corrective action.

5. Type II Noise Studies

Noise abatement projects on existing highways located on the Federal-aid highway system are provided for in FHWA FHPM 7.7.3 "Procedures for Abatement of Highway Traffic Noise and Construction Noise". Such projects are designated as Type II (Noise) Projects. NJDOT initiates study upon official request from local governments, and assigns the study projects to BEA. If the study determines that highway-induced noise exceeds design noise levels (those levels acceptable on new highway construction), that abatement measures are possible and practical, that the proposed measures are acceptable to local residents, then BEA will recommend design and construction of noise barriers or other measures. This recommendation goes to Planning to be considered for incorporation in Planning programs. Criteria for prioritizing the recommendation include local complaints, feasibility, funding, staff resources.

PART 2. LEVELS OF ACTION PROCEDURE

What Levels of Action Procedure Is

Levels of Action (LOA) is an assessment and decision process to evaluate the degree of environmental study a project requires and path of project development. An interdisciplinary staff considers social-economic-environmental effects, assesses the degree of concern, and determines a study processing plan which meets requirements of the Council on Environmental Quality's (CEQ) 1978 NEPA Regulations and Federal Highway Administration's (FHWA) implementing procedures as published in the Federal Register, October 30, 1980 (23 CFR Part 771). The LOA assessment identifies and evaluates potential SEE effects of the project so that the project can be classified for study in one of the three classifications established by the CEQ regulations. BEA conducts the environmental assessment at the lead unit's request early in the study process. In certain instances it is not necessary for BEA to assess the environmental impacts of an action. In these cases, the lead unit classifies the project as a categorical exclusion in accordance with the following procedures.

LOA Classification Procedure

BEA upon an LOA request from a lead unit proceeds with assessment studies seeking inputs from other NJDOT functional units including Office of Community Involvement (OCI). From information supplied and from its own study, BEA determines an LOA classification which is sent by the Director, Division of Project Development, to FHWA for concurrence. Once FHWA has concurred, the lead unit requests BEA to proceed with the degree of study necessary to produce the documentation required.

Exempt from BEA assessment and classification are those actions listed in the October 30, 1980 Federal Register (Paragraph 771.115(b) as Items 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13 (except for widenings) 14, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29. The lead unit determines if a project is exempt from BEA review and classification in accordance with the above list. If a project meets the criteria of the items listed above, the lead unit classifies the project as a Categorical Exclusion and forwards this determination to FHWA, through the appropriate Division Director, for concurrence. The lead unit coordinates with OCI to determine the need and level of a community involvement program and includes the program in the determination. Details of this procedure are found in Appendix F.

Project Categories

Three categories are used in classifying projects:

Class I - Environmental Impact Statement(EIS) Required

An EIS is prepared for projects that clearly involve significant impacts on the human environment; when the environmental studies and early coordination indicate significant impacts; or when review of the Environmental Assessment (EA) in light of comments so indicates. Examples of projects ordinarily requiring preparation of an EIS are:

- . Any new controlled access freeway
- . Any highway project of 4 or more lanes on new location
- . Major transportation-related development whose construction involves a large amount of demolition, displacement of a large number of individuals or businesses, or substantial disruption to traffic patterns.

Class II - Categorical Exclusion (CE)

Projects in this category are presumed not to have a significant effect on the environment and by their nature require minimal environmental analysis and early coordination. See Appendix F for a listing of categorical exclusions.

Class III - Environmental Assessment (EA)

An EA is prepared for projects not classified as Class I or II. Based on early coordination and environmental studies these projects are not anticipated to have significant environmental impacts. For projects where potential impacts and their significance are not readily apparent, the EA is used as basis for decision whether to reclassify the project Class I and prepare an EIS. If the EA does not identify significant impacts, the EA is used as basis for a "Finding of No Significant Impact" (FONSI).

Class I and Class III projects together form a relatively small percentage of the total number of NJDOT projects. But Class I and Class III projects are almost always major in size and scope and SEE sensitivity. They require application of BEA's full interdisciplinary capability and considerable interagency coordination.

Project Category Procedures

Each of the three classification categories requires different processing procedures. These procedures are shown graphically through a series of steps on Chart IV-A in Chapter IV.

- . Class I - (EIS) generally begins environmental study at Step 6
- . Class II - (Categorical Exclusion) begins environmental study at Step 9
- . Class III - (Environmental Assessment) generally begins environmental study at Step 9.

Review of Levels of Action Classification

Review of an LOA classification may be requested at any point in the study by BEA, or the lead unit. This review may be deemed necessary if during the study there has been a change in scope that will significantly alter environmental impacts or if study findings indicate possible need to reclassify the project's category. LOA classification must be reviewed at designated reevaluation points described in Part 1 of this chapter.

Federal Highway Administration Action

When a project has been classified Class II, Categorical Exclusion, a request for concurrence is made to FHWA by the Director of the division with responsibility for making the LOA determination. LOA determinations for Class I and Class III are forwarded to FHWA by the Director, Division of Project Development, with request for FHWA concurrence.

Consultation With U.S. Coast Guard and U.S. Army Corps of Engineers

Under agreements FHWA has with the U.S. Coast Guard and U.S. Army Corps of Engineers, FHWA is required to consult with these agencies prior to determining that any project which may require a permit from either of these agencies is a Class I, II, or III action. See Appendix H for copies of the FHWA/USCG Memorandum of Understanding and Appendix I for USDOT/USACE Memorandum of Agreement.

Cooperating Agencies

As appropriate, FHWA requests the following agencies to be "cooperating agencies" in the preparation of an EA or EIS. FHWA solicits these agencies as "cooperating agencies" at the Levels of Action stage.

- | | |
|--------------------------------------|--|
| U.S. Coast | - if permit required |
| U.S. Army Corps of Engineers | - if permit required |
| U.S. Environmental Protection Agency | - if Sole Source Aquifer impacted |
| U.S. Department of Interior | - if Scenic or Wild River River impacted |

Public Notification

Classification of projects requiring an EIS or EA is advertised in local newspapers having general circulation within the project area. BEA notifies OCI of the classification and OCI then is responsible for public notice.

FHWA is responsible for a Notice of Intent to be placed in the Federal Register for projects requiring an EIS. BEA prepares this notice and forwards to FHWA for concurrence and forwarding to the Federal Register.

CHAPTER VIII

LOCATION STUDY

Start of the Project Development Phase

As described in Chapter IV, the highest priority needs identified in the Planning stage are programmed for further development and assigned to the appropriate unit within NJDOT for handling. Where the solution to a need is clearly defined, the need is assigned to Design for design study. Most needs are of this type, since most needs are existing facility deficiencies with evident remedies. Where the solution to the need is not clearly defined, a feasibility study must be undertaken in order to define the approximate solution. This is done by the Bureau of Project Location (BPL) in consultation with other units. This type of study is necessary where new facilities with multiple location options are being considered, and where it is not evident how extensive an improvement is necessary to remedy the need.

In this chapter, the feasibility/location study of the project development process is described. As noted earlier, where such a study is not necessary, a need is advanced to design study directly. A discussion of the design study steps may be found in Chapter IX.

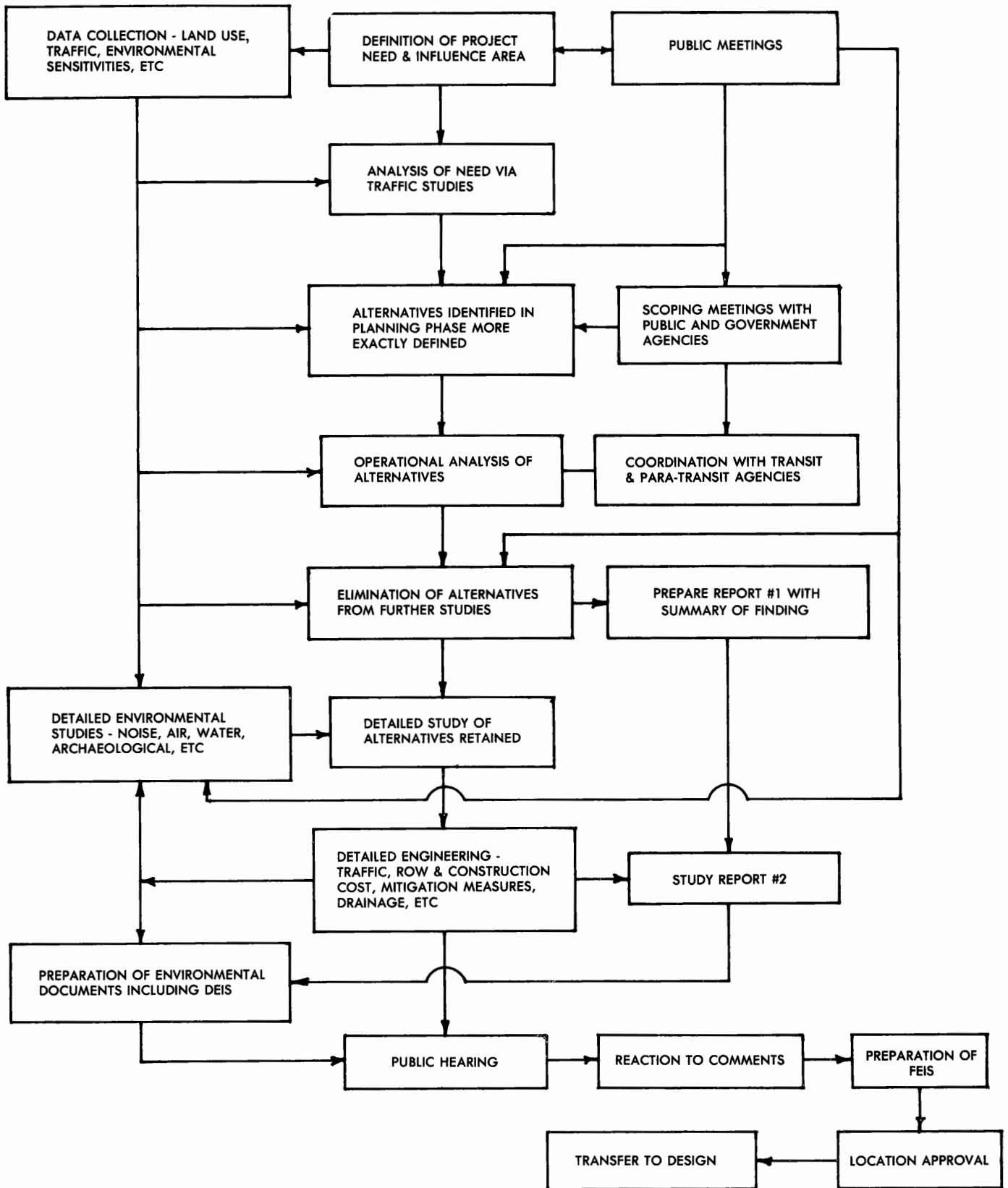
The feasibility and location study is a two stage procedure. The first stage--the feasibility study--may be undertaken separately if it is not apparent that there are any reasonable solutions. The results of the feasibility study are then the basis for a higher-level decision on whether to move forward to location study or not. In most cases, however, one study, comprised of both the feasibility and location stages, is undertaken at the outset. (See Figure VIII-A).

In any case, this is a particularly important time for public participation and coordination with federal, state, and local agencies, since it is an ideal time to shape a solution. The more cost-effective and publicly acceptable a solution is, the better its chances of implementation.

Feasibility Stage (Step 6)

As noted earlier, the feasibility study is a more in depth analysis of the possible alternatives including those identified in the Planning process as well as others emerging in the project development process and its public involvement program. The analysis identifies the social, economic, and

BUREAU OF PROJECT LOCATION GENERAL STUDY PROCESS



environmental (SEE) sensitivities, public support, and the probable costs and benefits associated with each of the alternatives to be screened for retention or dismissal. The resultant set of alternatives recommended for location study are reported (Step 7) to the Resource and Priority (RAP) Committee which in Step 8 considers the alternatives recommended for further study, reappraises the project, and then determines whether location study should ensue, acts to proceed with the location study.

Preliminary SEE Studies

At the study's outset BPL requests BEA participation (Step 9). BEA proceeds to study potential environmental problems and impacts and to identify environmental constraints, both regulatory and physical which could affect the project's feasibility. The SEE study:

- . Provides an inventory of environmental factors which must be considered
- . Shows how the project could become involved with these factors and explains implications of such involvement, such as need for developing EIS and 4 (f)* statements and time required for technical studies and for preparing and processing environmental documents
- . Makes first level review of air quality and noise, and identification of sensitive receptors
- . Identifies ecologically sensitive areas, 4(f) properties, historic and cultural resources, socioeconomic factors to be considered
- . Provides preliminary study of aesthetics to be considered
- . Identifies regulatory requirements such as permits and mandated consultation.

Location Stage (Step 12)

Location studies carry out detailed analysis of alternatives retained from the feasibility study. Project goals are refined; each alternative is studied for its practicality, cost, benefits, and public acceptance; SEE studies for each alternative are done in depth; business and residential relocations (if needed) are identified, costed, and replacement housing assessed.

- * A Section 4 (f) statement is a part of a federally required document when land is used from a publicly owned park, recreation area, wildlife refuge, or historical site.

For highway projects on the federal-aid highway system under state jurisdiction, BPL carries out the feasibility and location studies. For federal-aid highways under county or local jurisdiction the Bureau of Local Aid and Safety Programs (BLA) is the lead unit for projects which are studied by county or local staffs and consultants. BLA requests BEA to handle environmental studies and processing, OCI to layout and execute the public involvement program, and other NJDOT units to supply inputs in their functional responsibilities. Some major local projects may be assigned by RAP to BPL where RAP finds that the BPL resources may be advantageous to the project study.

Progressing the Study

The lead unit project manager oversees all project work and coordinates with NJDOT units and outside agencies. The project manager works closely with BEA whose responsibility it is to provide SEE studies and documentation of project impact, and with OCI whose responsibility it is to notify state, county and municipal officials and the public of the start and scope of the project, as well as to obtain their full participation in the study. The project manager also coordinates with the U.S. Army Corps of Engineers and the U.S. Coast Guard for their comments if the project requires permits from these agencies.

Community Involvement

As preliminary engineering and SEE information is developed, OCI in cooperation with the Project Manager meets with public officials, regional agencies, community and business groups, and interested individuals to establish a dialogue concerning the project. Major community meetings may be preceded by publication of newsletters circulated to interested groups and individuals. At these meetings NJDOT representatives solicit comments which NJDOT then considers. This evaluation may result in alternatives modification.

Levels of Action (LOA)

When the project's alternatives and SEE sensitivities have been identified and initial public reaction tested the lead unit requests BEA to establish a LOA (Step 10) in accordance with procedure outlined in Chapter VII. At LOA, SEE issues needing detailed study are identified, and issues not requiring detailed study are also identified and reasons for their not requiring detailed study documented. A project in location study may be designated Class I - EIS required, or Class III - Environmental Assessment (EA) required. Another reappraisal (Step 11) may be made by the RAP Committee if the LOA classification reveals that the project has unexpected complexity.

The LOA determination is sent to FHWA for concurrence. For a Class I - EIS Required project, BEA prepares a Notice of Intent (to prepare an EIS) and forwards to FHWA for its review and submittal to the Federal Register for publication. The Notice of Intent can additionally serve as notice and invitation for the early coordination and scoping process.

Early Coordination and Scoping - Agency Involvement

CEQ regulations and FHWA procedures require early coordination with other concerned agencies in order to establish scope of detailed studies for major projects. When need for detailed studies is established during LOA determination BEA will initiate during course of these studies an early coordination program with appropriate agencies. An important goal of this coordination is minimization of effort duplication by achievement of early agreement on what studies will be required to satisfy requirements of permitting agencies.

Detailed SEE and Engineering Studies

For Class I and Class III projects detailed SEE studies commence after LOA determination. Engineering studies continue and findings become input to SEE studies. Technical reports summarize the SEE studies which may include socioeconomics, cultural resources, ecosystems, air quality, noise, water quality, aesthetics, land use. During this phase the early coordination stipulations of the agreements between FHWA and the Coast Guard and Corps of Engineers will be followed, including designation of these agencies as cooperating agencies, if permits are required from these agencies.

Draft Environmental Impact Statement or Environmental Assessment/FONSI

At completion of detailed studies a Draft EIS is prepared for Class I projects. A preferred alternative may be identified in the DEIS based on early coordination and detailed SEE and engineering studies. For Class III projects an Environmental Assessment (EA) is prepared.

When a Draft EIS has been prepared it is sent to FHWA by the Director of Project Development for concurrence and signing and dating. Along with this transmittal a list of commitments made or implied in the DEIS will be provided. The DEIS is then circulated for comment by NJDOT on behalf of FHWA and made available to the public at least 30 days before the public hearing. When no hearing is held a newspaper notice similar to the public hearing notice advises availability of the DEIS. A Federal Register availability notice establishes a 45-day period for comment.

Environmental Assessments are submitted by the Director of Project Development to FHWA for approval. The EA is not circulated for comments, but is made available for public inspection. Class III Projects do not require a public hearing except those which meet the hearing criteria as outlined in Chapter III-5. BEA distributes the EA to applicable permit agencies such

as the Coast Guard and Army Corps of Engineers and to State and areawide clearinghouses. OCI sends the EA to local officials and advertises its availability in project area newspapers. A 30-day period is established with publication of this notice during which the public is invited to submit written comments on the social, economic, and environmental aspects of the project. At the end of the comment period, NJDOT evaluates any comments to determine whether revisions to the EA are required and a reappraisal is made by the RAP Committee to confirm the project's desirability. If no significant impacts are identified, NJDOT furnishes FHWA a copy of the EA revised as appropriate, the public hearing transcript when a public hearing was held, and a summary of any comments received and responses thereto and recommends a FONSI. If FHWA concurs, it indicates approval by making a separate written Finding of No Significant Impact (FONSI), which incorporates the EA and any other relevant documents. BEA sends a notice a availability of the FONSI to State and areawide clearinghouses. OCI publishes a notice of the FONSI determination in newspapers in the project area. FHWA adoption of the FONSI constitutes acceptance of the general location. The lead unit then initiates a Department Action by which the Commissioner adopts the general location of the project as defined in the EA.

If a Class III project is found to have significant impacts the LOA determination is changed to a Class I project, and if FHWA concurs, FHWA is asked to file a Notice of Intent in the Federal Register at this time, and the project processing proceeds similarly to a project initially designated Class I.

For those Class II (Categorical Exclusions) actions requiring location approval, this approval is made by FHWA after consultation with NJDOT. The lead unit then initiates a Department Action by which the Commissioner adopts the approved general location.

Public Hearing (Step 14)

Most location studies require public hearings or opportunity for public hearings because projects under study require significant amounts of new right of way or have significant impacts, two of the criteria for public hearings.

A public hearing is held, or the opportunity for such a hearing advertised, when the location study has progressed to completion of the EA or DEIS. OCI initiates the hearing process in accordance with public hearing procedure described in Chapter III - Community Involvement.

A pre-hearing information center, arranged for by OCI is set up in the vicinity of the proposed improvement to provide the public with information in advance of the hearing. The center is staffed with representatives of OCI, BPL, BEA, and ROW.

At this time the BPL project manager meets with the County Planning Board, Board of Chosen Freeholders, and municipal officials to communicate with them directly on the proposed improvement. OCI arranges for and attends these meetings.

The public hearing is held at a place and time generally convenient for persons affected by the project. Representatives of OCI, BPL, BEA, ROW participate; also Legal Services when requested. Representatives from involved outside agencies, will also be asked to attend.

Most location projects require development of sufficient design detail in Step 9 so that both location and design considerations may be covered in the Step 14 public hearing. For projects of greater complexity separate hearings may be desirable for treating location and design details. If so, a second hearing is provided for in Step 19.

Public Hearing Review and Evaluation - Final EIS (Step 16)

Comments received at the hearing and through circulation of the DEIS receive NJDOT interdisciplinary review by the lead engineering unit and representatives of BEA, ROW, and other units as appropriate. The Department's proposal is modified and supplemented, where feasible and prudent, to reflect the public's comments. A preferred alternative is agreed upon by BEA and the lead unit and recommended by BEA to the Director of Project Development for forwarding to the RAP Committee. If the RAP Committee approves the selected alternative, the Director of Project Development sends the recommendation to FHWA for concurrence.

If FHWA concurs in the preferred alternative selected, BEA prepares the Final EIS (FEIS) which on completion is sent by the Director of Project Development to FHWA for processing and approval. At this time, an updated list of commitments is provided to FHWA.

Upon FHWA approval (Step 17) of the FEIS, OCI advertises notice of approval in project area newspapers and FHWA notifies US Environmental Protection Agency (USEPA) which lists FHWA approval in the Federal Register. Thirty days after publication in the Federal Register, project development may proceed. FHWA documents its action in a Record of Decision (ROD) in accordance with FHWA Procedures. FHWA approval of the FEIS constitutes acceptance of the location.

With approvals complete the lead unit initiates a Department Action by which the Commissioner adopts the approved location. With general location adopted the project is transferred to Design for design study.

CHAPTER IX

DESIGN STUDY

Start of the Project Development Process

As described in Chapter IV, the highest priority needs identified in the Planning phase are programmed for further development and assigned to the appropriate unit within NDJOT for handling. Where the solution to a need is clearly defined, the need is assigned to the Design Unit for design study. Most needs are of this type, since most needs are existing facility deficiencies with self-evident remedies. Where the solution to the need is not clearly defined, a feasibility study is undertaken to identify alternatives. A location study or alternatives analysis must then be made in order to define the appropriate solution. This is done by the Bureau of Project Location (BPL) in consultation with other units.* This type of study is necessary where new facilities with multiple location options are being considered, and where it is not self-evident how extensive an improvement is necessary to remedy the need.

In this chapter the design study process is described. Six steps in the design process (Steps 9, 10, 13, 14, 17, 20) fall within the Development stage of the Project Development Process. Later design operations (Steps 21, 22, 23) are in the Implementation stage.

Initiation of Design

Design study projects are initiated from the Annual Construction Program. They may be projects either for the state-operated highway system, or for those portions of the federal-aid highway system under county or municipal jurisdiction. Projects are assigned to appropriate bureaus of Design or Traffic Operations and Local Aid (TOLA). Each project must be authorized by NJDOT Department Action and for federal funding by FHWA authorization.

Design projects are for many different purposes, such as:

New Highway or New Structure	Safety
Existing Highway Capacity Increase	Lighting
Park and Ride Facilities	Signs
Traffic Signals	Landscaping
Rehabilitation	Rest Areas
Drainage	Scenic Overlooks

* A detailed description of the feasibility and location study process appears in Chapter VIII.

The following bureaus serve as design lead units depending on project type:

State System

Regional Design Office
Bureau of Bridges and
Structures Design
Bureau of Utilities, Railroad
Safety and Engineering
Bureau of Landscape Architecture
Bureau of Electrical Operations
Bureau of Maintenance
Bureau of Environmental Analysis

County/Local Systems

Bureau of Local Aid and Safety
Programs
Bureau of Electrical Operations
Bureau of Bridges and Structures
Design

Design Areas

Design activity for the State highway system is assigned to four regions to facilitate administration--see Map IX-A. Similarly, the Bureau of Local Aid and Safety Programs (BLA) divides the state into four districts, but with different boundaries, for its administration of local aid projects--see Map IX-B. Bridges and structures design for the State highway system is centralized in the Bureau of Bridges and Structures Design.

Design Processing

Projects move through several phases while under design. Chart IX-C graphically illustrates the phases and activity in each. The phases are designated:

Preliminary Design
Phase I
Phase II
Phase III
Phase IV
Advertising Approval
Bids
Contract Award

Preliminary Design (Step 9)

Regional Design Offices (RDO) initiate most projects for the state system. Bureau of Local Aid (BLA) initiates most projects for county/local projects. Other functional bureaus listed above may also start projects. All projects are assigned to project managers.

STATE SYSTEM DESIGN REGIONS

REGION 1

SUSSEX
PASSAIC
MORRIS
WARREN
HUNTERDON
SOMERSET

REGION 2

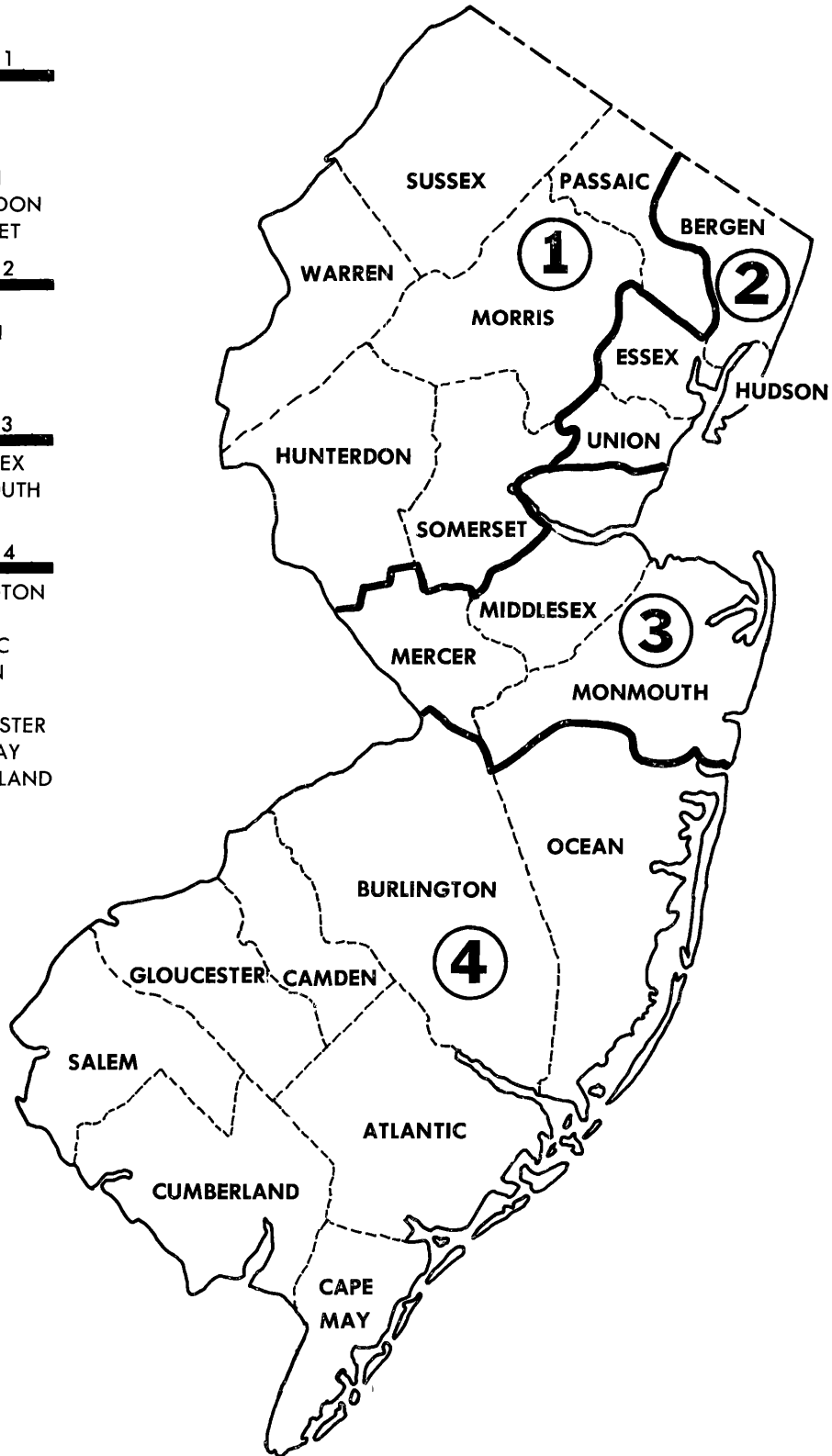
BERGEN
HUDSON
ESSEX
UNION

REGION 3

MIDDLESEX
MONMOUTH
MERCER

REGION 4

BURLINGTON
OCEAN
ATLANTIC
CAMDEN
SALEM
GLOUCESTER
CAPE MAY
CUMBERLAND



The lead unit proceeds to review all available data applicable to the project, particularly if the project has earlier had location study. The lead unit initiates studies and surveys which may include traffic surveys and projections, environmental studies, mapping, soil surveys. If an environmental document--FEIS or FONSI--was prepared in a location phase environmental commitments that might have been made are noted for design fulfillment.

Alignment schemes drafted for graphical presentation are reviewed by Bureau of Environmental Analysis (BEA) and Division of Right of Way (ROW). The RDO evaluates comments, selects a preliminary design scheme, forwards the scheme to FHWA for comment, schedules briefing sessions (after receiving FHWA comments) with county/municipal engineers and State and Federal agencies which have interest in the project.

Environmental Studies

Projects introduced at Step 9 without prior location study, that are not eligible for categorical exclusion classification, receive environmental processing similar to that described in Chapter VIII "Location Study;" that is, there is identification of environmental constraints and a preliminary assessment from which a Levels of Action (LOA) determination can be made. Class I and Class III classifications (see Chapter VII, Part 2 "Levels of Action Procedure") are processed similarly to procedure for location studies and described in Chapter VIII, and ultimately are summarized in an Environmental Assessment (EA) or an EIS.

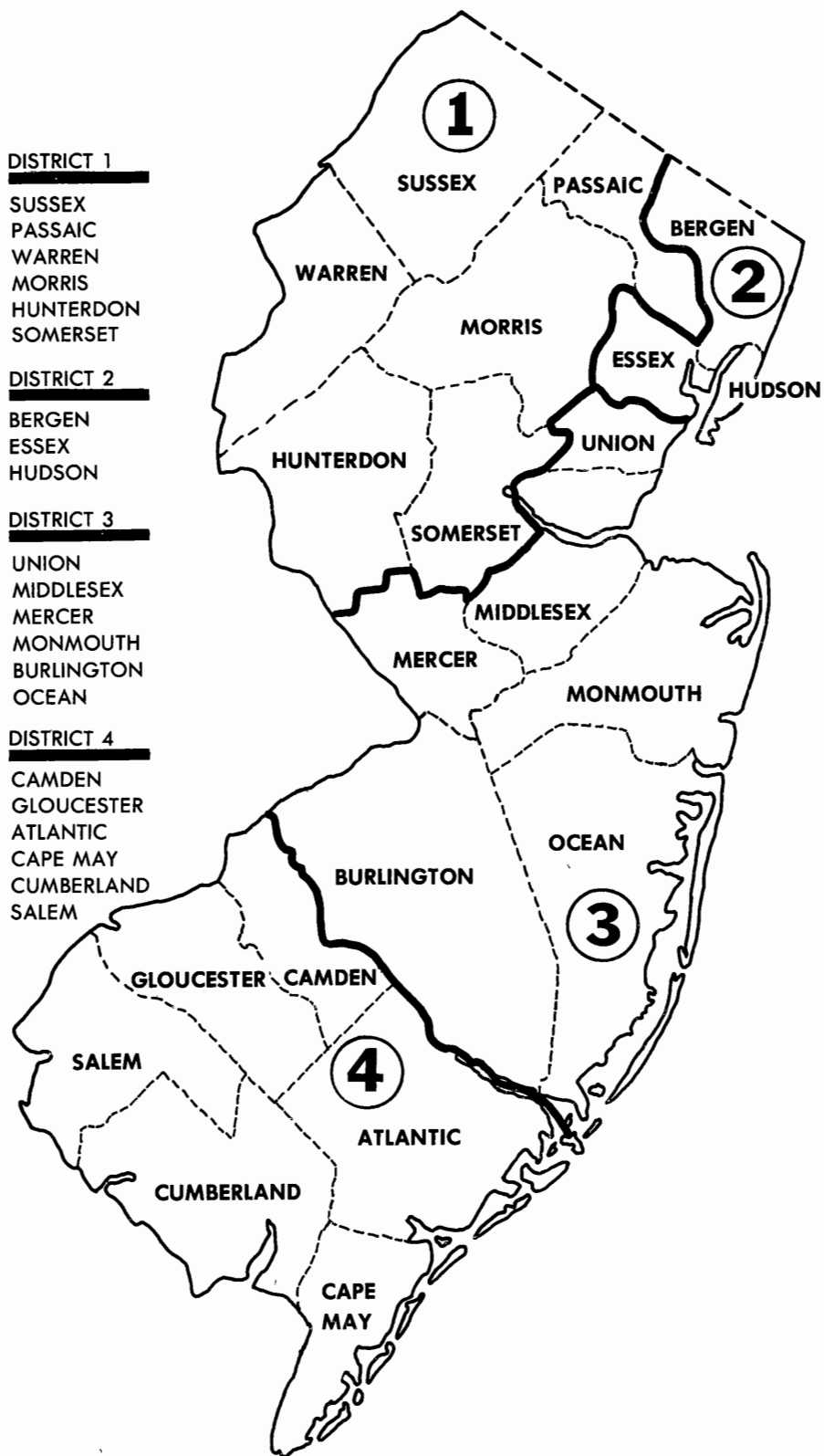
Community Involvement

As part of the community involvement program, the Office of Community Involvement (OCI) plans a series of meetings to be held throughout the project's design phases with local officials, community groups, environmental organizations, property owners, and other interested individuals. These meetings are scheduled for projects expected to meet criteria for holding a public hearing. Comments at these meetings receive interdisciplinary review by appropriate NJDOT units and are used in further development of the project. Written comments after interdisciplinary review are responded to by OCI or the lead unit as appropriate.

If the project has received LOA classification requiring development of an EIS or EA, opportunity for a public hearing is offered at Step 14. For projects classified as "categorical exclusions", a majority of projects, opportunity for public hearing may be advertised in exceptional cases.

The public hearing procedure is described in Chapter III - Community Involvement.

BUREAU OF LOCAL AID DESIGN DISTRICTS



Design Report and Design Approval*

A Design Report is submitted to FHWA in Step 20 for Class I and Class III projects. The Design Report consists of a full description of the project including termini, traffic data, a description of geographical and special features along the route, an accounting of the public hearing(s) and meetings held, and a full description of the controlling geometric features.

A list of studies made prior to the Design stage is included in the Design Report. All supporting documents are referenced. A separate noise report is submitted if necessary.

A summary and an analysis of public comments resulting from the public hearing(s) are shown, the significant categories of comment are listed, and an accounting of NJDOT actions is made.

A previously developed list of environmental commitments is included showing what NJDOT and all other parties to the project will do to mitigate SEE effects.

Any conditions that may have been the basis for FHWA concurrence in the FEIS or FONSI are listed along with disposition of these conditions.

For Class II categorical exclusion projects, only a Design Scheme is submitted to FHWA for authorization to proceed to design. A Design Scheme consists of a preliminary schematic sketch or sketches of the project proposed to be designed.

Design Approval (Step 20) is authorized by the Director of Engineering and Operations after recommendation by the Chief Engineer of Design. This takes place after resolution of FHWA comments on the Design Report, or in the case of categorical exclusions the Design Scheme.

PHASE I (Step 22)

After Design Approval the project moves to Phase I where detailed design work and 30 scale (1 inch equals 30 feet) plan development begins. Drafting of right of way plans is also started. The depth of SEE studies needed is assessed and these studies begun.

Local and agency officials are kept abreast of developments through the project manager in the lead unit.

Phase II (Step 22)

In Phase II development of design plans continues, right of way plans are drawn, and applications for required permits are prepared. Preliminary plans are sent for review and comment to BEA for environmental review and to ROW for property takings review. ROW may suggest changes to mitigate property takings. Upon resolution of ROW comments, design and right of way plans are circulated within NJDOT for technical review.

* As described in Chapter IV, detailed design, right-of-way plans, and appraisals may be initiated at an earlier stage.

Upon completion of this review, completed right of way plans and requisition documents go to ROW for a preliminary estimate of parcel costs and time required for relocation and acquisition. When the estimate is complete, the lead unit initiates a request to Federal Aid Coordination Section (FACS) of the Office of Programming and Monitoring for federal-aid programming authorization which when received is sent to ROW where commission action to authorize right of way acquisition is initiated.

Early in Phase II agencies from whom permits must be acquired are applied to. These agencies have generally been advised of the project either directly or by A-95 Review in the location phase or during preliminary design. The following agencies may be involved through their permit granting responsibilities:

- Federal Aviation Administration
- U.S. Coast Guard
- U.S. Corps of Engineers
- N.J. Department of Environmental Protection

Phase III (Step 22)

In Phase III, the plans are essentially complete subject only to minor modifications, and are submitted to those bureaus that were involved in the Phase II plan review. If requested by one or more of the reviewing groups, the Bureau of Roadway Plan Quality Review and Specifications Development (BRPR) conducts a Phase III review conference with the project design group and all bureaus involved in the Phase III review to resolve any issues and to assure compliance with NJDOT and FHWA Policies and standards. BLA coordinates all review work and procedure for county/local projects.

Phase IV (Step 22)

In Phase IV, for State-system projects BRPR requests final plan review from all bureaus that participated in previous plan reviews in order to insure the incorporation of Phase III comments. BLA does similarly for county/local projects including cognizant local agencies in the review.

Upon completion of the NJDOT Phase IV review, the Preliminary PS & E (Plans, Specifications and Estimate) are submitted by BRPR through the Federal Aid Coordination Section (FACS) to FHWA for review. FHWA comments regarding the Preliminary PS & E are received by FACS and forwarded to appropriate bureaus for resolution.

BRPR then prepares a Final PS & E (Contract Plans, Supplementary Specifications and Estimate) which includes changes required as a result of the FHWA Preliminary PS & E comments. Prior to submitting Final PS & E the BRPR prepares a Department Action for approval to advertise the project and processes the contract plan key sheet for signatures.

After receipt of a right of way availability certification from the Director of Right of Way, utility clearance letter from Chief, Bureau of Utilities,* Railroad Safety and Engineering, and an environmental reevaluation from Chief, Bureau of Environmental Analysis, FACS completes submittal of the Final PS & E to FHWA with a request for project advertising authorization. Upon FHWA's approval, FACS notifies BRPR* and the Bureau of Contract Administration (BCA) of this authorization. BRPR* submits Advertising Notice Information to BCA and BCA places media advertisements (Step 23) as required by statute, announcing the time and place where bids will be received, and where interested bidders may purchase contract plans, specifications and bid documents. County and municipal governments and public utility companies within the project limits receive contract plans and specifications without charge.

If FHWA authorization is contingent on further changes, BRPR incorporates these changes by addendum.

Receipt of Bids and Award of Contract (Step 23)

Sealed bid proposals are received and publicly opened by BCA at the time and place indicated in the advertisements. After verification of the accuracy of the proposal calculations, and review of the Minority Business Enterprise (MBE) requirements by the Office of Civil Rights, BCA prepares a Certificate of Award and Department Action for Award of Contract. This Certificate and Department Action is submitted to BRPR for review and comparison of bid prices with the cost estimate to determine if the contract should be awarded. If recommended for award and FHWA concurrence is obtained, the Department Action and Certification of Award are then prepared by BCA and processed to the Commissioner for approval.

Pre-Construction Program (Step 24)

Upon execution of the contract, the Supervising Construction Engineer appoints a Resident Engineer as project manager who arranges a preconstruction conference to coordinate organization, schedule, and requirements. The contractor, FHWA, and representatives from the Division of Right of Way, Bureau of Environmental Analysis, Office of Community Involvement, Office of Civil Rights, Design, Construction and Maintenance, and Transportation Operations and Local Aid, are invited to attend this conference.

Projects that involve an EIS or EA include a copy of that document and a list of environmental commitments in the Resident Engineer's agenda package. The BEA representative explains the commitments at the conference.

* For local aid projects, the utility clearance letter is supplied by the Chief Engineer, Transportation Operations and Local Aid. BLA submits the Advertising Notice Information to BCA.

Following the Pre-Construction Conference, the Office of Community Involvement may hold further meetings with local officials, municipal and county engineers, street and highway superintendents, police, fire and emergency services, representatives and other interested groups within the project area to determine problems that might be encountered, and to dispel rumors about the project. The locations and involvement of traffic controls, schools, playgrounds, detours, and local happenings are also reviewed at these meetings.

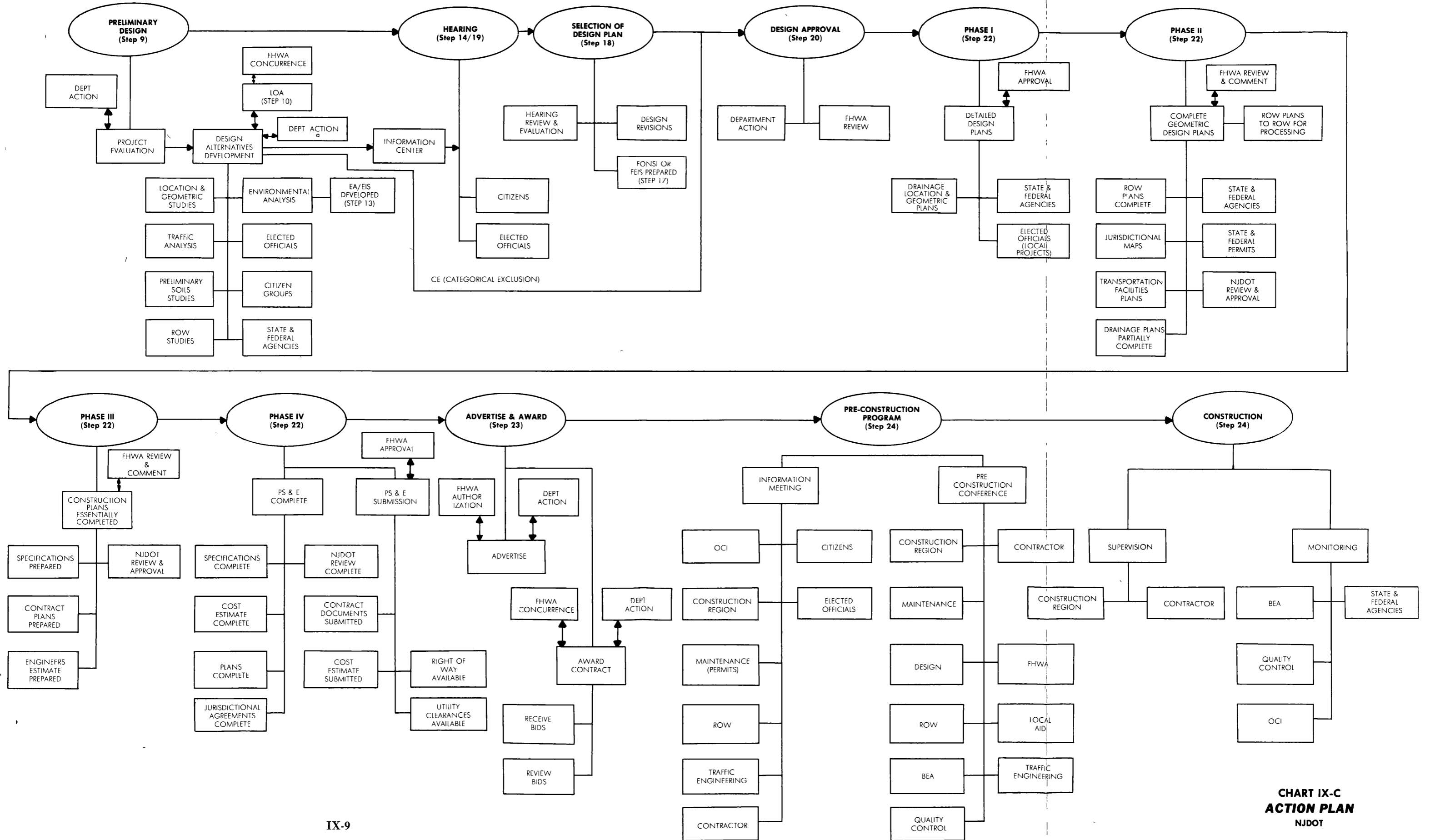
When the scope and involvement of the project are extensive, a local information center is established where residents and business people located within the project area can come to obtain information as to just how, where, when, and for how long they can expect to be affected by construction operations. The information center is usually established in a public building where exhibits are displayed. Department representatives from Right of Way, Maintenance (Permits), Community Involvement, Construction, and Traffic Engineering, as well as contractor personnel, staff the center.

In order to have maximum public participation in the Pre-Construction Program, announcements concerning public meetings and the project information center, if established, are made via local media. In addition to whatever Pre-Construction Program is available at the local level, project information may be obtained from the Office of Community Involvement at the NJDOT, 1035 Parkway Avenue, Trenton, New Jersey 08625.

Construction (Step 24)

By the time the contractor is ready to start construction the community or communities where construction will take place have had opportunity to inform themselves of the planning for construction. Once construction begins the regional construction staff implements required environmental protection measures during the construction project and provides for any additional measures necessary as construction proceeds. The Resident Engineer is required to report to BEA any unusual environmental problems encountered. OCI monitors community impressions and is prepared to handle questions or complaints. BEA monitors the contractor's operations for compliance with environmental commitments made during project development and design. Bureau of Quality Control monitors air, noise, and water quality during construction and post-construction according to a prearranged plan BEA develops.

DESIGN PROCESS FLOW CHART



CHAPTER X

RIGHT OF WAY

Role of Right of Way

Right of Way (ROW) involvement starts in project development where ROW cooperates with the Bureau of Environmental Analysis (BEA) by providing conceptual relocation studies on replacement housing, ROW preliminary cost estimates, and business relocation studies, for alternatives considered during location studies. ROW also prepares preliminary socioeconomic studies on request from BEA.

ROW involvement continues during the design phase, where ROW reviews right of way plans and comments on project socioeconomic impacts. When right of way plans are complete ROW has responsibility for property appraisals, property acquisitions, title searching and conveyancing, legal processing of condemnation actions. ROW also provides relocation assistance for residents and businesses. Relocation assistance procedure details may be found in NJDOT publication "Your Rights and Benefits If You Must Move". Acquisition procedures information may be found in NJDOT publication "How Land is Purchased for Highways."

A representative from ROW generally attends public hearings, providing information on property acquisition steps and relocation procedures and payments.

Right of Way Programming

When right of way plans and proposals are completed in Design Phase II they are transmitted to ROW whereupon the Director of ROW initiates programming steps for accomplishing right of way acquisition. Firm parcel cost estimates are prepared as is a Department Action for the Commissioner's approval of the right of way plans and authorization to acquire properties with designated Federal-aid and State funds.

Upon the Commissioner's authorization, the ROW Bureau of Control and Special Projects (BCSP) notifies all ROW bureaus and the ROW geographic district office to which the project is assigned. Concurrently advance information notice letters are sent to all affected property owners, enclosing maps of the property affected and the pamphlet, "How Land Is Purchased for Highways".

Appraisals

Prior to acquisition negotiations, formal detailed appraisals of fair market value of the property to be acquired are made by the district office. After the appraisal has been completed and "registered" in the

Bureau of Appraisals (BOAP) office in Trenton negotiations by the district office may begin, providing no relocation assistance is required. Where relocation assistance is involved an acceptable relocation assistance plan must be developed and approved before acquisition can be started.

Relocation Assistance Plan

Concurrent with preparing the appraisals a start is made on developing a formal Workable Relocation Assistance Plan (WRAP), a Federal requirement. In preparing the plan the district office conducts site occupancy surveys of the property and each occupancy. These are analyzed to develop relocation needs in relation to available housing resources, the Relocation Plan, and the lead time required to accomplish the relocations.

Prior to negotiations relocation plans must be found acceptable and approved by the Director of ROW and the FHWA. Relocation lead time factors are made known to Design Services and other NJDOT units so that activities can be coordinated and construction bid advertising scheduled.

Negotiations and Condemnations

Property purchase negotiations are conducted by the district office assigned to the project. Negotiations personnel are independent of those responsible for appraisals. Wherever possible, negotiations are conducted on a personal basis with the owner or owner's attorney at a time and place convenient for them. In accordance with the intent and philosophy of the Federal Uniform Real Property Policies Act of 1970, owners are tendered in writing at the outset, the full amount of the State's estimate of fair market value as established by the appraisal process. Should the owner be an occupant and eligible for a replacement housing additive, the additive will also normally be tendered in writing at this time. During the personal negotiations, the negotiator explains the taking and other matters, including proposed construction perspectives if the parcel is of a partial nature. The owner is further tendered an advance down payment and the option of retaining and removing his dwelling for an appropriate price reduction.

If agreement is reached an agreement document is executed and forwarded to the Right of Way Director who upon approval forwards the agreement to the Commissioner via a Department Action for execution. One copy of the executed agreement is returned to the owner by the Bureau of Acquisition (BOAC).

If negotiations fail condemnation is initiated through which an independent court establishes just compensation to be paid.

Possession and Payments

No owners are required to relocate unless the agreement purchase price has first been made available, or in condemnation, both a Complaint with Declaration of Taking and Court Deposit in the amount of the NJDOT value estimate have first been made into court where it can be applied for by the owner. Further and specifically, no residential owner or tenant is required to relocate unless there is first available to him decent, safe and sanitary replacement housing suitable to his needs and within his means.

Relocation Assistance

The Federal Uniform Relocation Assistance Act of 1970* together with the New Jersey Legislature's Uniform Transportation Replacement Housing and Relocation Act of 1972** provides the enabling legislation for relocation assistance provided by ROW. As a result, right of way acquisition is concerned not only with property required for public projects, but with the impact on and needs of the people to be displaced. In accordance with the intent and philosophies of the relocation laws, ROW has a trained professional staff of relocation specialists. Full relocation services, provisions, and payments are provided and no persons or family is required to relocate without reasonable time and unless there is actually available to them a decent, safe and sanitary replacement dwelling suitable to their needs within their means. In certain circumstances, this may require that the project be held up or abandoned unless NJDOT can construct the housing as a last resort, or alternatively, as a part of the project costs develop other adequate means of providing suitable replacement housing.

Relocation Services and Payments

The following services and payments are provided by the NJDOT Relocation Assistance Program:

- . assistance in finding replacement houses and business locations
- . moving expense reimbursement
- . business discontinuance allowance in lieu of moving reimbursement
- . payment of replacement housing supplements, mortgage interest rate differentials and closing costs on new home
- . payment of rent supplements

* 42 USC Sec. 3307, 4601 et seq; 49 USC Sec. 1606

** NJRS 27:7-72 et seq

- . down payment alternates and closing costs on new home (when available)
- . provisions of related supporting services and assistance

Right of Way Availability for Construction Advertising

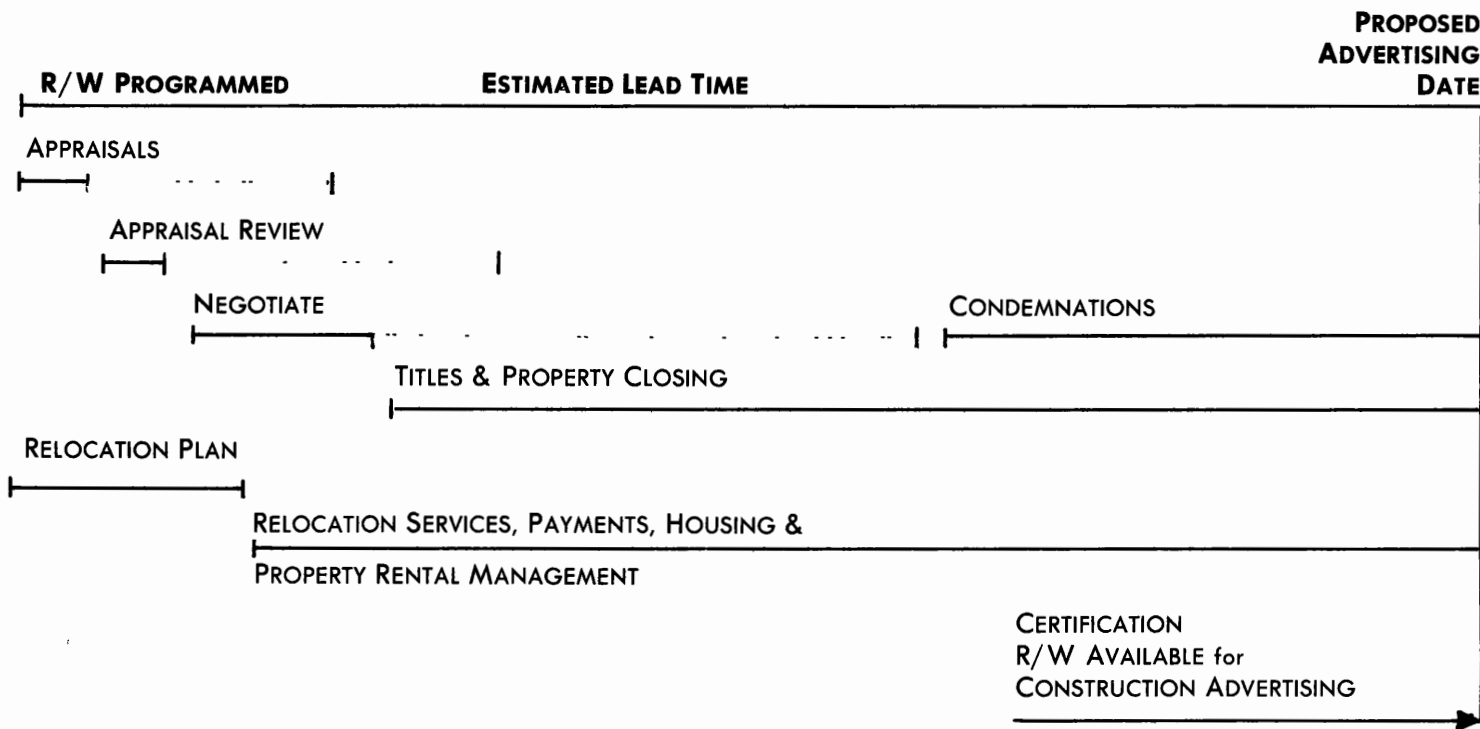
Upon acquisition of the right of way, including provision of relocation services and payments and the relocation of all families, the Right of Way Director prepares an availability letter addressed to FHWA and forwards the letter to the Office of Program Development, Federal-Aid Coordination Section, (FACS) which in turn transmits to FHWA as a part of the PS&E and advertising authorization request.

Lead Time and Work Flow Diagram Control

ROW lead time varies greatly dependent on project circumstances. A relatively simple project requiring few parcels with no relocation problems may require only 6 months or less to complete right of way acquisition. Two hundred vacant parcels might require two years; a lesser number of parcels but requiring relocation assistance could also take two years. For projects with complex parcels, with major relocation, as much as three years time may be needed.

At the outset of each project, the Bureau of Control and Special Projects (BCSP) secures from the Director the lead time estimate. This data is coordinated with the various functions to develop the work sequence critical path so as to assure control and completion in time for the desired advertising schedule. Chart X-A diagrams ROW work flow and shows the ROW work sequence and its relative time needs.

RIGHT OF WAY WORK FLOW DIAGRAM



NOTE: Where both a solid and dash line are shown for an operation, the solid line portion denotes completed work moving on to next operation. For example the first parcels appraised are immediately moved to appraisal review and then to negotiation while appraising of remaining parcels continues.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

Appendix

APPENDIX

	<u>Table of Contents</u>	Page
A. NJDOT	Glossary	A-1
B. NDDOT	Acronyms used in Action Plan	B-1
C. FHWA - UMTA	Urban Transportation Planning (Federal Register 8-6-81)	C-1
D. NJDOT	Pre-Design Assessment	D-1
E. FHWA - UMTA	Environmental Impact and Related Procedures (Federal Register 10-30-80)	E-1
F. NJDOT	Environmental Procedures Levels of Action Determination Environmental Reevaluation	F-1
G. FHWA	Summary of Selected Environmental Legislation	G-1
H. FHWA - USCG	Memorandum of Understanding	H-1
I. USDOT - USACE	Memorandum of Agreement	I-1

0

1

2

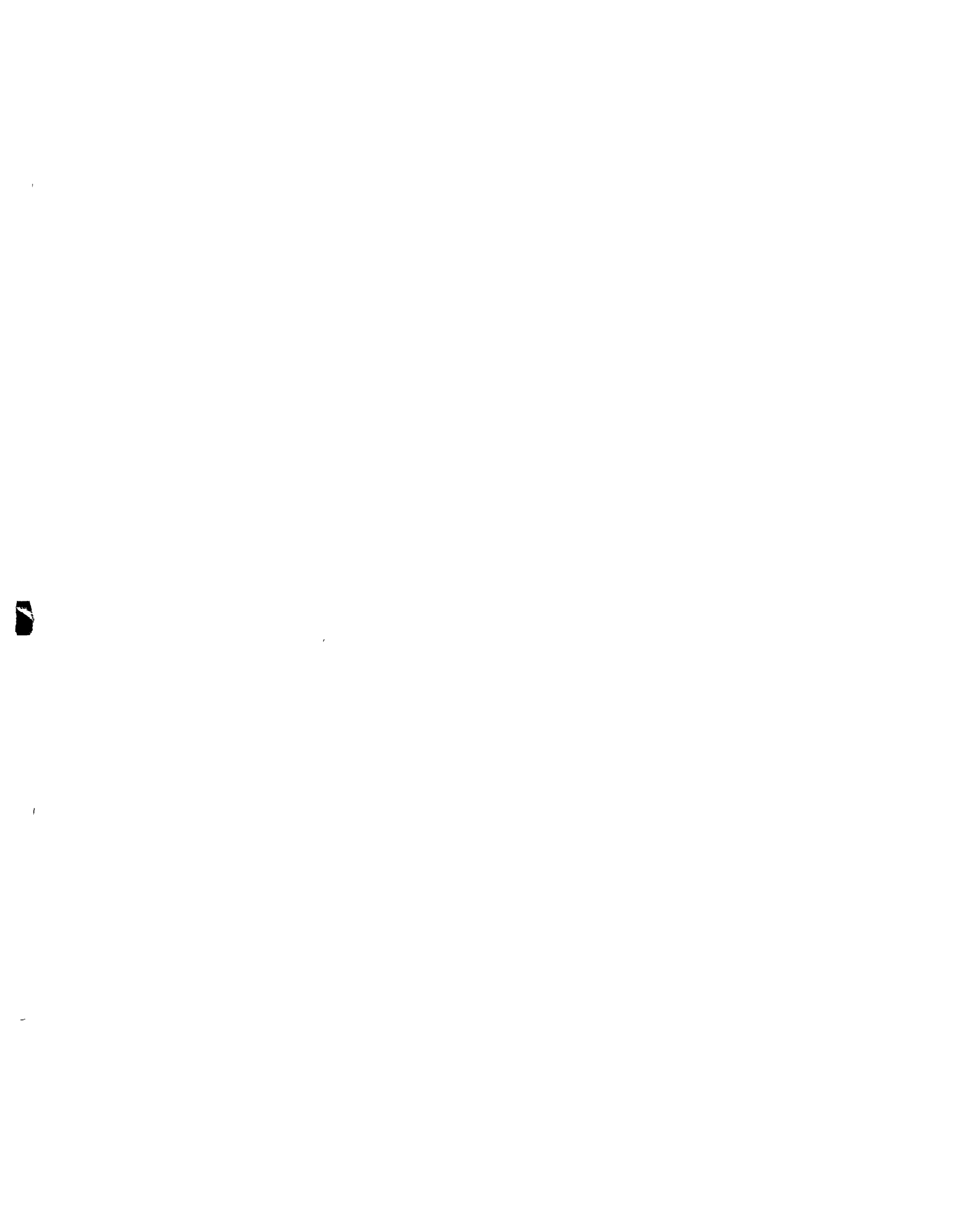
3

4

5

Appendix A

GLOSSARY



GLOSSARY

A-95 Review (A-95) - The process whereby state, regional, and local government agencies, together with planning agencies, participate in the evaluation, review, and coordination of Federal-aid programs and projects. State and area clearinghouses coordinate these functions established under Title IV. Intergovernmental Cooperation Act of 1968 and the Office of Management and Budget (OMB) Circular A-95.

Advisory Council on Historic Preservation (ACHP) - An independent agency of the United States which advises the President and the Congress on historic preservation matters, recommends measures to coordinate Federal historic preservation activities, and comments on Federal actions affecting properties included in or eligible for inclusion in the National Register of Historic Places.

Alternatives Analysis - A study procedure to identify and analyze alternative solutions to a transportation need.

Annual Construction Program - A program setting forth the projects for which NJDOT intends to commit capital funds appropriated for construction and improvements of transportation facilities during a specific fiscal year.

Categorical Exclusion (CE) - Project categories designated by CEQ, deemed not to individually or cumulatively have a significant effect on the human or natural environment, and thus are exempt from preparation of an Environmental Assessment or Environmental Impact Statement.

3-C Process - A continuing cooperative and comprehensive transportation planning process, carried on cooperatively by States and local communities for urban areas of more than 50,000 population, required by Title 23, U.S. Code, Section 134.

Commissioner - A cabinet-level official appointed by the Governor as head of the New Jersey Department of Transportation.

Corridor - An area of variable length and width within which transportation alternatives for meeting a particular transportation need are identified and their impacts assessed.

Council on Environmental Quality (CEQ) - The agency responsible for overall Federal compliance with the National Environmental Policy Act (NEPA) of 1969. The council issues regulations and governs implementation of the NEPA Act.

Delaware River Port Authority (DRPA) - A regional transportation authority which promotes the Port of Philadelphia, operates the Lindenwold High Speed Line and four toll bridges in the Camden/ Philadelphia region.

Delaware Valley Regional Planning Commission (DVRPC) - The designated regional planning agency for the Camden/Philadelphia region.

Department Action (DA) - A document executed by the Commissioner or Commissioner's designee indicating approval or disapproval of a proposed NJDOT action.

Design Approval - Department Action approval on a staff recommended schematic design plan which must precede federal funding of construction plans and specifications development.

Environmental Assessment (EA) - A concise document summarizing environmental studies which provide sufficient analysis for determining whether to prepare an EIS or FONSI.

Environmental Impact Statement (EIS) - A document supplying information on a project that may cause significant impacts on the environment, showing what the impacts are expected to be and measures to be taken to mitigate negative impacts.

Feasibility Study - A type of study that defines a project need, identifies alternative ways of meeting the need, and preliminarily analyzes the alternatives for their practicality in terms of engineering, economic, environmental effects, costs, and benefits.

Federal-Aid Highway Program Manual (FHPM) - A manual issued by FHWA containing regulations, policy instructions and general procedures relating to the Federal-Aid Highway Program.

Federal-Aid Highway System - The network of roads funded in part with federal funds and including urban, primary, secondary, Interstate highways.

Federal Highway Administration (FHWA) - A federal agency in the US Department of Transportation (USDOT) which administers the Federal-aid highway program.

Finding of No Significant Impact (FONSI) - A document presenting reasons why a project will not have a significant effect on the human environment and for which an EIS will not be prepared.

Interdisciplinary Approach - The bringing together of specialized expertise in the natural and social sciences, environmental design arts, and engineering technology in a joint effort to identify impacts of construction or other action on the human environment and to advise best possible means to minimize adverse impacts.

Lead Unit - The NJDOT bureau or office assigned responsibility for carrying out planning, development, or implementation studies requiring input from other NJDOT units.

Levels of Action (LOA) - An assessment procedure used to evaluate and classify the degree of environmental study a project requires.

Location Approval - FHWA approval or adoption of a Final EIS or FONSI.

Location Study - Detailed engineering and environmental analysis of alternative solutions to a transportation need.

Metropolitan Planning Organization (MPO) - The agency responsible for the continuing, cooperative, and comprehensive planning process in an urbanized area over 50,000 population, as required by federal law (23 U.S. Code, Section 134).

National Environmental Policy Act of 1969 (NEPA) - Federal legislation which established a national policy on the environment, required filing of environmental impact statements for major federal actions that would significantly affect the environment, and created the Council on Environmental Quality (CEQ).

New Jersey Department of Environmental Protection (NJDEP) - The state agency charged with administering environmental laws, policies, and programs.

New Jersey Department of Public Advocate (NJDPA) - A New Jersey State agency designated to monitor and respond to citizen concerns and complaints.

New Jersey Department of Transportation (NJDOT) - The State agency responsible for statewide transportation planning, construction, and maintenance of state owned highways and rail lines, procurement and ownership of rail and bus equipment and facilities.

New Jersey Transit Corporation (NJ TRANSIT) - A state-created corporation authorized to do short range planning, systems development, and operation of public transportation in New Jersey.

Notice of Planned Action (NOPA) - A letter sent to federal, state and local agencies by Bureau of Environmental Analysis (BEA) when a project is classified as an EA or EIS, providing agencies opportunity to comment on a project early in the project development stage. This early coordination can lead to one or more scoping meetings.

Phases I, II, III, IV - Steps within the NJDOT project design process where construction plans are reviewed by NJDOT bureaus sharing responsibility for contract plans and documents.

Plans, Specifications, and Estimates (PS&E) - Final construction plans, specifications, and cost estimate prepared for the advertising of a construction project.

Preliminary Design - Initial study for project design including surveys, traffic projections, mapping, environmental evaluation - leading to selection of a preliminary design scheme.

Prioritization - The ranking of projects according to their consistency with State, County, and local transportation plans, the gravity of their need, and the cost of implementation.

Programming - The arrangement of projects in multi-year and annual capital improvement programs in accordance with their priority and available funding.

Public Hearing - A public forum which affords opportunity for presenting views on alternative proposals and the effects of those proposals.

Reappraisal - The review of a programmed project during the development process to confirm or revise its priority, considering available alternatives, environmental effects, public acceptance, staff resources, policy conformance, and cost.

Record of Decision (ROD) - A written statement documenting FHWA approval of a final environmental impact statement.

Resource and Priority Committee (RAP) - A committee of NJDOT senior staff which assesses program and project needs, makes recommendations for priorities and the allocation of resources to meet these needs.

Regional Plan Association (RPA) - A research and planning agency supported by voluntary membership to promote the coordinated development of the New York-New Jersey-Connecticut urban region.

Social, Economic, Environmental (SEE) Effects - The aggregate of effects of a project or action, either beneficial or adverse, on the quality of life, existing resources, and human environment.

Standard Metropolitan Statistical Area (SMSA) - A county or group of contiguous counties which contain at least one city of 50,000 or more, or "twin cities" with combined population of at least 50,000.

State Highway System - Those routes within New Jersey designated by Interstate, US, or NJ route numbers, falling under sole jurisdiction of the State.

State Historic Preservation Officer (SHPO) - The official responsible for administering the National Historic Preservation Act within the state. This official is appointed by the Governor. The SHPO reviews cultural resource survey reports for Federal or federally funded projects to determine if sites meet the criteria of the National Register of Historic Places, and if so, to determine what effect the project would have on the sites. The SHPO is also a party to the Advisory Council commenting process. In New Jersey the Commissioner of the New Jersey Department of Environmental Protection is the SHPO.

Transportation Improvement Program (TIP) - A staged multi-year program of transportation improvements prepared annually by MPO's in cooperation with NJDOT.

Transportation Systems Management (TSM) - An effort directed towards short-range efficiency improvements for the existing transportation system in a metropolitan area.

Tri-State Regional Planning Commission (TRI-STATE) - The designated regional planning agency for the New York-New Jersey - Connecticut urban region.

Urbanized Area - An area defined by the US Bureau of the Census having a central city or cities and surrounding territory, with a population of 50,000 or more.

Workable Relocation Assistance Program (WRAP) - A program established by the Division of Right of Way for each construction project to insure all payments, benefits, and services required by law will be provided to the occupants, and displacements will not exceed available housing resources.

Appendix B

ACRONYMS USED IN ACTION PLAN

ACRONYMS USED IN ACTION PLAN

A-95	A-95 Review
ACHP	Advisory Council on Historic Preservation
BAR	Bureau of Accident Records
BBSD	Bureau of Bridges and Structures Design
BCA	Bureau of Contract Administration
BCSP	Bureau of Control and Special Projects
BDR	Bureau of Data Resources
BDS	Bureau of Design Standards and Economic Design Analysis
BEA	Bureau of Environmental Analysis
BEO	Bureau of Electrical Operations
BGC	Bureau of Graphics and Cartography
BGE	Bureau of Geotechnical Engineering
BLA	Bureau of Local Aid and Safety Programs
BLSA	Bureau of Landscape Architecture
BOAC	Bureau of Acquisitions
BOAP	Bureau of Appraisals
BOM	Bureau of Maintenance
BOP	Bureau of Programming
BOT	Bureau of Titles
BPL	Bureau of Project Location
BPN	Bureau of Publications
BPR	Bureau of Property and Relocation
BQC	Bureau of Quality Control
BRA	Bureau of Regional Analysis

BRPR	Bureau of Roadway Plan Quality Review and Specifications Development
BSIR	Bureau of Bridges and Structures Investigation, Evaluation and Rating
BSMI	Bureau of Scheduling, Monitoring, and Information
BSP	Bureau of Statewide Planning
BSPC	Bureau of Bridges and Structures Plan Coordination and Specifications Development
BTE	Bureau of Traffic Engineering
BTP	Bureau of Travel Projections
BUP	Bureau of Urban Planning
BURS	Bureau of Utilities, Railroad Safety and Engineering
CE	Categorical Exclusion
CEQ	Council on Environmental Quality
DA	Department Action
DRPA	Delaware River Port Authority
DVRPC	Delaware Valley Regional Planning Commission
EA	Environmental Assessment
EIS	Environmental Impact Statement
FACS	Federal Aid Coordination Section
FHPM	Federal-Aid Highway Program Manual
FHWA	Federal Highway Administration
FONSI	Finding of No Significant Impact
LA	Location Approval
LOA	Levels of Action
MBE	Minority Business Enterprise
MPO	Metropolitan Planning Organization
NEPA	National Environmental Policy Act of 1969
NJ TRANSIT	New Jersey Transit Corporation

NJDEP	New Jersey Department of Environmental Protection
NJDOT	New Jersey Department of Transportation
NJDPA	New Jersey Department of the Public Advocate
NOPA	Notice of Planned Action
OCI	Office of Community Involvement
OCR	Office of Civil Rights
OHS	Office of Highway Services
OJD	Office of Joint Development/Urban Initiatives
PS&E	Plans, Specifications, and Estimates
RAP	Resource and Priority Committee
RDO	Regional Design Office
ROD	Record of Decision
ROW	Right of Way (Division)
RPA	Regional Plan Association
SEE	Social, Economic, Environmental
SHPO	State Historic Preservation Officer
SMSA	Standard Metropolitan Statistical Area
TIP	Transportation Improvement Program
TOLA	Traffic Operations and Local Aid Services
TRI-STATE	Tri-State Regional Planning Commission
TSM	Transportation Systems Management
WRAP	Workable Relocation Assistance Program

Appendix C

URBAN TRANSPORTATION PLANNING

FHWA - UMTA

(Federal Register 8-6-81)

TRANSIT REPORT

**Thursday
August 6, 1981**

Part IV

**Department of
Transportation**

Federal Highway Administration

**Urban Mass Transportation
Administration**

Urban Transportation Planning

DEPARTMENT OF TRANSPORTATION**Federal Highway Administration****Urban Mass Transportation Administration****23 CFR Parts 450 and 650****49 CFR Part 613**

[FHWA Docket No. 80-24, Notice 4]

Urban Transportation Planning

AGENCIES: Federal Highway Administration (FHWA) and Urban Mass Transportation Administration (UMTA), Department of Transportation (DOT).

ACTION: Removal of regulations; issuance of interim final regulations.

SUMMARY: The purpose of this document is to issue amendments to existing regulations governing urban transportation planning under FHWA and UMTA grant programs. The amendments are intended to (1) reduce redtape and simplify administration of the planning process especially for urbanized areas under 200,000 population, (2) incorporate recent legislative changes, and (3) clarify the purpose of Transportation System Management (TSM) and other aspects of the planning process. The amendments previously issued to these regulations (46 FR 5702, January 19, 1981) are withdrawn and the rulemaking docket (FHWA Docket No. 80-24) is closed.

EFFECTIVE DATES: The amendments published on January 19, 1981 (46 FR 5702) are withdrawn effective July 30, 1981. These interim final amendments are effective on July 30, 1981.

FOR FURTHER INFORMATION CONTACT: FHWA: Sam W. P. Rea, Jr., Urban Planning Division, (202) 426-2961, or Stanley Abramson, Office of the Chief Counsel, (202) 426-0761; or UMTA: Robert Kirkland, Office of Planning Assistance, (202) 426-4991, or Anthony Anderson, Office of Chief Counsel, (202) 426-1908, all located at 400 Seventh Street, SW., Washington, D.C. 20590. FHWA office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday; UMTA office hours are from 8:30 a.m. to 5:00 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: This document amends the FHWA/UMTA regulations for urban transportation planning (23 CFR 450 and 49 CFR 613). The provisions of 23 CFR 450, Subparts A and C are incorporated into 49 CFR 613, Subparts A and B respectively. These amendments are considered to be significant under the regulatory policies and procedures of the Department of

Transportation (DOT) because they involve important departmental policy. A regulatory evaluation has been prepared for these amendments and is available for inspection in the rulemaking docket (No. 80-24, Room 4205). Copies of the regulatory evaluation may be obtained by contacting Mr. Sam W. P. Rea, Jr., at the address provided above under the heading "For Further Information Contact." The Administrators of the FHWA and UMTA have determined that this document does not contain a major rule under Executive Order 12291 and that, for the purposes of the Regulatory Flexibility Act, these amendments will not have a significant economic impact on a substantial number of small entities.

Background

On September 17, 1975, FHWA and UMTA jointly issued final regulations (40 FR 42976) implementing the urban transportation planning process that is mandated under the Federal-Aid Highway Acts (23 U.S.C. 101 et seq.) and the Urban Mass Transportation Act of 1964, as amended (UMT Act) (49 U.S.C. 1601 et seq.). The foregoing statutes require a continuing, comprehensive and cooperative (3C) planning process in all urban areas of more than fifty thousand population.

Under the urban transportation planning regulations, the UMTA and FHWA review and evaluate the transportation planning process in each urbanized area. Federal certification of the process does not constitute approval or rejection of any given transportation project, but simply constitutes the formal recognition that an acceptable 3C planning process exists. This certification is a prerequisite to subsequent Federal approvals of individual project proposals.

Proposed amendments to the urban transportation planning regulations were published for notice and comment on October 30, 1980 (45 FR 71990). Final amendments and a request for additional public comments were published on January 19, 1981 (46 FR 5702). The amendments published on January 19, 1981, were originally scheduled to take effect on February 18, 1981. On February 4, 1981, the DOT postponed the effective date until March 31, 1981 (46 FR 10706). The action was taken pursuant to the President's memorandum of January 29, 1981 (46 FR 11227, February 6, 1981), which, among other things, directed executive agencies to postpone for 60 days the effective dates of regulations which had been issued but were scheduled to become effective during the 60-day period

following issuance of the memorandum. As a result of their initial review of the postponed amendments, the FHWA and UMTA decided to postpone the effective date for an additional 90-day period (46 FR 19233, March 30, 1981) in order to provide sufficient time for full and appropriate review and revision of the subject amendments. An additional 30 days was provided by notice of June 30, 1981 (46 FR 33513).

The FHWA and UMTA have completed their review of the postponed amendments and the comments submitted to the public docket and have decided to withdraw those amendments at this time. In their place, the FHWA and UMTA are today issuing interim final regulations which incorporate only those provisions of the withdrawn amendments which will (1) reduce redtape and streamline the planning process for areas under 200,000 population, (2) incorporate recent legislative changes, and (3) clarify the purpose of Transportation System Management (TSM) and other aspects of the planning process. Although the changes being made are not as comprehensive as originally proposed, the entire text of the regulations (23 CFR 450, Subparts A and C) is being reissued for purposes of clarity and consistency.

The urban transportation planning regulations have been the subject of extensive public comment. In the preparation of this withdrawal notice and the interim final regulations set forth below, consideration was given to all substantive comments received as of June 1, 1981. For these reasons, it is not anticipated that additional notice and public participation would result in the receipt of useful information. Further rulemaking at this time would only serve to delay implementation of streamlined procedures. Accordingly, the FHWA and UMTA have determined that notice and comment on the withdrawal of the previously issued amendments and the issuance of these interim final amendments would be unnecessary and contrary to the public interest. The rulemaking docket (FHWA Docket No. 80-24) is being closed at this time.

As part of their ongoing program evaluation activities, the FHWA and UMTA are conducting a comprehensive review of the urban transportation planning process. The need for subsequent revisions to these regulations will be considered on the basis of the results of this review, legislative action and the experience gained by the FHWA and UMTA in operating under these regulations. It is anticipated that notice and opportunity

for comment would be provided prior to issuance of any subsequent revisions.

These regulations apply to all urbanized areas, and it is anticipated that the 1980 Census may result in the designation of approximately 100 new urbanized areas in addition to the 279 urbanized areas which are currently so designated. These new urbanized areas would be required to meet these joint urban transportation planning regulations and would be eligible for Federal funding to support their transportation planning processes. In view of the Administration's efforts to reduce redtape, to simplify or eliminate Federal requirements wherever possible, and to remove the Federal presence in areas of limited national interest, the Federal Highway Administration and the Urban Mass Transportation Administration are studying ways to simplify or eliminate these planning requirements in these newly designated urbanized areas. Guidance on this issue will be published in the *Federal Register* no later than August 31, 1981.

The transportation issues in these newly designated urbanized areas will be a subject of the comprehensive review of the urban transportation process mentioned earlier in this preamble.

Interim Final Regulations and Disposition of Comments

Over 190 comments were submitted to the public docket, including 57 from metropolitan planning organizations, 67 from State and local governments, 14 from national organizations and groups, 12 from transit operators and authorities, 5 from other Federal agencies and 39 from private citizens and other interested parties. Several commenters submitted more than one response to the docket.

The proposed provisions relating to major urban transportation investments elicited the most comments. These proposed changes (including the revisions to 23 CFR 630 and 49 CFR 613) have been withdrawn due to the ongoing reevaluation of the Department's major investment programs. Among the amendments was a new appendix to 49 CFR 613 that was a revised statement of UMTA policy on major urban mass transportation investments. This appendix would have superseded previous UMTA policy statements: "Policy on Major Urban Mass Transportation Investments" (41 FR 41512, September 22, 1976) and "Policy Toward Rail Transit" (43 FR 9428, March 7, 1978). However, since the interim final rule does not include the revised UMTA policy statement, the 1976 and 1978 statements remain in

place. The Procedural provisions of these policy statements were changed in an October 30, 1980 notice of revised UMTA policy (45 FR 71986). These 1980 procedural revisions also remain in place.

In view of the interest expressed in these regulations, each provision of the regulations which has been substantively revised or which was the subject of major commentary or concern is discussed below. All other substantive provisions of the joint planning regulations and related regulations (i.e., 23 CFR 630) remain unchanged. A table is included at the end of this preamble indicating the sections that are being substantively revised by this interim rule. For additional background information on the revisions to these regulations, readers are referred to the preamble to the notice of proposed rulemaking published on October 30, 1980 (45 FR 71990).

Section 450 106 is revised to conform to Sections 169(a) and 305(b) of the Surface Transportation Assistance Act of 1978 (Pub. L. 95-599) which provides that designations of metropolitan planning organizations (MPO's), after November 7, 1979, shall be made by agreement among the units of general purpose local government and the Governor. This section, however, is not intended to mandate new or reaffirmed designation action on the part of local governments or the Governor. To the extent possible, the MPO designated shall be established under specific State legislation, State enabling legislation or by interstate compact. In addition, the principal elected officials of the general purpose local governments shall be adequately represented on the MPO.

Several commenters requested that we more clearly define what constitutes "agreement" between units of general purpose local government and the Governor in the designations or redesignations made after that point in time. We have used the precise language of the legislation. We expect State and local officials to develop mutually acceptable procedures for making MPO designations. We are not imposing a Federal mandate on the definition of "adequate representation" of principal elected officials on the MPO policy body. In the spirit of a cooperative planning process, we expect State and local officials to develop mutually acceptable organizational structure and representation.

Section 450 108 has been revised to allow the requirement for an agreement between the MPO, the State and the publicly owned transit operators to be met if the parties agree to document

their responsibilities and procedures in a unified planning work program (UPWP). In order to minimize redtape, the requirement that agreements be sent to FHWA and UMTA (§ 450 108(g)), proposed in the NPRM, is deleted in the interim final rule.

Several commenters requested that the geographical scope of the transportation planning process as identified in § 450 110 and the geographical requirement relating to the representation on the MPO (§ 450 106(d)) be identical. We do not believe that such a requirement would be appropriate. The existing regulation requires that, as a minimum, the jurisdiction of the metropolitan planning organization encompass the urbanized area, as this boundary relates to the eligibility requirements of FHWA and UMTA capital and operating assistance programs. However, it is good planning practice to include areas likely to be urbanized when conducting long-range planning. To integrate transportation planning with other planning activities in the area, and to permit flexible institutional arrangements, we intend to retain the permissive language of the existing regulation.

Several commenters expressed concern that elimination of the prospectus and the subsequent inclusion of some of its elements in the UPWP might result in an increase in paperwork and staff effort. Therefore, we have revised § 450 114 of the regulations to make the development of a prospectus optional and have not added any additional mandatory elements to be included in the UPWP.

One commenter noted that the revised § 450 114 no longer contains language which encourages combining UPWP requirements with those of other planning programs. We do want to continue this encouragement and are, therefore, reinstating the language of the previous section which is still applicable.

The NPRM contained a substantial number of proposed revisions related to the MPO responsibilities under the Clean Air Act (Pub. L. 95-95). None of the changes added new requirements but merely restated specific requirements contained in the Clean Air Act. It has been found that MPO responsibilities concerning air quality matters are clearly stated within the law and generally do not require elaboration in the regulation. Therefore, with the exception of § 450.112(c), these changes have been eliminated from this interim rule. Section 450 112(c) has been retained to ensure coordination between transportation and air quality planning

by requiring MPO involvement in the development of transportation control measures in nonattainment areas.

The proposed rule also contained several references to the FHWA-UMTA Air Quality Conformity and Priority Regulation (23 CFR 770). These references have been consolidated into those contained in §§ 450.120(a)(2) and 450.320(c)(4). Additional references to this regulation would be redundant and, therefore, have been eliminated. Since UMTA is required to approve the annual element of the transportation improvement program (TIP/AE), § 450.320 is revised to specifically state that UMTA's approval constitutes the finding that the TIP/AE meets the requirements of §§ 176(c) and 176(d) of the Clean Air Act (42 U.S.C. 7506(c) and (d)) regarding conformity and priority of transportation programs and projects.

Sections 450.106(e) and 450.120(a)(7) are amended to allow greater participation in planning activities. The word "local" was deleted from § 450.106(e) to allow other than local agencies to carry out selected elements of the planning process. Likewise, § 450.120(a)(7) was revised to allow appropriate private and public transportation providers to participate in the process.

Section 450.120(a)(8) was amended to provide greater flexibility in performing transportation planning activities.

Several comments were concerned with the elimination of the requirement for an annual certification as proposed in § 450.122. This change is considered appropriate given the relatively slow rate of change occurring in the planning process on a yearly basis. While a formal certification review should not be needed annually, informal assessments of the need for a certification review would be a continuing function in the FHWA and UMTA administration of the planning process.

To help clarify a number of questions that have arisen regarding the purpose and scope of TSM, revisions have been made to § 450.116 and Appendix A. In § 450.116, conventional terms for elements of the transportation plan, i.e., short- and long-range elements, are now used. It should be noted that the importance of TSM is in no way diminished with this revision. Section 450.116 still lists TSM as a key component of both elements of the transportation plan.

The Appendix A has been revised to clarify the purpose of TSM as primarily addressing operational and service issues both short- and long-range. The new Appendix A replaces the 1975 Appendix version completely. Therefore, it is designed to stand alone

as clarification on the intent, scope, roles and responsibilities, activities and programming of TSM.

With these revisions, no new documentation is anticipated for TSM. TSM is to be documented in the normal products of the planning process. Much discretion is left to the localities to decide how best to report on TSM activities.

Lastly, since the TSM concept has been widely accepted and is now an integral part of the ongoing transportation planning and programming process, UMTA has decided to delete § 613.202 of Title 49. This in no way lessens the importance to TSM as a consideration in UMTA's program approval actions. Rather, it reflects our confidence that TSM will continue to find widespread application as a useful tool in meeting transportation needs with limited resources. Therefore, this requirement is being removed as part of our efforts to simplify the regulation.

Appendix B to 23 CFR Part 450, Subpart A and the Appendix to 49 CFR Part 613, Subpart B on transportation for elderly and handicapped persons are eliminated. Similarly, § 613.204 of 49 CFR is being removed at this time. Revisions to the appendices were published as parts of revisions to the DOT rule implementing § 504 of the Rehabilitation Act of 1973 (46 FR 37488, July 20, 1981). The DOT rule implementing § 504 (49 CFR 27) has been added as a citation to § 450.120(a)(5).

As part of a joint FHWA/UMTA effort to reduce redtape and simplify administrative and technical requirements in small metropolitan areas, FHWA and UMTA issued guidance on August 1, 1980, related to meeting the minimum requirement of the joint planning and programming regulations for urbanized areas of less than 200,000 population. This guidance was published in the Federal Register on October 23, 1980 (45 FR 70249). The guidance has been revised to make it consistent with this rulemaking and is included as Appendix C. Many commenters reacted favorably to the guidance.

As discussed in the NPRM, the provisions of 23 CFR Part 450, Subpart C are being revised in order to: (a) reflect recent amendments to this subpart which were issued in connection with amendments to the Interstate substitution and withdrawal regulations (23 CFR Part 476, Subpart D), published by FHWA and UMTA on October 20, 1980 (45 FR 69390); and (b) make technical revisions to this subpart to make it consistent with the proposed modification in Subpart A.

Also modified is § 450.312(a), which had required that, for informational purposes, the annual element of the TIP contain all nonfederally funded transportation systems management projects. Several commenters had objected to this requirement, which has been in the regulation since 1975, arguing that its benefit to the Federal Government is outweighed by its burden to the MPO's. We have removed the requirement as part of our efforts to simplify the regulation.

Section 450.308(e) is also eliminated as part of our efforts to simplify the regulation. This section required a discussion of how improvements from the two elements of the plan were merged into the transportation improvement program.

Table of Sections Containing Substantive Revisions

23 CFR 450

Subpart A

450.106(a)
450.106(e)
450.108(e) (new)
450.112(c) (new)
450.114
450.116

450.120(a)(2)
450.120(a)(5)
450.120(a)(7)
450.120(a)(8)
450.122(a)

Appendix A

Appendix B (deleted)
Appendix C (new)

Subpart C

450.308(e) (deleted)
450.312(a)(2) (deleted)
450.320(c)(4) (new)

49 CFR 613

Subpart B

613.202 (deleted)
613.204 (deleted)
Appendix (deleted)

The amendments published on January 19, 1981 (46 FR 5702) are withdrawn immediately. Because the interim final rule streamlines existing procedures, good cause exists to make it effective in less than 30 days under DOT regulatory policies and procedures. In addition, a 30-day delay in effective date is not required under the Administrative Procedure Act because the matters affected relate to grants, benefits, or contracts pursuant to 5 U.S.C. 553(a)(2). Accordingly, this interim final rule is effective upon issuance.

(Catalog of Federal Domestic Assistance Program Numbers 20.205, Highway Research, Planning and Construction; 20.500, Urban

Mass Transportation Capital Grants; 20 501, Urban Mass Transportation Capital Improvement Loans, and 20 507, Urban Mass Transportation Capital and Operating Assistance Formula Grants. The provisions of OMB Circular No A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to these programs)

Issued on July 30, 1981.

Arthur E. Teele, Jr.,

Urban Mass Transportation Administrator

L. P. Lamm,

Executive Director, Federal Highway Administration

In consideration of the foregoing, Chapter I of Title 23, Code of Federal Regulations, and Chapter VI of Title 49, Code of Federal Regulations, are amended as set forth below.

23 CFR 630.106 [Amended]; 49 CFR Part 613 [Amended]

1. The amendment to 23 CFR 630.106 which redesignated paragraphs (b) and (c) as paragraphs (c) and (d) respectively and added a new paragraph (b), and revised 49 CFR Part 613, Subpart B and the authority citation for Subpart A, all as published in the Federal Register at 46 FR 5702, January 19, 1981 are hereby removed

2. Part 450, Subpart A of 23 CFR is revised to read as follows:

PART 450—PLANNING ASSISTANCE AND STANDARDS

Subpart A—Urban Transportation Planning

Sec

450 100	Purpose
450 102	Applicability
450 104	Definitions
450.106	Metropolitan planning organization: Designations
450 108	Metropolitan planning organization: Agreements
450 110	Metropolitan planning organization Geographic scope
450 112	Metropolitan planning organization: Responsibilities
450 114	Urban transportation planning process Planning work programs
450 116	Urban transportation planning process Transportation plan
450 118	Urban transportation planning process Transportation improvement program
450 120	Urban transportation planning process Elements
450 122	Urban transportation planning process Certification
Appendix A	—Advisory information on transportation system management
Appendix B	—[Reserved]
Appendix C	—Advisory information on the simplification of administrative requirements for planning in metropolitan areas of less than 200,000 population

Authority 23 U S C 104(f)(3), 134, and 315; Sections 3, 5, and 8 of the Urban Mass

Transportation Act of 1964, as amended (UMT Act) (49 U S C 1602, 1604, and 1607), Sections 110, 172, 174, and 176 of the Clean Air Act, and 49 CFR 1 48(b) and 1 51

Subpart A—Urban Transportation Planning

§ 450.100 Purpose.

The purpose of this subpart is to implement 23 U S C. 134, and Sections 5(l) and 8 (a) and (c) of the Urban Mass Transportation Act of 1964, as amended (49 U S C. 1604(l) and 1607 (a) and (c)), which require that each urbanized area, as a condition to the receipt of Federal capital or operating assistance, have a continuing, cooperative, and comprehensive transportation planning process that results in plans and programs consistent with the comprehensively planned development of the urbanized area.

§ 450.102 Applicability.

The provisions of this subpart are applicable to the transportation planning process in urbanized areas. Certification under this subpart shall be a prerequisite for program approvals in urbanized areas pursuant to 23 U.S.C. 105(d) and 134(a), Section 8(c) of the UMT Act (49 U S.C. 1607(c)), and Subpart C of this part.

§ 450.104 Definitions.

(a) Except as otherwise provided, terms defined in 23 U.S.C 101(a) are used in this subpart as so defined.

(b) As used in this subpart:

“Governor” means the Governor of any one of the fifty States, or Puerto Rico, and includes the Mayor of the District of Columbia

“Metropolitan planning organization (MPO)” means that organization designated as being responsible, together with the State, for carrying out the provisions of 23 U S C. 134, as provided in 23 U.S.C. 104(f)(3), and capable of meeting the requirements of Sections 3(e)(1), 5(l), and 8 (a) and (c) of the UMT Act (49 U S C. 1602(e)(1), 1604(l), and 1607 (a) and (c)) This organization is the forum for cooperative decisionmaking by principal elected officials of general purpose local government.

§ 450 106 Metropolitan planning organization Designations.

(a) Designations of metropolitan planning organizations (MPO's) shall be made by agreement among the units of general purpose local governments and the Governor. To the extent possible, only one MPO shall be designated for each urbanized area or group of contiguous urbanized areas.

(b) Funds authorized by 23 U S C 104(f) shall be made available by the State to the MPO, as required by 23 U S C. 104(f)(3) To the extent possible, the MPO shall be eligible to receive planning funds authorized by Section 8 of the UMT Act of 1964, as amended (49 U S C. 1607)

(c) To the extent possible. the MPO designated shall be established under specific State legislation, State enabling legislation, or by interstate compact, with authority to carry out metropolitan transportation planning, and should perform the functions required by the Office of Management and Budget (OMB) Circular A-95 “Evaluation, Review and Coordination of Federal and Federally Assisted Programs and Projects” (41 FR 2052, January 13, 1976).

(d) Principal elected officials of general purpose local government within the jurisdiction of the MPO shall have adequate representation on the MPO

(e) Nothing herein shall be deemed to prohibit the MPO from utilizing, through contractual agreements, the staff resources of other agencies to carry out selected elements of the planning process.

(f) An MPO designated under the provisions of this section shall remain designated until another MPO is designated under the provisions of this section.

§ 450 108 Metropolitan planning organization: Agreements.

(a) The responsibilities for cooperatively carrying out transportation planning and programming shall be clearly identified in an agreement or memorandum of understanding between the State and the MPO.

(b) Where the MPO is different from the A-95 agency, there shall be an agreement between the two organizations which prescribes the means by which their activities will be coordinated, as required by Part IV of OMB Circular A-95. This agreement shall specify how transportation planning and programming will be part of the comprehensively planned development of the urbanized area.

(c) There shall be an agreement between the MPO and publicly owned operators of mass transportation services which specifies cooperative procedures for carrying out transportation planning and programming as required by this subpart

(d) To the extent possible there shall be one cooperative agreement containing the understandings required by this section among the State, MPO,

publicly owned operators of mass transportation services and, where necessary, the A-95 agency.

(e) Where parties involved agree, the requirement for an agreement specified in paragraphs (a) and (c) of this section may be satisfied by including the responsibilities and procedures for carrying out a cooperative process in the unified planning work program.

§ 450.110 Metropolitan planning organization: Geographic scope.

The transportation planning process shall, as a minimum, cover the urbanized area and the area likely to be urbanized in the period covered by the long-range element of the transportation plan described in § 450.116.

§ 450.112 Metropolitan planning organization: Responsibilities.

(a) The MPO in cooperation with the State, and in cooperation with publicly owned operators of mass transportation services, shall be responsible for carrying out the urban transportation planning process specified in § 450.120 and shall develop the planning work programs, transportation plan, and transportation improvement program specified in §§ 450.114 through 450.118. The MPO shall be the forum for cooperative decisionmaking by principal elected officials of general purpose local government.

(b) The MPO shall annually endorse the plan and programs required by §§ 450.114 through 450.118.

(c) The MPO shall develop or assist in developing the transportation control measures of the SIP in nonattainment areas which require transportation control measures.

§ 450.114 Urban transportation planning process: Planning work programs.

(a) The urban transportation planning process shall include the development of a unified planning work program (UPWP). The UPWP shall:

(1) Describe all urban transportation and transportation-related planning activities anticipated within the area during the next 1- or 2-year period regardless of funding sources; and
(2) Document work to be performed with planning assistance provided under section 8 of the UMT Act (49 U.S.C. 1607) and 23 U.S.C. 104(f) and 307(c).

(b) Arrangements may be made to combine the unified planning work program requirements with those of other Federal sources of physical planning funds (e.g., Department of Housing and Urban Development and Department of the Interior).

(c) The urban transportation planning process may include the development of a prospectus. The prospectus may

include: a summary of the planning program including discussions of the important transportation issues facing the area and, for each of the elements specified in § 450.120 of this subpart, a general description of the status, anticipated accomplishments and procedures used to carry out each element. To the extent that the prospectus satisfies the requirements of § 450.108 it may be included by reference in the UPWP.

§ 450.116 Urban transportation planning process: Transportation plan.

(a) The urban transportation planning process shall include the development of a transportation plan consisting of a short-range element and a long-range element. Transportation system management (TSM), as described in Appendix A to this subpart, shall be a key component of these elements. The transportation plan shall be reviewed annually to confirm its validity and its consistency with current transportation and use conditions.

(b) The short-range element of the transportation plan shall:

(1) Provide for the near-term transportation needs of persons and goods in the urbanized area;
(2) Identify actions, including TSM measures, that present a systematic approach in addressing problem areas.

(c) The long-range element of the transportation plan shall:

(1) Provide for the long-term transportation needs of persons and goods in the urbanized area;
(2) Identify new transportation policies, strategies, or facilities or major changes in existing facilities and may be in sufficient detail to identify location and mode to be implemented; and
(3) Fully explore TSM as a policy and investment strategy for the long-range transportation and development plans for the area.

(d) The transportation plan shall be consistent with the area's comprehensive long-range land use plan, urban development objectives, and the area's overall social, economic, environmental, system performance, and energy conservation goals and objectives.

§ 450.118 Urban transportation planning process: Transportation improvement program.

(a) The urban transportation planning process shall include development of a transportation improvement program (TIP) including an annual element as prescribed in Subpart C of this part.

(b) The program shall be a staged multivear program of transportation improvement projects consistent with

the transportation plan developed under § 450.116.

§ 450.120 Urban transportation planning process: Elements.

(a) The urban transportation planning process shall:

(1) Provide for the consideration of social, economic, and environmental effects in support of the requirements of 23 U.S.C. 109(h), and Sections 5(h)(2) and 14 of the UMT Act (49 U.S.C. 1604(h)(2) and 1610) and Section 174 of the Clean Air Act;

(2) Comply with the procedures in 23 CFR 770 related to air quality;

(3) Include provisions to ensure involvement of the public;

(4) Be consistent with Title VI of the Civil Rights Act of 1964 and the Title VI assurance executed by each State under 23 U.S.C. 324 and 29 U.S.C. 794, which ensure that no person shall on the grounds of race, color, sex, national origin, or physical handicap be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination under any program receiving Federal assistance from the Department of Transportation;

(5) Include special efforts to plan public mass transportation facilities and services that can effectively be utilized by elderly and handicapped persons pursuant to Section 16 of the UMT Act (49 U.S.C. 1612), Section 165(b) of the Federal-Aid Highway Act of 1973, as amended, and 49 CFR 27;

(6) Provide for the consideration of energy conservation goals, objectives, and where established, energy conservation targets;

(7) Provide for the involvement of the appropriate public and private transportation providers;

(8) Include the following activities as necessary and to the degree appropriate for the size of the metropolitan area and the complexity of its transportation problems:

(i) An analysis of existing conditions of travel, transportation facilities, vehicle fuel consumption, and systems management;

(ii) An evaluation of alternative TSM improvements in the development of the transportation plan to:

(A) Make more efficient use of existing transportation resources;

(B) Reduce energy consumption for transportation overall; and

(C) Respond to short-term disruptions in the energy supply;

(iii) Projections of urban area economic, demographic, and land use activities consistent with urban development goals, and projections of

potential transportation demands based on these levels of activity;

(iv) Analysis of alternative transportation investments or strategies to meet area wide needs for transportation facilities and to aid in the development of the long-range element of the transportation plan, such analysis to include estimates of the energy consumption of each alternative,

(v) Refinement of the transportation plan through the conduct of corridor, transit technology, and staging studies; and subarea, feasibility, location, legislative, fiscal, functional classification, institutional, and energy impact studies,

(vi) Monitoring and reporting of urban development, transportation, and energy consumption indicators and a regular program of reappraisal of the transportation plan, and

(vii) Implementation programming which merges the results of plan refinement of the long-range element and the improvements recommended in the short-range element of the transportation plan to produce a TIP as specified in Subpart C of this part

(b) The urban transportation planning process shall include preparation of technical reports to assure documentation of the development, refinement, and reappraisal of the transportation plan.

§ 450.122 Urban transportation planning process: Certification.

(a) The Federal Highway and Urban Mass Transportation Administrators jointly will review and evaluate as appropriate the transportation planning process in each urbanized area to determine if the process meets the requirements of this subpart

(b) If, upon the review and evaluation conducted under paragraph (a) of this section, the Administrators jointly determine that the transportation planning process in an urbanized area meets or substantially meets the requirements of this subpart, they may take one of the following actions, as appropriate:

(1) Certify the transportation planning process, or

(2) Certify the transportation planning process subject to one of the following conditions:

(i) That certain specified corrective actions be taken, or

(ii) That the process is a basis for approval of only those categories of programs or projects that the Administrators may jointly determine and that certain specified corrective actions be taken.

(c) The State and the MPO shall be notified of the actions taken under paragraph (b) of this section.

(d) A certification under paragraph (b) of this section will remain in effect until a new certification determination is made.

Appendix A—Advisory Information on Transportation System Management Under UMTA and FHWA Joint Regulations, 23 CFR Part 450, Subparts A and C, and 49 CFR 613, Subparts A and B

1 Purpose and Definition To implement the updated urbanized area planning requirements contained in Title 23 of the United States Code and the Urban Mass Transportation Act of 1964, as amended, UMTA and FHWA have jointly issued revised regulations (23 CFR Part 450 and 49 CFR Part 613) These regulations include Transportation System Management (TSM) as a key consideration in the planning process

This appendix provides additional guidance on the goals and scope of Transportation System Management (TSM)

It is increasingly important that transportation resources—facilities, equipment and services—be operated in the most efficient manner possible This need led to the concept of TSM and its inclusion as a feature of transportation plans for urbanized areas

When originally introduced, the TSM concept represented a significant change in the direction of transportation planning and programming TSM expands the focus of the planning process to include the consideration of improved *service and operations*, as well as *facilities*, as a potential means to maximize mobility TSM addresses both *supply and demand* The TSM concept views the transportation system as a whole with all modes receiving attention. The philosophy calls for addressing the transportation of people and goods, not merely movement of vehicles

TSM accounts more explicitly for external factors in transportation decisionmaking such as fiscal limitations, energy, environment, and air quality These external constraints on mobility can be dealt with through TSM in order to continue to expand or maintain mobility

2 Scope Transportation System Management calls for improving the efficiency and effectiveness of the transportation system by improving the operations and/or services provided TSM aspects of the Transportation Plan address services and operations of the system and identify management and operational changes needed to improve efficiency and effectiveness

A range of tactics (actions) is available to solve State and local transportation problems Examples are

- Traffic operations improvements
- Ridesharing
- Incentives to use of high occupancy vehicles (such as buses, carpools and vanpools), including preferential parking, reserved lanes, exclusive ramps, etc
- Transit route and schedule changes

- Transit management improvements
- Transit fare structure changes
- Innovative transit and paratransit services
- Pedestrian provisions
- Commuter oriented bicycle, motorcycle, and moped programs
- Parking management programs
- Work schedule changes
- Goods movement measures

In every case, these tactics address the operations or services provided by the transportation system In addition, some of these tactics can affect transportation demand, as opposed to only supply

Transportation System Management is applicable to a number of operating environments and with a wide range of agencies and groups participating For example, the central business district (CBD) is a likely site for high occupancy vehicle parking preferences, bus lanes, and pedestrian provisions, while a radial corridor is an appropriate place for high occupancy vehicle lanes, express bus services and park and ride lots Each of these actions need the support and coordination of a broad range of agencies and interest groups

Several TSM tactics applied together may often be more effective as a group than individual actions taken in an uncoordinated manner Therefore, a systematic approach to TSM planning should be encouraged For example, a package of measures to improve the efficiency of a corridor as a whole should be more effective as opposed to only looking at individual problem areas in the corridor in an isolated manner

Since Transportation System Management actions involve operations and services on existing facilities rather than development of major new facilities, they are generally *low cost* Certain actions, such as high occupancy vehicle lanes, may involve substantial sums, however

TSM involves both short- and long-term actions Service and operation changes generally can be implemented more quickly than construction of new facilities and thus can have a short-range focus However, TSM strategies may also involve *long-term* facility improvements (e.g., dedication of a new facility to high occupancy vehicle use) and have long-term impacts

3 Roles and Responsibilities A wide range of agencies is likely to participate in addressing TSM considerations in the planning process While the metropolitan planning organization (MPO) is primarily responsible for TSM coordination, other agencies, including State DOT's, city traffic departments, public transit operators and enforcement agencies, as well as the private sector, should also be involved These agencies generally have better knowledge of the operations of specific system elements under their control and can be called on to implement improvements Private sector involvement in programs such as ridesharing, work schedule changes, goods movement, etc., is vital to their success

The decision on which agency should conduct needed analyses should be made locally and should be based on the scale and level of the particular project or problem under study For example, it is probably most

appropriate that operators conduct route and schedule studies and other similar transit management analyses and that local traffic departments undertake signalization studies. In order to support these efforts, MPO's are encouraged to pass Federal planning assistance funds through to such agencies.

Private sector involvement is also important. Employers should be involved in ridesharing or transit-use promotions or in work rescheduling to spread peaks. Also, private providers of mass transit services should be considered for new services, such as paratransit or special user operations. Studies of goods movement management issues, such as truck routes, port access, downtown delivery, etc., should involve the private sector and port authorities.

Ensuring that all likely participants have an appropriate role can be critical to the success of a specific strategy. For example, a downtown parking management program would require participation of a variety of city agencies such as planning and zoning, traffic, and administration. Police involvement early in the planning process would ensure that enforcement is given adequate attention. Downtown business persons, whose operations might be affected, should be involved. Support from such a group could be critical. The transit operator could suggest key bottlenecks where parking changes could be beneficial.

4. *Planning Activities.* To address TSM, a number of key planning activities are encouraged in each urbanized area as part of the continuing planning process. Each area's Unified Planning Work Program (UPWP) should reflect, as necessary activities such as:

- System monitoring and data collection, including traffic and automobile occupancy counts and transit ridership monitoring and surveys;
- Regional problem identification, allowing for selection of such areas for further study of person and goods movement problems;
- Transit service planning, including reviews of service area, route, schedules, etc., on a continuing basis;
- Transit management analyses, covering maintenance practice, organization, personnel policies, financial planning, training, labor relations, etc.;
- Ridesharing and high occupancy vehicle analyses for HOV lanes, parking management, alternative work schedules, etc.;
- Analysis of signal timing optimization and other traffic engineering measures;
- Coordination of local agency activities to ensure that these will result in a plan that is internally consistent;
- Selective post-project evaluations to determine the effectiveness of implemented projects and areas for modification.

No new documentation products are required to address TSM. The plans and programming implications of TSM will be documented in the normal products of the urbanized area planning process, i.e., UPWP, technical reports, TIP, and transportation plan.

The manner in which TSM is documented should not be confused with the need for

project justification. Technical information (that may be needed for justifying certain types of transit projects) should be provided in technical reports on those projects and need not be included in the document(s) describing TSM aspects of the transportation plan.

The joint planning regulations require that the plan be reviewed and endorsed annually. Certification reviews will ensure that TSM is adequately addressed in the planning process.

5. *Programming.* Effective planning for Transportation Systems Management is likely to result in the programming and implementation of TSM type projects. One measure of the adequacy of the TSM planning effort conducted in an urbanized area is the level of TSM activity found in the area's Transportation Improvement Program (other measures include past progress in TSM implementation, and most importantly, the overall efficiency of existing system service and operations). FHWA and UMTA will not prescribe the number of types of projects that must appear in an area's TIP. TSM planning focused on the efficiency of existing services will generally result in the existence, on an ongoing basis, of programs covering transit service monitoring and assessment, transit service adjustments, transit maintenance programs, transit operator financial management programs, transit management and organizational improvement programs, ridesharing, traffic signalization, and high occupancy vehicle incentives.

A variety of funding sources are available to support planning and implementation for TSM. UMTA places priority on use of Section 3 technical studies funds for TSM planning as does FHWA on use of PL and HP&R funds. Implementation funds are available from UMTA through the Section 3 discretionary capital grant program, the Section 4(i) innovative techniques and methods program and the Section 5 urban mass transportation formula grant program. Federal-aid highway funds may also be used to implement a wide range of TSM-type projects.

Appendix B—[Reserved]

Appendix C—Advisory Information on the Simplification of Administrative Requirements for Planning in Metropolitan Areas of Less Than 200,000 Population

Introduction

The simplification of Federal program requirements has been given a high priority by the Administrators of FHWA and UMTA and by the Office of the Secretary. The objective in developing the guidance was to: (1) reduce the burden of Federal planning requirements in all urbanized areas under 200,000 population; and (2) reduce the administrative burden on FHWA and UMTA staffs.

This appendix provides for an appropriate level of effort for smaller urbanized areas.

Advisory Guidance

—There will be no need for a formal agreement except where the MPO and the A-95 agency are different. The requirements of other agreements may be satisfied through description of roles and responsibilities in the work program and/or TIP

—The Unified Planning Work Program (UPWP) may be a brief summary of the important transportation issues facing the area, and the work activities in the UPWP addressing these issues. The review of the UPWP need only be by the Federal funding agencies. Joint review and approval procedures should be worked out by these agencies.

—In accordance with Section 134, Title 23, U.S.C., the transportation plan must be based on transportation needs and consider long-range land use plans, overall goals and objectives, and their impact on future development. In small urbanized areas the long-range element may be a simple statement about land use policy and the location of major public facilities, and transportation improvements. The focus should be on the development of the short-range element.

—The level of technical effort should be commensurate with the problems being addressed. Maximum use should be made of simplified planning techniques, which are discussed in several planning manuals specifically developed for small areas.

—The transportation improvement program/annual element of the plan should be scaled to the needs of the area. If only a few projects can be funded annually, the document need only be a single page with the coming year's projects clearly identified.

—The certification review of the small area planning process should be as simple as possible and should be based to the maximum extent on previously submitted data.

—While the regulations under subpart C call for specific initiation procedures, the key to local involvement is the MPO endorsement. This should also be the focus of Federal review.

2. Part 450, Subpart B of 23 CFR is amended as follows:

§ 450.200 [Amended]

a. By amending § 450.200(b) to remove the phrase "by the Governor" in the third sentence.

§§ 450.202, 450.204, and 450.206 [Amended]

b. By amending §§ 450.202, 450.204 and 450.206 to delete the term "Pub. L." wherever it appears therein and to substitute in lieu thereof the term "PL".

c. By amending §§ 450.202(c) and 450.206(b) to delete the phrase "section 9" wherever it appears therein and to substitute in lieu thereof the phrase "section 8".

3. Part 450, Subpart C of 23 CFR is revised to read as follows.

PART 450—PLANNING ASSISTANCE AND STANDARDS

Subpart C—Transportation Improvement Program

Sec.	
450.300	Purpose
450.302	Applicability

Sec.

- 450.304 Definitions.
- 450.306 Transportation improvement program: General.
- 450.308 Transportation improvement program: Content.
- 450.310 Annual element: Project initiation.
- 450.312 Annual element: Content.
- 450.314 Annual element: Modification.
- 450.316 Action required by metropolitan planning organization.
- 450.318 Selection of projects for implementation.
- 450.320 Program approval.
- Authority: 23 U.S.C. 105, 134(a), and 135(b); Sections 3, 5, and 8(c) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602, 1604, and 1607(c)); Sections 110, 172, 174, and 176 of the Clean Air Act; and 49 CFR 1.48(b) and 1.51.

Subpart C—Transportation Improvement Program**§ 450.300 Purpose.**

The purpose of this subpart is to establish guidelines for the development, content, and processing of a cooperatively developed transportation improvement program in urbanized areas and to prescribe guidelines for the selection by implementing agencies of annual programs of projects to be advanced in urbanized areas.

§ 450.302 Applicability.

(a) The regulations in this subpart shall be applicable to projects in or serving urbanized areas with funds made available under:

- (1) 23 U.S.C. 104(b)(6) (urban systems projects);
- (2) 23 U.S.C. 103(e)(4) (interstate substitution projects);
- (3) Sections 3 and 5 of the Urban Mass Transportation Act of 1964, as amended (UMT Act) (49 U.S.C. 1602 and 1604—UMTA capital and operating assistance projects);
- (4) 23 U.S.C. 104(b)(1) (projects on extensions of primary systems in urbanized areas), except as provided in this subpart;
- (5) 23 U.S.C. 104(b)(5) (projects on the Interstate System), except as provided in this subpart.

(b) Projects under paragraphs (a) (4) and (5) of this section, which are included in the highway safety improvement program, may be excluded from the transportation improvement program at the option of the State.

§ 450.304 Definitions.

(a) Except as otherwise provided, terms defined in 23 U.S.C. 101(a) are used in this subpart as so defined.

(b) As used herein:

“Annual element” means a list of transportation improvement projects

proposed for implementation during the first program year.

“Governor” means the Governor of any one of the fifty States, or Puerto Rico, and includes the Mayor of the District of Columbia.

“Highway safety improvement program” means a program prepared by the State pursuant to 23 CFR Part 924.

“Interstate substitution projects” means projects funded under 23 U.S.C. 103(e)(4) (Withdrawal of Interstate segments and substitution of either nonhighway public mass transit projects or highway projects, or both).

“Interstate System projects” means projects funded under 23 U.S.C. 104(b)(5).

“Metropolitan planning organization (MPO)” means that organization designated as being responsible, together with the State, for carrying out the provisions of 23 U.S.C. 134, as provided in 23 U.S.C. 104(f)(3), and capable of meeting the requirements of Sections 3(e)(1), 5(1), and 8 (a) and (c) of the UMT Act (49 U.S.C. 1602(e)(1), 1604(1), and 1607 (a) and (c)). This organization is the forum for cooperative decisionmaking by principal elected officials of general purpose local government.

“Transportation improvement program (TIP)” means a staged multiyear program of transportation improvements including an annual element.

§ 450.306 Transportation improvement program: General.

(a) The transportation improvement program (TIP) shall be developed and updated annually under the direction of the metropolitan planning organization (MPO) in cooperation with:

- (1) State and local officials;
- (2) Regional and local transit operators;
- (3) Recipients authorized under Section 5(b) (2) or (3) of the UMT Act (49 U.S.C. 1604(b) (2) or (3)); and
- (4) Other affected transportation and regional planning and implementing agencies.

(b) The TIP shall consist of improvements recommended from the short-range and long-range elements of the transportation plan developed under § 450.116.

(c) The TIP shall cover a period of not less than 3 years, but may at local discretion cover up to 5 or more years.

§ 450.308 Transportation improvement program: Content.

The TIP shall:

(a) Identify transportation improvements recommended for advancement during the program period,

(b) Indicate the area's priorities;

(c) Group improvements of similar urgency and anticipated staging into appropriate staging periods; and

(d) Include realistic estimates of total costs and revenues for the program period.

§ 450.310 Annual element: Project initiation.

Federally funded projects shall be initiated for inclusion in the annual element at all stages in the development of the transportation improvement for which program action is proposed. These projects shall be initiated as follows:

(a) Proposed urban system highway projects shall be initiated by local officials in whose jurisdiction the project is located.

(b) Proposed urban system nonhighway public mass transit projects and Interstate substitution nonhighway public mass transit projects shall be initiated by principal elected officials of general purpose local governmental in consultation with local transit operating officials or by local transit operating officials.

(c) Proposed UMTA Section 3 projects (49 U.S.C. 1602) shall be initiated by recipients authorized under Section 5(b) (1) or (2) of the UMT Act (49 U.S.C. 1604(b) (1) or (2)), by local transit operating officials, or by principal elected officials of general purpose local governments in cooperation with local transit operating officials.

(d) Proposed UMTA Section 5 projects (49 U.S.C. 1604) shall be initiated by recipients authorized under Section 5(b) (1) or (2) of the UMT Act (49 U.S.C. 1604(b) (1) or (2)). Nothing in this paragraph is intended to prohibit or discourage the initiation by such recipients of projects recommended by local transit operating officials or by principal elected officials of general purpose local governments in cooperation with local transit operating officials.

(e) Proposed urban extension and Interstate System projects shall be initiated by the State highway agency.

(f) Proposed Interstate substitution highway projects shall be initiated according to the provisions of this section for the Federal-aid system of which they will be a part.

§ 450.312 Annual element: Content.

(a) Except as provided in § 450.302(b), the annual element shall contain projects initiated under § 450.310 and endorsed under § 450.316.

(b) With respect to each project under paragraph (a) of this section the annual element shall include.

(1) Sufficient descriptive material (i.e., type of work, termini, length, etc.) to identify the project;

(2) Estimated total cost and the amount of Federal funds proposed to be obligated during the program year;

(3) Proposed source of Federal and non-Federal funds; and

(4) Identification of the recipient and State and local agencies responsible for carrying out the project.

(c) Projects proposed for Federal support that are not considered by the State and MPO to be of appropriate scale for individual inclusion in the annual element may be grouped by functional classification, geographic area, and work type.

(d) The annual element shall be reasonably consistent with the amount of Federal funds expected to be available to the area. Federal funds that have been allocated to the area pursuant to 23 U.S.C. 150 shall be identified.

(e) The total Federal share of projects included in the annual element and proposed for funding under Section 5 of the UMT Act (49 U.S.C. 1604) may not exceed apportioned Section 5 funds available to the urbanized area during the program year.

§ 450.314 Annual element modification.

The annual element may be modified at any time consistent with the procedures established in this subpart for its development.

§ 450.316 Action required by the metropolitan planning organization.

(a) The TIP, including the annual element, shall be endorsed annually by the MPO.

(b) The MPO shall submit the TIP including the annual element.

(1) To the Governor and the Urban Mass Transportation Administrator, and

(2) Through the State to the Federal Highway Administrator.

§ 450.318 Selection of projects for implementation.

(a) The projects proposed to be implemented with Federal assistance under Sections 3 and 5 of the UMT Act (49 U.S.C. 1602 and 1604) and nonhighway public mass transit projects under 23 U.S.C. 103(e)(4) shall be those contained in the annual element of TIP submitted by the MPO to the Urban Mass Transportation Administrator.

(b) Upon receipt of the TIP, the State shall include in the statewide program of projects required under 23 U.S.C. 105.

(1) Those projects drawn from the annual element and proposed to be implemented with Federal assistance under 23 U.S.C. 104(b)(6) (Federal-aid urban system) in which it concurs, provided, however, that in any case where the State does not concur in a nonhighway public mass transit project, a statement describing the reasons for the nonconcurrence shall accompany the statewide program of projects; and

(2) Those projects drawn from the annual element and proposed to be implemented with Federal assistance under 23 U.S.C. 104(b)(1) (Projects on urban extensions of the Federal-aid primary system) and 23 U.S.C. 104(b)(5) (Interstate System projects in urbanized areas); and

(3) Those projects not drawn from the annual element that are proposed to be implemented with Federal assistance under 23 U.S.C. 104(b)(1) (Projects on urban extensions of the Federal-aid primary system) and 23 U.S.C. 104(b)(5) (Projects on the Interstate System) provided that:

(i) Such project or projects were initiated pursuant to § 450.310(e); and

(ii) Such project or projects are for highway transportation improvements for which there has been a Federal authorization to acquire right-of-way or Federal approval of physical construction or implementation where right-of-way acquisition was not previously federally funded

(c) For each project under paragraph (b)(3) of this section a statement shall accompany the statewide program of projects which shall.

(1) Include the views of the MPO, and

(2) Indicate how the requirements of 23 U.S.C. 134(a) have been met.

(d) The preparation and endorsement of the TIP and the selection of projects in accordance with this subpart will meet the requirements of 23 U.S.C. 105(d), 23 U.S.C. 134(a), and Section 8(a) of the UMT Act (49 U.S.C. 1607(a))

(e) The State shall notify the MPO of actions taken under paragraph (b) of this section.

§ 450.320 Program approval.

(a) Upon the determination by the Federal Highway Administrator and the Urban Mass Transportation Administrator that the TIP or portion thereof is in conformance with this subpart and that the area is under planning certification, programs of projects selected for implementation under § 450.318 will be considered for approval as follows:

(1) Federal-aid urban system projects included in the statewide program of projects under 23 U.S.C. 105 will be approved by:

(i) The Federal Highway Administrator with respect to highway projects;

(ii) The Urban Mass Transportation Administrator with respect to nonhighway public mass transit projects, and

(iii) The Federal Highway Administrator and the Urban Mass Transportation Administrator jointly in any case where the statewide program of projects submitted pursuant to 23 U.S.C. 105 does not include all Federal-aid urban system nonhighway public mass transit projects contained in the annual element

(2) Interstate substitution nonhighway public mass transit projects included in the annual element of the TIP will be approved by the Urban Mass Transportation Administrator

(3) Projects proposed to be implemented under Sections 3 and 5 of the UMT Act (49 U.S.C. 1602 and 1604) included in the annual element of the TIP will be approved by the Urban Mass Transportation Administrator after considering any comments received from the Governor within 30 days of the submittal required by § 450.316(b)(1).

(4) Federal-aid urban extension and Interstate projects included in the statewide program of projects under 23 U.S.C. 105 will be approved by the Federal Highway Administrator

(b) Approvals by the Federal Highway Administrator or joint approvals by the Federal Highway Administrator and Urban Mass Transportation Administrator will be in accordance with the provisions of this subpart and with 23 CFR 630, Subpart A. Approvals granted under this section will constitute:

(1) The approval required under 23 U.S.C. 105; and

(2) A finding that the program is based on a continuing, comprehensive transportation planning process carried on cooperatively by the States and local communities in accordance with the provisions of 23 U.S.C. 134.

(c) Approvals by the Urban Mass Transportation Administrator will be in accordance with the provisions of this subpart and with other applicable provisions of 49 CFR 613, Subpart B. These approvals will constitute.

(1) The approval required under Section 8(c) of the UMT Act (49 U.S.C. 1607(c)),

(2) A finding that the projects are

based on a continuing, cooperative and comprehensive transportation planning process carried on in accordance with the provisions of Section 8 of the UMT Act (49 U.S.C. 1607), as applicable;

(3) A finding that the projects are needed to carry out a program for a unified or officially coordinated urban transportation system in accordance with the provisions of Sections 3(e)(1),

5(l) or 8(c) of the UMT Act (49 U.S.C. 1602(e)(1), 1604(1) or 1607(c)), as applicable; and

(4) In nonattainment areas which require transportation control measures, a finding that the program conforms with the SIP and that a priority has been given to transportation control measures contained in the SIP in accordance with procedures in 23 CFR 770.

Title 49—Transportation

PART 613—PLANNING ASSISTANCE AND STANDARDS

§§ 613.202, 613.204 and Appendix [Removed]

4. Part 613, Subpart B of 49 CFR is amended by removing §§613.202 and 613.204 and the Appendix.

[FR Doc 81-22963 Filed 8-5-81; 8 45 am]

BILLING CODE 4910-22-M

Appendix D

PRE-DESIGN ASSESSMENT

NJDOT

PRE-DESIGN ASSESSMENT

Purpose

The purpose of this assessment is to develop and provide sufficient information regarding a proposed project to permit prioritization. This procedure supports the quarterly and annual updates.

Every request NJDOT receives or develops to rectify a problem/make an improvement on the State Highway System must be examined in sufficient detail to determine: the gravity of the problem; the array of possible solutions; and associated costs and benefits of each possible solution (in order of magnitude). This information should be sufficient to assign a priority rating, to allow the RAP Committee to decide whether NJDOT should proceed, and if it does proceed, what solutions to contemplate (i.e., cost constraint).

Source Documents

This activity will draw upon the Transportation Plan, requests for new projects (whether generated by internal or external sources), and a Pre-Tip Project Assessment.

Objectives

- . Review all project proposals for consistency with the goals and objectives of NJDOT.
- . Develop sufficient information to establish the relative need for a project.
- . Identify whether the project alternatives are known and establish parameters for such alternatives if they are not known.
- . Lay out any relationship to other projects already prioritized.

Process

- (1) Requests are routed to Office of Highway Services with a "Pre-TIP Assessment" completed to the maximum extent possible based on readily available information. Based upon this information a decision is made as to the need for an assessment. Requests for Assessment are directed to the Director, Transportation Planning and Research.
- (2) Director of Transportation Planning and Research reviews the Pre-TIP Assessment to determine whether the request warrants priority handling, and directs the appropriate Planning and Research unit accordingly. A letter is sent to the originator of the request by the Director, Office of Highway Services, acknowledging its receipt and the fact that the request is undergoing examination. The Planning unit with assigned responsibility subsequently conducts a preliminary analysis (including field investigation, if necessary) so that a priority can be assigned. The information will vary somewhat based upon the type of project involved.
- (3) Upon completion of the Pre-TIP Assessment, the assignment is routed to Engineering and Operations, Community Involvement, and the Commissioner's staff for evaluation. The results of the evaluation are assembled by Office of Highway Services, whereupon a proposed priority ranking is assigned. Projects reaching this point are accumulated for quarterly disposition by the RAP Committee.
- (4) Simultaneous with (3), the assessment is transmitted to the Office of Programming and Monitoring for a determination as to possible funding category and impact on the current program. The results of this analysis are forwarded to the Director, Office of Highway Services, for inclusion in the presentation to the RAP Committee (see (5)).
- (5) Each quarter the Director, Office of Highway Services, presents to the RAP Committee all of the projects ripe for decision, along with the proposed priority ranking and findings from (4) for each. The Committee then finalizes the rankings in light of prior commitments and resource restraints.
- (6) The Assistant Commissioner for Transportation Services informs the project originators of the NJDOT's decision to proceed or defer, and provides further information as necessary.
- (7) Projects being advanced are incorporated into the quarterly and annual reporting system for future reviews.

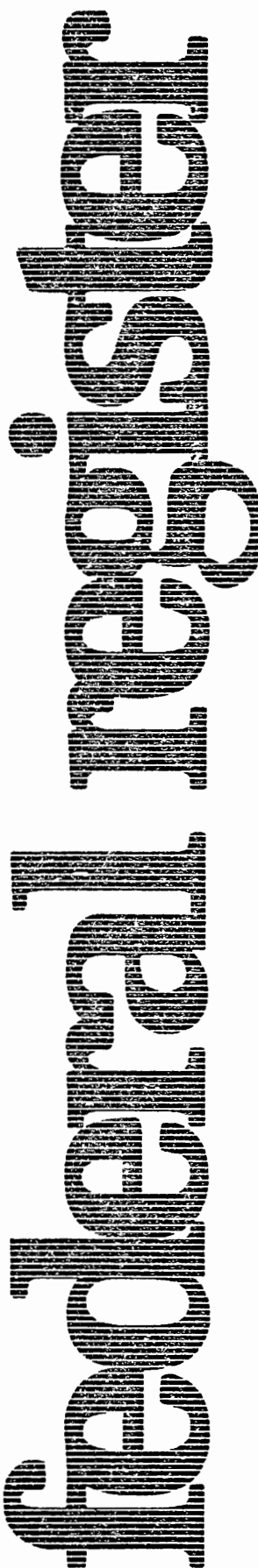
Appendix E

*ENVIRONMENTAL IMPACT AND
RELATED PROCEDURES*

FHWA - UMTA

(Federal Register 10-30-80)

Thursday
October 30, 1980



Part VI

**Department of
Transportation**

**Federal Highway Administration and
Urban Mass Transportation
Administration**

**Environmental Impact and Related
Procedures; Final Rule and Revised
Policy on Major Urban Mass
Transportation Investments and Policy
Toward Rail Transit**

DEPARTMENT OF TRANSPORTATION**Federal Highway Administration****Urban Mass Transportation Administration****23 CFR Part 771****49 CFR Part 622****Environmental Impact and Related Procedures**

AGENCIES. Federal Highway Administration (FHWA) and Urban Mass Transportation Administration (UMTA), Department of Transportation (DOT)

ACTION: Final rule

SUMMARY: The FHWA and UMTA are issuing a joint final regulation for the preparation of environmental impact statements and other related documents and procedures. This regulation incorporates the requirements of DOT Order 5610 1C, "Procedures for Considering Environmental Impacts," 44 FR 56420 (October 1, 1979), and sets forth procedures for complying with other environmental laws, principally section 4(f) of the Department of Transportation Act, 49 U S C 1653(f) and 23 U S C 138.

EFFECTIVE DATES. This regulation becomes effective on December 29, 1980. The documents and actions to which this regulation applies are described more fully in § 771.109 of the regulation.

ADDRESSES. Copies of comments received, together with the regulatory evaluation and work plan required by DOT Policies and Procedures implementing Executive Order 12044, are available for public inspection in the public docket room of the Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, S W , Washington, D C 20590, between the hours of 7 45 a m and 4 15 p m , EST, Monday through Friday. These materials are filed under FHWA Docket No 79-26. Additional comments on this final rule may be submitted to this address.

FOR FURTHER INFORMATION CONTACT: (1) For FHWA: Mr Robert Gatz, Office of Environmental Policy (HEV-10), telephone (202) 426-0106, or Mr Edward Kussy, Office of the Chief Counsel (HCC-40), telephone, (202) 426-0791, Federal Highway Administration, 400 Seventh Street, S W , Washington D C 20590, between the hours of 7 45 a m and 4 15 p m , EST, Monday through Friday.

(2) For UMTA: Mr Edward Fleischman, Office of Transit Assistance (UTA-30), telephone (202) 472-2435, or

Mr John Collins, Office of the Chief Counsel (UCC-10), telephone (202) 426-1906, Urban Mass Transportation Administration, 400 Seventh Street, S W Washington, D C 20590, between the hours of 8 00 a m and 6 00 p m , EST, Monday through Thursday.

SUPPLEMENTARY INFORMATION: The FHWA and UMTA have determined that this final rule is a significant regulation according to the criteria established by the Department of Transportation pursuant to Executive Order 12044. A regulatory evaluation is available for public inspection in the public docket room of the FHWA. Copies may be obtained by contacting Mr Robert Gatz or Mr Edward Fleischman. The addresses of the FHWA docket room and these individuals are set forth above. The regulation being issued today applies to both FHWA and UMTA actions. Thus, it will be published as Part 771 of Title 23 of the Code of Federal Regulations (CFR) with a cross reference in Part 622 of Title 49 of the CFR.

Introduction

The Council on Environmental Quality (CEQ) issued a final regulation for implementing the procedural provisions of the National Environmental Policy Act of 1969, as amended (NEPA), 42 U S C 4321 et seq , on November 29, 1978 (43 FR 55978). The CEQ regulation applies to all agencies of the Federal Government and is codified at 40 CFR Parts 1500-1508.

In response to the CEQ regulation, DOT issued DOT Order 5610 1C, Procedures for Considering Environmental Impacts, on October 1, 1979 (44 FR 56420). The DOT Order establishes general procedures and requirements for the consideration of environmental impacts by agencies within DOT. Both the CEQ regulation and the DOT Order require agencies such as the FHWA and UMTA to develop supplementary implementing procedures. This is especially the case where agency specific procedures are required to fully integrate the agency's programs with the CEQ regulation and the DOT Order. For this reason, both FHWA and UMTA determined that procedures applying directly to the two administrations were required. Thus, this regulation amends the existing FHWA regulation, 23 CFR Part 771, and adds a new Part 622 to Title 49 of the CFR for programs administered by UMTA.

This regulation establishes the specific NEPA requirements that must be followed by FHWA and UMTA, and by applicants for grants, permits and other actions from those two agencies. It

also contains the policies and procedures which will guide the FHWA and UMTA activities under section 4(f) of the DOT Act, 49 U S C 1653(f) and 23 U S C 138, which relates to the preservation of certain park and recreation areas wildlife and waterfowl refuges, and historic sites.

The CEQ regulation is an integral part of FHWA's and UMTA's environmental requirements. In accordance with § 1507.3 of the CEQ regulation, the regulation published here does not paraphrase the CEQ provisions. However, in order to reduce the burden on grant applicants, this regulation incorporates the procedural provisions of DOT Order 5610 1C. Grant applicants should not find it necessary to refer to the DOT Order in the course of normal project development. FHWA and UMTA have required compliance with the CEQ regulation and DOT Order since their effective dates.

This regulation was published in proposed form for public comment on October 15, 1979 (44 FR 59438). Comments were also requested directly from potential grant applicants. The closing date for comments was extended once (44 FR 66213, November 19, 1979), and the docket officially closed on December 3, 1979.

A total of 196 comments were received from Federal, State and local units of government, public interest groups, and private citizens in the period prior to or immediately after the closing date. These comments were given full consideration. A small number of comments were received very late in the development of this regulation, well after the close of the comment period, and were entered in the docket for public information.

Comments were reviewed jointly by FHWA and UMTA. Both agencies established task forces to review comments received and make recommendations. The views of the field offices of both agencies were actively solicited in the course of this process. The final regulation has been developed and coordinated jointly by FHWA and UMTA with considerable input from DOT and CEQ.

The remainder of this preamble is divided into three sections as follows:

General Comments—a discussion of the general comments received on the proposed regulation and of the overall objectives in preparing the final rule.

Section-by-Section Analysis—a summary of each section of the final regulation, including a discussion of major comments received on and changes made to each section.

Related Actions—a brief review of other actions being taken by FHWA and UMTA in the environmental area

General Comments

Federal agencies responding to the notice of proposed rulemaking included CEQ, the Environmental Protection Agency, and the Department of the Interior. Responses were received from 29 State transportation agencies and a wide range of local governments, transit authorities, private citizens and interest groups such as the National Wildlife Federation, Natural Resources Defense Council, Highway Users Federation, National Association of Counties and National Conference of State Historic Preservation Officers.

The major change in this regulation from the proposed rule is the complete integration of the UMTA and FHWA requirements. This is responsive to a number of comments which suggested consolidation of UMTA's and FHWA's procedures. In the proposed rule, the two agencies had issued a joint introductory part and similar detailed procedures. A close review of those detailed procedures indicated considerable simplification could be achieved by a complete merging of the procedures.

There are a number of significant advantages to this approach. UMTA's grant applicants and FHWA's grant applicants may be the same agencies. If they are not, they are agencies which must work very closely together at the State and local levels. Also, DOT requirements apply equally to both agencies. Thus, there is considerable procedural similarity between the two programs, which makes the issuance of joint procedures compelling. Furthermore, the environmental analysis required for compliance with NEPA frequently requires close interaction between UMTA and FHWA. This is especially the case in urban areas where environmental analyses can be particularly complex. Thus, combined procedures facilitate this process at the Federal level.

Another important advantage to a combined regulation is the emphasis that this places on the necessity to closely integrate highway and transit project development. Minor procedural differences in the highway and transit laws should not be allowed to predominate over a full and complete evaluation of all possible transportation solutions to a given problem.

There are, of course, fundamental differences in the major programs administered by UMTA and FHWA. These include (1) the statutory basis of the agencies' grant programs (most

significant FHWA programs are formula based and funded from a trust fund while UMTA administers a large discretionary grant program funded from general revenues), (2) the type of applicants (FHWA deals mainly with State highway agencies that are given special status under NEPA while UMTA usually does not deal with statewide agencies), (3) the degree of agency decentralization (FHWA has offices in each State while UMTA's field organization consists of 10 regional offices), and (4) the number of parallel regulations (FHWA has a number of related environmental regulations, e.g., process guidelines for environmental action plans (23 CFR Part 795), while UMTA has no other such regulations).

These differences led to the initial decision to publish parallel, but separate procedures. However, our subsequent analysis made clear that insofar as compliance with NEPA and other environmental procedures was concerned, these differences largely result in internal administrative differences and make little or no difference as to what NEPA documentation is actually required. Both UMTA and FHWA will be issuing non-regulatory guidance that will further assist applicants in complying with this regulation. This will be more fully explained below in the discussion of "Related Actions." In those relatively infrequent instances where statutory differences require different procedures in this regulation, they are specifically addressed in the section involved.

Comments received on the length of the regulation and the interpretation of the NEPA process reflected a wide range of views. We have attempted to strike a reasonable balance in both areas. As previously discussed, the regulation does not repeat the provisions of the CEQ regulation, but does include the procedural provisions of the DOT Order. The policies and procedures in the regulation are designed to streamline and shorten the environmental review process wherever possible, in keeping with the President's and DOT's policies on the reduction of red tape. In this regard, unnecessary requirements have been eliminated, lengthy or excessively detailed instructions have been curtailed, and flexibility and discretion have been provided to grant applicants wherever possible. The CEQ regulation and DOT Order set the overall policies and procedures, while this regulation tailors those policies and procedures to fit the unique aspects of the programs administered by FHWA and UMTA. Provisions in the draft regulation that

related solely to internal procedures have been eliminated to streamline the regulation.

Several comments expressed concern regarding the degree of public involvement. Both FHWA and UMTA heavily emphasize public involvement throughout their programs. This involvement is an essential part of the planning and project development processes. The joint planning regulation of the two agencies requires public participation (23 CFR 450.20(a)(3) and 49 CFR 613.120(a)(3)). The importance of public involvement and early coordination in project development is also emphasized in this regulation in §§ 771.105(c) and 771.111. The FHWA further emphasizes public involvement through its action plan process (23 CFR Part 795) and its public hearing requirements (23 CFR Part 790). Both of these processes form an integral part of the procedures set forth in this regulation.

Numerous comments addressed the ability of local government units to act as joint lead agencies in conjunction with State and Federal agencies in preparing environmental documents and carrying out other lead agency functions under the NEPA regulations. State agencies of statewide jurisdiction, such as State highway departments, are specifically allowed to prepare environmental impact statements (EIS's) under a 1975 amendment to section 102(2) of NEPA, (42 U.S.C. 4332(2)(D)). This section also requires guidance and participation by the responsible Federal official.

The legislative history makes clear that this amendment resulted from conflicting judicial decisions on the issue of State preparation of environmental documents. The question of whether other government units, not having statewide jurisdiction, could prepare these documents was recognized by Congress. The Conference Report on H.R. 3130 (Senate Report No. 94-331) raised the question of whether the amendment could be interpreted by the courts as a statement of congressional intent to either deny or affirm the validity of delegating EIS preparation responsibilities to agencies of less than statewide jurisdiction. This concern was addressed by including the last sentence of section 102(2)(D), which states that the amendment does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction. Thus, the amendment does not in any way declare illegal the preparation of EIS's by other governmental units.

The CEQ regulation addresses this question in §§ 1501.5 and 1506.2. Section

1501.5(b) states that Federal, State, or local agencies, including at least one Federal agency, may act as joint lead agencies to prepare an EIS. Section 1506.2 allows a local agency to be a joint lead agency. Section 6 of DOT Order 5610.1C allows a local agency to serve as a joint lead agency if the proposed action is subject to State requirements comparable to NEPA. The mechanism by which a State imposes all applicable Federal and State requirements, including NEPA requirements, on those localities should be sufficient, in the absence of NEPA-type legislation, to allow a locality to become a joint lead agency in preparing environmental documents. In any case, DOT Order 5610.1C was not intended to be any stricter than the CEQ regulation on this point. The CEQ regulation encourages States and local agencies with requirements comparable to NEPA to become joint lead agencies in order to avoid duplication. However, nothing in the CEQ regulation discourages a locality from becoming a joint lead agency with the State and Federal governments in the absence of such comparable State or local requirements. Of course, while a local agency may be a joint lead agency with the State and Federal governments, the responsible Federal official must insure that environmental documents accurately reflect all environmental concerns and Federal requirements.

A number of comments were received which either criticized or suggested changes in procedures which are required by the CEQ regulation (e.g., notice of intent, record of decision, content of environmental documents). It was not possible to revise the regulation in response to those concerns since the CEQ regulation is binding on all Federal agencies.

Numerous editorial revisions have been made in order to improve the clarity and style of the final regulation.

Section-by-Section Analysis

§ 771.101 Purpose

Section 771.101 describes the general purpose of the final regulation. It has been revised to reflect the fact that the FHWA/UMTA procedures are being issued in a single part of the Code of Federal Regulations.

§ 771.103 Authority and related statutes and orders.

At the request of several commenters, several additional related statutes and orders were added. The list in this section is intended to emphasize that compliance with the procedures of this

regulation is the means to comply with these other Federal requirements.

§ 771.105 Policy

Section 771.105 contains the basic policies of the FHWA and UMTA with respect to compliance with NEPA and related environmental statutes, regulations and orders. In keeping with the policy set forth in § 1500.2(c) of the CEQ regulation, this section of the regulation encourages Federal, State and local agencies to coordinate compliance with all applicable environmental requirements as part of the NEPA process. Several commenters asked that the factors which would be considered in deciding whether or not to mitigate an adverse impact be included. Paragraphs (b) and (d) have been redrafted to describe these factors and specifically include energy conservation benefits of the proposed expenditure. In response to a comment received, paragraph (e) indicates that the cost of preparing environmental documents specifically required by the Administration is eligible for Federal assistance in accordance with the contractual agreements between the applicant and the Administration.

§ 771.107 Definitions

Section 771.107 contains definitions for basic terms that are used throughout the regulation which are not defined in the basic statutory authority for the two programs or defined by the CEQ regulation. All of the CEQ definitions can be found in 40 CFR Part 1508. For highway projects administered directly by FHWA, such as some Forest Highway projects, the term "Administration" means the Director, Office of Federal Highway Projects, Regions 8 or 10, or Regional Engineer, Region 15. Some of the provisions contained in the definitions section of the draft regulations have been moved to other sections to streamline the regulation. No substantive changes have been made to those provisions.

§ 771.109 Applicability and responsibilities

Section 771.109 has been drafted by FHWA and UMTA to clarify when this regulation applies and what responsibility the applicant has in the environmental process. Activities that were proposed in the draft regulations as non-major Federal actions are described in the final regulation as categorical exclusions and listed in § 771.115(b). The Administration cautions applicants about undertaking activities with their own funds which might tend to limit the consideration of environmental alternatives in

subsequent proposals for Federal assistance. The Administration will not permit the consideration of alternatives to be biased by such undertakings. For projects administered by UMTA, if an applicant wishes confirmation from UMTA that it can proceed with a project using its own funds without prejudicing a future application, UMTA will process this "no prejudice" request using the procedures of this regulation. This section also makes it clear that the provisions of this regulation do not apply to, affect, or alter any decisions, approvals, authorizations, or other actions made or taken prior to the regulation's effective date. Paragraphs (a)(4) and (a)(5) of this section describe how the regulation applies to environmental documents in various stages of development.

As indicated in the applicability discussion in § 771.109(a) and the definition of "Action", this regulation applies to proposals for a variety of actions over which the Administration exercises the requisite degree of control and responsibility. The vast majority of the Administration's NEPA activities have traditionally been concentrated in the construction area. Accordingly, prior environmental regulations have been designed primarily for application to highway and transit projects. This regulation follows in that tradition by emphasizing the requirements and information relevant to construction grant applicants. However, an effort has been made to draft this regulation so that its provisions can be applied, as appropriate, to all transportation projects in which the Administration is involved. Specific provisions for non-project related actions (e.g., proposals for legislation) have not been included in this regulation. However, the general policies contained in the regulation, together with the procedures in the CEQ regulation and DOT Order, adequately provide for such actions.

A new paragraph (b) has been added to the regulation to ensure compliance with CEQ's requirement that appropriate mitigation measures will be carried out if the proposed project receives funds from the Administration (40 CFR 1505.3). The Administrations will adapt existing mechanisms to ensure that mitigation committed to in the environmental documents is actually done.

Section 771.109(c) explains an important concept that was originally presented in the definitions section of the UMTA draft regulation. The phrase "the Administration in cooperation with the applicant" is used throughout the final regulation to describe when the

responsibility for a particular activity. The meaning of the phrase will vary from project to project, depending on what agencies are involved. "Administration" means FHWA or UMTA, depending on which is the lead agency. "Applicant" means the entity—public or private—that is applying for Federal assistance. The basic statutory legislation in titles 23 and 49 of the United States Code defines who can be an eligible applicant. The phrase "in cooperation with" means that different applicants can have different levels of responsibility in the environmental process depending on the CEQ regulation. The greatest level of responsibility (authorized by 40 CFR 1506.2(a) of the CEQ regulation) is for public agencies that have statewide jurisdiction. All State DOT's and State highway and statewide transit agencies are statewide agencies and can prepare the EIS and other environmental documents themselves with the Administration participating in accordance with section 102(2)(D) of NEPA. All FHWA applicants fall within this type of responsibility.

The next greatest level of responsibility is for public agencies which are subject to state and local requirements comparable to NEPA. These "Joint Lead Agencies" may prepare the EIS and environmental documents jointly with the Federal agency (see 40 CFR 1501.5(b)). The Administration maintains its responsibility for the content.

Less responsibility is permitted for public agencies that do not fall within the above two types. A public agency which has special expertise in the proposed project may be a "Cooperating Agency" and have the responsibilities described in 40 CFR 1501.6(b). A local applicant for UMTA section 3 and 5 funds is presumed to be a cooperating agency and is involved, under UMTA leadership, in an active consultation process. The applicant may be directed to carry out UMTA's decisions.

Entities that do not fit within the above types (e.g., private institutions) are limited to providing environmental studies and commenting on environmental documents.

§ 771.111 *Early coordination and project development*

Paragraphs (a) through (e) have been added to better define the sequence of formal and informal actions that occur during the early stages of project development and to emphasize the need for early coordination. An explicit link has been made between the planning and programming of projects and the

decision on probable class of action of the proposed project.

No EIS, environmental assessment (EA) or finding of no significant impact (FONSI) is required at the systems planning stage. However, the Administration in cooperation with the applicant will use the information developed during the systems planning stage to identify the probable class of action of a project that may be proposed for funding at some future time. This early notification is designed to enhance consideration of environmental, social, economic, and energy effects.

It is recognized that an applicant may commit substantial resources (e.g., conduct planning studies) in advance of Federal project approval. Since the Administration must fully evaluate environmental impacts and alternatives in its decision making process and cannot bias its evaluation based on such prior actions, applicants are strongly encouraged to begin coordination with the Administration early in the project development phase.

Paragraph (f) requires that proposed projects be evaluated between logical termini. Although the comparable provision in the old FHWA regulation has been substantially revised and shortened, the new provision does not represent any change in policy with regard to the scope of the project which should be addressed in an EIS or FONSI.

Paragraph (g) has been added in response to a comment received concerning "tiering". This paragraph clarifies that complex transportation proposals may be best analyzed using first a broad program EIS and later a site-specific EIS. One commenter expressed concern over this section in the UMTA draft regulation that the first tier EIS (that is, a broad overview analysis which focuses on alternative transportation modes and corridors) would not consider cultural resources which might influence the location of the project. If tiering is used, the Administrations will consider the potential impact on cultural resources in the first tier EIS. At this stage of analysis, the Administration, in cooperation with the applicant, would consult state and local inventories of historic properties and the National Register, and would use available information on archeological resources if project alternatives could potentially affect these resources. This question is addressed more fully in § 771.135, dealing with section 4(f) of the DOT Act, to the extent that section is applicable.

Paragraph (h) has been included, in response to comments received, to provide contacts for individuals seeking information on environmental

procedures. We hope that this will provide another means to facilitate citizen involvement in agency decision making.

§ 771.113 *Timing of administration actions*

This section identifies and limits the types of project activities that are permitted prior to approval of the final EIS and the record of decision (ROD). Any Federal resources expended to gather data, to comply with other environmental laws, or for advance land acquisition will not bias the Administration's eventual decision on the project.

A number of comments were received asking that time limits be imposed for all major steps in the NEPA process. In response to these comments, and to be consistent with 40 CFR 1501.8(a) of the CEQ regulation, time limits will be established on a case-by-case basis when requested.

A number of comments expressed the view that highway agencies should be allowed to proceed with final design activities once the final EIS has been forwarded from the FHWA Division Office to the FHWA Regional Office. One of the arguments advanced for this concept was the contention that there were very few changes made in the project design once the final EIS has been accepted by the Division Office.

It is recognized that in some instances individual project costs may increase because of the time required to process the final EIS. This does not usually result in a cost increase to the program as a whole, since the funds that were scheduled to be utilized on a specific project are made available and shifted to another project within that State, thus, that second project may be constructed ahead of its original anticipated schedule and is, therefore, constructed at a lower cost. The FHWA has carefully considered this recommendation, but does not believe that it would be desirable to implement such a change. It would not be a wise expenditure of Federal funds to permit a State agency to proceed with the final design of a recommended alternative prior to a decision on that project by either the Regional Administrator or by the Washington Headquarters, as may be appropriate.

The UMTA has special statutory authority to issue a "Letter of Intent" for projects that it proposes to fund in the future. Section 771.113(c) clarifies that when UMTA indicates an intention to obligate future funds for a multi-year capital transit project (such as a new rail system), the breadth of the EIS must

consider, at least, the entire project covered by the Letter of Intent.

§ 771 115 *Classes of actions*

Section 771 115, pursuant to the CEQ regulation, establishes three classes of actions. Class 1 contains those actions that are presumed to require draft and final EIS's. Class 2 contains those actions that are presumed not to have a significant impact on the environment and therefore need no additional environmental analysis. These projects qualify as categorical exclusions (CE's) in accordance with the CEQ regulation. Class 3 contains all other actions since the significance of their environmental impacts is unknown. An EA must be prepared for Class 3 actions. If no significant environmental impact is found, a FONSI is prepared. Otherwise a draft and final EIS are required. The later sections describe how the presumptions can be overcome. The list of Class 1 projects contained in the regulation addresses both FHWA and UMTA actions. The transit class 1 projects were described in the proposed UMTA rule in § 622 203(a). A change was made in the fourth class 1 project to expand the class to encompass both highway and transit related major development projects. This classification will also consider the availability of commercial and residential replacement facilities. The highway class 1 projects were proposed in § 771 213(e) and have been revised to encompass those projects which are presumed to require an EIS.

One commenter requested that any action that has more than a minimal impact on land protected under section 4(f) (sec § 771 135) always be considered a Class 1 action. However, in the Administrations' experience, section 4(f) can encompass projects where 4(f) land is involved and yet there is no significant impact on the environment. For this reason, projects involving 4(f) lands will be treated on a case-by-case basis rather than creating an additional Class 1 project. Of course, any project that involves 4(f) property and has a significant effect on the environment will require as EIS.

Section 771 115(b) identifies a national list of activities that are classified as Class 2 or CE's. The CE's are authorized by CEQ in § 1508 4 of its regulation. The FHWA draft regulation contained a list of examples of CE's that would be utilized and approved in a manner similar to FHWA's previous procedures for non-major actions. A number of comments were received requesting the regulation be revised to identify certain CE's on a national basis rather than presenting "examples" to be approved

by the FHWA Division Administrator. This recommendation was similar to the approach proposed by UMTA. It was adopted and should substantially reduce paperwork requirements by eliminating the need for each of the 50 States to justify and submit for FHWA approval each of the items included on the national list.

The final regulation combines CE's proposed separately by FHWA and UMTA in the draft regulations. The new, identical language will enhance coordination between FHWA and UMTA when an action classified as a CE is jointly funded by the two agencies.

A great many comments were received on the types of actions proposed in § 622 203 for Class 2 (CE) projects.

CE #1 addresses planning and technical studies. This CE is limited to those studies which do not fund the construction of facilities or the acquisition of capital equipment to ensure that physical commitments are not made to a particular course of action.

CE #2 is identical to the CE proposed in § 622 203.

CE #3 is based on language that was included in proposed § 771 109(a). Approval of a unified planning work program and planning certification are actions that do not themselves require environmental documentation.

CE #4 encompasses programming approvals. Environmental concerns at this stage of development are addressed using the procedures of § 771 111.

CE #5 concerns concept approvals for interstate substitution projects and is also addressing using the procedures of § 771 111.

One commenter asked that the regulations be revised to permit preliminary engineering to be undertaken during the period of time when environmental documentation is being prepared. We agree that preliminary engineering may be a necessary step to analyze alternatives. For this reason, we have included in CE #6 engineering to define project elements, costs, and impacts and in CE #1 planning and technical studies. This is consistent with 40 CFR 1506 1(d) of the CEQ regulations. We recognize that it is sometimes necessary to spend money to understand the impacts of a project and that it does not make sense to require an environmental impact analysis to decide whether or not to prepare an environmental analysis. However, we do not want these Federal and local expenditures for studies and data to foreclose alternatives. We emphasize that these financial

expenditures are not to bias the environmental process.

CE #7 covers classes of highways under 23 U S C 103. It does not involve physical impacts and is identical in substance to the provision described in the Appendix to the FHWA proposed regulation.

CE #8 is identical to the CE that FHWA proposed.

In response to a comment received, the proposed CE for bridge replacement (#9) has been revised to be identical to the CE contained in the final NEPA regulation of the Coast Guard (45 FR 32818, May 19, 1980) so that different agencies of DOT will be consistent.

CE #10 addresses bikeway projects that typically are not major Federal actions significantly affecting the environment.

CE #11 is substantively the same as the CE for safety work programs contained in the Appendix to FHWA's proposed rule.

CE #12 addresses the transfer of Federal lands under the statutory requirements of 32 U S C 317 when the subsequent action is not an FHWA action.

CE #13 is the CE for highway modernization. It has been revised from the proposed language to limit the CE to minor amounts of land acquisition.

CE #14 is for highway safety and traffic operations and was proposed in the FHWA Appendix. It has been revised to limit the CE to those projects which require only minor amounts of land.

CE #15 and #17 are identical to the CE's proposed by FHWA.

CE #16 covers ridesharing and fringe parking facilities that typically are not major Federal actions significantly affecting the environment.

CE #18 is a CE for administrative costs of the transit rural programs.

CE #19 is substantively identical to the CE proposed by UMTA for operating assistance for transit systems.

The FHWA also received a number of comments which suggested that "new rural two-lane highways," which previously had been considered as a non-major action, should be included as a CE. The FHWA believes that the definition of "new rural two-lane highway" is too broad to permit these projects to be classified as CE's. This issue has been discussed with the CEQ, which concurs that it would not be appropriate to consider the "new rural two-lane highway" as a CE.

One commenter asked if the CE that permits purchases of vehicles of the same mode could be revised to permit the purchase of dual-mode buses (i.e., buses that are powered both by electric

and diesel motors) The proposed CE recognized that the purchase of the same mode vehicles (diesel bus for diesel bus or electric railcar for electric railcar) merely maintains the environmental status quo and has been retained as CE #20 Since dual-mode buses represent a new technology, UMTA lacks experience in assessing the environmental effects of such buses For this reason UMTA would treat the purchase of dual-mode buses as a Class 3 action at least until more experience is gained with this technology

CE's #21, #22, #23 and #24 are identical in substance to the CE's proposed by UMTA

Several commenters requested that new rail yards be treated similarly to new bus storage yards, i.e., that they be considered a CE when located in appropriately zoned areas. In UMTA's experience, the construction of rail yards could involve significant impacts in the surrounding community For this reason, rail yards for new rail systems would be part of the EIS for the Class 1 project and rail yards for existing systems would be evaluated as Class 3 actions The CE for new bus storage yards (#25) was modified in response to a comment to reflect that bus storage and maintenance facilities that will be located in industrial or transportation areas permitted under existing zoning are eligible for a CE if the street system can handle the anticipated traffic from the facility

In response to comments received, a number of additional clarifications were added to the CE for land purchases (#26) With respect to applicants for UMTA funding it is anticipated that land would be purchased in advance under the loan provisions of section 3(b) of the Urban Mass Transportation Act This provision creates a narrow statutory mechanism to maintain current land use and to preserve alternatives for future consideration By statute, no construction can begin on such property without triggering repayment of the loan. The statute creates a mechanism to preserve the status quo and any environmental impacts associated with future construction projects would be evaluated as part of the environmental documentation for that future project The regulation has been revised to reflect the concept that, while advance land acquisition preserves an option, the scope of alternatives for a capital project in the future will not be prejudiced by the advance acquisition of land If the land is not needed, the statute provides that the land will be sold and the value recaptured For all

other types of projects, this CE is limited to minor amounts of land

In response to a comment from CEQ, the CE for regulations and directives proposed by UMTA and FHWA has been limited to those regulations that are not major, significant regulations under the terms of Executive Order 12044 (see CE #27) This Executive Order governs the preparation of regulations

CE #28 and #29 are substantively identical to the CE's proposed by FHWA

Some commenters proposed additional criteria for various Class 2 actions such as controversy, noise impact, or location in an area that has air pollution problems Rather than including these factors and excluding other possible factors, we intend to rely on the early notification and citizen involvement procedures of § 771.111 and the specific procedures in § 771.117(c) to determine whether a proposed action is properly classified as a Class 2 action

UMTA's proposal and FHWA's draft Appendix categorically excluded the promulgation of all regulations and directives from the requirements for either an EA or EIS UMTA and FHWA believe that certain proposed regulations and directives may have such an impact that environmental study should be undertaken Such proposals would generally be considered "major" under the criteria established in Section 3 of Executive Order 12044 and would require the preparation of a regulatory analysis It would be appropriate for environmental impacts to be studied at the same time as economic impacts are being analyzed Therefore, paragraph (c) of the regulation requires that an EA be prepared for proposed major rules, regulations, and directives and permits the EA to be contained in the regulatory analysis

§ 771.117 *Categorical exclusions*

This section describes the procedures that are used to ensure that actions are properly classified as Class 2 actions Provisions have been included so that applicants may identify and recommend additional categories of projects for classification as CE's Further, the regulation provides for the preparation of an EA, FONSI or EIS for types of projects on the list where special circumstances exist

§ 771.119 *Environmental assessments*

Section 771.119 contains the requirements that apply to EA's prepared for Class 3 actions Several comments were received concerning the "scoping" process for EA's outlined by

UMTA in its draft regulation While scoping is not required by CEQ for EA's, the preamble to the CEQ regulation encouraged such scoping (see 43 FR 55982) In preparing EA's, both Administrations will use a process by which significant issues, impacts, and alternatives can be identified for inclusion in the EA The FHWA and the State highway agencies will rely on the State action plans (23 CFR Part 795) and other early coordination activities to define the scope of the EA The UMTA and its applicants will rely on a scoping process to achieve the specific objectives in § 771.119(b) The UMTA recognizes that an applicant may take the lead responsibility in preparing an EA As one means to ensure that the applicant undertakes an EA of the proper scope, UMTA has decided to adopt this streamlined scoping process and require that it be employed by the applicant in consultation with UMTA at the earliest appropriate time

The UMTA's draft regulation contained a provision applying to EA's whereby UMTA could, as a result of the scoping process, require an applicant to hold a public hearing on the environmental impacts of the proposed project This provision has been dropped Since a public hearing is already required as part of the application for all capital (as well as operating) assistance grants, it was felt that a duplicative hearing requirement could be eliminated by specifying in § 771.119(e) that the applicant's EA be prepared and made available prior to the grant application public hearing The requirements for public hearings and other public involvement procedures with respect to EA's for FHWA projects are contained in approved State Action Plans and, where applicable, 23 CFR Part 790 Where there is no requirement for a public hearing, this regulation establishes a 30-day period for receiving any comments on the EA

The draft regulation indicated an EA was appropriate in those situations where an EIS was not required and the proposed project was not classified as a CE The final regulation also provides that an EA is appropriate in those situations where it would assist in determining the need for an EIS This change was made in response to a number of comments received and is considered to be consistent with the purpose of the EA as identified in the CEQ regulation

§ 771.121 *Findings of no significant impact*

Section 771.121 describes the procedures that the Administration will follow when it determines that a Class 3

action will not significantly affect the environment. In this joint regulation, several changes have been made from the FHWA and UMTA draft regulations. A substantive change is the addition of paragraph (c) which deals with the situation where a FONSI has been prepared and approved by another Federal agency for a project that includes partial FHWA or UMTA funding. Although FHWA and UMTA cannot adopt another agency's FONSI, we can incorporate it into our own finding, thus eliminating any duplication of work. The UMTA and FHWA draft provisions establishing a 30-day review period for projects normally requiring an EIS but for which EA's are written have been relocated to § 771.119(h). In addition, this section now specifies the means by which an Administration's FONSI is made available to agencies and the public.

§ 771.123 Draft environmental impact statements

This section discusses the procedures applying to draft EIS's, the relationship between the project applicant and the Administration, and their respective responsibilities during the development of the draft EIS. It further discusses the circulation of the draft document and establishes a time period for the return of comments on the draft. This section is similar to the section in the FHWA draft regulation, however, the following differences should be noted.

The scoping process used to identify the significant issues to be addressed in the EIS has been given greater prominence. Whereas most FHWA applicants have established procedures by which coordination among interested agencies takes place and the scope of the EIS is determined, UMTA and its applicants do not have such procedures. The regulation, in § 771.123(b), notes several ways to carry out scoping for an EIS, including holding a scoping meeting. Two commenters requested that a scoping meeting not be required for every draft EIS, as was stipulated in the UMTA draft regulation. UMTA believes, however, that the scoping meeting is an important means to identify and discuss potential environmental issues and can lead to less delay later on. Thus, the final regulation states that normally UMTA will require a scoping meeting. If experience shows that this step has become counterproductive, this section will be revised. The role of the Metropolitan Planning Organization (MPO) has been clarified in the development of draft and final environmental impact statements (EIS's) in this section and § 771.125. The role of

the MPO's in the overall planning process is also being proposed for further discussion in a forthcoming notice of proposed rulemaking that will consider revisions to the joint planning regulations (23 CFR Part 450).

There has also been a substantive change in this section and in the final EIS section on the way UMTA develops EIS's for major urban mass transportation investments. UMTA has reassessed its major investment related procedures in response to comments asking for clarification of the relationship among the alternatives analysis (prescribed by UMTA's Policy on Major Urban Mass Transportation Investments), preliminary engineering, and the EIS process. The commenters expressed concern about the time required to undertake this work and reservations about the timing of UMTA's decisions. The commenters called for streamlined procedures, so that alternatives analysis and preliminary engineering could be accomplished more expeditiously, and the preparation of the EIS could be properly timed in relation to the decision process.

Based on this reassessment, UMTA has decided that a procedural change could mitigate these problems. The procedural change will permit UMTA to explore alternatives more rigorously in the draft EIS and give a preliminary engineering grant consistent with 40 CFR 1506.1(d) to refine environmental impacts and costs for inclusion in the final EIS. Revised procedures applying to UMTA major urban mass transportation investments are being published as a separate notice in today's **Federal Register**. Revised major investment and rail policies will be incorporated in revisions to the FHWA/UMTA joint planning regulation currently being developed.

Section 771.123(e) acknowledges a difference in how a consultant is selected to prepare an EIS depending on whether the applicant is a State Agency with statewide jurisdiction or an agency with less authority in the NEPA process.

The FHWA and UMTA draft regulations differed with respect to the need for public hearings during the EIS commenting period. The FHWA relied on State requirements, while UMTA specified a public hearing for all draft EIS's. The final requirement is contained in § 771.123(h). Those actions proposing to use UMTA section 3 or 5 funds normally require a public hearing as part of the grant application process. Where possible, the public hearing for the draft EIS may be combined with the hearing required for the grant application. It should be noted that if it

is not possible to prepare the EIS in advance of the grant application public hearing, UMTA will require a separate public hearing for the purpose of receiving comments on the draft EIS.

§ 771.125 Final environmental impact statements

Section 771.125 of the regulation deals with the preparation and processing of the final EIS. It emphasizes the need to comply, to the extent possible, with all applicable environmental laws and Executive Orders in accordance with the "one step" environmental document philosophy in both the CEQ regulation (40 CFR 1502.25) and the DOT Order. This section also identifies those categories of projects which must be submitted for prior concurrence based on the DOT Order. This provision was in the FHWA draft regulation but not in the UMTA draft regulation. The list now includes categories of projects with which UMTA is involved (new construction or extension of fixed guideway systems and major transportation-related development projects) and which will require the prior concurrence of the Office of the Secretary of Transportation before the final EIS can be circulated. Provision is also made for waiving the prior concurrence requirement in certain instances.

The wording of this section is similar to the FHWA draft regulation but includes the following important additions. Paragraph (a) includes a provision which reflects revisions to the UMTA policy on major urban mass transportation investments. The paragraph notes that a final EIS for a major urban mass transportation investment may be developed in conjunction with preliminary engineering so that the final EIS can present more detailed information on costs, impacts, and mitigation measures. This paragraph also includes a statement that final EIS's for projects in urbanized areas must show the views of the MPO on the preferred alternative.

Paragraph (f) recognizes that a difference exists in the effect of an UMTA approval of a final EIS as compared to an FHWA approval of a final EIS. The FHWA's approval of a final EIS typically means location approval for the preferred alternative. In UMTA's large discretionary capital assistance program, EIS approval is a separate and distinct action from approval of the project. There are factors unrelated to the EIS, having to do principally with the availability of funds, which determine which major transit projects will be approved. Thus, completion of the EIS does not mean

automatic approval of the UMTA capital grant

In response to a comment received, a further revision to this section provides that a preliminary record of decision will accompany the proposed final EIS during the internal DOT review process

§ 771 127 *Record of decision*

Section 771 127 contains the procedures that govern the Administrations' preparation of a ROD for a proposed action. The ROD will be developed based on consultation with the applicant, but the basic funding decision is the responsibility of the Administration. In response to a comment, this section in the final regulation now provides that a preliminary ROD is prepared. This preliminary ROD will accompany the proposed final EIS during the internal review process. Wording has been added in this section to allow certain administrative actions to be taken in connection with a proposed action during the time between the completion of the final EIS circulation period and the signing of the ROD. Such actions would usually concern steps taken to fulfill grant application requirements and would be consistent with the limitations on actions stipulated in the CEQ regulation.

One commenter suggested that we establish a page limit for ROD's to decrease the burden on applicants. The CEQ regulation specifies that the ROD be a concise document and it is the Administrations' intention to keep these documents as brief as possible. The ROD will summarize and rely on the more detailed information in the final EIS on the factors involved in selecting the preferred alternative and any mitigation measures that have been adopted. However, we recognize that the ROD will vary in length depending on the complexity of the proposed action or the degree of controversy surrounding it and therefore we decline to establish a page limit for this document.

Another commenter wanted copies of the ROD automatically sent to anyone who commented on the draft or final EIS. This document is already available to the public for inspection. The Administrations decline to establish an additional administrative burden that is not required under the CEQ or DOT procedures. Another commenter asked that some environmental findings be removed from the final EIS and placed instead in the ROD. We have not adopted this change because we believe that the final EIS should continue to be the primary means for documenting

compliance with environmental laws when there are significant impacts.

A new paragraph (b) has been added to clarify the procedures which will be followed if changes to the ROD are necessary.

§ 771 129 *Reevaluation*

This section is a combination of the sections in the draft FHWA and UMTA regulations dealing with supplemental statements and assessments. The FHWA language on supplemental EIS's has been retained. One commenter asked for clarification concerning the preparation and review of supplemental EIS's. The adopted language clarifies that either draft or final EIS's may be supplemented. A new or supplemental draft EIS is almost always required if a new alternative is considered after the original final EIS has been filed. However, a supplemental or new EIS will not be necessary if the Administration decides to fund an alternative that was adequately described in the final EIS but was not identified as the proposed action. Scoping is not required at the reevaluation stage since this information was obtained earlier.

The section in the UMTA draft regulation on tiered EIS's has been dropped since tiered EIS's do not involve a reevaluation or reconsideration of earlier decisions but rather a phased, progressively more detailed approach to assessing an action's environmental impacts.

In response to a comment paragraphs (c)(1) through (4) were included which track the language in the DOT Order on the lengths of time that draft and final EIS's are considered valid. After these time periods, EIS's must be reassessed to determine if they are still current and accurate.

The paragraph in the UMTA draft regulation on supplemental EA's has been revised. Rather than require an EA, with its investigation of alternatives, in all cases, we have specified that environmental studies may be appropriate to assess the change. If significant impacts are found a supplemental draft or final EIS is required. If the impact from the change is not significant or if it is similar to the impact of an action that was considered, this will be indicated in the project file. To avoid confusion the reference to the term FONSI has been deleted from this paragraph.

§ 771 131 *Emergency action procedures*

This section remains the same as the FHWA draft version.

§ 771 133 *Compliance with other requirements*

This section underscores the policy expressed in § 771 105 that all environmental protection requirements should be undertaken and completed as part of the NEPA process and evidence of necessary coordination and compliance should be contained in the environmental document required by NEPA.

§ 771 135 *Section 4(f) of the Department of Transportation Act*

Section 771 135 contains the procedures relative to section 4(f) of the DOT Act (49 U.S.C. 1653(f)) and the companion provision in 23 U.S.C. 138.

In the preamble to the draft regulation, comments were specifically invited on a proposal to limit the application of section 4(f), insofar as that section applies to historic sites, to sites listed on the National Register of Historic Places or determined to be eligible for listing by the Secretary of the Interior pursuant to the National Historic Preservation Act, 16 U.S.C. 470, et seq.

This proposal was made for two reasons. First, in contrast to other 4(f) properties, historic sites need not be publicly owned. Thus, it is often difficult to identify the "official" with jurisdiction over the site. In order to maximize the protective reach of section 4(f), we require 4(f) treatment in the absence of a determination of non-significance. In the case of historic sites, this assumption of significance has often resulted in 4(f) treatment of sites which were so insignificant that no governmental body had established any jurisdictional interest over the site. Second, the criteria for determining eligibility for listing in the National Register provide a convenient basis for determining whether a site is one of national, State, or local historic significance. Anyone can request a determination of eligibility from the Department of the Interior, and FHWA and UMTA have an affirmative duty to seek such determinations on potentially eligible sites as part of the project development process.

Comments were received both in favor of and against this proposal, including several favorable comments from State historic preservation agencies. After due consideration, we have determined to adopt the provision in the proposed regulation with the additional provision that the Administration may determine that section 4(f) applies even to properties not eligible for inclusion in the National Register. The final regulation extends full protection to historic sites in

accordance with section 4(f) while addressing what has become a significant administrative problem.

Several comments suggested that for historic sites section 4(f) compliance could be achieved by relying entirely on the consultation provision of section 106 of the National Historic Preservation Act. We believe that the use of the National Register criteria to identify properties of national, State, or local historic significance will provide enhanced coordination between section 106 and section 4(f) and reduce red tape. Because of differences in the substantive protective provisions of section 106 and section 4(f), it is not possible to completely combine the procedures for compliance with the two sections. Nevertheless, analysis of alternatives, consideration of appropriate mitigation, and coordination with other agencies should be accomplished concurrently to the extent that this is feasible.

A related problem has arisen with respect to archeological sites which are treated as historic sites under both section 4(f) and the National Historic Preservation Act. Frequently, the consultation required by section 106 results in a determination that data recovery is the appropriate form of mitigation for the archeological site. Such determinations are typically made when the recovery of the material contained in or on the site renders more valuable information than leaving such material at the specific location. Applying section 4(f) to archeological sites where data recovery is appropriate would impose the section 4(f) test to sites for which all interested agencies have agreed that removal of the archeological material is in the best public interest. This regulation incorporates current DOT policy by applying section 106 and section 4(f) to archeological sites sequentially. If data recovery under section 106 is appropriate, then section 4(f) would not apply, since recovery results in the removal of materials which make the site significant for purposes of section 4(f). It should be noted that section 4(f) continues to apply to archeological sites on or eligible for the National Register where the site has significance for reasons other than the materials contained. The regulation also clarifies the existing policy that section 4(f) applies to the late discovery of such sites where data recovery is not appropriate under section 106. The consultation under section 4(f) process may be expedited in such cases.

Many comments raised a concern that section 4(f) was frequently applied to

lands determined not to be significant because the land to be used was part of a larger body of land which included areas of significance. Most commonly, such areas are designated "multiple use" areas, i.e., areas which have a number of functions, only some of which may be protected by section 4(f). Multiple use lands are dealt with in § 771.135(e). This section applies only to large parcels of land which are administered for a variety of purposes. The various purposes must be conducted in geographically distinct parcels. Under paragraph (e), a determination is required by the official having jurisdiction over the land as to the nature of the use. Section 4(f) applies only to those parcels which are used for one of the purposes enumerated in section 4(f). Typical examples of multiple use lands are national forests, State forests, game preserves, etc. The precise name of the facility is unimportant. The determining factor is that the area is used for a variety of discrete functions which are administered as a single entity. In the case of lands administered as multiple use lands under general statutory authority, it would be expected that an existing plan, clearly designating multiple uses, would be available. Lands would not qualify where many uses are mixed throughout the area, rather than in geographically separate parcels. Further, section 4(f) continues to apply to insignificant uses of otherwise significant areas.

Section 771.135(g) provides that section 4(f) need not apply to areas designated late in the project development process if the property was acquired for transportation purposes prior to the designation or change in the determination of significance. This provision does not apply to areas which are significant but were not recognized as such because an inadequate effort was made to identify their significance in a timely fashion.

Section 771.125(j) permits the section 4(f) approval to be in the final EIS or in the ROD. If the final EIS contains the section 4(f) approval, the ROD must summarize the basis of the Administration's approval action. Appropriate cross referencing to environmental documents is encouraged in the interest of brevity. These alternative approaches are provided to accommodate UMTA procedures which may result in a project being finally approved some time after the completion of the final EIS. Where the ROD is approved a relatively short time after the completion of the final EIS, as with most FHWA projects, the section

4(f) approval should be made part of the ROD. This section also outlines procedures for those actions which do not require a ROD.

Another new provision, § 771.135(m), deals with tiered section 4(f) statements. Frequently, at early stages of project development, such as is often the case with first-tier EIS's, the degree of design detail required to fully develop "all possible planning to minimize harm" is not available. In some cases, even alternative choices relating to the use of section 4(f) lands cannot be made. This provision applies section 4(f) to an extent consistent with the information available, but does not distort the tiered environmental impact analysis encouraged by the CEQ regulation.

§ 771.137 International actions

This section discusses the application of this regulation to international actions and was added to identify the NEPA requirements for the Administrations' foreign project activities. At this time, only FHWA activities are involved. This section was incorporated directly from DOT Order 5610.1C.

Related Actions

The provisions of this regulation are also being issued as Volume 7, Chapter 7, Section 2, of the Federal-Aid Highway Program Manual (FHPM 7-7-2). The Manual contains the policies, procedures, requirements and guidelines which apply to the Federal-aid highway program. It is provided directly to all State highway agencies and is available for inspection and copying under 49 CFR Part 7, Appendix D.

Based on experience under the previous procedures, and in view of the direct applicability of the provisions of the CEQ regulation to their activities, the FHWA and UMTA have determined that certain requirements can be dropped from the regulation and issued as explanatory guidance. Specifically, the detailed requirements concerning the format and content of environmental documents prepared for proposed actions have been deleted from the regulation and will be issued as explanatory guidance. Certain administrative housekeeping procedures, such as detailed distribution instructions for copies of environmental documents, will also be issued separately.

These explanatory materials will be issued separately by UMTA and FHWA. The FHWA will issue its explanatory guidance in the form of an appendix to FHPM 7-7-2 and will publish this in the general notice section of the Federal Register. Comments received on the

draft appendices, as well as on the material moved from the draft regulation to the explanatory guidance documents, will be discussed in the preamble to the notice. The UMTA will be revising Circular 5620 1, "Guidelines for Preparing Environmental Assessments", and will be issuing other explanatory guidance on the environmental process. The UMTA guidance provides detail on assessing impacts from transit projects and covers applicable environmental laws, regulations, and related requirements, such as energy conservation, which are normally complied with during preparation of the environmental document.

As indicated earlier in the preamble, it is the intent of this regulation to combine the requirements of UMTA and FHWA with Departmental NEPA requirements contained in DOT Order 5610 1C. The Department plans to issue guidance on the content of environmental impact statements in the form of a revision to attachment 2 of DOT Order 5610 1C in the near future. That attachment will indicate the documentation needed for other environmental and related requirements, such as those dealing with energy conservation, wetlands, floodplains, and section 4(f).

The UMTA draft regulation contained a provision on the development of EISs for proposed major urban mass transportation investments. In response to comments asking for clarification of the decision-making process for major mass transportation investments and the relationship to the EIS process, UMTA has revised its procedures on major mass transportation investments and is publishing them as a separate notice in today's **Federal Register**.

The revised procedures allow for more detailed studies of promising alternatives to be undertaken during alternatives analysis. Further, instead of preparing the final EIS at the completion of alternatives analysis, the procedures permit the final EIS to be prepared during preliminary engineering. These changes should result in more reliable cost estimates and a more accurate definition of environmental impacts and required mitigation measures in the final EIS.

Over the past several years, the FHWA has presented courses on the preparation of environmental documents to some 40 State transportation agencies and FHWA field offices, often with representatives from other Federal and State agencies in attendance. As a result of the issuance of the CEQ regulations, DOT Order 5610 1C and this regulation, the course materials will be updated and a new series of courses presented. At

this time, it is anticipated that the first of these courses will be presented beginning in mid-1981. State transportation agencies desiring further details may contact Mr. Robert Gatz at the address provided above.

A similar series of courses on the preparation and review of environmental assessments is planned by UMTA for its regional offices. Interested grant applicants will be permitted to participate as well. These courses are planned to start at the end of this year. Contact Mr. Edward Fleischman at the address provided for further information.

(Catalog of Federal Domestic Assistance Program Numbers: 20 205 Highway Research, Planning and Construction; 20 500, Urban Mass Transportation Capital Grants; 20 501, Urban Mass Transportation Capital Improvement Loans; 20 502, Urban Mass Transportation Grants for University Research and Training; 20 503, Urban Mass Transportation Managerial Training Grants; 20 504, Urban Mass Transportation Technology; 20 505, Urban Mass Transportation Technical Studies Grants; 20 506, Urban Mass Transportation Demonstration Grants; 20 507, Urban Mass Transportation Capital and Operating Assistance Formula Grants; 20 509, Public Transportation for Rural and Small Urban Areas; 20 510, Urban Mass Transportation Planning Methods Research and Development; 23 003, Appalachian Development Highway Systems; 23 008, Appalachian Local Access Roads. The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to these programs.)

In consideration of the foregoing, Chapter VI of Title 49 and Chapter I of Title 23, Code of Federal Regulations, are amended by revising Part 622 by adding Subpart A and revising Part 771, respectively, as set forth below.

Issued on October 24, 1980

John S. Hassell, Jr.,
Federal Highway Administrator

Theodore C. Lutz,
Urban Mass Transportation Administrator

Title 49—Transportation

CHAPTER VI—URBAN MASS TRANSPORTATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

PART 622—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

Subpart A—Environmental Procedures

Sec.
622 101 Cross-reference to procedures
Authority: 42 U.S.C. 4321 *et seq.*, 49 U.S.C. 1601 *et seq.*, 49 CFR 1.51

Subpart A—Environmental Procedures

§ 622.101 Cross-reference to procedures

The procedures for complying with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) and related statutes, regulations, and orders are set forth in Part 771 of Title 23 of the Code of Federal Regulations.

Title 23—Highways

CHAPTER I—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER H—RIGHT-OF-WAY AND ENVIRONMENT

PART 771—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

Sec.
771 101 Purpose
771 103 Authority and related statutes and orders
771 105 Policy
771 107 Definitions
771 109 Applicability and responsibilities
771 111 Early coordination and project development
771 113 Timing of administration actions
771 115 Classes of actions
771 117 Categorical exclusions
771 119 Environmental assessments
771 121 Findings of no significant impact
771 123 Draft environmental impact statements
771 125 Final environmental impact statements
771 127 Record of decision
771 129 Reevaluation
771 131 Emergency action procedures
771 133 Compliance with other requirements
771 135 Section 4(f) of the Department of Transportation Act
771 137 International actions

Authority: 42 U.S.C. 4321 *et seq.*, 23 U.S.C. 138, 49 U.S.C. 1653(f), 23 U.S.C. 315, 49 CFR 1.48(b).

§ 771.101 Purpose

This regulation prescribes the policies and procedures of the Federal Highway Administration (FHWA) and the Urban Mass Transportation Administration (UMTA) for implementing the National Environmental Policy Act of 1969 (NEPA) and the regulations of the Council on Environmental Quality (CEQ). This regulation sets forth all FHWA, UMTA, and Department of Transportation (DOT) requirements under NEPA for the processing of transportation projects, including the applicable operating procedures and implementing instructions contained in DOT Order 5610 1C, dated Sept. 18, 1979.

§ 771 103 Authority and related statutes and orders

(a) *Authority* (1) 42 U S C 4321 *et seq.*, National Environmental Policy Act of 1969, as amended,

(2) 23 U S C 138 and 49 U S C 1653(f), Section 4(f) of the Department of Transportation Act of 1966,

(3) 23 U S C 109, Standards,

(4) 23 U S C 315, Rules, Regulations and Recommendations,

(5) 40 CFR 1500, *et seq.*, CEQ Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act,

(6) 49 CFR 1 51, DOT Delegations of Authority to UMTA,

(7) 49 CFR 1 48(b), DOT Delegations of Authority to FHWA,

(8) DOT Order 5610 1C, Procedures for Considering Environmental Impacts, dated September 18, 1979

(b) *Related statutes and orders* ¹ The following is a list of major statutes and orders relating to the preparation of environmental documents

(1) 16 U S C 461, *et seq.*, Archeological and Historic Preservation Act, and 23 U S C 305,

(2) 16 U S C 470f, Section 106 of the National Historic Preservation Act of 1966,

(3) 16 U S C 662, Section 2 of the Fish and Wildlife Coordination Act,

(4) 16 U S C 1452, 1456, Sections 303 and 307 of the Coastal Zone Management Act of 1972,

(5) 16 U S C 1536, Section 7 of the Endangered Species Act of 1973,

(6) 33 U S C 1251, *et seq.*, Clean Water Act of 1977,

(7) 42 U S C 300(f) *et seq.* Safe Drinking Water Act,

(8) 42 U S C 4371 *et seq.*, Environmental Quality Improvement Act of 1970,

(9) 42 U S C 4601, *et seq.*, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970,

(10) 42 U S C 4901 *et seq.*, Noise Control Act of 1972,

(11) 42 U S C 7401 *et seq.* Clean Air Act,

(12) 42 U S C. 200d-d4, Title VI of the Civil Rights Act of 1964,

(13) Executive Order 11514, Protection and Enhancement of Environmental Quality, as amended by Executive Order 11991, dated May 24, 1977,

(14) Executive Order 11593, Protection and Enhancement of the Cultural Environment dated May 13, 1971,

implemented by DOT Order 5650 1, dated Nov 20, 1972,

(15) Executive Order 11988, Floodplain Management, dated May 24, 1977, implemented by DOT Order 5650 2, dated April 23, 1979,

(16) Executive Order 11990, Protection of Wetlands, dated May 24, 1977, implemented by DOT Order 5660 1A, dated August 24, 1978,

(17) Section 3(d), 5(h) and 5(i) of the Urban Mass Transportation Act of 1964 (49 U S C 1601, *et seq.*),

(18) Section 14 of the Urban Mass Transportation Act of 1964 (49 U S C 1610),

(19) UMTA Circular 5620 1, Guidelines for Preparing Environmental Assessments

§ 771 105 Policy

It is the policy of the Administration that

(a) To the fullest extent possible, all environmental investigations, reviews, and consultations be coordinated into a single process, and compliance with all applicable environmental requirements be reflected in the appropriate environmental document required by this regulation,

(b) Alternative courses of action be evaluated and decisions be made in the best overall public interest based upon a balanced consideration of the need for safe and efficient transportation and of national, State, and local environmental goals including protection and enhancement of the environment, energy conservation and urban revitalization,

(c) Public involvement and a systematic interdisciplinary approach be essential parts of the development process for proposed actions,

(d) Measures necessary to mitigate adverse impacts be incorporated into the proposed action. Measures necessary to mitigate adverse impacts are eligible for Federal funding when it is determined that

(1) The impacts for which the mitigation is proposed actually result from the Administration action,

(2) The proposed mitigation represents a reasonable public expenditure when considered in light of the severity of impacts of the action and the social, economic, energy, and environmental benefits of the proposed mitigation measures, and

(3) The proposed measures would assist in complying with a statute, Executive Order, or Administration regulation or policy

(e) Costs incurred by the applicant which are directly related to the preparation of environmental documents requested by the Administration will be eligible for Federal assistance in

accordance with Administration procedures

(f) No person, because of handicap, age, race, color, sex, or national origin, be excluded from participating in, or denied benefits of, or be subject to discrimination under any Administration program or procedural activity required by or developed pursuant to this regulation

§ 771 107 Definitions

The definitions contained in the CEQ regulation and in titles 23 and 49 of the United States Code are applicable to this regulation. In addition, the following definitions apply to this regulation

(a) Environmental studies—the investigations of potential environmental impacts made to determine the appropriate environmental process to be followed and subsequent investigations that assist in the preparation of the appropriate environmental document

(b) Action—the approval of construction of highway and transit projects with funds administered by FHWA under title 23 of the United States Code and by UMTA under title 49 of the United States Code and related statutes. It also includes approval of activities such as joint and multiple use permits, changes in access control, etc which may or may not involve a commitment of Federal funds

(c) Administration—the FHWA or UMTA, whichever is the designated lead agency for the proposed action

§ 771 109 Applicability and responsibilities

(a)(1) The provisions of this regulation and the CEQ regulation apply to proposals for Administration action over which the Administration exercises sufficient control and responsibility to alter the development or action being proposed. Actions taken by the applicant which do not require Federal approvals, such as preparation of a regional transportation plan, are not Administration actions

(2) The provisions of this regulation do not apply to, affect, or alter decisions, approvals, authorizations, or other actions made by the Administration prior to the effective date of this regulation

(3) Except as provided in paragraph (a)(4) of this section, draft environmental impact statements (DEIS's) final environmental impact statements (FEIS's), environmental assessments (EA's), findings of no significant impact (FONSI) and categorical exclusions (CE's) accepted or prepared by the Administration after the effective date of this regulation will

¹ The FHWA prepared a notice entitled 'Summary of Selected Environmental Legislation' which provides details on pertinent environmental requirements. Copies are available as prescribed in 49 CFR Part 7 App D and G from UMTA and FHWA headquarters and field offices

be developed in accordance with this regulation

(4) FEIS's accepted by the Administration prior to July 30, 1981, whose drafts were filed with the Environmental Protection Agency (EPA) prior to July 30, 1979 (for FHWA, November 30, 1979), may be developed in accordance with the regulations in effect at the time the draft document was filed

(5) All FEIS's accepted by the Administration after July 30, 1981, whose drafts were filed with EPA prior to July 30, 1979 (for FHWA November 30, 1979), will be developed in accordance with § 771.125 except that the requirements of § 771.127 (Record of decision) are not applicable

(b) It shall be the responsibility of the applicant, in cooperation with the Administration, to implement those mitigation measures stated as commitments in the environmental documents prepared pursuant to this regulation. The FHWA will assure that this is accomplished through reviews and approvals of designs, plans, specifications and estimates (P S and E) and construction inspections. The UMTA will assure implementation of committed mitigation measures through incorporation by reference in the grant agreement

(c) The Administration in cooperation with the applicant has the responsibility to manage the preparation of the appropriate environmental document. The role of the applicant is determined by the Administration in accordance with the CEQ regulation as described below. If the applicant qualifies for more than one role, the Administration will determine which role the applicant will assume. Regardless of the role the applicant is permitted to assume, the Administration is responsible for the decisions made on the scope and content of the appropriate environmental document

(1) *Statewide agency* If the applicant is a public agency that has statewide jurisdiction (for example, a State highway agency or a State department of transportation) or is a local unit of government acting through a State agency and meets the requirements of Section 102(2)(D) of NEPA, the applicant may prepare the EIS and other environmental documents with the Administration furnishing guidance, participating in the preparation, and independently evaluating the document in accordance with Section 102(2)(D) of NEPA. All applicants in this group qualify as joint lead agencies with the Administration (all FHWA applicants qualify under this paragraph)

(2) *Joint lead agency* If the applicant is a public agency and is subject to State or local requirements comparable to NEPA, then the Administration and the applicant may prepare the EIS and other environmental documents as joint lead agencies. The applicant will initially develop substantive portions of the environmental document although the Administration will be responsible for its scope and content

(3) *Cooperating agency* If the applicant is a local public agency that has special expertise in the proposed action, the applicant may be a cooperating agency. A local applicant for Sections 3 and 5 assistance under the Urban Mass Transportation Act (UMT Act) of 1964, as amended, is presumed to be a cooperating agency. During the environmental process, the Administration will discuss the scope and content of the appropriate environmental document with the applicant before decisions are made on the scope and depth of the environmental analysis. The applicant may be directed to carry out these decisions

(4) *Other* In all other cases the role of the applicant is limited to providing environmental studies and commenting on environmental documents. All private institutions or firms are limited to this role

§ 771.111 Early coordination and project development.

(a) Early coordination involves the input from and exchanges of information with the public and public agencies from the inception of proposals for actions to the preparation of the appropriate environmental document. Applicants intending to apply for funds should notify the Administration at the time that a particular project concept is identified. When requested, the Administration will advise the applicant, insofar as possible, of the probable class of action and related environmental laws and requirements which would apply to the proposed action and of the need for specific studies and findings which would normally be developed concurrently with the environmental document

(b) Any requested identification of the probable class of action will be made at the Transportation Improvement Program (TIP) approval stage, or at an earlier stage, if sufficient information is available to identify the probable impacts of the proposed action (23 CFR Part 450, Subpart C)

(c) When the FHWA and UMTA are involved in the development of multimodal projects, the agencies will be joint lead agencies or one agency will

be designated as the lead agency. When the FHWA or UMTA acts as a joint lead agency with another Federal agency, mutually acceptable procedures for the preparation and processing of environmental documents will be established on a case-by-case basis consistent with the purpose and policy of this regulation

(d) During the early coordination process, the Administration in cooperation with the applicant may request other appropriate agencies to become cooperating agencies. Agencies with jurisdiction by law must be requested to become cooperating agencies

(e) Early notification to and solicitation of views from other States and Federal land management entities significantly affected by the proposed action shall be accomplished by the applicant in cooperation with the Administration. The notification and solicitation of views from other States should be mailed to the A-95 clearinghouses for those States unless the Governor has designated an agency other than the clearinghouse for this purpose. The Administration will prepare a written evaluation of any issues identified which indicate a significant disagreement with respect to the impact of the proposed action or any of the alternatives. This evaluation will be furnished to the applicant for incorporation into the EA or DEIS

(f) In order to ensure meaningful evaluation of alternatives and to avoid commitments to transportation improvements before they are evaluated, each EIS or FONSI prepared for a proposed action shall evaluate a project which

(1) Connects logical termini and is of sufficient length to address environmental matters on a broad scope,

(2) Has independent utility or independent significance, i.e., is useable and a reasonable expenditure even if no additional transportation improvements in the area are accomplished, and

(3) Will not restrict consideration of alternatives for other reasonably foreseeable transportation improvements

(g) The tiering of EIS's, as discussed in the CEQ Regulation (40 CFR 1502.20), is encouraged when it will improve or simplify the environmental processing of complex actions. The first tier EIS would focus on broad issues such as mode choice, general location and areawide air quality and land-use implications of the alternate transportation improvements. A second tier, site specific EIS would focus on more

detailed project impacts and detailed mitigation measures

(h) Interested citizens may obtain information on the UMTA environmental process and the status of EIS's issued by UMTA from Director, Office of Program Analysis, Urban Mass Transportation Administration, Washington, D C 20590 Questions on the status of DEIS's combined with alternatives analyses as required by the policy on major urban mass transportation investments should be directed to Director, Office of Planning Assistance, Urban Mass Transportation Administration, Washington, D C 20590. Information on the FHWA environmental process may be obtained from Director, Office of Environmental Policy, Federal Highway Administration, Washington, D C 20590

§ 771.113 Timing of administration actions.

(a) The Administration in cooperation with the applicant will complete all work, including any necessary design work, required to make those engineering and environmental decisions necessary to complete a FONSI or an EIS and to comply with other related laws and regulations which, to the maximum extent possible, must be accomplished coincident with the NEPA process. However, other design activities, property acquisition (other than hardship or protective buying pursuant to 23 CFR 712.204(d)), or construction shall not proceed until the following actions have been completed

(1)(i) The action has been classified as a categorical exclusion, or (ii) a FONSI has been adopted or (iii) a FEIS has been approved and available for the prescribed period of time, and a record of decision, when required, has been prepared and signed, and

(2) For FHWA actions, the FHWA Division Administrator has received and accepted the public hearing transcripts, reports and certifications required by 23 U S C 128

(b) For FHWA actions, the completion of the requirements set forth in paragraph (a) of this section is considered acceptance of the general location of the proposed action unless otherwise specified by the appropriate FHWA official. For those categorical exclusions which require location approval, this approval will be made by the FHWA after consultation with the applicant

(c) Letters of Intent issued under the authority of Section 3(a)(4) of the UMT Act are used by UMTA to indicate an intention to obligate future funds for multiyear capital transit projects. The

scope of the environmental document must address the entire project covered by the proposed Letter of Intent. Letters of Intent will not be issued by UMTA until the NEPA process is completed.

§ 771.115 Classes of actions.

There are three classes of actions which prescribe the level of documentation required in the NEPA process

(a) *Class I (EIS's)* Actions that may significantly affect the environment require an EIS (40 CFR 1508.27)

Examples of these actions are

(1) Any new controlled access freeway

(2) Any highway project of 4 or more lanes on a new location

(3) New construction or extension of fixed guideway systems (e.g., rapid rail, light rail, commuter rail, automated guideway transit, and exclusive busway) These projects would be expected to cause major shifts in travel patterns and land use

(4) Major transportation related development whose construction involves a large amount of demolition, displacement of a large number of individuals or businesses, or substantial disruption to local traffic patterns. This classification will take account of the condition of the buildings and availability of comparable replacement facilities for displaced residences or businesses

(b) *Class II (Categorical exclusions)* Actions that do not individually or cumulatively have a significant effect on the environment do not require an environmental impact statement or environmental assessment. The following actions are categorical exclusions

(1) Planning and technical studies which do not fund the construction of facilities or acquisition of capital equipment

(2) Grants for training and research programs which do not involve construction

(3) Approval of a unified planning work program and certification of a State or local planning process. 23 CFR Part 450

(4) Approval of Transportation Improvement Programs under 23 CFR Part 450, Subpart C and statewide programs under 23 CFR Part 630, Subpart A

(5) Approval of project concepts under 23 CFR Part 476

(6) Engineering when undertaken to define the elements of a proposal or alternatives sufficiently so that environmental effects can be assessed

(7) Federal-aid highways system revisions under 23 U S C 103, which

establishes classes of highways on the Federal-aid highway system

(8) Approval of utility installations along or across a transportation facility.

(9) Reconstruction or modification of an existing bridge structure on essentially the same alignment or location (e.g., widening less than a single travel lane, adding shoulders or safety lanes, walkways, bikeways, or pipelines) except bridges on or eligible for inclusion on the National Register or bridges providing access to barrier islands. Reconstruction or modification of an existing one lane bridge structure, presently serviced by a two lane road and used for two lane traffic, to a two lane bridge on essentially the same alignment or location, except bridges on or eligible for inclusion on the National Register or bridges providing access to barrier islands

(10) Construction of bicycle and pedestrian lanes, paths, and facilities

(11) Activity included in the State's "highway safety plan" under 23 U S C. 402

(12) Transfer of Federal lands pursuant to 23 U S C 317 when the subsequent action is not an FHWA action

(13) Modernization of an existing highway by resurfacing, restoration, rehabilitation, widening less than a single lane width, adding shoulders, adding auxiliary lanes for localized purposes (e.g., weaving, turning, climbing), and correcting standard curves and intersections. This classification is not applicable when the proposed project requires acquisition of more than minor amounts of right-of-way or substantial changes in access control

(14) Highway safety or traffic operations improvement projects including the correction or improvement of high hazard locations, elimination of roadside obstacles, highway signing, pavement markings, traffic control devices, railroad warning devices, and lighting. This classification is not applicable when the proposed action requires acquisition of more than minor amounts of right-of-way or substantial changes in access control

(15) Alterations to existing building to provide for noise reduction and the installation of noise barriers

(16) Ridesharing activities and transportation corridor fringe parking facilities

(17) Landscaping

(18) Program administration and technical assistance activities by the applicant to administer Section 18 funds (Rural public transportation program)

(19) Project administration and operating assistance to transit

authorities to continue existing service or increase service to meet demand

(20) Purchase of vehicles of the same type (same mode) either as replacements or to increase the size of the fleet where such increase can be accommodated by existing facilities or by new facilities which themselves are within a categorical exclusion

(21) Track and rail bed maintenance and improvements when carried out within the existing right-of-way

(22) Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where no additional land is required and there is no substantial increase in the number of users

(23) Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant physical impacts off the site

(24) Installation of signs, small passenger and bus shelters, and traffic signs where no substantial land acquisition or traffic disruption will occur

(25) Construction of new bus storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic

(26) Acquisition of land in which the property will not be modified, the land use will not be changed, and displacements will not occur For projects other than UMTA advance land loans, this categorical exclusion is limited to the acquisition of minor amounts of land This is undertaken for the purpose of maintaining the current land use and preserving alternatives to be considered in the environmental process Advance land acquisition shall not limit the evaluation of alternatives, including shifts in alignment for a construction project, which may be required in the NEPA process

(27) Promulgation of rules, regulations, and directives for which a regulatory analysis is not required by Section 3 of Executive Order 12044

(28) Research activities as defined in 23 U S C 307

(29) Emergency repairs under 23 U S C 125 which do not substantially change the design and are commenced during or immediately after the occurrence of a natural disaster or catastrophic failure

(c) *Class III (EA's)* Actions in which the significance of the impact on the environment is not clearly established All actions that are not Class I or II are

Class III All actions in this class require the preparation of an EA to determine the appropriate environmental document required, unless it can be initially determined that an EIS should be prepared In the case of rules, regulations, or directives for which a regulatory analysis is required by Section 3 of Executive Order 12044, the EA may be contained in the regulatory analysis and need not be a separate document

§ 771.117 Categorical exclusions

(a) Categorical exclusions are categories of actions which do not involve significant environmental impacts or substantial planning, time or resources These actions will not induce significant foreseeable alterations in land use, planned growth, development patterns, or natural or cultural resources The categorical exclusions are listed in § 771.115(b)

(b) Any recommendation by an applicant that a proposed action is a categorical exclusion as identified in § 771.115(a) must be approved by the Administration The Administration may require sufficient information to determine if the proposal meets the criteria for a categorical exclusion Proposals meeting the criteria for categorical exclusions do not require additional environmental documentation

(c) The Administration may determine that any action proposed as a categorical exclusion may, because of extraordinary circumstances, require appropriate environmental studies to establish the need for an EIS Extraordinary circumstances includes situations that are likely to involve

(1) Significant impacts on the environment,

(2) Substantial controversy on environmental grounds,

(3) Significant impacts on properties protected by Section 4(f) of the DOT Act and Section 106 of the National Historic Preservation Act, or

(4) Inconsistencies with any Federal, State, or local law or administrative determination relating to the environment

(d) An applicant may propose that additional categories of actions be added to the list of categorical exclusions in § 771.115(b) Such proposals shall be submitted to the Administration headquarters office for approval and will be processed in accordance with 40 CFR 1507.3

§ 771.119 Environmental assessments

(a) The EA shall be prepared by the applicant in consultation with the Administration for each action that is

not a categorical exclusion and does not clearly require the preparation of an EIS or where, in the opinion of the Administration, the EA would assist in determining the need for an EIS

(b) For actions that require an EA, the applicant in consultation with the Administration will, at the earliest appropriate time, begin consultation with interested agencies and others to achieve the following objectives Define the scope of the project, identify alternatives to the proposed action, determine which aspects of the proposed action have potential for environmental impact, identify measures and alternatives which might mitigate adverse environmental impacts, and identify other environmental review and consultation requirements which should be prepared concurrently with the EA The applicant will accomplish this through an early coordination process approved by the Administration (e.g., State Action Plan) or through a scoping process A summary of the contacts made and comments received will be included in the EA

(c) The EA is subject to Administration approval before it is made available to the public as an Administration document If the EA is made available prior to Administration approval, it must be labeled as the applicant's document

(d) The EA need not be circulated for comment but the document must be made available for public inspection at the applicant's office and at the appropriate Administration field offices in accordance with paragraphs (e) and (f) of this section Notice of the availability of the EA shall be sent by the applicant to the State and areawide clearinghouses

(e) When a public hearing is required, the EA will be prepared in advance of the notice of the public hearing The notice of the public hearing in local newspapers will announce the availability of the applicant's EA and where it may be obtained or reviewed The FHWA public hearing requirements are contained in approved State Action Plans UMTA has a public hearing requirement in all applications for capital and operating assistance

(f) When a public hearing is not required, the applicant shall place a notice in a newspaper(s) similar to a public hearing notice and at a similar stage of development of the action advising the public of the availability of the EA and where information concerning the action may be obtained The notice shall invite comments from all interested parties including those who believe that the action involves a significant impact on the human

environment or that the analysis of social, economic, and environmental impacts presented in the EA is inadequate to assess their significance. Comments shall be submitted in writing to the applicant or the Administration within 30 days of the publication of the notice unless the Administration determines a shorter period is warranted.

(g) If no significant impacts are identified, the applicant will furnish the Administration a copy of the EA, revised as appropriate, the public hearing transcript when a public hearing was held, and a summary of any comments received and responses thereto and recommend a FONSI.

(h) If, at any point in the EA process, the Administration determines that the proposed action may have a significant impact on the environment, the preparation of an EIS will be required. Actions in § 771.115(a) will normally require preparation of an EIS. If an action in these categories is processed with an EA, copies of the EA will be made available for public review (including State and areawide clearinghouses) for 30 days before the Administration makes its final decision. (See 40 CFR 1501.4(e)(2)). This public availability will be announced by a notice similar to a public hearing notice at least 30 days before any decision on the EA is made. The EA will be provided to the Administration Washington Headquarters at the same time it is made available to the public.

§ 771.121 Findings of no significant impact

(a) The Administration, after review of the EA and any public hearing comments or other comments received regarding the EA, and if in agreement with the applicant's recommendations, will make a separate written finding of no significant impact (FONSI) incorporating the EA and any other appropriate environmental documents.

(b) After a FONSI had been made by the Administration, a notice of the availability of the FONSI shall be sent by the applicant to State and areawide clearinghouses and the document will be available from the applicant or the Administration upon request by the public.

(c) If another Federal agency has issued a FONSI on an action which includes an element proposed for Administration funding, the Administration will evaluate the FONSI, and if it is determined that the proposed Administration-funded action and its environmental impacts are adequately identified and assessed, the

Administration will issue its own FONSI incorporating the other agency's FONSI.

§ 771.123 Draft environmental impact statements

(a) A DEIS will be prepared when the Administration determines initially that the action may cause significant impacts on the environment, when the environmental studies and early coordination for the action indicate significant impacts, or when the review of the EA in light of comments received indicates the impacts expected to result from the action may be significant when the decision has been made by the Administration that an EIS will be prepared, the Administration will issue a notice of intent for publication in the **Federal Register**. Applicants are encouraged to announce the intent to prepare an EIS by appropriate means at the local level.

(b) After publication of the notice of intent, the Administration in cooperation with the applicant will begin a scoping process. The scoping process will be used to identify the range of alternatives and impacts and the significant issues to be addressed in the EIS and to achieve the other objectives of 40 CFR 1501.7. For FHWA, scoping is normally achieved through procedures developed in accordance with State Action Plans (32 CFR Part 795) and through other early coordination activities. For UMTA, a scoping meeting will normally be required. If a scoping meeting is to be held, it will be announced in the Administration's notice of intent and by appropriate means at the local level.

(c) The DEIS shall be prepared by the Administration in cooperation with the applicant. The DEIS shall discuss all reasonable alternatives to the proposed action and summarize the studies, reviews, consultations, and coordination required by environmental laws and Executive Orders to the extent appropriate at this stage in the environmental process. The DEIS for actions in an urbanized area shall reflect the involvement of the metropolitan planning organization (MPO) and alternatives to be considered in the DEIS shall be developed in consultation with the MPO.

(d) For major urban transportation investments the DEIS documents the results of an analysis of transportation alternatives.

(e) An applicant which is a "joint lead" or "cooperating" agency may select a consultant to assist in the preparation of an EIS subject to the concurrence of the Administration to assure compliance with 40 CFR 1506.5(c). (See § 771.109(c) for

definitions of these terms.) A "statewide" agency may select a consultant in accordance with applicable procedures. The Administration will select any such consultant for "other" applicants.

(f) The Administration, when satisfied that the DEIS complies with NEPA requirements, will approve the DEIS for circulation by signing and dating the title page.

(g) A lead, joint lead, or a cooperating agency shall be responsible for printing the EIS. The initial printing of the DEIS shall be in sufficient quantity to meet requirements for copies which can reasonably be expected from agencies, organizations, and individuals. Normally, copies will be furnished free of charge. However, with Administration concurrence, the party requesting the DEIS may be charged a fee which is not more than the actual cost of reproducing the copy or may be directed to the nearest location where the statement can be reviewed.

(h) The DEIS shall be circulated for comment by the applicant on behalf of the Administration. The UMTA requires a public hearing during the circulation period of all DEISs. The FHWA public hearing requirements are contained in approved State Action Plans or, if applicable, 23 CFR Part 790. If a public hearing is required, the DEIS shall be available for a minimum of 30 days in advance of the public hearing. The availability of the DEIS shall be included in any public hearing notice and mentioned at any public hearing presentation with a request for public comments. If a public hearing is not required, a notice shall be placed in a newspaper similar to a public hearing notice advising where the DEIS is available for review, how copies may be obtained, and where the comments should be sent.

(i) The DEIS shall be circulated to:

(1) Public officials, private interest groups, and members of the public having the potential to be directly affected or expressing an interest in the proposed action or the DEIS. Comments should be obtained directly from appropriate State and local agencies, except where review is secured by agreement through the A-95 clearinghouse.

(2) Government agencies expected to have jurisdiction or responsibility over, or interest or expense in the proposed action.

(j) The **Federal Register** public availability notice shall establish a period of not less than 45 days for the return of comments on the DEIS. The notice and the DEIS transmittal letter

shall identify where comments are to be sent

(k) The applicant shall furnish copies of the DEIS to those States and Federal land management entities which may be significantly affected by the proposed action or any of the alternatives. These copies shall be accompanied by a request that such State or entity advise the Administration in writing of any disagreement with the evaluation of impacts in the statement. Copies of the DEIS are to be furnished to the A-95 clearinghouses of other impacted States unless the Governor has designated an agency other than the clearinghouse for this purpose. The Administration will furnish the comments received to the applicant along with a written assessment of any disagreements for incorporation into the FEIS.

§ 771.125 Final environmental impact statements.

(a)(1) After circulation of a DEIS and consideration of comments received, a FEIS shall be prepared by the Administration in cooperation with the applicant or, where permitted by law, by the applicant with appropriate guidance and participation by the Administration. The FEIS shall identify the preferred alternative, discuss substantive comments received on the DEIS and all reasonable alternatives considered, summarize citizen involvement, and include when appropriate a description of the procedures to be followed to assure that all environmental mitigation measures are implemented. The FEIS for actions in urbanized areas shall include the views of the MPO regarding the preferred alternative. The FEIS should also document compliance, to the extent possible, with all applicable environmental laws and Executive Orders or provide reasonable assurance that their requirements can be met.

(2) For UMTA-funded major urban mass transportation investments (new construction or extension of a fixed guideway), the applicant shall prepare a report identifying a locally preferred alternative. Approval may be given to begin preliminary engineering on the principal alternatives currently under consideration. During the course of such preliminary engineering, the applicant will refine project costs, effectiveness, and impact information with particular attention to alternative designs, operations, detailed location decisions and appropriate mitigation measures. These studies will be used to prepare the FEIS.

(b) Every reasonable effort shall be made to resolve interagency disagreements on proposed actions before processing the FEIS. If significant

issues remain unresolved, the FEIS shall identify those issues and the consultations and other efforts made to resolve them.

(c) A preliminary record of decision (ROD) shall accompany the proposed FEIS during the internal review process. (See § 771.127)

(d) The FEIS shall be reviewed for legal sufficiency by the Administration's Chief Counsel or designee.

(e) The Administration will indicate approval of the FEIS for an action by signing and dating the title page. However, FEIS's prepared for actions in one or more of the following categories shall be subject to prior concurrence by the Administration, Washington Headquarters and the Office of the Secretary of Transportation:

(1) Any highway project on a new location in an urbanized area of over 100,000 population or bypassing such area.

(2) Any new controlled access freeway.

(3) New construction or extension of a fixed guideway transit system.

(4) Any major transportation related development whose construction requires the preparation of an EIS (see § 771.115(a)(4)) if the proposed Administration grant assistance exceeds \$5 million or if the proposed total cost of publicly and privately funded construction is expected to exceed \$50 million.

(5) Any action to which a Federal, State or local government has indicated opposition on environmental grounds (which has not been resolved to the written satisfaction of the objecting agency).

(6) Any action for which the Administration or the Office of the Secretary of Transportation requests that the FEIS be reviewed at the Washington Headquarters office.

(f) The signature of the UMTA approving official on the title page constitutes UMTA authorization to circulate the FEIS, compliance with Section 14 of the UMT Act and fulfillment of the grant application requirements of Section 3(d)(1) and (2) and Section 5(h) and 5(i) of the UMT Act. The approval of the FEIS does not commit UMTA to approval of any grant request for future funding of the preferred alternative.

(g)(1) After review of a DEIS on an action in one or more of the categories in paragraph (e) of this section, the Administration with the concurrence of the Office of the Secretary of Transportation may determine that the FEIS may be processed without prior concurrence of the Administration

Headquarters Office. This determination will include consideration of

(i) Adequacy of early coordination with other Federal, State, and local government agencies, and

(ii) Adequacy of the DEIS in identifying environmental impacts of, and reasonable alternatives to, the proposed action.

(2) Any determination under this paragraph is subject to review and withdrawal at any time prior to approval of the FEIS.

(h) The initial printing of the FEIS shall be in sufficient quantity to meet the request for copies which can be reasonably expected from agencies, organizations, and individuals. Normally, copies will be furnished free of charge. However, with Administration concurrence, the party requesting the FEIS may be charged a fee which is not more than the actual cost of reproducing the copy or may be directed to the nearest location where the statement can be reviewed.

(i) At the time the FEIS is distributed and filed with EPA, the applicant is responsible for making the FEIS available through State and areawide clearinghouses pursuant to OMB Circular A-95, publication of a notice of availability in local newspapers, and for furnishing the document to any person(s), organizations, or agencies that made substantive comments on the DEIS or requested a copy. At this time the FEIS shall be available for public review at the applicant's offices and at appropriate Administration offices. A copy should also be made available for public review at public institutions such as local government offices, public libraries, and schools, as appropriate.

(j) The Administration shall not make any project approvals for any action requiring an EIS until the approval of a ROD, in accordance with § 771.127.

§ 771.127 Record of decision

(a) The Administration shall complete and sign a ROD (40 CFR 1505.2) no sooner than 30 days after publication of the FEIS notice in the Federal Register or 90 days after publication of a notice for the DEIS, whichever is later. The ROD should document any required Section 4(f) approval in accordance with § 771.135(k). A preliminary ROD is to be prepared by the Administration in consultation with the applicant. The proposed action shall not be advanced except for administrative actions taken to secure further project funding and other actions consistent with 40 CFR 1506.1 until any required ROD has been signed. A ROD is not required for those EIS's where the DEIS was filed with

EPA prior to July 30, 1979 (For FHWA November 30, 1979)

(b) If the Administration subsequently wishes to take an action which was not identified as the proposed action in the final EIS, or proposes to make substantial changes to the mitigation measures or findings discussed in the record of decision, a revised preliminary record of decision shall be processed internally by the same offices that acted on the original EIS

§ 771.129 Reevaluation.

(a) The applicant shall consult with the Administration to assure that the proposed action or environmental conditions have not significantly changed prior to proceeding with major project approvals or authorizations.

(b) The DEIS or FEIS may be supplemented at any time. Supplements will be necessary when there have been significant changes in the proposed action, the affected environment, the anticipated impacts, or the proposed mitigation measures. However, a supplemental EIS will not be necessary if the Administration decides to fund an alternative adequately covered in the Final EIS but not identified as the proposed action. The decision to prepare a supplement to the FEIS shall not require withdrawal of the previous approvals for those aspects of the proposed action not directly affected by the changed condition or new information. A supplement is to be developed in the same manner (except that scoping is not required) as a new EIS (draft and final, with a ROD)

(c)(1) The DEIS is considered valid for a period of 3 years. If an acceptable FEIS is not submitted to the Administration within 3 years from the date of the DEIS circulation, a written evaluation of the DEIS shall be prepared by the Administration in cooperation with the applicant prior to submission of the FEIS. This evaluation must demonstrate that there have not been significant changes in the proposed action, the affected environment, the anticipated impacts or the proposed mitigation measures. If there have been changes in these factors which would be significant in the consideration of the proposed action, a supplement to the DEIS or a new DEIS shall be prepared.

(2) If major steps to advance the action (e.g., authority to acquire a substantial portion of the right-of-way, or approval of the plans, specifications and estimates) have not occurred within 3 years from the date the FEIS or FEIS supplement was approved, the Administration in cooperation with the applicant shall prepare a written evaluation of the FEIS before further

approvals may be granted. If there have been significant changes in the proposed action, the affected environment, the anticipated impacts, or proposed mitigation measures, a new or supplemental EIS shall be prepared and circulated.

(3) If major steps to advance the action have not occurred within 5 years from the date the FEIS or FEIS supplement was approved, or within the time frame identified in the FEIS, the written evaluation required in paragraph (c)(2) of this section will be prepared and forwarded for review and action to the same offices that took approval action on the original FEIS

(4) The requirements for a written evaluation as described in paragraphs (c)(2) and (c)(3) of this section apply only to requests for Administration approvals after July 30, 1982.

(d) If any changes are made to the proposed action and it is uncertain if a supplemental EIS is required, the applicant will develop appropriate environmental studies or, if necessary, an EA to assess the impacts of such changes. If it is determined that the changes result in significant environmental impacts which could not be identified from reviewing the initial EIS, a supplemental EIS will be prepared. If no supplemental EIS is required after the studies or EA required by this subsection have been made, the Administration shall so indicate in the project file

§ 771.131 Emergency action procedures.

Requests for deviations from the procedures in this regulation because of emergency situations shall be referred to the Administration's Washington Headquarters for evaluation and decision after consultation with CEQ, through DOT, in accordance with 40 CFR 1508.11 for evaluation and decision.

§ 771.133 Compliance with other requirements.

(a) The FEIS or FONSI should document compliance with requirements of all applicable environmental laws, Executive Orders, and other related requirements. If full compliance is not possible by the time the FEIS or FONSI is prepared, the FEIS or FONSI should reflect consultation with the appropriate agencies and provide reasonable assurance that the requirements will be met. Approval of the environmental document by the Administration constitutes approval or any required findings and determinations that are contained therein

(b)(1) Sections 3(d) and 5(i) of the UMT Act require applicants for Sections

3 and 5 grants to make several certifications regarding the local decisionmaking process. The report requirement of Section 5(i) will be satisfied by a FONSI, FEIS, or an identification of the project as meeting the criteria for categorical exclusions.

(2) Section 5(h)(2) of the UMT Act requires the Secretary of Transportation to consider the environmental effects of any proposed Section 5 project and make decisions based on the public interest. The provisions of this regulation satisfy the statutory provisions of Section 5(h)(2).

§ 771.135 Section 4(f) of the Department of Transportation Act.

(a)(1) No Administration action will use land from a significant publicly owned park, recreation area, or wildlife and waterfowl refuge or any significant historic site unless a determination is made that

(i) There is no feasible and prudent alternative to the use of land from the property, and

(ii) The proposed action includes all possible planning to minimize harm to the property resulting from such use.

(2) Supporting information must demonstrate that there are unique problems or unusual factors involved in the use of alternatives and that the cost, environmental impacts, or community disruption resulting from such alternatives reaches extraordinary magnitudes.

(b) The Administration will determine the application of section 4(f). Any use of lands from a section 4(f) property shall be evaluated early in the development of the action when alternatives to the proposed action are under study

(c) Consideration under section 4(f) is not required when the Federal, State, or local official having jurisdiction over a park, recreation area, or refuge determines that it is not significant. The Administration will review the official's determination, to assure its reasonableness. In the absence of a satisfactory determination, the section 4(f) land will be considered to be significant

(d) In determining the application of section 4(f) to historic sites, the Administration in cooperation with the applicant will consult with the State Historic Preservation Officer and local officials and will identify properties on or eligible for the National Register of Historic Places. For purposes of section 4(f), a historic site is significant only if it is on or eligible for the National Register, unless the Administration determines that the application of section 4(f) is otherwise appropriate.

(e) Where Federal lands or other large public land holdings (e.g. State forests) are administered under statutes permitting management for multiple uses, and in fact are managed for multiple uses, section 4(f) applies only to portions of such lands which are in fact being used for or are designated in the plans of the administering agency as being for park, recreation, wildlife or waterfowl refuge, or historic purposes. The determination of significance shall be made by the official having jurisdiction over the lands. The Administration will review the agency's land use determination to assure its reasonableness.

(f)(1) Section 4(f) applies to all archeological sites on or eligible for inclusion on the National Register, including those discovered during construction, unless the Administration, after consultation with the State Historic Preservation Officer and the Advisory Council on Historic Preservation, determines that the archeological resource is important chiefly for the information it contains and has minimal value for preservation in place. Such archeological resources which do not warrant preservation in place may be recovered in accordance with a resource recovery plan developed in compliance with 36 CFR Part 800.

(2) For sites discovered during construction, where preservation of the resource in place is warranted, the section 4(f) process will be expedited. In such cases, the evaluation of feasible and prudent alternatives will take account of the level of investment already made and the review process, including the consultation with other agencies, will be shortened as appropriate.

(g) Designations of park and recreation lands, wildlife and waterfowl refuges, and historic sites are sometimes made and determinations of significance changed late in the development of a proposed action. With the exception of the treatment of archeological resources in paragraph (f) of this section, an action may proceed without consideration under section 4(f) if the property interest in the section 4(f) type lands was acquired for transportation purposes prior to the designation or change in the determination of significance and if an adequate effort was made to identify properties protected by section 4(f) prior to project approval.

(h) The evaluations of alternatives to avoid the use of section 4(f) land and of possible measures to minimize harm to such lands shall be presented in the DEIS or EA or, for those projects classified as categorical exclusions, in a separate document. The document

containing the section 4(f) evaluation shall be provided for coordination and comment to the official having jurisdiction over the section 4(f) property and to the Department of the Interior and, as appropriate, to the Department of Agriculture and the Department of Housing and Urban Development. A time limit of 45 days shall be established by the Administration for receipt of comments.

(i) The discussion in the FEIS, FONSI, or separate section 4(f) evaluation shall specifically address:

(1) The reasons why alternatives to avoid a section 4(f) property are not feasible and prudent, and

(2) All measures which will be taken to minimize harm to the section 4(f) property.

(j) The final section 4(f) evaluation will be reviewed for legal sufficiency by the Administration Chief Counsel or designee.

(k) The Administration will document and make the section 4(f) approval either in its approval of the FEIS or in the ROD for actions processed with EIS's. In those cases where the section 4(f) approval is documented in the FEIS, the Administration will summarize the basis for its section 4(f) approval in the ROD. Actions requiring the use of section 4(f) property and proposed to be processed with a FONSI or classified as a categorical exclusion shall not proceed until notified by the Administration of section 4(f) approval. For those actions processed with a FONSI or classified as a categorical exclusion, any required section 4(f) approval will be documented separately.

(l) Circulation of a separate section 4(f) evaluation will be required when:

(1) A modification of the alignment or design requires the use of section 4(f) property after the categorical exclusion, FONSI, or FEIS has been processed,

(2) A modification of the alignment or design which significantly increases the use of section 4(f) land is found to be necessary after the original section 4(f) approval, or

(3) Another agency is the lead agency for the NEPA process, unless another DOT element is preparing the section 4(f) statement.

(m) An analysis required by section 4(f) may involve different levels of detail where the section 4(f) involvement is addressed in a tiered EIS.

(1) When the first tier broad-scale EIS is prepared, the detailed information necessary to complete the section 4(f) evaluation may not be available at that stage in the development of the action. In such cases, an evaluation may be made on the potential impacts that a proposed action will have on section 4(f)

land and whether those impacts could have a bearing on the decision to be made. A preliminary determination may be made at this time as to whether there are feasible and prudent locations or alternatives for the action to avoid the use of section 4(f) land. This preliminary determination shall consider all possible planning to minimize harm to the extent that the level of detail available at the first tier EIS stage allows. It is recognized that such planning at this stage will normally be limited to ensuring that opportunities to minimize harm at subsequent stages in the development process have not been precluded by decisions made at the first tier EIS stage. This preliminary determination is then incorporated into the first tier EIS.

(2) A section 4(f) approval made when additional design details are available shall include a determination that:

(i) The preliminary section 4(f) determination made pursuant to paragraph (m)(1) of this section is still valid.

(ii) There are no feasible and prudent design alternatives to the use of such section 4(f) land.

(iii) The proposed action includes all possible planning to minimize harm.

§ 771.137 International actions

(a) The requirements of this regulation apply to:

(1) Administration actions significantly affecting the environment of the global commons outside the jurisdiction of any nation (e.g., the oceans and Antarctica).

(2) Administration actions significantly affecting the environment of a foreign nation not participating in the action or not otherwise involved in the action.

(3) Administration actions which significantly affect the environment of a foreign nation and which provide a product or action producing a toxic emission or effluent that is prohibited or strictly regulated in the United States by Federal law.

(4) Administration actions outside the U.S., its territories, and possessions which significantly affect natural resources of global importance designated for protection by the President or by international agreement.

(b) If communication with a foreign government concerning environmental studies or documentation is anticipated, the Administration shall coordinate such communication with the Department of State through the Office of the Secretary of Transportation.

[FR Doc. 80-33714 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF TRANSPORTATION**Urban Mass Transportation Administration****Policy on Major Urban Mass Transportation Investments and Policy Toward Rail Transit****AGENCY:** Urban Mass Transportation Administration (UMTA)**ACTION:** Notice of Revised UMTA Policy.

SUMMARY: This notice is being published to announce two revisions to the UMTA Policy on Major Urban Mass Transportation Investments and Policy Toward Rail Transit. Changes that have been made to the FHWA/UMTA environmental impact procedures published elsewhere in the **Federal Register** have necessitated these policy statement revisions. These revised procedures establish that UMTA may fund conceptual design studies leading to a greater level of detail on the alternatives presented in the alternatives analysis/draft environmental impact statement (EIS). The revised procedures further establish that UMTA may fund preliminary engineering following the circulation of the alternatives analysis/draft EIS. Preliminary engineering on the locally preferred alternative as well as other promising alternatives evaluated in the draft EIS will provide more accurate information on costs and environmental impacts for the final EIS.

Previously, alternatives were developed in less detail in the alternatives analysis/draft EIS and preliminary engineering was undertaken following the circulation of the final EIS. These changes will integrate a progressively more detailed study of alternatives into the EIS process to ensure that the preferred alternative in the final EIS is more carefully defined in terms of environmental impacts and costs. This notice will clarify UMTA procedures governing the EIS process for major urban mass transportation investments.

FOR FURTHER INFORMATION CONTACT: Mr. John Barber, Office of Transit Assistance (UTA-32), telephone (202) 472-7100, or Mr. Joel Ettinger, Office of Planning assistance (UPM-12), telephone (202) 426-2380, Urban Mass Transportation Administration, 400 Seventh Street, SW, Washington, D.C. 20590, between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: The Urban Mass Transportation Administration (UMTA) published its Policy on Major Urban Mass Transportation Investments on September 22, 1976 (41 FR 41512) and

Policy Toward Rail Transit on March 7, 1978 (43 FR 9428). The procedures set forth in the major investment policy established the requirement for a rigorous, objective evaluation of alternatives where a major investment was being considered. The procedures specified that the alternatives analysis is combined with a draft environmental impact statement (EIS) and that the final EIS is prepared at the same level of detail as the draft EIS.

During the commenting period on UMTA's proposed regulation on environmental impact and related procedures (44 FR 59445, October 15, 1979), UMTA applicants asked for clarification of the relationship of the alternatives analysis and the EIS process. Further, suggestions were made to integrate preliminary engineering into the EIS process because of what was perceived as duplicative and confusing agency review requirements for each

UMTA's experience in developing EIS's under the procedures in its major investment and rail transit policies has shown the need for a greater level of detail on environmental impacts and more accurate cost estimates of the project proposals emerging from alternatives analysis before the final EIS can be prepared.

For these reasons, UMTA is implementing the following changes in the procedures of the major investment and rail transit policies. UMTA may allow, where appropriate, conceptual design studies during the preparation of the alternatives analysis/draft EIS. These studies would be undertaken at a sufficient level of detail to identify a locally preferred alternative in terms of mode and general alignment. Upon completion of the alternatives analysis/draft EIS, UMTA may approve funds to support preliminary engineering for one or more promising alternatives. By authorizing preliminary engineering after the draft EIS and the applicant's preferred alternative report have been completed, UMTA will be integrating a progressively more detailed study of promising alternatives into the EIS process to ensure that the preferred alternative in the final EIS is more carefully defined in terms of environmental impacts and costs. This procedure should also aid applicants by clarifying the sequence of UMTA decisions with respect to the evaluation of fixed guideway alternatives.

Comments are invited on these procedures. Moreover, since a forthcoming Notice of Proposed Rulemaking (NPRM) will also provide an opportunity for comment on the entire set of policies and procedures governing major urban transportation investments,

there will be additional opportunities for public involvement. That NPRM is being published in the **Federal Register** with several proposed revisions to the FHWA/UMTA joint planning regulations. Among the revisions is a set of proposed joint FHWA and UMTA procedures covering all planning activities leading to the preparation of a draft EIS for major urban transportation investments. A change in nomenclature will be proposed in the NPRM whereby the term "alternatives analysis" will be replaced with "corridor refinement studies".

Procedures for Major Urban Mass Transportation Investments

This section outlines the procedures which UMTA will normally follow in reviewing alternatives analysis studies, in implementing the environmental impact statement requirements of the National Environmental Policy Act, and in making funding commitments.

1 After obtaining UMTA's concurrence, the applicant may proceed with an alternatives analysis, and UMTA in cooperation with the applicant will prepare a draft EIS. The draft EIS shall be combined in a single document with the results of the alternatives analysis. The alternatives analysis will investigate the most promising alternatives identified in system planning at a sufficient level of detail to identify a locally preferred alternative in terms of mode and general alignment. This investigation may include conceptual design of the alternatives to provide a sufficiently confident level of cost, ridership demand, and environmental impact information to allow a decision on a locally preferred alternative. UMTA will ensure that the alternatives analysis and preparation of the draft EIS have been performed in accordance with UMTA policy and procedures.

2 After the end of the circulation period for the draft EIS, the applicant should designate, in a separate document, the locally preferred alternative and state a rationale for the choice. This document should clearly state that any recommendation is solely that of the applicant and that UMTA's judgement is reserved until the environmental process is completed.

3 Upon review of the locally preferred alternative report and the comments received on the draft EIS, UMTA will decide whether the alternatives analysis requirements have been satisfied and a preliminary engineering grant should be given to develop data for the final EIS. This decision will be based upon an appraisal of the cost-effectiveness of the

locally preferred alternative compared to the other alternatives examined in the analysis. The grant may be for preliminary engineering of the locally preferred alternative as well as other promising alternatives evaluated in the draft EIS. Preliminary engineering will be undertaken as necessary to insure that all alternatives in the final EIS are presented at a comparable level of detail. Preliminary engineering should develop system cost, effectiveness, and impact information with particular attention to alternative designs, operations, detailed location decisions and appropriate mitigation measures.

4. The final EIS is developed during preliminary engineering. No action may be taken which would limit the choice of reasonable alternatives studied in the draft EIS until completion of the circulation of the final EIS.

5. UMTA may admit projects into preliminary engineering whose combined cost exceeds available Federal authorization levels. This will be done in anticipation of any of several possibilities: the withdrawal of projects as a result of changing local priorities, a local decision to use non-Federal resources to finance more than 20 percent of total cost, enactment of additional authorizations; or changing conditions such as the availability of detailed cost estimates which might lead to a later decision that a particular project should not be federally financed.

6. During the execution of preliminary engineering, the applicant will complete all the steps which must precede a Federal indication of intent to fund the project. These steps include providing evidence of firm commitment of the non-Federal capital share, providing evidence of State and/or local consensus regarding the financing of operating deficits, and planning for and gaining financial commitment to necessary supportive actions to promote effective utilization of the proposed fixed guideway system. A letter of intent may be issued for construction in a specific dollar amount only upon completion of the circulation of the final EIS and review of the capital grant application, the transcript of the public hearing, and the detailed cost estimates emerging from preliminary engineering. The decision to issue such a letter will be based upon a comparison of projects then pending.

7. If UMTA determines that the project warrants Federal support, UMTA will also develop with the locality a full funding agreement which will (1) Fix the total amount of the Federal contributions, subject to a defined method of adjusting for inflation, (2) include a mutually

agreeable schedule for anticipating Federal contributions during the life of the project, and (3) require the locality to complete construction of the project as defined, and to absorb any additional cost incurred, except under certain specific "extraordinary" circumstances.

8. Specific annual contributions under the letter of intent and full funding agreement will be subject to the availability of appropriations and the ability of the grant recipient to use the funds effectively. UMTA will limit the sum total of letters of intent to the sum of future Section 3 authorizations, less an amount which is necessary for those portions of the Section 3 program which are not covered by letters of intent.

Dated October 24 1980

Theodore C Lutz,
Administrator

[FR Doc. 80-33695 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-57-M

Appendix F

ENVIRONMENTAL PROCEDURES

NJDOT

Levels of Action Determination

Environmental Reevaluation

LEVELS OF ACTION DETERMINATION

Procedure

The determination of the Level of Action for projects will be a shared responsibility among the Bureau of Environmental Analysis (BEA) and the lead units within NJDOT. The responsibility is as follows:

- Lead Unit - Initiates all requests for LOA determination.
- Lead Unit - Identifies and classifies certain projects as Categorical Exclusions and requests FHWA approval. See Attachment A - Classification of Categorical Exclusions.
- BEA - Identifies and classifies projects as EIS's, EA's, and Categorical Exclusions (excepting CE's classified by lead units) and requests FHWA approval.

BEA and the lead units will utilize the list of actions in Paragraph 771.115(b) of the October 30, 1980 Federal Register to determine if a project is a Categorical Exclusion. Only those actions specifically listed in the October 30, 1980 Federal Register qualify as Categorical Exclusions.

The lead unit may make a Categorical Exclusion determination for projects covered by Items Number 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13 (except for widenings), 14, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29.

The procedure is as follows:

A. Projects not requiring BEA Assessment

1. If a proposed project does not require BEA assessment, the lead unit will prepare the form "Level of Action Determination." The lead unit will contact office of Community Involvement (OCI) to determine the need for a community involvement program and indicate extent of the program on the form.

2. The Bureau Chief of the Lead Unit will review and recommend approval of the LOA Determination and forward to the appropriate Division Director (Example - Design Services, Traffic Operations and Local Aid Services.)
3. The Division Director will concur in the LOA Determination and transmit the Determination to the FHWA Division Administrator.
4. FHWA Division Administrator will, if in agreement, concur in the Determination and return a copy to NJDOT.
5. The lead unit will provide OCI a copy of approved LOA determination.

B. Projects requiring BEA Assessment

1. The Lead Unit initiates a request for LOA Determination.
2. The Lead Unit identifies the following information on the LOA Determination form:

Project Identification
 Costs
 Existing and Proposed Roadway
 Description of Project
 Description of ROW
 Coast Guard and Corps of Engineer Involvement

3. The Lead Unit forwards the LOA Determination to BEA.
4. BEA assigns a Project Manager who prepares an LOA Assessment and completes the LOA Determination. OCI is requested to provide the appropriate community involvement program.
5. The Chief, BEA, will review and recommend approval of the LOA Determination and forward it to the Director, Division of Project Development.
6. The Director, Division of Project Development, will concur in the LOA Determination and forward it to FHWA Division Administrator.
7. The FHWA Division Administrator, will, if in agreement, concur in the Determination and return a copy to NJDOT.
8. BEA will supply a copy of the approved LOA determination to the lead unit and to OCI.

Attachment A

Classification of Categorical Exclusions (Class 2 Actions)

1. The Department will utilize the actions listed as Categorical Exclusions in Paragraph 771.115(b) of the October 30, 1980 Federal Register (See Attachment B).
2. The lead unit within the Department will, with the exceptions as noted below, in Item 3, determine if a proposed action is a Categorical Exclusion. The lead unit will forward this determination to FHWA for approval through the Division Director. The lead unit will use the attached list of Categorical Exclusions in making its determination with the exceptions as noted therein. The exceptions will require a review, assessment and classification by BEA.
3. The exceptions requiring a review, assessment and classification by BEA are:
 - 1) Any action on the list (October 30, 1980 Federal Register) of Categorical Exclusions which requires additional right of way or easements.
 - 2) Categorical Exclusions #9, #15, #22 and #13 (widenings only) on the list of Categorical Exclusions cited above.

Although these actions are normally Categorical Exclusions they have potential for significant environmental impacts. BEA will assess the likelihood of significant environmental impacts especially on properties protected by Section 4(f) of the DOT Act; Section 106 of the National Historic Preservation Act; Executive Order 11910, Protection of Wetlands; and Executive Order 11988, Floodplain Management.

BEA will forward its determination of a Categorical Exclusion to FHWA for approval through the Director, Division of Project Development.

Attachment B

List of Categorical Exclusions (Class 2)

(Paragraph 771.115(b) - October 30, 1980 Federal Register)

Actions that do not individually or cumulatively have a significant effect on the environment do not require an environmental impact statement or environmental assessment. The following actions are categorical exclusions and will not require a review and assessment by BEA except as indicated or where additional right of way or easements are required:

- (1) Planning and technical studies which do not fund the construction of facilities or acquisition of capital equipment.
- (2) Grants for training and research programs which do not involve construction.
- (3) Approval of unified planning work program and certification of a State or local planning process. 23 CFR Part 450.
- (4) Approval of Transportation Improvement Programs under 23 CFR Part 450, Subpart C and statewide programs under 23 CFR Part 630, Subpart A.
- (5) Approval of project concepts under 23 CFR Part 476.
- (6) Engineering when undertaken to define the elements of a proposal or alternatives sufficiently so that environmental effects can be assessed.
- (7) Federal-aid highways system revisions under 23 U.S.C. 103, which establishes classes of highways on Federal-aid highway system.
- (8) Approval of utility installations along or across a transportation facility.

- (9) Reconstruction or modification of an existing two lane bridge structure on essentially the same alignment or location (e.g. widening less than a single travel lane, adding shoulders or safety lanes, walkways, bikeways, or pipelines) except bridges on or eligible for inclusion on the National Register or bridges providing access to barrier islands. Reconstruction or modification of an existing one lane bridge structure, presently serviced by a two lane road and used for two lane traffic, to a two lane bridge on essentially the same alignment or location, except bridges on or eligible for inclusion on the National Register or bridges providing access to barrier islands. This action requires review, assessment and classification by BEA.
- (10) Construction of bicycle and pedestrian lanes, paths, and facilities.
- (11) Activity included in the State's "highway safety plan" under 23 U.S.C. 402.
- (12) Transfer of Federal lands pursuant to 23 U.S.C. 317 when the subsequent action is not an FHWA action.
- (13) Modernization of an existing highway by resurfacing, restoration, rehabilitation, widening less than a single lane width, adding shoulders, adding auxiliary lanes for localized purposes (e.g. weaving, turning, climbing), and correcting substandard curves and intersections. This classification is not applicable when the proposed project requires acquisition of more than minor amounts of right of way or substantial changes in access control. This action requires review, assessment and classification by BEA, if there is any widening of the existing roadway.
- (14) Highway safety or traffic operations improvement projects including the correction or improvement of highway hazard locations; elimination of road traffic control devices; railroad warning devices; and lighting. This classification is not applicable when the proposed action requires acquisition of more than minor amounts of right of way or substantial changes in access control.

- (15) Alterations to an existing building to provide for noise reduction and the installation of noise barriers. This action requires review, assessment and classification by BEA.
- (16) Ridesharing activities and transportation corridor fringe parking facilities.
- (17) Landscaping.
- (18) Program administration and technical assistance activities by the applicant to administer Section 18 funds. (Rural Public Transportation Program).
- (19) Project administration and operating assistance to transit authorities to continue existing service or increase service to meet demand.
- (20) Purchase of vehicles of the same type (same mode) either as replacements or to increase the size of the fleet where such increase can be accommodated by existing facilities or by new categorical exclusion.
- (21) Track and rail bed maintenance and improvements when carried out within the existing right of way.
- (22) Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where no additional land is required and there is no substantial increase in the number of users. This action requires review, assessment and classification by BEA.
- (23) Purchase and installation of operating or maintenance equipment to be located within the physical impacts of the site.
- (24) Installation of signs, small passenger and bus shelters, and traffic signs where no substantial land acquisition or traffic disruption will occur.

- (25) Construction of new bus storage and maintenance facilities in areas used predominately for industrial or transportation purposes where such construction is not inconsistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic.
- (26) Acquisition of land in which the property will not be modified, the land use will not be changed, and displacements will not occur. For projects other than UMTA advance land loans, this categorical exclusion is limited to the acquisition of minor amounts of land. This is undertaken for the purpose of maintaining the current land use and preserving alternatives to be considered in the environmental process. Advance land acquisition shall not limit the evaluation of alternatives, including shifts in alignment for a construction project, which may be required in the NEPA process.
- (27) Promulgation of rules, regulations, and directives for which a regulatory analysis is not required by Section 3 of Executive Order 12044.
- (28) Research activities as defined in 23 U.S.C. 307.
- (29) Emergency repairs under 23 U.S.C. 125 which do not substantially change the design and are commenced during or immediately after the occurrence of natural disaster or catastrophic failure.



DEPARTMENT OF TRANSPORTATION

PROCEDURE

No.	1.1281
Page	1 of 4

SUBJECT	EFFECTIVE DATE	APPROVAL
ENVIRONMENTAL REEVALUATION	3-1-82	<i>Amiel Cauty</i> Commissioner of Transportation

I. PURPOSE

To state the procedure for reaffirming the Approved Level of Action and assure the adequacy of the environmental document.

II. AUTHORITY

N.J.S.A. Title 27
National Environment Policy Act, 1969

III. DEFINITIONS

Environmental Impact Statement (Class I Action) is a public document prepared for actions which may cause significant impacts on the environment. An Environmental Impact Statement (EIS) provides full and fair discussion of significant environmental impacts and informs decision-makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment.

Categorical Exclusions (Class II Action) are actions that do not individually or cumulatively have a significant effect on the environment and do not require an Environmental Impact Statement or Environmental Assessment.

Environmental Assessment/FONSI (Class III Action) is a public document prepared for actions which are not a Categorical Exclusion and do not clearly require the preparation of an EIS. An Environmental Assessment (EA) provides the means for determining the significance of the impacts of the action on the environment. If no significant impacts are identified, the EA forms the basis for a Finding of No Significant Impact (FONSI).

Lead Units are those units that will be requesting and using FHWA Funds for their programs and projects.

IV. REQUIREMENTS

The National Environment Policy Act requires that Federal actions be evaluated to determine their scope and effect on the human environment before proceeding. This process is to take place at the earliest stage and continue at each succeeding Federal action to insure that the original action is accurate and valid. Federal actions include location approval, design approval (if applicable), PS&E approval, or right of way authorization. Items to be re-evaluated include the scope of the project, changes in existing land use, and new or changed Social, Economic and Environmental information and impacts. Significant differences from the previous submission would require a new determination as to the adequacy of the environmental document and the possible need to process and circulate a supplemental environmental document.

PROCEDURE

		No. 1.1281
SUBJECT	EFFECTIVE DATE	
ENVIRONMENTAL REEVALUATION	3-1-82	Page 2 of 4

IV. REQUIREMENTS (Cont'd)

The environmental reevaluation of a project will normally take place at Step 22 of the Action Plan.

Note: ENVIRONMENTAL REEVALUATIONS ARE NOT REQUIRED FOR PROJECTS WHICH WERE ORIGINALLY CLASSIFIED AS NON-MAJOR ACTIONS IN ACCORDANCE WITH REVISION I OF ACTION PLAN.

V. POLICY

A. RESPONSIBILITY

1. Lead Units are responsible for:
 - . initiating all reevaluations.
 - . completing the reevaluations which were classified by the Lead Unit as Categorical Exclusions.
2. The Bureau of Environmental Analysis is responsible for:
 - . completing reevaluations for all EIS's, EA's, Non-Major Actions, and for CE's that were originally classified by the Bureau of Environmental Analysis.
3. Lead Units and BEA are also responsible for:
 - . notifying the Resources & Priority Committee of any reevaluation which would necessitate a new or supplemental environmental document requiring the use of additional resources.
4. The Resources & Priority Committee is responsible for:
 - . determining the priority of projects which, as a result of an environmental reevaluation, will require a new or supplemental environmental document.

VI. PROCEDURE FOR PROCESSING A REEVALUATION REQUEST FOR STATE HIGHWAY PROJECTS

A. CATEGORICAL EXCLUSION (SEE RESPONSIBILITY SECTION V.A.1.)

Lead Unit
Project Manager

1. Contact the Office of Community Involvement to determine the status of the Community Involvement Program then complete and sign Categorical Exclusion Form PT-E-4A and forward via your chain of command to your Bureau Chief or your Regional Design Engineer.

PROCEDURE

No. 1.1281

SUBJECT

ENVIRONMENTAL REEVALUATION

EFFECTIVE DATE

3-1-82

Page 3 of 4

VI. PROCEDURE FOR PROCESSING A REEVALUATION REQUEST FOR STATE HIGHWAY PROJECTS (Cont'd)

A. CATEGORICAL EXCLUSION (SEE RESPONSIBILITY SECTION V.A.1.) (Cont'd)

- | | |
|--|---|
| Lead Unit
Bureau Chief or/
Regional Design
Engineer | 2. Review the Form PT-E-4A, and if you approve, sign and date the Form PT-E-4A and forward to the Office of Programming and Monitoring. |
| Office of Programming
& Monitoring | 3. Forward the reevaluation and other required documents to FHWA with a request for authorization. |

B. EIS, EA, CE AND NON-MAJOR ACTION (SEE RESPONSIBILITY SECTION V.A.2.)

- | | |
|---|---|
| Lead Unit
Project Manager | 1. Complete the information on Form PT-E-4B EIS/EA/Non-Major Action or PT-E-4A Categorical Exclusion, as to project identification and Question Number One. Sign and date Form PT-E-4A/PT-E-4B and forward to the Bureau of Environmental Analysis. |
| Bureau of
Environmental
Analysis Project
Manager | 2. Contact the Office of Community Involvement to determine the status of the Community Project Involvement Program, then complete and sign and date the Form PT-E-4B/PT-E-4A and forward to your Bureau Chief. |
| Chief, Bureau of
Environmental
Analysis | 3. Review and approve by signing and dating Form PT-E-4B/PT-E-4A and forward the original to the Lead Unit Project Manager. |
| Lead Unit
Project Manager | 4. Upon receipt of Form PT-E-4B/PT-E-4A make a copy for your files and forward the original to the Office of Programming and Monitoring. |
| Office of Programming
& Monitoring | 5. Forward the reevaluation with other required documents to FHWA with a request for authorization. |

VII. PROCEDURE FOR PROCESSING A REEVALUATION REQUEST FOR LOCAL AND MUNICIPAL HIGHWAY PROJECTS

A. CATEGORICAL EXCLUSION (SEE RESPONSIBILITY SECTION V.A.1.)

- | | |
|---|---|
| Lead Unit
Project Manager,
Bureau of Local Aid
& Safety Programs | 1. Contact the Office of Community Involvement to determine the status of the Community Involvement Program then complete and sign Categorical Exclusion Form PT-E-4A and forward via your chain of command to your Bureau Chief. |
|---|---|

PROCEDURE

		No 1.1281
SUBJECT ENVIRONMENTAL REEVALUATION	EFFECTIVE DATE 3-1-82	Page 4 of 4

VII. PROCEDURE FOR PROCESSING A REEVALUATION REQUEST FOR LOCAL AND MUNICIPAL HIGHWAY PROJECTS (Cont'd)

A. CATEGORICAL EXCLUSION (SEE RESPONSIBILITY SECTION V.A.1.) (Cont'd)

Bureau Chief,
Local Aid & Safety
Programs

2. Review and approve by signing and dating the Form PT-E-4A and request authorization to advertise the project. Forward the originals to FHWA via the Office of Programming and Monitoring with a request for authorization.

B. EIS, EA, CE, AND NON-MAJOR ACTION (SEE RESPONSIBILITY SECTION V.A.2.)

Lead Unit Project
Manager, Bureau of
Local Aid & Safety
Programs

1. Complete information on Form PT-E-4B EIS/EA/Non-Major Action or PT-E-4A Categorical Exclusion, as to project identification and Question Number One. Sign and date the Form and forward to the Project Manager, Bureau of Environmental Analysis.

Project Manager,
Bureau of
Environmental
Analysis

2. Contact the Office of Community Involvement to determine the status of the Community Project Involvement Program, then complete and sign and date the Form PT-E-4B/PT-E-4A and forward to your Bureau Chief.

Bureau Chief,
Environmental
Analysis

3. Review and approve by signing and dating the Form PT-E-4B/PT-E-4A and forward the original to the Lead Unit Project Manager, Bureau of Local Aid and Safety Programs.

Lead Unit
Project Manager,
Bureau of Local
Aid and Safety
Programs

4. Forward the reevaluation and other required documents to FHWA VIA the Office of Programming and Monitoring with a request for authorization.

ENVIRONMENTAL REEVALUATION

ENVIRONMENTAL IMPACT STATEMENT/FINDING OF NO SIGNIFICANT IMPACT/NON-MAJOR ACTION

Route and Section _____

Federal Project No _____

Local Name of Road _____

Job Code No _____

County _____

LOA Classification _____

Municipality _____

LOA Classification Date _____

Title of Project _____

Environmental Document (Check one)

FEIS

EA/FONSI

Non-Major Action

WA Approval of Environmental Document _____

Date

1 Has the scope of the project changed since approval of the environmental document?
Comment on changes

2 Are the changes in project scope significant enough to change the findings or conclusions in the environmental document?

3 Has land use in the project area changed significantly enough to alter the conclusions in the environmental document?

4 Have all environmental commitments been incorporated in the project plans and specifications?

5 Have new or changed regulations, which would significantly alter the conclusions in the environmental document, been issued?

6 Has new information or factors become known which would change the conclusions in the environmental document?

Has there been a change in community reaction to project since environmental document approval?
Comment on current status of community reaction

YES	NO	REVIEW UNIT
		Lead Unit
		BEA
		BEA
		BEA
		BEA
		BEA
		BEA/OCI

COMMENTS:

PREPARED BY:

Lead Unit: _____
Project Manager _____ Date _____ Telephone No. _____

Bureau of Environmental Analysis
Project Manager _____ Date _____ Telephone No. _____

On the basis of the above evaluation it is my determination that there have not been significant changes in the proposed action, the affected environment, the anticipated impacts; or the proposed mitigation measures since approval of the environmental document

Chief, Bureau of Environmental Analysis

Date

Appendix G

SUMMARY OF SELECTED ENVIRONMENTAL LEGISLATION

FHWA



U. S. DEPARTMENT OF TRANSPORTATION

FEDERAL HIGHWAY ADMINISTRATION

SUBJECT

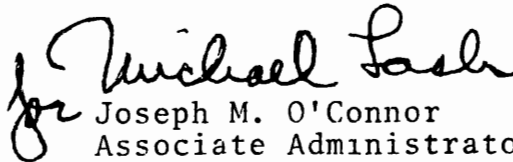
Summary of Selected
Environmental Legislation

FHWA NOTICE

N 6640.17
July 16, 1979

EXPIRATION DATE: July 12, 1980

1. PURPOSE. To provide distribution of an updated environmental reference list entitled "Summary of Selected Environmental Legislation."
2. CANCELLATION. This Notice cancels FHWA Notice N 6640.12, dated August 18, 1977, "Summary of Environmental Legislation."
3. BACKGROUND
 - a. Continual action by Congress in passing specialized environmental legislation and action by executive agencies in promulgating implementing regulations have resulted in a continuous expansion of environmental requirements. Because of the dynamics of this situation, there is a need to provide current information on these requirements.
 - b. This update of the "Summary of Environmental Legislation" provides a ready-reference list that can be used by FHWA regional and division offices and State highway agencies to keep current on pertinent environmental requirements.
4. COMMENTS
 - a. The attached reference list should be useful during early project development to ascertain what Federal laws and policies relating to environmental protection may be involved in a particular project.
 - b. Information on any noted omissions or comments on how the summary might be made more useful to the field should be forwarded to the Office of Environmental Policy (HEV-22).



Joseph M. O'Connor
Associate Administrator for
Right-of-Way and Environment

SUMMARY OF SELECTED ENVIRONMENTAL LEGISLATION

6-13-79

LEGISLATIVE REFERENCE	REGULATION REFERENCE	PURPOSE	APPLICABILITY	GENERAL PROCEDURES	AGENCY FOR COORDINATION AND CONSULTATION
<u>GENERAL ENVIRONMENTAL STATUTES</u>					
1 National Environ- mental Policy Act 42 U S C 4321-4347 (P L 91-190) (P L 94-83)	FHPM 7-7-2 23 CFR 771 DOT Order 5610 1B 40 CFR 1500, et seq , CEQ Regulations Executive Order 11514, as amended by Executive Order 11991 on NEPA respon- sibilities Executive Order 12114, Environmental Effects Abroad of Major Fed- eral Actions	Consider envi- ronmental factors through systematic interdisciplinary approach before committing FHWA to a course of action	All FHWA actions	Procedures set forth in CEQ regulations and FHPM 7-7-2	Appropriate Federal, State, and local agencies
2 Preservation of Parkland (Section 4(f)) 49 U S C 1653(f) 23 U S C 138	FHPM 7-7-2 23 CFR 771	Preserve publicly owned parklands, waterfowl and wildlife refuges, and all historic areas	Significant publicly owned parklands, recreation areas, wildlife and waterfowl refuges, and significant historic sites "used" for a highway project	Specific finding required 1 Avoids protected areas, if possible 2 Includes steps to minimize harm	DOI, DOA, HUD, and State or local agencies having jurisdiction

G-2

FHWA NOTICE N 6640 17
July 16, 1979
Attachment

SUMMARY OF SELECTED ENVIRONMENTAL LEGISLATION

FHWA NOTICE N 6640 17
July 16, 1979
Attachment

LEGISLATIVE REFERENCE	REGULATION REFERENCE	PURPOSE	APPLICABILITY	GENERAL PROCEDURES	AGENCY FOR COORDINATION AND CONSULTATION
<u>GENERAL ENVIRONMENTAL STATUTES</u>					
3 23 U S.C 109(h) (P L 91-605) (Process Guidelines)	FHPM 7-7-1 23 CFR 795	To assure that possible adverse economic, social, and environmental effects of proposed highway projects are fully considered and that final decisions on highway projects are made in the best overall public interest	Each State highway agency must have an environmental action plan under which all Federal-aid highway projects are developed	Identification of social, economic, and environmental effects Consideration of alternative courses of action Involvement of other agencies and the public Systematic interdisciplinary approach	Appropriate Federal, State, and local agencies
<u>HEALTH</u>					
4 Safe Drinking Water Act 42 U S C 300(f), et seq (See especially 42 U S C 300(j-6)) (P L 93-523)	FHPM 6-7-3-3 23 CFR 650, Subpart E	Ensure public health and welfare through safe drinking water.	1. All public drinking water systems and reservoirs (including rest area facilities) 2 Actions which may have a significant impact on an aquifer which is the sole or principal drinking water source.	Compliance with national primary drinking water regulations	EPA Appropriate State agency

63

SUMMARY OF SELECTED ENVIRONMENTAL LEGISLATION

LEGISLATIVE REFERENCE	REGULATION REFERENCE	PURPOSE	APPLICABILITY	GENERAL PROCEDURES	AGENCY FOR COORDINATION AND CONSULTATION
--------------------------	-------------------------	---------	---------------	-----------------------	--

HEALTH

5 Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901, et seq. See especially 42 U.S.C. 6961-6964 (P.L. 91-512) (P.L. 94-580)	23 CFR 751 40 CFR 240-255, Subpart I	Provide for the recovery and recycling, and environmentally safe disposal of solid wastes.	All projects which necessitate the disposal of solid wastes.		EPA
--	--	--	--	--	-----

C-4

6 Federal Environmental Pesticide Control Act (formerly FIFRA) 7 U.S.C. 136-136y (P.L. 92-516)	40 CFR 164, 172	Control the application of pesticides to provide greater protection to man and the environment.	See 36 CFR 171.3 for applicability.	Using or supervising restricted use pesticides will require certification	EPA
--	-----------------	---	-------------------------------------	---	-----

HISTORIC AND
ARCHEOLOGICAL
PRESERVATION

7 Section 106 of the National Historic Preservation Act, as amended 16 U.S.C. 470(f) (P.L. 89-665) (P.L. 91-243) (P.L. 93-54) (P.L. 94-422) (P.L. 94-458)	FHPM 7-7-2 23 CFR 771 36 CFR 60 36 CFR 63 36 CFR 800 Executive Order 11593	Protect, rehabilitate, restore, and reconstruct districts, sites, buildings, structures, and objects significant in American architecture, archeology and culture	All properties on or eligible for inclusion in the National Register of Historic Places	1 Identify and determine effects of project on subject properties 2. Afford Advisory Council early opportunity to comment, in accordance with 36 CFR, Part 800.	State Historic Preservation Officer, Advisory Council on Historic Preservation, DOI (HCRS)
---	---	---	---	--	--

FHWA NOTICE N 6640 17
July 16, 1979
Attachment

SUMMARY OF SELECTED ENVIRONMENTAL LEGISLATION

LEGISLATIVE REFERENCE	REGULATION REFERENCE	PURPOSE	APPLICABILITY	GENERAL PROCEDURES	AGENCY FOR COORDINATION AND CONSULTATION
<u>HISTORIC AND ARCHEOLOGICAL PRESERVATION</u>					
8 Preservation of Historical and Archeological Data 16 U.S.C. 469a (P L. 93-291) (Moss-Bennett Bill)		Preserving historical and archeological data from loss or destruction	Any alteration of terrain resulting from Federal construction project or federally licensed activity or program.	3. Mitigate damages to greatest extent possible	DOI (HCRS)
9 Act for the Preservation of American Antiquities (34 Stat 225) 16 U S C 431-433	43 CFR 3 36 CFR 251 1	Preserve and protect paleontological resources, historic monuments, memorials, and antiquities from loss or destruction.	Federal construction projects on federally owned property and any presidentially proclaimed historic landmarks, historic and prehistoric structures, and objects of historic or scientific interest	1 Identify and evaluate resource. 2 Mitigate or avoid resource in consultation with appropriate officials in the State 3. If necessary, apply for permission to appropriate, excavate, injure, or destroy such objects	State DOI (HCRS) Department having jurisdiction over land on which antiquities are situated

G-5

FHWA NOTICE N 6640.17
 July 16, 1979
 Attachment

SUMMARY OF SELECTED ENVIRONMENTAL LEGISLATION

LEGISLATIVE REFERENCE	REGULATION REFERENCE	PURPOSE	APPLICABILITY	GENERAL PROCEDURES	AGENCY FOR COORDINATION AND CONSULTATION
<u>LAND AND WATER USAGE</u>					
10 Wilderness Act 16 U S.C 1131-1136 (P L 88-577) (P L 90-532) (P L 91-504) (P L 92-364) (P L 93-429) (P L 93-550) (P L 93-632) (P L 94-557)	36 CFR 293 43 CFR 19 50 CFR 35	Preserve and protect wilderness areas in their natural condition for use and enjoyment by present and future generations	All lands designated as part of the wilderness system by Congress.	Apply for modification or adjustment of wilderness and boundary by Secretary of Department wishing to do so.	Agriculture (USFS) DOI (FWS, NPS, BLM) State agencies
11 Wild and Scenic Rivers Act 16 U S C 1271-1287 (P L 90-542) (P L 93-279) (P L 93-621) (P L. 94-486)	43 CFR 6223	Preserve and protect wild and scenic rivers and immediate environments for benefit of present and future generations.	All projects which affect designated and potential wild, scenic, and recreational rivers, and/or immediate environments.	Submit project plan reports	DOI (HCRS) and/or Agriculture (USFS)
12 Land and Water Conservation Fund Act (Section 6(f)) 16 U S C 460L-4 to 460L-11 (P L 88-578)		Preserve, develop, and assure the quality and quantity of outdoor recreation resources for present and future generations	All projects which impact recreational lands purchased or improved with land and water conservation funds	Secretary of the Interior must approve any conversion of property acquired or developed with assistance under this Act to other than public outdoor recreation use	DOI

C-6

FHWA NOTICE N 6640.17
July 16, 1979
Attachment

SUMMARY OF SELECTED ENVIRONMENTAL LEGISLATION

LEGISLATIVE REFERENCE	REGULATION REFERENCE	PURPOSE	APPLICABILITY	GENERAL PROCEDURES	AGENCY FOR COORDINATION AND CONSULTATION
<u>LAND AND WATER USAGE</u>					
13 Executive Order 11990, Protection of Wetlands	DOT Order 5660 1A	To avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative.	Federally undertaken, financed or assisted construction, and improvements in or with significant impacts on wetlands	Evaluate and mitigate impacts on wetlands Specific finding required in final environmental document	DOI (FWS), EPA, USCE State agencies
G-7 14 National Trails System Act 16 U S C 1241-1249 (P L 90-543) (P L 94-527)		Provide for outdoor recreation needs and encourage outdoor recreation	Projects affecting national recreational, scenic, or side trails designated by Congress and lands through which such trails pass	1 Apply for easement of right-of-way from Secretary of the Interior (Agriculture). 2 Ensure potential trail properties be made available for use as recreational and scenic trails	DOI (HCRS) Agriculture (USFS)
15 Rivers and Harbor Act of 1899 33 U S C 401, et seq, as amended and supplemented	33 CFR 114-115 FHPM 6-7-1	Protection of navigable waters of the U S	Any construction affecting navigable waters and any obstruction, excavation, or filling in	Must obtain approval of plans for construction, dumping and dredging permits, and bridge permits	USCE USCG EPA State agencies

FHWA NOTICE N 6640 17
 July 16, 1979
 Attachment

SUMMARY OF SELECTED ENVIRONMENTAL LEGISLATION

LEGISLATIVE REFERENCE	REGULATION REFERENCE	PURPOSE	APPLICABILITY	GENERAL PROCEDURES	AGENCY FOR COORDINATION AND CONSULTATION
<u>LAND AND WATER USAGE</u>					
16 Federal Water Pollution Control Act (1972), as amended by the Clean Water Act (1977) (formerly FWPCA) 33 U S C 1251-1376 (P L 92-500) (P L 95-217)	DOT Order 5660 1A FHWA Notices N5000.3 and N5000.4 FHPM 6-7-3 40 CFR 120 40 CFR 122-125 40 CFR 128-131 40 CFR 133 40 CFR 135-136 23 CFR, Part 650, Subpart B	Restore and maintain chemical, physical, and biological integrity of the Nation's waters through prevention, reduction, and elimination of pollution	Any discharge of a pollutant into waters of the U S.	<ol style="list-style-type: none"> 1 Obtain permit for dredge or fill material from USCE or EPA, as appropriate (Section 404) 2. Permit for all other discharges from EPA or appropriate State agency (Section 402) (Rest area sewage disposal and asphalt batch plants) 3 Water quality certification is required from State (Section 401) 4 Control of ocean discharges (Section 403) 	USCE EPA Designated State water quality control agency
Executive Order 11988, Evaluation of Flood Hazards	FHPM 6-7-3-2 23 CFR 771 DOT Order 5650.2 23 CFR, Part 650, Subpart A	To avoid the long- and short-term adverse impacts associated with the occupancy and modification of floodplains, and to restore and preserve the natural and beneficial values served by floodplains	All construction of Federal buildings, structures, roads, or facilities which encroach upon the base floodplain.	Specific finding required in final environmental document.	HUD USCE TVA Others

G-8

FHWA NOTICE N 6640 17
July 16, 1979
Attachment

SUMMARY OF SELECTED ENVIRONMENTAL LEGISLATION

LEGISLATIVE REFERENCE	REGULATION REFERENCE	PURPOSE	APPLICABILITY	GENERAL PROCEDURES	AGENCY FOR COORDINATION AND CONSULTATION
<u>LAND AND WATER USAGE</u>					
18 National Flood Insurance Act 42 U S C 4001-4128 (P L. 93-234)	24 CFR 1910	Increase limits of coverage and identify and disseminate information concerning flood-prone areas	Any federally assisted acquisition or construction project in area identified as having special flood hazards Sale of flood insurance available under the program	Conduct land management studies and investigation. Avoid any construction in flood-prone areas	HUD (FIA)
19 Marine Protection Research and Sanctuaries Act 33 U S C 1401-1444 (P.L 92-532)	FHWA Notices N5000 3 and N5000 4 40 CFR 225	Regulate dumping of materials into U S. ocean waters	Any transportation to and dumping into the open sea	Apply for permit in accordance with existing procedures	EPA USCE, if dredge material
20 Water Bank Act 16 U.S C 1301-1311 (P L 91-559)	40 CFR 752	Preserve, restore, and improve wetlands of the Nation	Any agreements with landowners and operators in important migratory waterfowl nesting and breeding areas	Apply procedures established for implementing Executive Order 11990	Secretary of Agriculture

G-9

FHWA NOTICE N 6640 17
 July 16, 1979
 Attachment

SUMMARY OF SELECTED ENVIRONMENTAL LEGISLATION

LEGISLATIVE REFERENCE	REGULATION REFERENCE	PURPOSE	APPLICABILITY	GENERAL PROCEDURES	AGENCY FOR COORDINATION AND CONSULTATION
<u>LAND AND WATER USAGE</u>					
21 Coastal Zone Management Act 16 U S C 1451-1464 (P L 92-583) (P L 94-370)	FHPM 7-7-2 15 CFR 920 15 CFR 923 15 CFR 925 23 CFR 771	Preserve, protect, develop, and (where possible) restore and enhance resources of the coastal zone	All projects significantly affecting areas under the control of the State coastal zone management agency.	Ensure that projects comply with Federal consistency regulations for coastal zone management programs.	State coastal zone management agency and Commerce (OCZM)
<u>WILDLIFE</u>					
22 Endangered Species Act of 1973, as amended 16 U S C 1531-1543 (P L 93-205) (P L 95-632)	50 CFR 17 50 CFR 402	Conserve species of fish, wildlife, and plants facing extinction	Any action that might jeopardize continued existence of such endangered/threatened species or result in destruction or modification of critical habitat	Consult with the Secretary of the Interior, Commerce, as appropriate	DOI (FWS) Commerce (NMFS)
23 Fish and Wildlife Coordination Act 16 U S C 661-666 (P L 85-624)	FHPM 7-7-2 23 CFR 771 50 CFR 410	Conservation, maintenance, and management of wildlife resources	Any project which involves impoundment (surface area of 10 acres or more), diversion, channel deepening, or other modification of a stream or other body of water	Follow DOI procedures.	DOI (FWS) State agencies

G-10

FHWA NOTICE N 6640 17
 July 16, 1979
 Attachment

SUMMARY OF SELECTED ENVIRONMENTAL LEGISLATION

10

LEGISLATIVE REFERENCE

REGULATION REFERENCE

PURPOSE

APPLICABILITY

GENERAL PROCEDURES

AGENCY FOR COORDINATION AND CONSULTATION

NOISE

24 Standards
23 U.S.C. 109(1)
(P.L. 91-605 &
P.L. 93-87)

FHPM 7-7-3
23 CFR 772

Promulgate noise standards for highway traffic.

All highway construction projects

- Perform and document
- 1 Noise impact analysis
 - 2 Analysis of mitigation measures
 - 3 Coordination with local officials

EPA,
Officials of local governments

AIR QUALITY

25 Clean Air Act, as amended
42 U.S.C. 7400
(P.L. 91-604 &
P.L. 95-95)

40 CFR 50, 51

Protect and enhance quality of Nation's air resources to promote public health and welfare

Areas where State implementation plans (SIP's) have transportation control measures (TCM's).

1. Transportation plans, programs, and improvements must conform with SIP
2. FHWA program must give priority to appropriate TCM's
3. Project approval sanction for insufficient SIP development progress.

UMTA, EPA, State and local air pollution control agencies

FHWA NOTICE N 6640 17
 July 16, 1979
 Attachment

SUMMARY OF SELECTED ENVIRONMENTAL LEGISLATION

11

LEGISLATIVE REFERENCE	REGULATION REFERENCE	PURPOSE	APPLICABILITY	GENERAL PROCEDURES	AGENCY FOR COORDINATION AND CONSULTATION
<u>AIR QUALITY</u>					
26 23 U S C 109(j) (P L 91-605)	FHPM 7-7-9 23 CFR 770	To assure that highways constructed pursuant to 23 U S.C are consistent with applicable SIP's so that national ambient air quality standards may be attained	All urban transportation plans and programs and highway construction projects	Regulations describe a process for making consistency determinations for transportation plans, programs, and projects	EPA, State and local air pollution control agencies

ABBREVIATIONS

BLM - Bureau of Land Management	HUD - Housing and Urban Development
CEQ - Council on Environmental Quality	NMFS - National Marine Fishery Service
CFR - Code of Federal Regulations	NPS - National Park Service
DOA - Department of the Army	OCZM - Office of Coastal Zone Management
DOI - Department of the Interior	P L - Public Law
DOT - Department of Transportation	SIP - State Implementation Plan
EPA - Environmental Protection Agency	Stat. - Statute
FHPM - Federal-Aid Highway Program Manual	TVA - Tennessee Valley Authority
FIA - Federal Insurance Administration	UMTA - Urban Mass Transportation Administration
FIFRA - Federal Insecticide, Fungicide, & Rodenticide Act	U S C - United States Code
FWPCA - Federal Water Pollution Control Act	USCE - U S Corps of Engineers
FWS - Fish and Wildlife Service	USCG - U S Coast Guard
HCRS - Heritage Conservation and Recreation Service	USFS - U.S Forest Service

FHWA NOTICE N 6640 17
 July 16, 1979
 Attachment

Appendix H

MEMORANDUM OF UNDERSTANDING

FHWA/USCG



U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

SUBJECT

USCG/FHWA Memorandum of Understanding
on Implementing NEPA

FHWA NOTICE

N 6640.22
July 17, 1981

1. PURPOSE. To transmit the United States Coast Guard/Federal Highway Administration (USCG/FHWA) Memorandum of Understanding on coordinating the preparation of environmental documents.
2. CANCELLATIONS. The 1977 USCG/FHWA Memorandum of Understanding transmitted by FHWA Notice N 6640.10 dated March 28, 1977, is canceled.
3. BACKGROUND
 - a. The use of this Memorandum of Understanding is intended to improve coordination and avoid unnecessary duplication of effort by the USCG, the FHWA, and the State highway agencies (SHA's) in the preparation and processing of environmental impact statements (EIS's) as required by the National Environmental Policy Act (NEPA) of 1969 for bridge projects requiring action by both the FHWA and the USCG.
 - b. In addition to the revisions necessitated by the 1978 Council on Environmental Quality Regulations, revisions have been made to reduce duplication of effort and enhance problem resolution.
4. ACTION. Division Administrators should assure that copies of the attached Memorandum of Understanding are furnished to SHA's. In addition, Regional and Division Administrators should give special attention to the initiation of the early coordination activities with the USCG indicated in the Memorandum of Understanding. These activities are the determination of classes of actions, preparation of EIS's, environmental assessments, and findings of no significant impact, and the holding of joint USCG/FHWA public hearings.

Attachment

FOR: R. A. Barnhart
Federal Highway
Administrator

DISTRIBUTION: H-W(CC/EO/MS/RE) - 5
H-D-4
H-M-4 (Minus ME)

H-1

OPI HEW-11

U.S. Coast Guard/Federal Highway Administration
Memorandum of Understanding on Coordinating the
Preparation and Processing of Environmental Documents

I. Purpose

The purpose of this Memorandum of Understanding (MOU) is to avoid unnecessary duplication of effort by the Coast Guard and the Federal Highway Administration (FHWA), both agencies of the Department of Transportation (DOT), in the preparation and processing of environmental documents pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4332(2)(c)) and other Federal environmental statutes and orders for bridge projects requiring approvals of both the FHWA and Coast Guard. The NEPA requires the Secretary of Transportation to make explicit analyses of environmental consequences of proposed major Federal actions under DOT jurisdiction and prepare detailed statements which analyze and consider the impact of these proposed actions upon the environment. The procedures set forth in this MOU will be utilized to strengthen the early coordination between the Coast Guard and the FHWA prior to and during the development of the highway section and environmental processing.

II. Definitions

The definitions contained in the Council on Environmental Quality (CEQ) regulations (40 CFR 1500-1508) are applicable to this MOU as well as the following:

1. Bridge: The term "bridge and its approaches," as used in 33 CFR 114.05, should be defined in each case by applying proper engineering sense to the facts of the case. The term may be defined generally as including all work integral to the structure itself. For example, if a bridge deck's grade is the same as the grade of the highway approach to it, the point where the abutment terminates would be considered the limit of the bridge. In a case where the bridge deck is at a higher elevation than the approach highway leading up to it, with a change in grade required to reach that elevation, the point where a change in grade in the approach highway occurs would be considered the limit of the bridge. Other bridges, whether highway, railroad, industrial conveyors, pipelines, etc., excepting aerial transmission lines, which are reconstructed, removed, relocated, or otherwise involved in the Federal assistance project requiring approval of the location and plans by the Commandant, U.S. Coast Guard, are included in this definition.
2. Bridge Permit: The approval of location and plans of a bridge, pursuant to the provisions of 33 U.S.C. 401, 491 et seq., 511 et seq., 525 et seq., and 535, and Acts of Congress authorizing the construction of bridges, including international bridges.

3. Coast Guard: This shall mean the Commandant of the Coast Guard; Chief, Office of Navigation; Chief, Bridge Administration Division; or Commander of a Coast Guard District to the extent of the authority delegated. However, throughout sections IV and V of this MOU, unless otherwise stated, Coast Guard shall mean the Commander of a Coast Guard District.
4. FHWA: This shall mean the Administrator, Federal Highway Administration; the Regional Federal Highway Administrator; or Division Administrator (Division Engineer for Direct Federal highway projects) to the extent of the authority delegated. However, throughout sections IV and V of this MOU, unless otherwise stated, FHWA shall mean the Division Administrator.
5. Highway Agency (HA): The agency with the primary responsibility for initiating and carrying forward the planning, design, and construction of bridges and highways. For bridges and highways financed with Federal-aid highway funds, the HA will normally be the appropriate State highway department. For bridges and highways financed with other funds, such as National Forest, and National Park roads and highways, etc., the HA will be the appropriate Federal or State agency.
6. Federally Aided Highway Project: Highway and bridge projects constructed with the assistance of the FHWA-administered funds, including projects financed from funds transferred to the FHWA from other agencies.
7. Navigable Waters of the United States: (1) For purposes of bridge administration, "navigable waters of the United States" means the following (unless specifically declared otherwise by Congress):
 - a. the territorial sea;
 - b. internal waters subject to tidal influence; and
 - c. internal waters not subject to tidal influence, which
 - (1) are or have been used, or are or have been susceptible for use, by themselves or in connection with others, as highways for substantial interstate or foreign commerce, notwithstanding obstructions that require portages; or
 - (2) a governmental or non-governmental body having expertise in waterway improvement determines or has determined to be capable of improvement at a reasonable cost (a favorable balance between cost and need) to provide, by themselves or in connection with others, highways for substantial interstate or foreign commerce.

III. Lead Agency for Environmental Processes

Except as provided for in Section 144(h) of Title 23 U.S.C., the Coast Guard must approve (issue a permit for) the location and plans for highway bridges crossing navigable waters of the United States. A significant number of these bridges are constructed with the assistance of Federal funds administered by the FHWA.

The actions by the FHWA and Coast Guard require an evaluation under the terms of NEPA, as implemented by the CEQ Regulations (40 CFR 1500-1508), DOT Order 5610.1C, applicable parts of the operating agencies' directives (FHPM 7-7-2 and Commandant Instruction M 16475.1A), and other Federal environmental statutes and orders. The CEQ regulations strongly encourage that a single agency (lead agency) be designated to handle the NEPA responsibilities where related actions by several Federal agencies are to be taken. The lead agency, in such instances, assumes the responsibility for consultation with other agencies, coordinating necessary environmental studies and evaluations, and preparation of any NEPA-related determination or document for review by the cooperating Federal agencies prior to making it available for public review.

The Coast Guard and the FHWA agree that, when a highway section requires an action by both FHWA and Coast Guard, the FHWA will normally serve as the lead agency for the preparation and processing of environmental documents.

IV. Responsibility of the FHWA

A. FHPM 7-7-2 defines three classes of actions which prescribe the level of documentation required in the NEPA process. These are:

1. Class I (EIS's) - Actions that require an EIS.
2. Class II (Categorical Exclusions) - Actions that do not individually or cumulatively have a significant effect on the environment.
3. Class III (Environmental Assessments) - Actions in which the significance of the impact on the environment is not clearly established. All actions that are not Class I or Class II are Class III. For these actions, an environmental assessment (EA) must be prepared culminating in a decision to prepare an EIS or a finding of no significant impact (FONSI).

The above documents shall demonstrate, where applicable, consideration of and compliance with the requirements of other Federal environmental statutes and orders, including but not limited to:

23 U.S.C. 138 and 49 U.S.C. 1653(f) (Section 4(f) of the Department of Transportation Act of 1966);

16 U.S.C. 461, et seq., Archeological and Historic Preservation Act and 23 U.S.C. 305;

16 U.S.C. 662, Section 2 of the Fish and Wildlife Coordination Act;

16 U.S.C., 1452, 1456, Sections 303 and 307 of the Coastal Zone Management Act of 1972;

16 U.S.C. 1536, Section 7 of the Endangered Species Act of 1973;

33 U.S.C. 1251, et seq., Clean Water Act of 1977;

42 U.S.C. 300(f), et seq., Safe Drinking Water Act of 1974;

42 U.S.C. 4371, et seq., Environmental Quality Improvement Act of 1970;

42 U.S.C. 4601, et seq., Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

42 U.S.C. 4901, et seq., Noise Control Act of 1972;

42 U.S.C. 7401, et seq., Clean Air Act;

42 U.S.C. 2000(d)-(d)4, Title VI of the Civil Rights Act of 1964;

Executive Order 11514, Protection and Enhancement of Environmental Quality, as amended by Executive Order 11991, dated May 24, 1977;

Executive Order 11593, Protection and Enhancement of the Cultural Environment, dated May 13, 1971, implemented by DOT Order 5650.1, dated November 20, 1972;

Executive Order 11988, Floodplain Management, dated May 24, 1977, implemented by DOT Order 5650.2, dated April 23, 1979;

Executive Order 11990, Protection of Wetlands, dated May 24, 1977, implemented by DOT Order 5660.1A, dated August 24, 1978.

- B. It is the intent of this MOU that the data developed and the evaluation of impacts upon the human environment set forth in the appropriate environmental document will satisfy the requirements of both FHWA and the Coast Guard. In order to achieve this result, it is incumbent upon FHWA to initiate early and to maintain continuing coordination with the Coast Guard throughout the NEPA phase of project development. Accordingly, it is the responsibility of FHWA to take the following actions:
1. As the lead agency, FHWA shall be responsible for the preparation of the appropriate documentation for Class I, II, or III projects in accordance with the requirements of FHPM 7-7-2.
 2. The FHWA shall consult with the Coast Guard prior to determining that any project which may require a Coast Guard bridge permit is a Class I, II, or III action.
 3. For each project that may require a Coast Guard bridge permit and is to be processed as a Class I or Class III action, FHWA will request that the Coast Guard become a cooperating agency.
 4. For Class I projects, FHWA will continue to consult with the Coast Guard during the preparation of both the draft and final EIS.

5. For Class II projects, FHWA will provide the Coast Guard with information which documents that a project is a categorical exclusion.
6. For Class III projects, FHWA will consult with the Coast Guard during the preparation of both the environmental assessment, and if so determined, the FONSI.
7. The FHWA will consult with the Coast Guard relative to the need for highway and Coast Guard public hearing opportunities and consider a joint public hearing where appropriate.
8. If FHWA determines, pursuant to Section 144(h) of Title 23 U.S.C., that a project is exempt from a Coast Guard permit, it shall so notify the Coast Guard of same if FHWA believes that sufficient navigation exists to require the establishment, maintenance, and operation of lights and signals as required under 14 U.S.C. 685.
9. When a difference of opinion arises between the FHWA Division Administrator and the Coast Guard District Commander relative to the proper class of action or adequacy of environmental documentation, the FHWA Division Administrator shall meet with the Coast Guard District Commander and attempt to resolve the issue. If the issue is not resolved, the FHWA Division Administrator shall so notify the FHWA Regional Administrator who, in turn, shall consult with the District Commander. If the issue is not resolved at the FHWA Regional Office level, the Regional Administrator shall refer it to the FHWA Associate Administrator for Right-of-Way and Environment for appropriate handling.
10. The FHWA will ensure that the environmental documentation submitted to the Coast Guard with the permit application is complete with respect to satisfying NEPA and other Federal environmental statutes and orders.

V. Responsibility of the Coast Guard

It is the responsibility of the Coast Guard to take the following actions:

1. The Coast Guard shall cooperate with and provide guidance to FHWA and the HA during the determinations of class of actions and in the preparation of appropriate environmental documentation relative to its areas of jurisdiction.
2. The Coast Guard will furnish names of waterway organizations to FHWA and the HA with whom consultation should be made during the development of environmental studies and to whom copies of the draft environmental documents should be sent for review.
3. Provided coordination has been accomplished in accordance with this MOU, the Coast Guard will ordinarily accept FHWA's environmental documentation as satisfactory compliance with NEPA for the purpose of processing the bridge permit application.

4. Where it is necessary for the Coast Guard to hold a hearing or public review of the navigational aspects of the proposal, the Coast Guard notice will make reference to the approved FHWA environmental documentation. It is not the intent of the Coast Guard notice to invite review and comment on approved FHWA environmental documentation.

Concur *R.A. Baruchart*
Federal Highway Administrator

Concur *J.B. Jones*
Commandant, U.S. Coast Guard

Date *27 Apr. 81*

Date *6 May 1981*

Appendix I

MEMORANDUM OF AGREEMENT

USDOT/USACE

UNITED STATES GOVERNMENT

DEPARTMENT OF TRANSPORTATION

FEDERAL HIGHWAY ADMINISTRATION

Memorandum

DATE July 21, 1980

SUBJECT: USDOT/U.S. Army Memorandum of Agreement
Corps of Engineers Permits (Section 10/404)

In reply
refer to HED-01

FROM: John G. Bestgen
Deputy Regional Administrator
Albany, New York

TO: Division Administrators and
Territorial Representative

Attached for your information and guidance is a copy of a recent Memorandum of Agreement between the USDOT and the Department of the Army. The Agreement pertains to Corps of Engineers permits which are required on many Federal-aid highway projects. The Agreement calls for a change to the current timing of permit applications by most State Highway Departments (SHD). One consequence is that SHDs may need to do more detailed design work before a final EIS or FONSI can be approved, compared to past practices (see part 6.c. of the MOA). The Agreement should be brought to the attention of the SHD.

The Agreement adds to other requirements, such as the FHWA/Coast Guard MOA, to directly involve other agencies in the early stages of highway project development. Note that the Corps of Engineers is to be consulted on project classifications (see 3.d.(1)) and will be a cooperating agency for both EISs and environmental assessments (see 3.d.(2)). Close attention should also be given to paragraph 3.c. of the Agreement. This paragraph requires the SHD to show compliance with various specific environmental requirements in the project environmental documentation. This documentation could be an EIS, Environmental Assessment, or support for a determination that a project should be classified as a Categorical Exclusion.

The Washington Office has not yet issued information on the specific application of this MOA to FHWA programs. Any such information which we receive will be promptly relayed to you. In the meantime, please keep my office posted on your efforts to implement this MOA and on any



W.A. Nostrand, Jr., Director
: Office of Environment and Design

**MEMORANDUM OF AGREEMENT BETWEEN
THE SECRETARY OF TRANSPORTATION AND
THE SECRETARY OF THE ARMY ON PERMIT PROCESSING**

1. Purpose and Scope.

a. This agreement between the Secretary of Transportation and the Secretary of the Army is made under Section 404(q) of the Clean Water Act which reads as follows:

(q) ~~***~~ ~~The Secretary~~ of the Army shall enter into agreements with the Administrator of the Environmental Protection Agency, the Secretaries of the Departments of Agriculture, Commerce, Interior, and Transportation, and the heads of other appropriate Federal agencies to minimize, to the maximum extent practicable, duplication, needless paperwork, and delays in the issuance of permits under this section. Such agreements shall be developed to assure that, to the maximum extent practicable, a decision with respect to an application for a permit under subsection (a) of this section will be made not later than the ninetieth day after the date the notice for such application is published under subsection (a) of this section.

b. Since the reduction of duplication, paperwork, and delays is a goal in all Department of the Army (DA) regulatory programs, this agreement is also applicable to other DA regulatory authorities, particularly Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403).

c. The procedures set forth in this Memorandum of Agreement will be utilized to strengthen the early coordination between DOT and the Corps prior to and during development of projects and the environmental documentation.

2. Definitions.

The definitions contained in the Council on Environmental Quality Regulations (40 CFR 1508) are applicable to this Memorandum of Agreement.

a. "Corps" means the Corps of Engineers or any official of the Corps of Engineers acting within his or her regulatory authority on behalf of the Secretary of the Army.

b. "DOT" means the Department of Transportation or any official of any element within the Department of Transportation acting within his or her authority in the application for a DA permit.

c. "DOT Action" means an undertaking authorized, licensed, funded or carried out by the DOT which may require a DA permit, to the extent that it has not been exempted by law from such a requirement or covered in a general permit.

d. "Applicant" means the DOT, state or local agency or private party responsible for initiation of a DOT action and making application for a DA permit.

e. "Environmental documentation" means any document prepared by either DOT or the Corps to comply with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4347) and the Council on Environmental Quality's NEPA implementing regulations.

3. Lead Agency for Environmental Processes.

a. When a DOT action requires processing by both the Corps and DOT, DOT will ordinarily be the lead agency for the environmental documentation, and the procedures set forth in paragraphs 3b, 3c and 3d shall apply. For the following exceptions, the lead agency and the procedures to be followed will be agreed upon on a case-by-case basis:

(1) Unusual cases, such as a minor DOT action that is a small part of a large activity requiring a DA permit.

(2) An action requiring action by both the Corps and the Coast Guard other than one involving statutes governing the construction, alteration, or removal of bridges over navigable waters of the United States.

b. As soon as practicable within the planning process of a DOT action involving the need for a DA permit, DOT or the applicant will establish and maintain communication with the Corps for the purposes of reducing duplication and delays. The intent is that the evaluation of impacts upon the human environment for all reasonable alternatives will satisfy the requirements of both DOT and the Corps, allow the Corps to accept DOT resolution of issues raised during the environmental processing, and minimize further review of such issues during the permit process.

c. For DOT actions requiring a DA permit, DOT will be responsible for environmental documentation in accordance with the applicable DOT Orders and paragraph 3a above. These documents will demonstrate, where applicable, consideration of and compliance with the substantive requirements of Federal environmental statutes and executive orders including but not limited to:

**National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)
Executive Order 11988 (Floodplain Management)
Executive Order 11990 (Protection of Wetlands)**

Fish and Wildlife Coordination Act (16 U.S.C. 661-666c)
Endangered Species Act (16 U.S.C. 1531 et seq.)
National Historic Preservation Act (16 U.S.C. 470 et seq.)
Archeological and Historic Preservation Act of 1974 (P.L. 93-291)
Wild and Scenic Rivers Act (16 U.S.C. 1271-1287)
Coastal Zone Management (16 U.S.C. 1451-1464)

d. As the lead agency, the DOT will:

(1) Consult with the Corps during the evaluation as to whether a proposed DOT action is a major action significantly affecting the quality of the human environment or is categorically excluded.

(2) When DOT determines that a project requires either an EIS or an environmental assessment, solicit Corps' participation as a cooperating agency to insure that the environmental documentation adequately covers the portion of the work requiring a DA permit.

(3) Provide a copy of the draft EIS or environmental assessment to the Corps for review and comments.

(4) As provided by CEQ regulations and DOT procedures, attempt to resolve environmental issues raised in comments on the draft EIS, prior to approval of the final EIS.

(5) Provide the Corps a copy of the final EIS or environmental assessment at the time the document is prepared.

4. Cooperating Agency.

When a DOT action requires processing by both the Corps and DOT, and DOT determines that the project requires either an EIS or an environmental assessment, the Corps will function as a cooperating agency to insure consideration of and compliance with the substantive requirements of the Clean Water Act (33 U.S.C. 1251-1376) applicable to the Corps' regulatory program. The DOT will seek to resolve areas of disagreement with the Corps prior to DOT action on the environmental documentation.

5. Public Hearings.

The DOT and the Corps will make every reasonable effort, within controlling regulations, to avoid duplicative public hearings. Whenever possible, joint hearings will be held:

6. DA Permit.

a. The Corps' public interest review will be limited to the geographic vicinity of the specific activity requiring a DA permit. The Corps will

normally adopt the DOT environmental processing and documentation, pursuant to Section 1506.3 of the CEQ regulations, and rely on this in its decision document on the permit application. It is understood that DOT and the Corps may occasionally reach different conclusions regarding the environmental documentation. In such cases, the Corps may find it necessary to prepare additional environmental documentation.

b. The Corps agrees, when requested by DOT or the applicant, to begin its public interest review in advance of receipt of an application, possibly including the issuance of a public notice either by the Corps or jointly with DOT, based on preliminary information available at the draft EIS, environmental assessment or categorical exclusion stage. The DOT or the applicant, in selecting a plan requiring an application for a DA permit, will consider all reasonable alternatives based on its own public involvement procedures, as well as comments received by and from the Corps as a result of its review.

c. At the appropriate time, in preparing the final environmental documentation, DOT will make or cause to be made application for the DA permit. Normally, this will be done as soon as a preferred action is identified and sufficient information can be developed for the Corps to process the application. The Corps agrees that the location of the proposed DOT action with approximate quantities (e.g., of fill, dredged material, etc.) and reasonable estimates of construction grades will be sufficient to initiate permit processing.

d. Unless precluded as a matter of law or procedures required by law, the Corps will issue the public notice not later than fifteen days after receipt of all information required to complete the application for the preferred action.

e. Substantive comments, relative to the issues considered in the Corps' public interest review, received in response to a permit application public notice, will be furnished to DOT. If there are objections to permit issuance, DOT or the applicant may take one of the following actions:

- (1) Resolve the objections by agreeing to recommended modifications;
- (2) Request continued processing despite objections, with or without providing counterarguments;
- (3) Request suspension of processing to provide time either for negotiations with objecting parties or for preparation of a response; or
- (4) Withdraw the application.

The Corps may establish appropriate time limits for DOT or applicant response.

f. The Corps will make every reasonable effort to minimize the use of special conditions in permits issued for DOT actions and will consult with DOT or the applicant in their preparation. Commitments identified in environmental documents and enforceable by DOT upon an applicant will not normally be repeated in the DA permit. The Corps will normally not include any special conditions that would duplicate Federal, state or local laws or programs that accomplish the same purpose.

g. To the maximum extent practicable, the Corps will take action on a permit application not later than ninety days after public notice is issued.

h. The duration of the DA permit will be commensurate with the expected completion date of the DOT action. The Corps will consult with DOT or the applicant in establishing starting and completion dates for work covered by the permit.

7. Consistent Administration of Corps' Regulatory Functions.

The Corps recognizes its responsibility to provide consistent administration of its permit programs throughout the country.

8. General Permits.

The Corps has found the practice of issuing general permits on both a regional and nationwide basis to be an effective way to reduce duplication, paperwork, and delays. The DOT and the Corps pledge to do everything possible to insure the successful continuation of this vital program. The DOT will assist the Corps in remaining aware of potential cumulative impacts that may occur as a result of construction activities covered by general permits.

9. Coast Guard Bridge Permits.

This agreement does not contravene the U.S. Coast Guard/Chief of Engineers' Memorandum of Agreement dated April 18, 1973.

10. Effective Dates and Modifications.

This agreement shall become effective on the last signature date below, and remain in effect for three years, at which time it shall be the subject of renegotiation or extension upon mutual agreement. If either party finds within this period that its terms need to be modified, the other party shall be notified in writing of the specific change(s) desired, with proposed language, and the

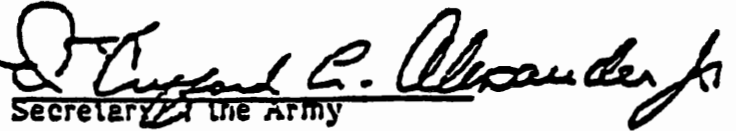
reason(s) therefor. The proposed change(s) shall become effective within sixty days, unless the other party indicates in writing a desire to discuss the proposed change(s).

MAR 19 ..

Date: _____

Date: MAR 24 1990


Secretary of Transportation


Secretary of the Army

