

FACILITIES DEVELOPMENT MANUAL

Wisconsin Department of Transportation

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FDM 20-1-1 Purpose

March 16, 2018

1.1 Originator

The Section Chief, Bureau of Technical Services, Environmental Process and Documents Section is the ORIGINATOR of this chapter. All questions or comments regarding the contents of this chapter should be directed to Jay Waldschmidt, Section Chief, Bureau of Technical Services, Environmental Process and Documents Section (BTS-EPDS), (608) 267-9806, jay.waldschmidt@dot.wi.gov.

1.2 Goals and Objectives

The purpose of this chapter is to assist project teams in complying with WisDOT's environmental process and obligations under Federal and State laws and to provide an understanding of the resources available to accomplish that goal.

This chapter will provide guidance to prepare and process environmental documentation necessary for the development of WisDOT projects to comply with the National Environmental Policy Act (NEPA) and the Wisconsin Environmental Policy Act (WEPA), using templates and content developed by WisDOT in partnership with FHWA. The chapter provides a brief overview of NEPA and WEPA as well as links to other related federal and state laws, regulations, policies and executive orders for preparation of NEPA and WEPA documents.

NEPA and WEPA establish policy, set goals and provide a framework for decision-making during transportation project development. The NEPA/WEPA process guides project decisions that balance engineering and transportation needs with social, economic and natural environmental factors.

It is intended that the WisDOT staff and consultants reference this chapter to implement NEPA/WEPA planning principles in an effective manner to produce quality environmental documents which;

- meet the intent of NEPA and WEPA;
- are legally sufficient and defensible;
- are easy to read and understand for the public (<http://www.plainlanguage.gov/>);
- provide full and honest disclosure; and
- are based upon sound scientific and technical information.

1.3 Chapter Overview

The following lists and summarizes the chapter sections.

20-5 Major Laws and Agreement Documents

This section is a summary of the most important laws and agreement documents that impact WisDOT projects. Links for more information are included. For more in-depth information contact a member of the WisDOT environmental staff.

20-10 Roles and Responsibilities in the Environmental Document Process

This section outlines the roles of the various members of the project team in the environmental process and the production of the environmental document.

20-15 Types of Environmental Documents

This section is a brief synopsis of the various levels of environmental documents utilized by WisDOT for projects.

20-20 Categorical Exclusion Documents

This section is a more in-depth discussion of the various forms of environmental documents that fall into the Categorical Exclusion category.

20-25 Environmental Assessments

This section is a more in-depth discussion of the Environmental Assessment document type.

20-30 Environmental Impact Statements

This section is a more in-depth discussion of the Environmental Impact Statement document type.

20-35 Environmental Document Reviews and Approvals

This section goes through the review process of the various levels of environmental documents and the signatories in each case.

20-40 Re-Evaluating Environmental Documents

This section goes through the process of updating or re-evaluating an environmental document of any type.

20-45 Other Required Documents

This section goes through the other documents potentially needed to complete the environmental process and documentation of a project.

20-50 Permits

This section goes through the permits potentially needed to complete the environmental process and complete a project.

A glossary of abbreviations, acronyms, and definitions frequently used throughout this chapter is included in [Attachment 1.1](#).

LIST OF ATTACHMENTS

[Attachment 1.1](#) Glossary and Acronyms

Glossary and Acronyms

AASTO - American Association of State Highway Transportation Officials

ACHP – (US) Advisory Council on Historic Preservation

AIS – Agricultural Impact Statement

Basic Sheets - WisDOT templates used for ER and EA level documents. They are supplemented by Factor Sheets.

BIA – (US) Bureau of Indian Affairs

BOA – (WisDOT) Bureau of Aeronautics

BTS - (WisDOT) Bureau of Technical Services

BTS-EPDS - (WisDOT) Bureau of Technical Services – Environmental Process and Documents Section.

BTS-ESS – (WisDOT) Bureau of Technical Services – Environmental Services Section.

CE – A level of environmental documentation known as categorical exclusions.

CEC – A WisDOT level of CE known as a Categorical Exclusion Checklist that does not need FHWA approval.

CEQ – Council on Environmental Quality

CFR – Code of Federal Regulations

CO – WisDOT Central Office

Coordination Plan – Required for EIS level documents and occasionally for EA level documents, the Coordination Plan precedes scoping and is used to outline how the project’s environmental information will be available to public officials and citizens before decisions are made and before actions are taken.

CSR - Conceptual Stage Relocation Plan, a document produced by WisDOT Real Estate when inhabited properties or businesses must be relocated.

DATCP – (Wis) Department of Agriculture, Trade and Consumer Protection

DEIS – Draft Environmental Impact Statement

DILHR – (Wis) Department of Industry, Labor and Human Relationships

DOI – United States Department of the Interior

EA – An Environmental Assessment is a document requiring WisDOT BTS-EPDS and FHWA review and results in either a FONSI or an EIS.

ER - A WisDOT level of CE known as an Environmental Report that requires FHWA approval.

EIS – An Environmental Impact Statement is a document requiring WisDOT BTS-EPDS and FHWA review and is made up of a Draft and Final EIS and a ROD.

EJ – Environmental Justice (refers to Executive Order 12898)

EO – Executive order

EPA – (US) Environmental Protection Agency

Factor Sheets – WisDOT templates used in ERs and EAs to supplement the Basic Sheets in describing factor impacts and mitigation being implemented by a project.

FEIS – Final Environmental Impact Statement

FPPA – USDA Farmland Protection Policy Act

FHWA – Federal Highway Administration, arm of USDOT

FTA – Federal Transit Administration

HOV – High Occupancy Vehicle, usually in reference to lanes designated as such

IAM - Impact Analysis Methodology document is required for EIS level documents and occasionally for EA level documents. The IAM is used to communicate and document WisDOT and FHWA’s structured approach to analyzing impacts of the project and its alternatives. Collaboration on the impact analysis methodology is intended to promote an efficient and streamlined process and early resolution of concerns or issues.

IAM – An Impact Analysis Methodology

LPMC – (WisDOT) Local Program Master Consultant

LWCF – Land and Water Conservation Fund Act

Mitigation – The process of avoidance, minimization and compensation of impacts to the environment when developing and building a project.

MPO – Metropolitan Planning Organization

NEPA – National Environmental Policy Act

NOI – A Notice of Intent is written by the Region and sent to FHWA to have published in the Federal Register. It's publication is the formal beginning of an EIS document.

NPS – National Park Service

NRCS – (US) Natural Resources Conservation Services

PA – Programmatic Agreement

PCE - A WisDOT level of CE known as a Programmatic Categorical Exclusion that does not require FHWA approval.

PEL – A Planning and Environmental Linkages Study is a planning level study that includes NEPA quality investigations and decision making that can be used in a future NEPA environmental document.

PIL – Process Initiation Letter is a letter from the Region to FHWA required for an EA level document to begin the NEPA process.

PMP – Is Project Management Plan and is utilized by Region staff in tracking project planning and design.

PS&E – Plans, Specifications and Estimates

REC – (WisDOT) Region Environmental Coordinator

ROD – A Record of Decision is the final environmental documentation for an EIS.

RPC – Regional Planning Commission

Section 4(f) – The Department of Transportation Act of 1966, well known and codified as Section 4(f), states that the U.S. Secretary of Transportation shall not approve any project or program which involves the use of any publicly owned land from a public park, recreation area, historic site, or waterfowl or wildlife refuge of national, state, or local significance, as determined by the officials having jurisdiction, unless there is no feasible and prudent alternative to the use of such land and such project includes all possible planning to minimize harm. Consideration of Section 4(f) is required for all federally funded transportation related actions. The requirements are codified in 23CFR774. If any WisDOT CE level document that is Federally funded includes a temporary 4(f) use, de minimis 4(f) use, or programmatic 4(f) use of a property it must be reviewed by BTS-EPDS and FHWA.

Section 6(f) – of the Land and Water Conservation Fund Act of 1965 (LWCF) mandates property acquired or developed with LWCF funds shall not be converted to uses other than for public outdoor recreation uses.

Section 106 – of the National Historic Preservation Act of 1966 (36 CFR 800) requires federal agencies to consider the effects of their undertakings on historic properties.

Section 401 WQC – of the Clean Water Act (CWA), Water Quality Certification, provides the licensing or permitting agency (WisDOT/FHWA) a certification from the State (WDNR or Tribe) in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge originates or will originate, that any such discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of this title.

Section 404 - of the Clean Water Act (CWA) establishes a program to regulate the discharge of dredged or fill material into waters of the United States, including wetlands. Usually refers to the permit required from the USACE.

SHPO – State Historic Preservation Officer

Significance – A NEPA term used to describe the level of potential impacts to a resource(s) and the level of documentation needed to record the impact(s)

TDM – Travel Demand Model

THPO – Tribal Historic Preservation Officer

TSM – Transportation System Management

Undertaking – A NEPA term used to describe a project, activity, or program funded in whole or in part under jurisdiction of a Federal agency.

USACE – United States Army Corp of Engineers

USC – United States Code of Federal Regulations

USCG – United States Coast Guard

USDA – United States Department of Agriculture

USDOT – United States Department of Transportation

USFS – United States Forest Service

USFWS - United States Fish and Wildlife Service

WDNR – Wisconsin Department of Natural Resources

WEPA – Wisconsin Environmental Policy Act

WHS – Wisconsin Historical Society

WisDOT – Wisconsin Department of Transportation



FDM 20-5-1 Major Laws, Regulations and Agreement Documents

March 16, 2018

1.1 Introduction

The purpose of this section is to provide a reference to the laws, policies, regulations and agreements that affect federal and state transportation actions. Only the major laws and agreements affecting WisDOT projects will be outlined here.

The major state and federal laws WisDOT is obligated to follow are the Wisconsin Environmental Policy Act (WEPA) and for projects with federal funding or permitting, the National Environmental Policy Act (NEPA). These are considered umbrella laws since they pull together the numerous other state and federal laws and regulations related to transportation and the environment. NEPA and WEPA require WisDOT to document the process used to study and obtain input from agencies and the public on potential effects of proposed actions, and to disclose and consider these effects when making project decisions.

There are many federal and state environmental laws, regulations and policies that determine how a transportation action can be initiated, evaluated and implemented. These laws, regulations and policies strive to provide a balance between transportation development and protection of the human environment (which is made up of the natural and physical environments) by guiding agencies toward using a systematic, interdisciplinary approach that involves early and meaningful agency and public involvement. Agency coordination is discussed in FDM Chapter 5 and public involvement is discussed in FDM Chapter 6.

Due to the myriad of laws and regulations that fall under the NEPA/WEPA umbrella and the ever-changing nature of them, this section will only focus on the laws, regulations, policies and agreements that most impact WisDOT projects. Many of the additional laws are discussed in more detail in other areas of the FDM Chapters (FDM Chapters 5, 7, 10, 21, 22, 23, 24, 25 and 26) and will require consultation with the Region Environmental Coordinator (REC), Local Program Management Consultant (LPMC) or the Bureau of Technical Services, Environmental Process and Document Section (BTS-EPDS) or Environmental Services Section (BTS-ESS) staff for more detail.

The user is further advised that not all laws, regulations, policies and agreements will apply to all actions so again it is advised to consult with the appropriate environmental staff throughout project development.

FDM 20-5-5 Major Federal Law and Regulations

March 16, 2018

5.1 National Environmental Policy Act

The National Environmental Policy Act (NEPA) sets forth broad national policy relating to the environment and establishes implementing procedures through the Council on Environmental Quality (CEQ). NEPA was passed in 1969 and signed into law in 1970 and is codified in 42 U.S.C. 4331; implementing regulations are located at 40 CFR 1500-1508. All federal agencies must interpret and administer their policies, regulations and laws in accordance with Section 102 of NEPA and their implementing regulations. FHWA interprets and administers the policies, regulations and laws for WisDOT's projects receiving federal funding or requiring federal approvals. FHWA's NEPA implementing regulations are located at 23 CFR 771. Additional detail is included in [FDM 20-15](#).

FDM 20-5-10 State Law and Administrative Code

March 16, 2018

10.1 Wisconsin Environmental Policy Act (WEPA) (1.11 Wis. Status)

The Wisconsin Environmental Policy Act (WEPA) is a state law passed in 1972 and details the state's environmental policy requiring state agencies to consider the impact of governmental actions on the environment. This act applies only to state agencies. It does not apply to local governments or private parties unless their actions involve state agency regulation or funding.

WEPA requires WisDOT and other state agencies to consider the environmental effects of their policies and actions. This act requires WisDOT and other state agencies to gather relevant environmental information and consider it in their decision-making under their other statutory authorities. Agencies must also look at appropriate alternatives to the course of action they are proposing. The principle for broad citizen participation as part of environmental decision-making was also established by WEPA.

WEPA is intended to primarily mirror NEPA while not being more restrictive.

10.5 Wisconsin Administrative Code - Chapter Trans 400

Trans 400 is the state transportation administrative rule which interprets state statutes relating to WEPA. The purpose of Trans 400 is to implement WEPA by establishing the department policy for considering the environmental effects of its undertakings on the quality of the human environment when there is no Federal involvement in the project. Trans 400 spells out how:

- WisDOT identifies department undertakings that have the potential to affect the quality of the human environment
- WisDOT determines the appropriate level of environmental analysis necessary
- WisDOT documents each action

FDM 20-5-15 Major State Agreement Documents

March 16, 2018

15.1 Wisconsin Department of Transportation (WisDOT) and Wisconsin Department of Natural Resources (WDNR) Cooperative Agreement, 1995

In 1995, WisDOT and WDNR established a cooperative agreement to encourage cooperation between the agencies on transportation projects that have the potential to impact the environment. The agreement established basic guidance and policy direction for the liaison procedure for coordination on transportation projects as well as larger scale policy and planning efforts by either agency, recognizing each agency's statutory responsibilities and the shared responsibility to serve the public interest. The agreement outlines the liaison procedure, applicability, and roles and responsibilities of each agency.

The agreement was updated in 2002, and amended several times to add guidance and procedures covering various resources, including: compensatory wetland mitigation, endangered and threatened species consultation, erosion control and storm water management, floodplain encroachment and visual impacts to the Lower Wisconsin State Riverway.

A copy of the agreement can be found here:

<https://wisconsin.gov/Pages/doing-business/eng-consultants/cnslt-rsrcs/environment/formsandtools.aspx>

or here:

<http://dnr.wi.gov/topic/sectors/documents/dnrdotcooperativeagreement.pdf>



FDM 20-10-1 Roles and Responsibilities

March 16, 2018

1.1 Introduction

All project staff, including consultant partners, involved in developing WisDOT projects, have a responsibility to comply with the Wisconsin Environmental Policy Act (WEPA), and for projects that will receive federal funding or approvals, the National Environmental Policy Act (NEPA).

FDM 20-10-5 WisDOT Staff Responsibilities

March 16, 2018

5.1 Project Manager (PM)

The WisDOT Project Manager is the lead for the project, including overseeing the environmental process and document preparation. The PM is responsible for assuring that the project follows the NEPA/WEPA process, including compliance with other environmental laws and regulations, and maintains legal sufficiency. Project related decisions should be made within the NEPA/WEPA framework and documented to assure legal compliance with laws and regulations. The PM should rely heavily on the expertise of the environmental staff team members for assistance in fulfilling NEPA/WEPA legal requirements. The PM or other delegated WisDOT staff has lead responsibility for consultant designed projects and must ensure NEPA/WEPA compliance.

5.2 Region Environmental Coordinator (REC) and Local Program Management Consultant (LPMC)

WisDOT has environmental specialists in each Region (RECs) to provide leadership and guidance to WisDOT's project staff during development, implementation and documentation of environmental processes required by NEPA, WEPA and other environmental laws, regulations, and policies. Additionally, they provide a vital link and line of communication between the Region project team, WisDOT Central Office environmental staff, FHWA and agency partners. They may also provide research, analysis, consultation and coordination assistance and technical expertise on environmental laws and regulations. The RECs are qualified environmental reviewers and are required to review all state and federal level projects completed in the Region offices. The specific review and approval responsibilities for environmental documents are outlined in [FDM 20-40](#). The RECs also serve as the first point of contact under the Department of Natural Resources/WisDOT Cooperative Agreement ([FDM 5-10](#)).

The Local Roads Management Consultant (LPMC) is required to fill the REC environmental document review role for all local road projects administered through WisDOT.

5.3 Bureau of Technical Services (BTS), Environmental Process and Documentation (EPDS) and Environmental Services (ESS) Sections

WisDOT environmental specialists in BTS provide statewide program leadership and guidance on all environmental issues. They also develop statewide policy concerning environmental matters, develop and offer training, and serve as liaisons with FHWA on environmental policy issues.

The Environmental Process and Documents Section (BTS-EPDS) is made up primarily of NEPA/WEPA specialists who maintain a working knowledge of all the requirements for producing legally sufficient NEPA and WEPA documents for transportation projects. Each Region has an EPDS liaison assigned from this group with the RECs as the points of contact. The BTS-EPDS regional liaisons are qualified environmental reviewers and are responsible for review of environmental documents forwarded by the Regions or completed by other Central Office Divisions and Sections. The specific review and approval responsibilities are outlined in [FDM 20-40](#).

Additionally, the cultural resources team is in the BTS-EPDS. They serve as technical experts in this area and maintain master contracts to complete cultural resource environmental investigations for WisDOT designed projects.

The Environmental Services Section (BTS-ESS) consists of environmental specialists who work on policy development and serve as technical experts in the areas of environmental justice, wetlands and water resources, hazardous materials, threatened and endangered species, stormwater, erosion control, air, noise, and other resources. They also maintain master contracts to complete environmental investigations for WisDOT designed projects.

10.1 Federal Highway Administration /Federal Transit Administration

If federal funding is applied to a project, or a federal action (for example, a permit approval) is required, federal procedures must be followed. As the federal lead agency, FHWA/FTA has specific duties concerning inviting other affected or interested federal agencies and Indian Tribes to participate in the project's environmental review process depending on the type of document being completed. These duties are discussed in more detail in the specific sections on EAs ([FDM 20-25](#)) and EISs ([FDM 20-30](#)).

The Wisconsin FHWA Division office provides specialists to assist with WisDOT projects when they are the lead agency.

<http://www.fhwa.dot.gov/widiv/staff.cfm>

Typically, the project point of contact and primary NEPA reviewer from FHWA is a Field Operations Engineer (FOE). FHWA also has Environmental Specialists who provide technical assistance to the FOEs, and act as the FHWA Environmental Lead for larger and more complex federal undertakings. Specific document review and approval responsibilities are outlined in [FDM 20-40](#).

FTA staff and contacts can be found at the following link.

<https://www.transit.dot.gov/about/regional-offices/region-5/region-5>



FDM 20-15-1 Environmental Document Types

March 16, 2018

1.1 Environmental Documents

The regulations promulgated by the CEQ (40 CFR 1500) and FHWA (23 CFR 771.115) identify three environmental (3) classes of action which prescribe the level of documentation required in the NEPA process. These levels are also utilized for actions defined by WEPA for transportation projects.

https://docs.legis.wisconsin.gov/code/admin_code/trans/400

1. Class I Environmental Impact Statements (EISs) are prepared for actions that significantly affect the environment. See [FDM 20-30](#) for a full discussion of the EIS process.
2. Class II Categorical Exclusions (CEs) are prepared for actions that FHWA has determined do not individually or cumulatively have a significant environmental effect and are excluded from the requirement to prepare an Environmental Assessment (EA) or EIS. A specific list of CEs requiring minimal documentation is set forth in Sec. 771.117(c). When appropriately documented, additional projects may also qualify as CEs pursuant to Sec. 771.117(d). There are three types of CE documents discussed in this chapter:
 - Categorical Exclusion Checklist (CEC)
 - Programmatic Categorical Exclusion (PCE)
 - Environmental Report (ER)
3. Class III Environmental Assessments (EAs) are actions in which the significance of the environmental impacts 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:
 - If after completing the process it is determined that there are no significant impacts associated with the project a Finding of No Significant Impact (FONSI) is completed
 - If at any time a significant impact is identified an EIS is prepared.

Occasionally, a proposed project may not clearly fit within any of the environmental document definitions discussed above. If this is the case, further consultation with the REC for region projects is encouraged before a decision is made as to what is the appropriate type of environmental document to prepare. For environmental documents being prepared by central office divisions and sections, the BTS-EPDS liaison should be consulted.

FDM 20-15-5 Determining Appropriate Environmental Document Types

March 16, 2018

To determine the appropriate class of action and the requisite level of documentation necessary to comply with NEPA and WEPA, it is essential to understand the term "significance" and how it is determined. The significance of impacts from a proposed transportation project on the environment is the primary factor in the determining the appropriate level of environmental document needed for any project type.

To determine the document level the first step is to determine the funding source. Any project with a federal funding source must demonstrate fiscal constraint. Fiscal constraint requires that funding for programmed projects be reasonably expected to be available. The funding must be programmed in the Statewide Transportation Improvement Program (STIP), the metropolitan transportation plan, or a metropolitan Transportation Improvement Program (TIP). Per FHWA, fiscal constraint may consider new funding sources and levels of funding not currently in place, but the funding must be reasonably expected to be available. For this reason, planning studies are utilized to begin investigations prior to funding being constrained.

WEPA documents do not need to demonstrate fiscal constraint before beginning.

To determine significance, the severity of the impact anticipated from the proposed project must be examined in terms of the type, quality and sensitivity of the resources involved; the location of the proposed project; the duration of the effect (short- or long-term) and other considerations of context. Significance of the impact will vary with the setting of the proposed action and the surrounding area (including residential, industrial, commercial, and natural sites).

Per the CEQ regulations (40 CFR 1500-1508), the determination of a significant impact is a function of both context and intensity.

Context: This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short-term and long-term effects are relevant.

Intensity: This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered when evaluating intensity:

1. Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.
2. The degree to which the proposed action affects public health or safety.
3. Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.
4. The degree to which the effects on the quality of the human environment are likely to be highly controversial.
5. The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.
6. The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.
7. Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.
8. The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.
9. The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.
10. Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

The following discussion specifies the criteria used to determine the environmental document type required.

5.1 Environmental Impact Statement

A decision to prepare an EIS for a proposed action may be made when that action clearly involves significant impacts on the human and natural environment, when environmental studies and the results of early coordination indicate significant impacts, or when the review of an EA concludes that significant impacts would result from a proposed action ([FDM 20-30](#)).

5.2 Categorical Exclusions

CEs are the most common type of NEPA document prepared and processed by WisDOT. FHWA and WisDOT have developed a Programmatic Agreement for the processing of CE level documents:

<https://wisconsin.gov/Pages/doing-bus/eng-consultants/cnslt-rsrcs/environment/formsandtools.aspx>

CEs are actions that do not individually or cumulatively have a significant environmental impact and are excluded from the requirement to prepare an EA or an EIS. Pursuant to 23 CFR 771.117(a) CEs are actions that:

- Do not induce significant impacts to planned growth or land use for the area
- Do not require the relocation of significant numbers of people
- Do not have significant impact on any natural, cultural, recreational, historic or other resource
- Do not involve significant air, noise or water quality impacts
- Do not have significant impact on travel patterns
- Do not otherwise, either individually or cumulatively, have any significant environmental impacts or

Any action which normally would be classified as a CE but could involve unusual circumstances will require the FHWA, in cooperation with the applicant, to conduct appropriate environmental studies to determine if the CE

classification is proper (23 CFR 771.117(b)). Unusual circumstances include:

- Significant environmental impacts
 - Substantial controversy on environmental grounds
 - Significant impacts on properties protected by Section 4(f) of the DOT Act or Section 106 of the Historic Preservation Act
 - Inconsistencies with any federal, state, or local law, requirement or administrative determination relating to the environmental aspects of the action
 - Wisconsin specific examples of unusual circumstances include axillary lanes and capacity expansion projects as define in the Programmatic Agreement between the FHWA and the WisDOT regarding the processing of actions classified as categorical exclusions for Federal Aid Highway Projects.

The classification of a project as a CE under NEPA does not exempt the action from other federal or state environmental requirements, for example Section 404, Section 106, floodplain impacts, threatened and endangered species impacts, etc. All applicable federal or state requirements must be completed before WisDOT or FHWA will approve the CE.

See [FDM 20-20-1.1](#) to determine the appropriate CE document type.

5.3 Environmental Assessment

An Environmental Assessment (EA) is prepared for an action where the significance of impacts is uncertain. An EA is a public document which serves to provide sufficient evidence and environmental analysis to determine whether to prepare an EIS or to prepare a Finding of No Significant Impact (FONSI). All actions that do not readily fall into an EIS action nor meet the qualifications of a CE are evaluated as an EA.

Based on the review and findings of an EA and any public comments, an EIS is prepared if the Region, BTS-EPDS and FHWA determine that significant impacts would occur because of implementing the project. A FONSI is prepared in the event the study concludes that the proposed action will not cause significant impacts. The FONSI is a conclusion to the EA and highlights data supporting the finding that no significant impacts will occur because of the action. See [FDM 20-25](#) for details on the preparation of EAs and FONSI.

5.4 Planning Studies

WisDOT may prepare planning studies to facilitate decision making on transportation investments and to connect long-range planning and environmental analysis (23 USC 135).

Planning studies are undertaken before the NEPA process begins and as such do not require fiscal constraint as a NEPA document does.

Per 23 USC 168, Integration of Planning and Environmental Review, the federal lead agency for a project may adopt and use a planning product in proceedings related to any class of action in the environmental review process of the project.

The following are the types of planning studies developed by WisDOT:

- Studies prepared as part of §84.295(10) Establishing Locations and Right-of-Way Widths for Future Freeways or Expressways (preservation)
- Corridor planning
- Planning and Environmental Linkages Studies (PEL) (23 CFR 450 Appendix A)

The REC and the BTS-EPDS liaison should be contacted to determine if one or both need to be part of the team for any of the above planning studies. The REC and or BTS-EPDS will coordinate with FHWA as needed. For further understanding of the planning processes at WisDOT contact the planning staff.

5.5 Conclusion

Following the determination of the appropriate environmental document type, the development of the subsequent environmental document follows a review and approval process prescribed by federal and state environmental policy. The individual steps in the process are described in detail in the following sections.



FDM 20-20-1 Introduction

March 16, 2018

Federal actions meeting the criteria of a Categorical Exclusions (CEs) are defined pursuant to 23 CFR 771.111(f), 40 CFR 1508.4 and 23 CFR 771.117(a) and do not individually or cumulatively have significant effects on the human environment. CEs require neither an Environmental Assessment (EA) nor an Environmental Impact Statement (EIS). WisDOT must certify to FHWA the action does not result in significant environmental impacts (see definition of significance in [FDM 20-15-5.1](#)). WisDOT must prepare either an EA or EIS for all undertakings not qualifying as a CE.

Furthermore, none of the CEs can be processed, without FHWA consultation, if the project includes unusual circumstances such as the following:

1. Significant environmental impacts (see definition of significance in [FDM 20-15-5.1](#))
2. Substantial controversy on environmental grounds
3. Significant impacts on properties protected by Section 4(f) of the DOT Act or Section 106 of the Historic Preservation Act as defined by 36 CFR 800
4. Inconsistencies with any federal, state, or local law, requirement or administrative determination relating to the environmental aspects of the action
5. Wisconsin specific examples of unusual circumstances include auxiliary lanes and capacity expansion projects as define in the Programmatic Agreement between the FHWA and the WisDOT regarding the processing of actions classified as categorical exclusions for Federal Aid Highway Projects

For any project which includes unusual circumstances, consult with your REC or BTS-EPDS and FHWA as appropriate, to determine the level of environmental analysis and environmental document type to be completed. Unusual circumstances may require additional studies to be completed prior to making a CE determination or prior to the decision to prepare an EA or EIS. CEs are processed following the programmatic agreement (PA) between the WisDOT and FHWA for federally funded projects that meet the CE criteria.

<https://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnsit-rsrces/environment/formsandtools.aspx>

Classification of an action as a CE does not dismiss requirements to comply with other laws and regulations such as Section 106, Section 4(f), Section 404 or Water Quality-Section 401 requirements, etc.

1.1 Actions Covered

Pursuant to the terms of “Programmatic Agreement between the Federal Highway Administration Wisconsin Division and the Wisconsin Department of Transportation Regarding the Processing of Categorical Exclusion Actions (CE PA)” there are three types of documentation for CE actions:

1. Actions listed in 23 CFR 771.117(c) that do not have unusual circumstances may use the Categorical Exclusion Checklist (CEC).
2. Actions listed in 23 CFR 771.117(d) may be processed as a Programmatic Categorical Exclusion (PCE) if they are not disqualified by Section VII of the PA between WisDOT and FHWA.
3. Actions listed in 23 CFR 771.117(d) that are disqualified by Section VII may be processed as an Environmental Report and may be documented with WisDOT Basic and Factor Sheets.
4. Additional actions which meet the criteria for a CE in 23 CFR 771.117(a) but are not listed in 23 CFR 771.117(c) or 771.117(d) and require additional documentation to demonstrate significant impacts will not result, require an Environmental Report (ER) and may be documented with WisDOT Basic and Factor Sheets.

Figure 1.1 is a chart outlining the categorical exclusion (CE) document processing options. WisDOT cannot use CEC or PCE documentation for projects located on Tribal lands that are in trust, allotted or reservation status without prior approval by BTS-EPDS and FHWA.

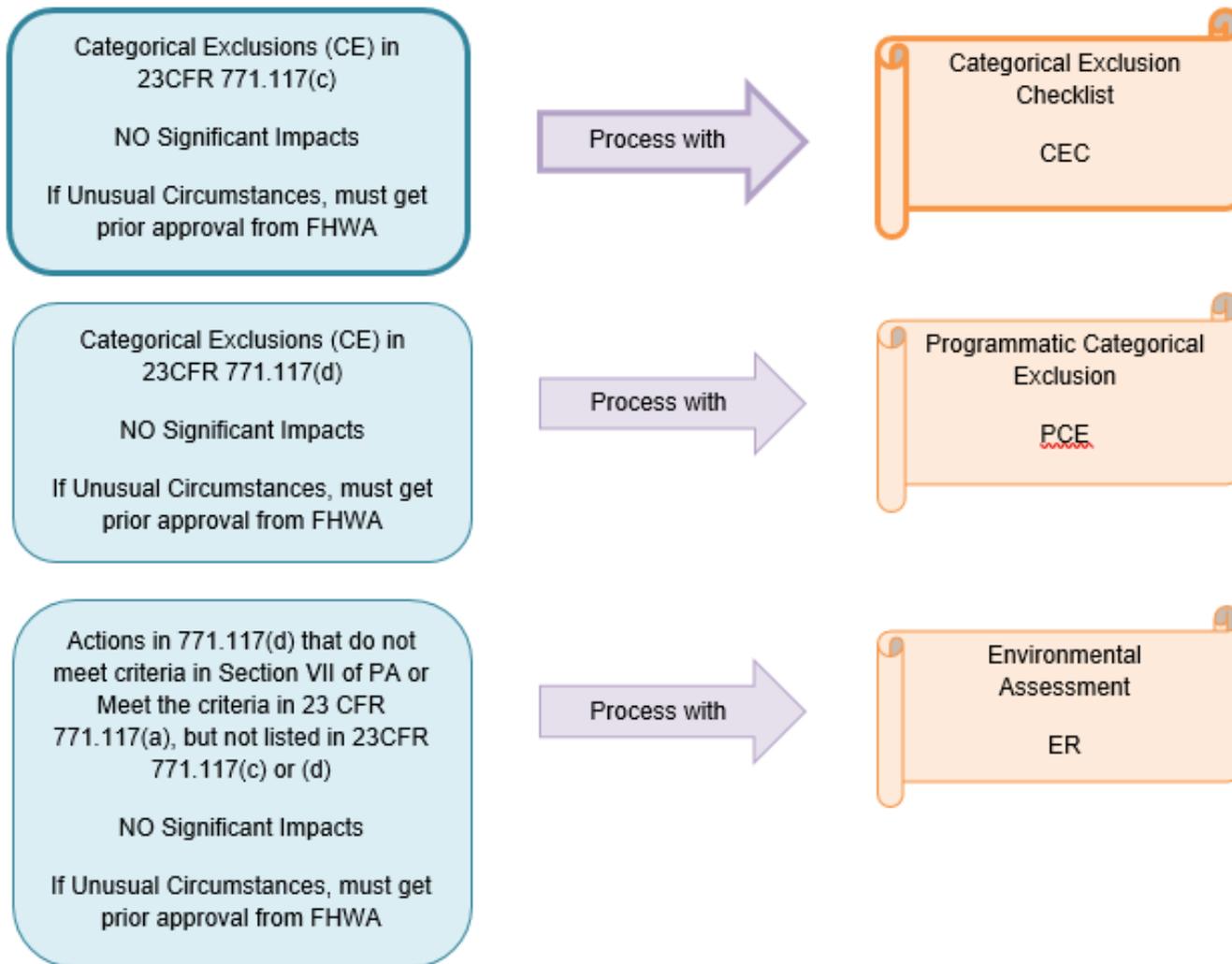


Figure 1.1 Categorical Exclusion (CE) Documentation Processing Options

FDM 20-20-5 Categorical Exclusion Checklist

March 16, 2018

5.1 Actions Covered

Actions covered by the Categorical Exclusion Checklist (CEC) are found in 23 CFR 771.117(c) and discussed in the FHWA-WisDOT PA.

<https://wisconsin.gov/Documents/doing-bus/eng-consultants/cnslt-rsrcs/environment/pace2015.pdf>

5.2 Process

During project identification and or Project Management Plan (PMP) scoping (FDM 2-5, FDM 2-10, FDM 2-15), the decision to move forward with a CEC should be discussed with the REC or the BTS - EPDS Liaison as defined in FDM 20-10-1 to be sure the project is eligible for this level of documentation.

Scoping or definition of a project for a CEC can be relatively informal and can be completed in a variety of ways. The project team may use the PMP Process to complete scoping and may do a field review. Initial scoping is usually done by a planning team before it moves into project development, where a more detailed scoping of the project is often undertaken. Now, there is no prescribed form for scoping of CE projects. The key is to define the purpose and need and the full potential scope of the project prior to beginning any investigative studies to avoid project delays and cost increases due to scope changes later in the process.

The CEC is completed during the project development process as identified in FDM 3-1 Attachment 1.2. The CEC cannot be completed prior to documenting that there are no significant impacts and no unusual circumstances.

The CEC does not exempt WisDOT from complying with all other applicable regulations, laws, statutes,

executive orders, interagency agreements or other policy. Documentation of compliance with all applicable requirements needs to be attached to the CEC or placed in the project file.

Normally CEC actions do not require any further NEPA approval from FHWA. Documentation regarding the use of the CEC and the absence or mitigation of unusual circumstances must be maintained by WisDOT to justify the application of the CEC.

5.3 Documentation

Documentation and tracking is required for all CEC projects. Complete the CEC form

<https://wisconsin.gov/Pages/doing-business/eng-consultants/cnslt-rsrcs/environment/formsandtools.aspx>

and add to the project file along with any necessary supporting documentation as discussed in [FDM Chapter 5](#). The CEC is to be completed by project staff with the assistance of the REC or BTS-EPDS, as applicable.

Factor Sheets, described in [FDM 20-20-15.3](#) may be completed and attached to demonstrate or clarify that the impact to specific factors is not significant if appropriate.

The PA requires review and tracking of CECs. To facilitate this, provide a completed copy of the CEC with all required signatures to the REC or BTS-EPDS liaison, as appropriate. The environmental staff can assist with defining the necessary attachments and level of public involvement required.

FDM 20-20-10 Programmatic Categorical Exclusions (PCE)

March 16, 2018

10.1 Actions Covered

Actions covered by the PCE are found in 23 CFR 771.117(d) subject to the limitations in Section VII of the FHWA-WisDOT PA.

<https://wisconsin.gov/Documents/doing-business/eng-consultants/cnslt-rsrcs/environment/pace2015.pdf>

10.2 Process

During project identification and or PMP scoping ([FDM 2-5](#), FDM 2-10, FDM 2-15-1), discuss the decision to move forward with a PCE with the REC or BTS-EPDS to be sure the project is eligible for this level of documentation and no unusual circumstances are present.

Scoping or definition of a project for a PCE can be relatively informal and can be completed in a variety of ways. The project team may use the PMP Process to complete scoping and may do a field review. Initial scoping is usually done by a planning team before it moves into project development, where a more detailed scoping of the project is often undertaken. Now, there is no prescribed form for scoping of CE projects. The key is to define the purpose and need and the full potential scope of the project prior to beginning any investigative studies to avoid project delays and cost increases due to scope changes later in the process.

The PCE is to be completed by the project team with the assistance of the REC or BTS-EPDS. The PCE is completed during the project development process as defined in [FDM 3-4](#). The PCE cannot be completed prior to documenting that there are no significant impacts and no unmitigated unusual circumstances.

The PCE does not exempt WisDOT from complying with all other applicable regulations, laws, statutes, executive orders, interagency agreements or other policy. Documentation of compliance with all applicable requirements needs to be attached to the PCE or placed in the project file.

Normally PCE actions do not require any further NEPA approval from FHWA. Documentation regarding the PCE definition and the absence of unusual circumstances must be maintained by WisDOT to justify the use of the PCE.

10.3 Documentation

Documentation and tracking is required for all PCE projects. Complete the PCE form and add to the project file along with any necessary supporting documentation.

<https://wisconsin.gov/Pages/doing-business/eng-consultants/cnslt-rsrcs/environment/formsandtools.aspx>

Factor Sheets, described in [FDM 20-20-15.3](#) may be completed and attached to demonstrate or clarify that the impact to specific factors is not significant if appropriate.

10.4 Categorical Exclusions and WEPA Undertakings

To determine which CE template to use when there is not federal funding or federal permits involved in any portion of the undertaking refer to Trans 400.08(c) and (d) Categorization of Department Actions, to determine which document template (CEC or PCE) is appropriate. For actions where it is determined that an ER is

determined to be appropriate the guidance for the completion of an ER in [FDM 20-20-15](#) must be followed.

FDM 20-20-15 Environmental Report

March 16, 2018

15.1 Actions Covered

Actions covered by Environmental Reports (ER) are described in Section VI A.3 of the FHWA-WisDOT PA.

<https://wisconsindot.gov/Documents/doing-bus/eng-consultants/cnsit-rsrces/environment/pace2015.pdf>

The ER is the most appropriate document type for projects that will not have significant environmental impacts (see definition of significance in [FDM 20-15](#)).

15.2 Process

Scoping or definition of a project for an ER can be relatively informal and can be completed in a variety of ways. The project team may use the PMP Process to complete scoping and may do a field review. Initial scoping is usually done by a planning team before it moves into project development, where a more detailed scoping of the project is often undertaken. Now, there is no prescribed form for scoping of ER projects. The key is to define the purpose and need and the full potential scope of the project prior to beginning any investigative studies to avoid project delays and cost increases due to scope changes later in the process.

15.3 Documentation

WisDOT Environmental Basic Sheets and Factor Sheets are used for documentation of all ER level projects. Guidance documents are available for the Basic Sheets and each Factor Sheet.

<https://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnsit-rsrces/environment/formsandtools.aspx>

The Basic and Factor Sheets and the guidance language are intended to be self-explanatory. The Basic and Factor Sheets and guidance language are updated frequently so always be sure to use the most recent version.

If the author completely and clearly answers each question on the Basic and Factor Sheets, the document should tell the story of the project decision-making process from the initial needs identification through the selection of the preferred alternative in a way the public can understand. For assistance or questions concerning these templates and the associated guidance contact your REC or BTS-EPDS, as appropriate.

The Basic Sheets contain background information for the project, define the purpose and need and describe all of the alternatives that were studied to address the purpose and need. These sheets also provide information on public involvement, environmental factors, a summary of impacts, and other information pertinent to the ER.

Individual Factor Sheets correspond with specific environmental factors identified in the Environmental Factors Matrix of the Basic Sheets. The Factor Sheets are used to provide more detailed information on environmental factors and issues that may be substantial and require more of an in-depth discussion than is provided in the Basic Sheets. If there is no substantial impact to a specific environmental factor, a Factor Sheet is not completed.

15.3.1 Purpose and Need

The purpose and need of a project is essential in establishing a basis for the development of the range of reasonable alternatives required in an environmental document and assists with the identification and eventual selection of a preferred alternative. Basic Sheet 3, Question 1 addresses the purpose and need.

The following items may be listed and described in the purpose and need statement for a proposed action. The author should select the needs most appropriate to the project in the order of greatest to least needed and explain them so the public can understand them. These are by no means all-inclusive or applicable in every situation. They are intended as a guide. In the document, discuss only the applicable needs in descending order of importance. Do not discuss the project solutions in the purpose and need statement.

- Project Status - Briefly describe the action's history, including measures taken to date, other agencies and governmental units involved, action spending, schedules, etc.
- Capacity - Discuss the capacity of the present facility and its ability to meet present and projected traffic demands. Discuss what capacity and levels of service for existing and proposed facilities are needed.
- System Linkage - Discuss if the proposed action is a "connecting link" and how it fits into the transportation system.
- Transportation Demand - Discuss the action's relationship to any statewide plan or adopted urban transportation plan. In addition, explain any related traffic forecasts that are substantially different from those estimates of the 23 U.S.C. 134 (Section 134) planning process.

- Legislation - Explain if there is a federal, state, or local governmental mandate for the action.
- Social Demands or Economic Development - Describe how the action will address employment, schools, land use plans, recreation facilities, etc. In addition, describe projected economic development/land use changes that indicate the need to improve or add to the highway capacity.
- Modal Interrelationships - Explain how the proposed action will interface with and serve to complement airports, rail and port facilities, mass transit services, pedestrian and bicycle accommodations, etc.
- Safety - Explain if the proposed action is necessary to correct an existing or potential safety hazard. In addition, explain if the existing accident rate is excessively high and why, and how the proposed action will improve safety.
- Roadway Deficiencies - Explain if and how the proposed action is necessary to correct existing roadway deficiencies (e.g., substandard geometrics, structural sufficiency, load limits on structures, inadequate cross-section, high maintenance costs, etc.)

Consistent with 23 CFR 771.111(f), in order to ensure meaningful evaluation of alternatives and to avoid commitments to transportation improvements before they are fully evaluated, the action evaluated in the environmental document shall:

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

When developing a transportation project, project sponsors should consider how the end points of the action are determined, both for the improvement itself and for the scope of the environmental analysis. Whether the action has "logical termini" or not is also a concern. Logical termini for project development are defined as rational end points for both a transportation improvement and a review of the environmental impacts.

In developing a concept that can be advanced through the stages of planning, environment, design, and construction; the project sponsor needs to consider a whole or integrated action. This action should satisfy the projects purpose statement. In addition, the action should be considered in the context of local socio-economics and topography, future travel demand, and other infrastructure improvements. Without framing an action in this way, project sponsors may only peripherally meet project needs or may cause unexpected side effects that require additional corrective action. Project sponsors should also be aware of the problem of segmentation. Segmentation may occur when a transportation need extends throughout an entire corridor, but project sponsors discuss the environmental issues and transportation need of only a segment of the corridor. Staging construction of various phases of a project due to fiscal availability is not considered segmentation.

15.3.2 Agency and Tribal Coordination

WisDOT, in partnership with FHWA (on federally funded projects), is responsible for inviting resource agencies, local units of government and tribes to participate in the NEPA/WEPA process to coordinate among a wide range of stakeholders with diverse interests, resolve conflict and ensure that quality transportation decisions and potential impacts are fully explained in the environmental document. These responsibilities require WisDOT and FHWA to balance transportation needs, costs, environmental resources, safety, and public input in order to arrive at objective and responsible transportation decisions.

Depending on the potential impacts of the project, agencies with applicable expertise will be involved during the decision-making process. Contact agencies early and coordinate often to understand resources under their authority and to incorporate their concerns into the project and describe them in the document. At a minimum, all projects must be coordinated with the Wisconsin Department of Natural Resources (WDNR), tribes and the United States Fish and Wildlife Service.

Although not all inclusive, [Table 15.1](#) highlights the federal, tribal, state, and local agencies and governmental entities that might be involved if the project has potential to impact a resource.

Table 15.1 Environmental Impact and Agencies Possibly Involved

Potential Impacts	Agencies with Possible Involvement*
Wetlands	WDNR, USACE, USFWS, Tribes
Lakes, Streams, Rivers, Water Bodies	USCG, WDNR, USACE, USFWS, Tribes, EPA
Agricultural Impacts	DATCP, NRCS
Archaeological Impacts	ACHP, SHPO/THPO, NPS, Tribes, local historical societies
Historical Impacts	ACHP, SHPO/THPO, NPS, Tribes, local historical societies
Hazardous Materials	WDNR, local units of government
National Forest	USFS, NPS
Threatened, Endangered or Rare Species	USFWS, WDNR, Tribes
Tribal Lands	Tribes, BIA
Parks	WDNR, NPS, local units of government
Airports	BOA
Structures Over Navigable Waters	USCG, WDNR, USACE, USFWS, potentially others
Significant Impacts of any Kind	EPA
Air Quality	WDNR, EPA, MPOs/RPCs
Noise	Local units of government
Section 4(f)	DOI, SHPO/THPO, local unit of government or other property owner
Section 6(f) or other special funding	WDNR, NPS, USFWS, DOI, USDA, NRCS, potentially others

Definitions of all acronyms can be found in [FDM 20-1 Attachment 1.1](#).

15.3.3 Public Involvement

Public involvement is an essential component of all levels of the NEPA and WEPA decision-making process during project development. Public involvement must be implemented in accordance with [FDM Chapter 6](#) on all projects administered by WisDOT, including those federally funded projects that are developed by local units of government or their consultants. For an ER, hold at least one Public Involvement Meeting (PIM) prior to completion of the document to allow public comments on the project to be included in the document. The ER also allows for a public hearing to be held based on criteria identified on Basic Sheet 3, Question 13.

<https://wisconsin.gov/Pages/doing-bus/eng-consultants/cnslt-rsrcs/environment/formsandtools.aspx>

A hearing, if warranted by the answers to the questions on Basic Sheet 3, Question 13, must occur prior to the final signature of the ER.

15.3.4 Alternatives Analysis

The identification, consideration, and analysis of alternatives are integral to the NEPA process and the goal of objective decision-making. Serious consideration of alternatives should lead to a solution that satisfies the transportation need and protects environmental and community resources.

Alternatives analysis should:

- Rigorously explore and objectively evaluate a reasonable range of alternatives. For alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated including how they do or do not address the project purpose and need.
- Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may also evaluate their comparative merits.
- Include reasonable alternatives not within the jurisdiction of the lead agency, if they could contribute to a solution such as modal options (such as bus, bicycle and rail).
- Include the alternative of no action.

- Identify the agency's preferred alternative, and justify the selection based on the information and evidence in the document.

Alternatives analysis should clearly indicate why and how the range of project alternatives was developed, including what kind of public and agency input was used. In addition, alternatives analysis should explain why and how alternatives were eliminated from consideration. It must be made clear what criteria were used to eliminate alternatives, at what point in the process the alternatives were removed (screened) and the measures for assessing the alternatives' effectiveness.

During preparation of NEPA documents, project sponsors should be candid about the rationale for generating, evaluating and eliminating alternatives. Being as specific as possible is important. If an alternative is eliminated from further consideration because it does not meet the purpose and need, adequate explanation must be provided.

All reasonable alternatives retained for detailed study, or the reasonable range of alternatives, should be considered and discussed at a comparable level of detail to avoid any indication of a bias towards an alternative(s).

There are times when an alternative that is not reasonable is included, such as when another agency requests inclusion due to public expectation. In such cases, it should be clearly explained why the alternative is being analyzed in detail, and why it will not be selected.

The no-build alternative, which may include measures to continue the function of the facility, must always be included in the analysis. In some cases, the no-build alternative may be a reasonable alternative, especially when the impacts of other alternatives are great and the need is relatively minor, but generally it serves as a baseline against which the other alternatives can be compared.

Transportation System Management (TSM) and Transportation Demand Management (TDM) alternatives may be considered as potential standalone design options or in combination with other build alternatives. Such alternatives may include high-occupancy vehicle lanes, ridesharing, signal synchronization and other actions. Also, where appropriate, mass transit options should be considered even when they are outside FHWA's funding authority.

Beyond the CEQ requirement of evaluating all, or a reasonable number representative of the full spectrum of reasonable alternatives, there are other requirements for analyzing alternatives. These requirements fall under Section 4(f), the Executive Orders on Wetlands and Floodplains, and the Section 404(b)(1) guidelines. To address these requirements and conclusively demonstrate that some alternatives are not prudent or practicable, project sponsors must develop a well-justified purpose and need statement.

The use of land from a Section 4(f) protected property (such as a significant, publicly owned park, recreation area, or wildlife and waterfowl refuge, or any significant historic site) may not be approved unless there is a finding of de minimis impact or a determination is made that there is no feasible and prudent alternative for such use. Many factors exist that could render an alternative not prudent, including cost and environmental impacts. If an alternative does not meet the action's purpose or need, then the alternative is not prudent, provided the purpose and need section can substantiate that unique problems will be caused by not developing the action.

If a proposed action is to be within a wetland or significantly encroaches upon a floodplain, a finding must be made that there is no practicable alternative to the wetland impact or floodplain encroachment.

Any alternative that does not meet the need for the action is not practical. If the action's purpose and need are not adequately addressed, specifically delineated, and properly justified; resource agencies, interest groups, the public, and others will be able to generate one or possibly several alternatives that avoid or limit the impact and appear practical. A well-described justification of the action's purpose and need may prevent long and involved negotiations or additional analyses demonstrating that an alternative is not practicable.

15.3.5 Environmental Effects

The definition of the impacts that must be addressed and considered by federal agencies in satisfying the requirements of the NEPA process, which includes direct, indirect and cumulative impacts have been defined by CEQ regulations (40 CFR 1508.7 and 1508.8). Effects include:

- Direct effects, which are caused by the action and occur at the same time and place.
- Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.
- Cumulative impacts, which are caused by incremental impacts from the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-

federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

Effects and impacts are terms used interchangeably in the regulations and in this chapter. For ease of documentation WisDOT has divided effects into four broad categories and 25 subcategories of factors in considering development of a highway project:

1. Economic
 - a. General Economics
 - b. Business
 - c. Agriculture
2. Social and Cultural
 - a. Community or Residential
 - b. Indirect Effects
 - c. Cumulative Effects
 - d. Environmental Justice
 - e. Historic Resources
 - f. Archaeological Resources
 - g. Tribal Issues
 - h. Section 4(f), 6(f), or Other Unique Areas
 - i. Aesthetics
3. Natural
 - a. Wetlands
 - b. Rivers, Streams and Floodplains
 - c. Lakes or Other Open Water
 - d. Groundwater, Wells or Springs
 - e. Upland Wildlife or Habitat
 - f. Coastal zones
 - g. Threatened or Endangered species
4. Physical
 - a. Air Quality
 - b. Construction Stage Sound Quality
 - c. Traffic Noise
 - d. Hazardous Substances or Contamination
 - e. Stormwater
 - f. Erosion Control

WisDOT's Factor Sheets are used to assess these categories.

<https://wisconsin.gov/Pages/doing-business/eng-consultants/cnslt-rsrcs/environment/formsandtools.aspx>

Unique factors not called out in specific Factor Sheets may become an issue on a project, such as invasive species, and will still need to be addressed in the document.

Effects may also include those resulting from actions which may have both beneficial and adverse effects, even if on balance the agency believes that the effect will be beneficial.

15.3.6 Environmental Commitments

Summarize all agreements to mitigate adverse environmental effects beyond those found in the WisDOT Standard Specifications for Highway and Structure Construction in the Environmental Commitments section of

the document on Basic Sheet 8.

<https://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rsrcs/environment/formsandtools.aspx>

Also include any enhancements in the commitments. It is essential to outline these measures in the document and summarize how adverse environmental effects will be mitigated. Mitigation includes the entire process of avoidance, minimization and compensation for effects. For each potential environmental impact, clearly discuss the avoidance, minimization and compensation of the effects. Completion of all agreements concerning mitigation needs to be documented in the project file prior to construction of the proposed action. The completion of mitigation commitments should be documented in the project file.

15.3.7 Review and Approval Process

Refer to tables in [FDM 20-35-1](#).

FHWA is the final reviewer and signatory of all ERs involving federal funds. BTS-EPDS is the final reviewer and signatory of all ERs involving no federal funds.



FDM 20-25-1 Introduction

March 16, 2018

Environmental Assessments (EA) are the appropriate document type for actions when it is unclear if the environmental impacts will be significant ([FDM 20-15-5](#)). Contact the region environmental coordinator (REC) or BTS-EPDS Liaison, as appropriate, if the project team believes an EA is needed. An EA is a process that leads to preparation of a Finding of No Significant Impact (FONSI) or the determination that an Environmental Impact Statement (EIS) needs to be prepared.

FDM 20-25-5 Process

March 16, 2018

Defining a project through scoping for an EA should involve the entire design and planning team. Initial scoping is usually done by a planning team before it moves into project development where more detailed scoping of the project is often undertaken. At this time, there is no prescribed form for scoping of EA projects. It is suggested that the scoping of a project follow the PMP as defined in [FDM 2-1](#) and [FDM 2-20](#). The key is to define the full potential scope, or area of potential impacts, of the project prior to beginning any investigative studies. This will help prevent project delays and cost increases due to scope changes later in the process.

5.1 Process Initiation Letter

The Process Initiation Letter (PIL), begins the environmental documentation process for EAs. The PIL template required for use in developing all PILs can be found at:

<https://wisconsin.gov/Pages/doing-bus/eng-consultants/cnslt-rsrcs/environment/formsandtools.aspx>

Projects that do not involve federal funding or permitting do not require a PIL to initiate an EA.

FDM 20-25-10 Documentation

August 15, 2019

10.1 WisDOT Environmental Basic Sheets and Factor Sheets

WisDOT Environmental Basic Sheets and Factor Sheets are used for documentation of all EA level projects. Guidance documents are available for the Basic Sheets and each Factor Sheet.

<https://wisconsin.gov/Pages/doing-bus/eng-consultants/cnslt-rsrcs/environment/formsandtools.aspx>

The Basic and Factor Sheets and the guidance language are intended to be self-explanatory. The Basic and Factor Sheets and guidance language are updated frequently so always be sure to use the most recent version.

If the author completely and clearly answers each question on the Basic and Factor Sheets, the document should tell the story of the project decision-making process from the initial needs identification through the selection of the preferred alternative in a way the public can understand. For assistance or questions concerning these templates and the associated guidance contact your REC or BTS-EPDS, as appropriate.

The Basic Sheets contain background information for the project, define the purpose and need and describe all of the alternatives that were studied to address the purpose and need. These sheets also provide information on public involvement, environmental factors, a summary of impacts, and other information pertinent to the EA.

Individual Factor Sheets correspond with specific environmental factors identified in the Environmental Factors Matrix of the Basic Sheets. The Factor Sheets are used to provide more detailed information on environmental factors and issues that may be substantial and require more of an in-depth discussion than is provided in the Basic Sheets. If there is no substantial impact to a specific environmental factor, a Factor Sheet is not completed.

10.5 Purpose and Need

The purpose and need of a project is essential in establishing a basis for the development of the range of reasonable alternatives required in an environmental document and assists with the identification and eventual selection of a preferred alternative. Basic Sheet 3, Question 1 addresses the purpose and need.

The following items may be listed and described in the purpose and need statement for a proposed action. The author should select the needs most appropriate to the project and explain them so the general public can understand them. These are by no means all-inclusive or applicable in every situation. They are intended as a guide. In the document, discuss only the applicable needs in descending order of importance. Do not discuss

the project solutions in the purpose and need statement.

- Project Status - Briefly describe the action's history, including measures taken to date, other agencies and governmental units involved, action spending, schedules, etc.
- Capacity - Discuss the capacity of the present facility and its ability to meet present and projected traffic demands. Discuss what capacity and levels of service for existing and proposed facilities are needed.
- System Linkage - Discuss if the proposed action is a "connecting link" and how it fits into the transportation system.
- Transportation Demand - Discuss the action's relationship to any statewide plan or adopted urban transportation plan. In addition, explain any related traffic forecasts that are substantially different from those estimates of the 23 U.S.C. 134 (Section 134) planning process.
- Legislation - Explain if there is a federal, state, or local governmental mandate for the action.
- Social Demands or Economic Development - Describe how the action will address employment, schools, land use plans, recreation facilities, etc. In addition, describe projected economic development/land use changes that indicate the need to improve or add to the highway capacity.
- Modal Interrelationships - Explain how the proposed action will interface with and serve to complement airports, rail and port facilities, mass transit services, pedestrian and bicycle accommodations, etc.
- Safety - Explain if the proposed action is necessary to correct an existing or potential safety hazard. In addition, explain if the existing accident rate is excessively high and why, and how the proposed action will improve safety.
- Roadway Deficiencies - Explain if and how the proposed action is necessary to correct existing roadway deficiencies (e.g., substandard geometrics, structural sufficiency, load limits on structures, inadequate cross-section, high maintenance costs, etc.)

Consistent with 23 CFR 771.111(f), to ensure meaningful evaluation of alternatives and to avoid commitments to transportation improvements before they are fully evaluated, the action evaluated in the environmental document shall:

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

When developing a transportation project, project sponsors should consider how the end points of the action are determined, both for the improvement itself and for the scope of the environmental analysis. Whether the action has "logical termini" or not is also a concern. Logical termini for project development are defined as rational end points for both a transportation improvement and a review of the environmental impacts.

In developing a concept that can be advanced through the stages of planning, environment, design, and construction; the project sponsor needs to consider a whole or integrated action. This action should satisfy the projects purpose statement. In addition, the action should be considered in the context of local socio-economics and topography, future travel demand, and other infrastructure improvements. Without framing an action in this way, project sponsors may only peripherally meet project needs or may cause unexpected side effects that require additional corrective action. Project sponsors should also be aware of the problem of segmentation. Segmentation may occur when a transportation need extends throughout an entire corridor, but project sponsors discuss the environmental issues and transportation need of only a segment of the corridor. Staging construction of various phases of a project due to fiscal availability is not considered segmentation. Further discussion on purpose and need, logical termini and segmentation can be found on the FHWA Environmental Review Toolkit webpage:

<https://www.environment.fhwa.dot.gov/projdev/tdmalts.asp>

10.10 Agency and Tribal Coordination

WisDOT, in partnership with FHWA (on federally funded projects), is responsible for inviting resource agencies, local units of government and tribes to participate in the NEPA/WEPA process to coordinate among a wide range of stakeholders with diverse interests, resolve conflict and ensure that quality transportation decisions and potential impacts are fully explained in the environmental document. These responsibilities require WisDOT and FHWA to balance transportation needs, costs, environmental resources, safety, and public input to arrive at objective and responsible transportation decisions.

Depending on the potential impacts of the project, agencies with applicable expertise will be involved during the

decision-making process. Contact agencies early and coordinate often to understand resources under their authority and to incorporate their concerns into the project and describe them in the document. At a minimum, all projects must be coordinated with the Wisconsin Department of Natural Resources (WDNR), tribes, and the United States Fish and Wildlife Service.

Although not all inclusive, Table 10.1 highlights the federal, tribal, state, and local agencies and governmental entities that might be involved if the project has potential to impact a resource.

Table 10.1 Environmental Impact and Agencies Possibly Involved

Potential Impacts	Agencies with Possible Involvement*
Wetlands	WDNR, USACE, USFWS, Tribes
Lakes, Streams, Rivers, Water Bodies	USCG, WDNR, USACE, USFWS, Tribes, EPA
Agricultural Impacts	DATCP, NRCS
Archaeological Impacts	ACHP, SHPO/THPO, NPS, Tribes, local historical societies
Historical Impacts	ACHP, SHPO/THPO, NPS, Tribes, local historical societies
Hazardous Materials	WDNR, local units of government
National Forest	USFS, NPS
Threatened, Endangered or Rare Species	USFWS, WDNR, Tribes
Tribal Lands	Tribes, BIA
Parks	WDNR, local units of government
Airports	BOA
Structures Over Navigable Waters	USCG, WDNR, USACE, USFWS, potentially others
Substantial Impacts of any Kind	EPA
Air Quality	WDNR, EPA, MPOs/RPCs
Noise	Local units of government
Section 4(f)	DOI, SHPO/THPO, local unit of government or other property owner
Section 6(f) or other special funding	WDNR, USFWS, NPS DOI, USDA, NRCS, potentially others

Definitions of all acronyms can be found in [FDM 20-1 Attachment 1.1](#).

10.15 Public Involvement

Public involvement is an essential component of all levels of the NEPA and WEPA decision-making process during project development. Public involvement must be implemented in accordance with [FDM Chapter 6](#) on all projects administered by WisDOT, including those federally funded projects that are developed by local units of government or their consultants. With the EA process, typically a series of public meetings and outreach are required to make decisions and screen alternatives. A public hearing, if planned or requested, must occur following the completion of the draft EA and prior to making a decision on the final appropriate document (FONSI or draft EIS). See [FDM 6-15](#) for discussion of notices for availability of environmental documents.

The criteria identified on Basic Sheet 3 can assist in making the decision on when a hearing may be needed.

<https://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rsrcs/environment/formsandtools.aspx>

10.20 Alternatives Analysis

The identification, consideration, and analysis of alternatives are integral to the NEPA process and the goal of objective decision-making. Serious consideration of alternatives should lead to a solution that satisfies the transportation need and protects environmental and community resources.

Alternatives analysis should:

- Rigorously explore and objectively evaluate a reasonable range of alternatives. For alternatives which were eliminated from detailed study, briefly discuss the reasons for their elimination including how they do or do not address the project purpose and need.
- Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may also evaluate their comparative merits.
- Include reasonable alternatives not within the jurisdiction of the lead agency, if they could contribute to a solution such as modal options (such as bus, bicycle and rail).
- Include the alternative of no action.
- Identify the agency's preferred alternative, and justify the selection based on the information and evidence in the document.

Alternatives analysis should clearly indicate why and how the particular range of project alternatives was developed, including what kind of public and agency input was used. In addition, alternatives analysis should explain why and how alternatives were eliminated from consideration. It must be made clear what criteria were used to eliminate alternatives, at what point in the process the alternatives were removed (screened) and the measures for assessing the alternatives' effectiveness.

During preparation of NEPA documents, project sponsors should be candid about the rationale for generating, evaluating and eliminating alternatives. Being as specific as possible is important. If an alternative is eliminated from further consideration because it does not meet the purpose and need, adequate explanation must be provided.

There are times when an alternative that is not reasonable is included, such as when another agency requests inclusion due to agency requirements or public expectation. In such cases, it should be clearly explained why the alternative is not reasonable, prudent or practicable, why it is being analyzed in detail, and why it will not be selected.

The no-build alternative, which may include measures to continue the function of the facility, must always be included in the analysis. In some cases, the no-build alternative may be a reasonable alternative, especially when the impacts of other alternatives are great and the need is relatively minor, but generally it serves as a baseline against which the other alternatives can be compared.

Transportation System Management (TSM) and Transportation Demand Management (TDM) alternatives may be considered as potential standalone design options or in combination with other build alternatives. Such alternatives may include high-occupancy vehicle lanes, ridesharing, signal synchronization and other actions. Also, where appropriate, mass transit options should be considered even when they are outside FHWA's funding authority.

Beyond the CEQ requirement of evaluating all, or a reasonable number representative of the full spectrum of reasonable alternatives, there are other requirements for analyzing alternatives. These requirements fall under Section 4(f), the Executive Orders on Wetlands and Floodplains, and the Section 404(b)(1) guidelines. To address these requirements and conclusively demonstrate that some alternatives are not prudent or practicable, project sponsors must develop a well-justified purpose and need statement.

The use of land from a Section 4(f) protected property (such as a significant, publicly owned park, recreation area, or wildlife and waterfowl refuge, or any significant historic site) may not be approved unless there is a finding of de minimis impact or a determination is made that there is no feasible and prudent alternative for such use. Many factors exist that could render an alternative not prudent, including cost and environmental impacts. If an alternative does not meet the action's purpose or need, then the alternative is not prudent, provided the purpose and need section can substantiate that unique problems will be caused by not developing the action.

If a proposed action is to be located in a wetland or significantly encroaches upon a floodplain, a finding must be made that there is no practicable alternative to the wetland impact or floodplain encroachment.

Any alternative that does not meet the need for the action is not practical. If the action's purpose and need are not adequately addressed, specifically delineated, and properly justified; resource agencies, interest groups, the public, and others will be able to generate one or possibly several alternatives that avoid or limit the impact and appear practical. A well-described justification of the action's purpose and need may prevent long and involved negotiations or additional analyses demonstrating that an alternative is not practicable.

10.25 Environmental Effects

The definition of the impacts that must be addressed and considered by federal agencies in satisfying the requirements of the NEPA process, which includes direct, indirect and cumulative impacts have been defined by CEQ regulations (40 CFR 1508.7 and 1508.8). Effects include:

- Direct effects, which are caused by the action and occur at the same time and place.
- Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.
- Cumulative impacts, which are caused by incremental impacts from the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

Effects and impacts are terms used interchangeably in the regulations and in this chapter. For ease of documentation WisDOT has divided effects into four broad categories and 25 subcategories of factors in considering development of a highway project:

1. Economic
 - a. General Economics
 - b. Business
 - c. Agriculture
2. Social and Cultural
 - a. Community or Residential
 - b. Indirect Effects
 - c. Cumulative Effects
 - d. Environmental Justice
 - e. Historic Resources
 - f. Archaeological Resources
 - g. Tribal Issues
 - h. Section 4(f), 6(f), or Other Unique Areas
 - i. Aesthetics
3. Natural
 - a. Wetlands
 - b. Rivers, Streams and Floodplains
 - c. Lakes or Other Open Water
 - d. Groundwater, Wells or Springs
 - e. Upland Wildlife or Habitat
 - f. Coastal zones
 - g. Threatened or Endangered species
4. Physical
 - a. Air Quality
 - b. Construction Stage Sound Quality
 - c. Traffic Noise
 - d. Hazardous Substances or Contamination
 - e. Stormwater
 - f. Erosion Control

WisDOT's Factor Sheets are used to assess these categories.

<https://wisconsin.gov/Pages/doing-business/eng-consultants/cnslt-rsrcs/environment/formsandtools.aspx>

Unique factors not called out in specific Factor Sheets may become an issue on a project, such as invasive

species, and will still need to be addressed in the document.

Effects may also include those resulting from actions which may have both beneficial and adverse effects, even if on balance the agency believes that the effect will be beneficial.

10.30 Environmental Commitments

Summarize all agreements to mitigate adverse environmental effects beyond those found in the WisDOT Standard Specifications for Highway and Structure Construction in the Environmental Commitments section of the document on Basic Sheet 8.

<https://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rsrcs/environment/formsandtools.aspx>

Also include any enhancements in the commitments. It is essential to outline these measures in the document and summarize how adverse environmental effects will be mitigated. Mitigation includes the entire process of avoidance, minimization and compensation for effects. For each potential environmental impact, clearly discuss the avoidance, minimization and compensation of the effects. Completion of all agreements concerning mitigation needs to be documented in the project file prior to construction of the proposed action. Completion of all mitigation measures need to be documented to the project file once they are completed.

10.35 Environmental Assessment Review and Approval Process

10.35.1 Draft and Final EA

FHWA must approve the Draft EA before it is made available to the public. Once the Draft EA has been reviewed and approved the public must be given the opportunity to request a public hearing. WisDOT could also decide to hold a hearing even before a request is made. EAs do not need to be circulated but they must be made available to the public through notices of availability in local, state, or regional clearinghouses, newspapers and other means. See [FDM Chapter 6](#) for a full discussion of the environmental document availability and public hearing process

After public comments are received and considered, a determination of the significance of the impacts is made:

- If at any point in the process of preparing an EA it is discovered that the project would result in significant impacts, an Environmental Impact Statement (EIS) must be prepared see [FDM 20-30](#).
- If, after completing the EA, it is evident that there are no significant impacts associated with the project, a Finding of No Significant Impact (FONSI) may be prepared.

10.35.5 Finding of No Significant Impact (FONSI)

If it is determined that there will be no significant impacts a FONSI will be prepared to conclude the EA process and document the decision. A FONSI is issued when environmental analysis and interagency review during the EA process find a project to have no significant impacts on the quality of the environment. The FONSI document utilizes Addendum A as a template to capture public comments and any changes from the Draft EA. The FONSI does not require formal public circulation.

<https://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rsrcs/environment/formsandtools.aspx>

10.35.10 Environmental Assessment Review and Approval Process

Refer to tables in [FDM 20-40-1](#).

FHWA is the final reviewer and signatory of all EAs involving federal funds or permits. FHWA would also issue a FONSI if appropriate. BTS-EPDS is the final reviewer and signatory of all EAs involving no federal funds or permits. BTS would issue a FONSI for project involving no federal funds if appropriate.



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The Environmental Impact Statement (EIS) is the most complex level of environmental document. It is prepared when it is determined that the action is likely to cause significant impacts to the environment or for projects that are highly controversial on environmental grounds.

The intent of this section is to direct environmental document preparers and reviewers in fulfilling regulatory environmental obligations for EIS action types. An EIS can be used for federally funded or those with no federal funds or permits.

FDM 20-30-5 Process

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The following pages describe in detail the individual steps for the EIS process.

5.1 Early Coordination

Prior to the formal EIS process, early coordination with interested parties may be beneficial. Discussion during early coordination should be planning focused. Potential topics to discuss include, but are not limited to:

- Preliminary areas of concern
- Potential stakeholders
- Environmental requirements and permits

Often these discussions are essential to the development of the Notice of Intent to Prepare a Draft Environmental Impact Statement (NOI). Any decisions made during early coordination must be revisited during the formal scoping process to ensure their validity.

Participation in early coordination should include internal WisDOT staff, and may need to be expanded to groups such as joint lead agencies (FHWA, FRA, FAA), resource agencies, local units of government and the public. A prescribed group to be involved in early coordination cannot be specified as each project is unique.

For further information regarding early coordination, contact your Region Environmental Coordinator (REC) or Bureau of Technical Services (BTS)-Environmental Process and Document Section (EPDS) liaison as appropriate.

5.2 Process Initiation Letter

The Process Initiation Letter (PIL) begins the environmental documentation process for all EISs. The PIL template required for use in developing all PILs can be found at:

<https://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnsit-rsrces/environment/formsandtools.aspx>

5.3 Notice of Intent to Prepare a Draft Environmental Impact Statement

For both state and federally-funded projects, publish an NOI as soon as practical after the decision is made to prepare an EIS. The NOI must be published prior to formal EIS scoping. The process associated with the publication of an NOI for each project funding scenario is discussed below.

5.3.1 Notice of Intent to Prepare an EIS for State Funded Only Projects

For a project that will utilize only state funds and not require federal involvement, the document preparer must inform the public and agencies of an EIS by publishing an NOI in the Wisconsin Administrative Register and a local newspaper of general circulation.

For projects of statewide interest an NOI must also be published in the official state newspaper.

Information required in a state level NOI must include:

- A statement that the project will require the preparation of an EIS
- A brief description of the proposed action
- A preliminary list of possible alternatives
- A brief discussion of the proposed scoping process
- Name and address of the WisDOT contact person

A template can be obtained by contacting your REC.

When completed, the project team shall send an electronic copy of the NOI, to the REC and BTS-EPDS liaison for review. The BTS-EPDS liaison will forward an approved NOI to the address below for publication in the Wisconsin Administrative Register:

Deputy Revisor of Statutes
131 W. Wilson Street
Suite 800
(Interdepartmental Mail)

5.3.2 Notice of Intent to Prepare an EIS for Federally Funded Projects

For a project that will utilize federal funds, the document preparer must inform the public and agencies of an EIS by publishing an NOI in the *Federal Register*.

Required information in the NOI shall briefly:

- Describe the proposed action and possible alternatives.
- Describe the agency's proposed scoping process including whether, when, and where any scoping meeting will be held.
- State the name and address of a person within the agency who can answer questions about the proposed action and the environmental impact statement.

The project team shall prepare the notice for the Federal Register. Examples may be obtained by contacting your REC or BTS-EPDS liaison.

When completed, the project team shall send an electronic copy of the NOI, to the REC and BTS-EPDS liaison for review. The BTS-EPDS liaison will forward the reviewed NOI to FHWA for review and approval. FHWA will then submit the approved NOI to the Federal Register for publication. This publication initiates the EIS and formal scoping process.

5.4 Scoping

5.4.1 Scoping - General

The Council on Environmental Quality (CEQ) and FHWA regulations require scoping, an early and open process of communication, for all actions which require an EIS. Scoping helps refine the project's purpose and need, identifies significant issues and guides the development of the range of alternatives considered during environmental analysis.

Scoping, as a part of preparing an EIS, is a formal process that must commence as soon as practical after the publishing of an NOI. Any decisions made during early coordination must be revisited during the formal scoping process to ensure their validity.

Pursuant to 40 CFR 1501.7, scoping is open to the public; state, tribal, and local governments; and affected federal agencies. The identification of potential stakeholders is important when determining whom to invite to a scoping meeting. Stakeholders may include but are not limited to:

- Federal, state, tribal and local agencies
- The public
- Other interest groups

Notification by personal letter is preferable because it helps to encourage maximum participation. 23 USC 139 requires that participating agencies must be identified no later than 45 days of publication of an NOI. The first public involvement meeting typically serves as the scoping meeting for the public.

Scoping, as an open process, allows for better and more efficient National Environmental Policy Act (NEPA) analysis by placing the responsibility on stakeholders to express concerns early in the process. Scoping ensures the early identification of issues that would have been raised eventually and helps ensure the development of a legally sufficient EIS.

Scoping should identify other environmental review and consultation requirements so the lead, tribes and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the draft EIS.

5.4.2 Scoping - Indian Tribes

Project scoping letters are sent to tribes recognized by the Federal Government and, or the State of Wisconsin that have shown interest in the county where the project is located. These project scoping letters are sent to the

Tribal Chairs/Presidents with a courtesy copy sent to the Tribal Historic Preservation Officer. Tribes that are recognized by the State of Wisconsin and have shown interest, specific to their tribal history, in the county where the project is located should also be invited to be a participating agency on all EISs.

A list of Tribal Chairs/Presidents can be found on the Department of Administration website link:

<http://witribes.wi.gov/docview.asp?docid=19085&locid=57>

Do not confuse Tribal scoping with Section 106 Tribal consultation requirements which are found in [FDM Chapter 26](#) Cultural Resource Preservation.

5.5 Coordination Plan and Impact Analysis Methodologies Documents

A Coordination Plan for Agency and Public Involvement and Impact Analysis Methodology Report documents are developed to ensure the project is in compliance with the public and agency coordination process included in 23 USC 139.

5.5.1 Coordination Plan

The Coordination Plan is used to outline how the project's environmental information will be available to public officials and citizens before decisions are made and before actions are taken.

The project team prepares the Coordination Plan following publication of the NOI. The draft Coordination Plan is reviewed by the REC and BTS-EPDS liaison and forwarded to FHWA for review and concurrence before the scoping process begins. The Coordination Plan template can be found at:

<https://wisconsin.gov/Pages/doing-bus/eng-consultants/cnsit-rsrcs/environment/formsandtools.aspx>

The Coordination Plan facilitates and documents the lead agencies' structured interaction with the public and other agencies, including Tribes. It informs the public and other agencies of how project coordination will be accomplished. The Coordination Plan functions to expedite and improve the environmental review process by clearly defining when interaction will occur and expected outcomes.

The Coordination Plan template should be utilized to guide the preparer through the preparation process. Additional detail, not included in this section, is included in the Coordination Plan template.

The draft coordination plan must be distributed to agencies for comment within 90 days of publication of the NOI.

5.5.2 Impact Analysis Methodology Report

The purpose of the Impact Analysis Methodology (IAM) Report is to communicate and document WisDOT and FHWA's structured approach to analyzing impacts of the project and its alternatives. Collaboration on the impact analysis methodology is intended to promote an efficient and streamlined process and early resolution of concerns or issues.

The project team prepares the IAM Report following acceptance of the PIL. The draft IAM is reviewed by the REC and the BTS-EPDS liaison and forwarded to FHWA for review. The IAM template can be found at:

<https://wisconsin.gov/Pages/doing-bus/eng-consultants/cnsit-rsrcs/environment/formsandtools.aspx>

The IAM report contains three sections:

- Applicable laws, regulations and guidelines
- General methodologies
- Project specific methodologies

The IAM template should be utilized to guide the preparer through the preparation process. Additional detail, not included in this section, is included in the IAM template.

The IAM report is typically distributed to agencies along with the Coordination Plan for comment within 90 days of publication of the NOI.

FDM 20-30-10 Documentation

March 16, 2018

10.1 EIS Documentation Overview

The requirements for the format and content of a draft EIS, final EIS and ROD are described in CEQ regulations, 40 CFR 1500 - 1508. FHWA has developed agency specific regulations, 23 CFR 771.123 - 127, pertaining to format and content of an EIS.

The following guidelines must be followed when writing an EIS. If unusual circumstances suggest that it would

be beneficial to deviate from this process, the Region should coordinate proposed changes with BTS-EPDS and FHWA.

To assist the document preparer in achieving the above goals, the American Association of State Highway Transportation Officials (AASHTO) has developed the following publications;

- Improving the Quality of Environmental Documents

http://environment.transportation.org/pdf/nepa_process/QUALITY_NEPA_DOCS.pdf

- Examples of Effective Techniques for Improving the Quality of Environmental Documents

http://environment.transportation.org/center/products_programs/reports/quality_enviro_docs.aspx

10.2 EIS Format and Structure

The goal of the EIS is to tell the story of the project development and decision-making processes in a manner that the public can understand. The purpose and need should be clearly discussed as well as how each alternative does or does not meet the project purpose and need. The EIS should examine the strengths and weaknesses associated with each alternative and discuss impacts and mitigation of impacts for each alternative carried forward for detailed consideration. The EIS should summarize coordination and include supporting information in appendices or by reference. Finally, the document must distinguish changes between the draft and the final EIS.

Document writers should focus on information that is relevant to the project decision, keeping the document as brief as possible.

Use the following techniques during EIS development:

1. use clear, concise writing,
2. prepare effective summaries, technical reports, and other documentation to include in the project file,
3. choose a flexible, consistent, easy-to-use document format,
4. summarize information and using pictures, illustrations and effective graphics to communicate complex issues or comparisons,
5. separate technical information or high-volume materials into appendices or incorporating by reference,
6. include only the most relevant information in the document for compliance and decision making,
7. make the level of detail on a topic related to the relative importance and degree of harm associated with the project, and
8. incorporate by reference when possible and appropriate (rather than including in the body of the NEPA document).

Include the following contents in both state and federal EISs.

- Cover Page
- Summary
- Table of Contents
- Purpose and Need
- Alternatives
- Existing Conditions,
- Environmental Impacts
- Measures to Mitigate Adverse Impacts
- Section 4(f) and/or Section 6(f) Analysis (if required)
- Community Involvement and Agency Coordination
- List of Environmental Impact Statement Recipients
- List of Preparers
- References
- Index
- Appendices

In the following sections, each component required in an EIS is described.

10.2.1 Cover Page

The cover page should include:

- Federal EIS identification number (for NEPA documents)
- State project ID
- Title of the proposed action
- Designation of draft EIS, final EIS or supplemental draft or supplemental final EIS and whether the document includes Section 4(f), Section 6(f) or Section 106 evaluations
- A federal EIS shall include the statement “Submitted Pursuant to 42 U.S.C. 4323(2)(c)”
- A federal EIS which contains a Section 4(f) evaluation shall also include the statement “and 49 U.S.C. 303”
- A state-only EIS shall include the statement “Submitted Pursuant to s. 1.1 Wisconsin Statutes”
- The name of the lead agency(ies) and all cooperating agencies
- Approvals
- Name(s), address(es) and telephone number(s) of information contact person(s)
- Statement regarding combined final EIS and ROD if applicable
- Abstract
- Date comments are due
- Where comments should be sent
- NEPA statement or Wisconsin Environmental Policy Act (WEPA) statement

For a federal EIS, include a federal EIS identification number at the top left-hand corner designating the federal agency, state, type of document, year prepared, the number assigned to the statement, and whether the document is a draft EIS, final EIS or draft or supplemental final EIS. (Example: FHWA-WIS-EIS-2014-01-D (F) (S)).

The federal EIS identification number is provided by FHWA and the state project ID number is provided by the Region during the early planning stages of the project. A Federal EIS Title Sheet and State-Only EIS Title Sheet template can be obtained by contacting your REC or BTS-EPDS Liaison.

The abstract is a very brief project statement printed on the cover page.

The NEPA or WEPA statement is required indicating that the EIS has been prepared in compliance with NEPA or WEPA as appropriate. The policy statement should be placed on the back of the cover page.

10.2.2 Summary

Develop the summary to emphasize the major conclusions, areas of controversy (including issues raised by agencies and the public) and the issues to be resolved. The summary is intended to assist reviewers by providing an easily accessible overview of the proposed action. The summary should be placed in the document so that it may be reproduced separately for public involvement purposes. The summary should not exceed 15 pages of text if possible.

The summary includes the following:

- A project location map, including location within the state.
- A description of the proposed action indicating the route, termini, type of improvement, number of lanes, length, county, city, state, functional classification and other items as appropriate.
- Purpose and need.
- The alternatives considered and whether they meet the project’s purpose and need. If they are not proposed for adoption, explain why not.
- The alternatives retained for detailed study. If a combined final EIS/ROD will be prepared, the draft EIS should identify which is the preferred alternative. If a combined final EIS/ROD will not be prepared, the final EIS should identify and justify the preferred alternative.
- The environmental impacts including a reference to an Impact Summary Table if applicable.
- Highlights of the results of public and agency involvement including any areas of controversy or major unresolved issues.
- A description of any major actions proposed by other government agencies in the same geographic area as the proposed action.
- A list of other federal or state actions required because of this proposed action (e.g., permit approvals, etc.).

- Proposed mitigation.
- An Impact Summary Table or Matrix providing the reader with a one-page comparison, by each alternative, of costs, acquisition and relocation requirements, and other environmental and social impacts.

10.2.3 Table of Contents

Provide a complete list with page numbers of all major headings, subheadings, exhibits, tables and appendices.

If applicable, a summary of any contents on an accompanying DVD or CD should be included.

A glossary and list of abbreviations and acronyms should follow the Table of Contents.

10.2.4 Purpose and Need

The purpose and need of a project is essential in establishing a basis for the development of the range of reasonable alternatives required in an environmental document and assists with the identification and eventual selection of a preferred alternative. The "purpose" identifies and describes the proposed action while the "need" are the transportation problem(s) the proposed project is intending to address.

The following items may be listed and described in the purpose and need statement for a proposed action. These are by no means all-inclusive or applicable in every situation. They are intended as a guide. Discuss the needs in descending order of importance. Do not discuss the project solutions in the purpose and need statement.

- Project Status - Briefly describe the action's history, including measures taken to date, other agencies and governmental units involved, action spending, schedules, etc. This area should include reference to the TIP, STIP and/or other relevant planning documents.
- Capacity - Discuss the capacity of the present facility and its ability to meet present and projected traffic demands. Discuss what capacity and levels of service for existing and proposed facilities are needed.
- System Linkage - Discuss if the proposed action is a "connecting link" and how it fits into the transportation system.
- Transportation Demand - Discuss the action's relationship to any statewide plan or adopted urban transportation plan. In addition, explain any related traffic forecasts that are substantially different from those estimates of the 23 U.S.C. 134 (Section 134) planning process.
- Legislation - Explain if there is a federal, state, or local governmental mandate for the action.
- Social Demands or Economic Development - Describe how the action will address employment, schools, land use plans, recreation facilities, etc. In addition, describe projected economic development/land use changes that indicate the need to improve or add to the highway capacity.
- Modal Interrelationships - Explain how the proposed action will interface with and serve to complement airports, rail and port facilities, mass transit services, pedestrian and bicycle accommodations, etc.
- Safety - Explain if the proposed action is necessary to correct an existing or potential safety hazard. In addition, explain if the existing accident rate is excessively high and why, and how the proposed action will improve safety.
- Roadway Deficiencies - Explain if and how the proposed action is necessary to correct existing roadway deficiencies (e.g., substandard geometrics, structural sufficiency, load limits on structures, inadequate cross-section, high maintenance costs, etc.). In addition, explain how the proposed action will correct these deficiencies.

Consistent with 23 CFR 771.111(f) to ensure meaningful evaluation of alternatives and to avoid commitments to transportation improvements before they are fully evaluated, the action evaluated in each EIS shall:

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

When developing a transportation project, project sponsors should consider how the end points of the action are determined, both for the improvement itself and for the scope of the environmental analysis. Whether the action has "logical termini" or not is also a concern. Logical termini for project development are defined as rational end points for both a transportation improvement and a review of the environmental impacts.

In developing a concept that can be advanced through the stages of planning, environment, design, and construction; the project sponsor needs to consider a whole or integrated action. This action should satisfy the

projects purpose statement. In addition, the action should be considered in the context of local socio-economics and topography, future travel demand, and other infrastructure improvements. Without framing an action in this way, project sponsors may only peripherally meet project needs or may cause unexpected side effects that require additional corrective action. Project sponsors should also be aware of the problem of segmentation. Segmentation may occur when a transportation need extends throughout an entire corridor, but project sponsors discuss the environmental issues and transportation need of only a segment of the corridor.

10.2.5 Alternatives

This section of the draft EIS must discuss a range of alternatives, including all reasonable alternatives under consideration and those other alternatives which were eliminated from detailed study (23 CFR 771.123(c)). The section must include a discussion of how and why the reasonable alternatives were selected for detailed study and explain why other alternatives were eliminated from further consideration. This discussion may be a summary of a detailed memorandum or series of memorandums that are incorporated by reference into the EIS. The following range of alternatives should be included in the initial alternatives screening process:

- **No-Build Alternative:** The no-build alternative, which might include short-term scheduled maintenance activities or measures to continue the function of the facility, must always be included in the analysis. In some cases, the no-build alternative may be a reasonable alternative, especially when the impacts of other alternatives are great and the need is relatively minor, but generally it serves as a baseline against which the other alternatives can be compared.
- **Transportation System Management (TSM) Alternative:** The TSM alternative includes those activities which maximize the efficiency of the present system. Possible subject areas to include in this alternative are options such as fringe parking, incident management, ridesharing, high-occupancy vehicle (HOV) lanes on existing roadways and traffic signal timing optimization. This limited construction alternative is usually relevant only for major projects proposed in urbanized areas with populations over 200,000.

For all major projects in these urbanized areas, HOV lanes should be considered. Consideration of this alternative may be accomplished by reference to the regional transportation plan, when that plan considers this option. Where a regional transportation plan does not reflect consideration of this option, it may be necessary to evaluate the feasibility of HOV lanes during early project development. Where a TSM alternative is identified as a reasonable alternative for a connecting link project, it should be evaluated to determine the effect that not building a highway link in the transportation plan will have on the remainder of the system. A similar analysis should be made where a TSM element(s) (e.g., HOV lanes) is part of a build alternative and reduces the scale of the highway link.

While the above discussion relates primarily to major projects in urbanized areas, the concept of achieving maximum utilization of existing facilities is equally important in rural areas. Before selecting an alternative on new location for major projects in rural areas, it is important to demonstrate that reconstruction and rehabilitation of the existing system will not adequately correct the identified deficiencies and meet the project need.

- **Transportation Demand Management (TDM) Alternative:** This alternative includes those reasonable and feasible transit options (bus systems, rail, etc.) even though they may not be within the existing project-sponsor funding authority. It should be considered on all proposed major highway projects in urbanized areas with populations over 200,000. Consideration of this alternative may be accomplished by reference to the regional or area transportation plan where that plan considers mass transit or by an independent analysis during early project development.

Where urban projects are multi-modal and are proposed for federal funding, close coordination is necessary with the Federal Transit Administration (FTA). In these situations, FTA should be consulted early in the project-development process. Where FTA funds are likely to be requested for portions of the proposal, FTA must be requested to be either a joint lead agency or a cooperating agency at the earliest stages of project development (23 CFR 771.111(d)). Where applicable, cost-effectiveness studies that have been performed should be summarized in the EIS.

- **Build Alternatives:** Both improvement of existing highway(s) and alternatives on new location should be evaluated as appropriate. For most major projects, there is a potential for a large number of alternatives. Alternative screening may be required as only a representative number of reasonable alternatives must be presented and evaluated in detail in the draft EIS (40 CFR 1502.14(a)). When initial screening results in a large number of reasonable alternatives, additional screening should be conducted to determine the reasonable alternatives carried forward for detailed evaluation. The number of reasonable alternatives evaluated in detail in the draft EIS, therefore, depends on the particular project and the facts and circumstances in each case.

Each alternative should be briefly described using maps or other visual aids such as photographs or graphics. The material should provide a clear understanding of the alternative's termini, location, costs

and the project concept (number of lanes, right-of-way requirements, median width, access control, etc.). Where land has been or will be reserved or dedicated by local government(s), donated by individuals, or acquired through advanced or hardship acquisition for use as highway right-of-way for any alternative under consideration, the draft EIS should identify the status and extent of such property and the alternative(s) involved. Where such lands are reserved, the EIS should state that the reserved lands will not influence the alternative to be selected.

- **Combined Alternative:** It may be appropriate to combine alternatives in some circumstances. Combining may clarify that a full range of alternatives has been investigated. For example, a low-build alternative could be combined with TSM and TDM alternatives.

Development of more detailed design for some aspects (e.g., Section 4(f), Section 106, US Army Corps of Engineers (USACE) or US Coast Guard (USCG) permits, noise, wetlands, etc.) of one or more alternatives may be necessary during preparation of the draft and final EIS in order to evaluate impacts or mitigation measures or to address issues raised by other agencies or the public. However, care should be taken to avoid unnecessarily specifying features which preclude cost-effective final design options.

All alternatives that undergo detailed analysis, including the no-build, need to be developed to a comparable level of detail in the draft EIS so that their comparative merits may be evaluated (40 CFR 1502.14(b) and (d)). When a final EIS/ROD will likely be prepared, a preferred alternative should be identified based on early coordination and environmental analyses. In these instances, the draft EIS should include a statement indicating that the determination of the preferred alternative will not be made until the alternatives' impacts and comments on the draft EIS and from the public hearing have been fully evaluated.

Where a preferred alternative has not been identified, the draft EIS should state that all reasonable alternatives are under consideration and that a decision on the preferred alternative will be made after full evaluation of comments provided by agencies and the public on the alternatives and resulting impacts identified in the draft EIS.

The final EIS must identify the preferred alternative and should discuss the basis for its identification. If the preferred alternative is modified after the draft EIS, the final EIS should clearly identify the changes and discuss the reasons why any new impacts are not significant.

10.2.6 Existing Conditions, Environmental Impacts and Measures to Mitigate Adverse Impacts

The past process for developing an EIS was to separate the affected environment discussion and the environmental consequences discussion into two sections. Recent practice has shown that combining the two discussions and incorporating the discussion of mitigation into one section improves document readability. For that reason, these sections of the EIS have been combined and are now titled Existing Conditions, Environmental Impacts and Measures to Mitigate Adverse Impacts.

This section provides a concise description of the existing social, economic, and environmental setting for the area; includes the probable beneficial and adverse social, economic, and environmental effects of alternatives under detailed consideration; and describes the measures proposed to mitigate adverse impacts. Where possible, the description should be a single description for the general project area rather than a separate one for each alternative.

For each resource category that requires discussion in this section, consideration should be given to the general population served and/or affected (city, county, etc.) by the proposed action. The population should be identified by race, color, national origin, and age. Demographic data should be obtained from available secondary sources (e.g., census data, planning reports) unless more detailed information is necessary to address specific concerns. All socially, economically, and environmentally sensitive locations or features in the proposed project impact area (e.g., neighborhoods, elderly/minority/ethnic groups, parks, hazardous material sites, historic resources, wetlands, etc.), should be identified on exhibits and briefly described in the text. For the location of archaeological sites, threatened or endangered species, hazardous materials, or burial sites it is mandatory to label them all as a group as sensitive areas to prevent disturbance, looting or destruction.

Information included in the environmental impacts and measures to mitigate adverse impacts discussion for each resource category should have sufficient scientific and analytical substance to provide a basis for evaluating the comparative merits of the alternatives. The discussion of the proposed project impacts should be in proportion to their significance.

Data and analyses should be presented commensurate with the magnitude of the impact. For smaller impacts, material, data and analyses should be summarized or incorporated by reference. Photographs, illustrations and other graphics should be embedded in the text when possible, to give a clear understanding of the area and the important issues as appropriate. Other activities which contribute to the significance of the proposed action's impacts should be described.

When preparing the final EIS, the impacts and mitigation measures of the alternatives, particularly the preferred alternative, may need to be discussed in more detail to elaborate on information, refine commitments or address issues raised following the draft EIS. The final EIS will identify any new impacts (and their significance) resulting from modification of or identification of substantive new circumstances or information regarding the preferred alternative following the draft EIS circulation.

The following should be included as part of the environmental impacts and measures to mitigate adverse impacts discussion of this section in the draft and final EIS:

- Supporting information or results of analyses to establish the reasonableness of the conclusions on impacts
- A discussion, in appropriate detail, of mitigation measures for each reasonable alternative so they can be identified in the draft EIS
- Analysis, identification and description of all proposed mitigation measures for the preferred alternative in the final EIS
- All commitments to monitoring measures during construction activities should be summarized.

If important issues raised by other agencies on the preferred alternative remain unresolved, the final EIS must identify those issues and the consultation and other efforts made to resolve them [23 CFR 771.125(a)(2)].

Resource Categories Discussions

The following resource categories should be discussed for each reasonable alternative where a potential for impacts has been identified.

- Geographic Setting
- Soil Resources
- Land Use and Planning
- Transportation Service
- Utilities
- Residential
- Commercial and Industrial
- Institutional and Public Service
- Socio-Economic Characteristics
- Environmental Justice
- Agricultural Resources
- Visual Character and Aesthetics
- Water Resources
- Wild and Scenic Rivers
- Floodplains and Hydraulics
- Coastal Zones
- Wetlands
- Threatened and Endangered Species
- Other Natural Resources
- Noise
- Air Quality
- Contaminated Sites
- Historic Properties
- Archaeological and Burial Sites
- Recreational Resources and Public Land Use
- Construction
- Indirect Effects and Cumulative Effects
- Relationship of Long and Short-Term Uses Versus Long-Term Productivity
- Irreversible and Irretrievable Commitments to Resources

The discussion that follows for each resource category assumes that the resource is present in the project area. If the resource is not present in the project area, include a sentence indicating such and the discussion is concluded. It may also be necessary to provide an explanation regarding how it was determined that the

resource is not present, such as a field review was completed by who and when and no resource was identified.

This list is not all-inclusive and on specific projects there may be additional resource categories that should be included.

Geographic Setting

The geographic setting discussion should describe the spatial relationship of the project to the surrounding area. The local unit(s) of government in which the project is located should be identified. Adjacent communities should be referenced. The project length and termini should be defined. A discussion of land use and substantial topographic features within the study area should be included.

Soil Resources

The soil resources discussion should describe the existing soil types and any impacts that may occur to those soils.

Land Use and Planning

The land use and planning discussion should describe existing and future land uses and local and regional planning documents that are relevant to the study area.

The land use discussion should begin with a description of current development trends and discussion of state, regional, and local government plans and policies with regard to land use and growth in the area. The land use impact analysis should assess the consistency of the alternatives with the adopted comprehensive plans covering the area.

The indirect social, economic, and environmental impacts of any substantial, foreseeable, induced development should be presented for each alternative, including adverse effects on existing communities. Where possible, the distinction between planned and unplanned growth should be identified.

The conformity of each alternative with other local and regional plans and policies should be discussed. Alternative designs to minimize and mitigate adverse land use impacts should be discussed. If an alternative is not in conformity with local and regional plans, then requested amendments to the plan(s) need to be discussed.

Transportation Service

The transportation service discussion describes existing mass transit services, passenger and freight rail, bicycle/pedestrian facilities and the transportation facility being evaluated, including other adjacent roadways in the study area. Impacts to these transportation facilities associated with each alternative should be discussed.

Potential for safety improvements resulting from each alternative should be analyzed if safety is identified as one of the project needs.

Change in travel patterns resulting from each alternative needs to be discussed.

Measures to manage congestion during construction should be discussed in the impacts portion of this section. Coordination required with operators of other transportation modes to minimize disruption of services should be detailed.

Utilities

The utilities discussion should describe existing utilities in the study area. Typically, only major utilities such as electric, gas, sewer, water and fiber optics are discussed as part of this category. Impacts to utilities should be identified.

Measures to minimize and mitigate adverse utility impacts should include discussion of compensating utilities for relocating their facilities.

It should also be noted that continued coordination with utilities, municipalities and the county to avoid or minimize interruptions in service during construction will occur.

Residential

The residential discussion should describe existing residential neighborhoods located within and adjacent to the project corridor.

The residential impacts discussion should identify residential displacements. Information should be summarized in sufficient detail to adequately explain the relocation situation including anticipated problems, proposed solutions and possible mitigation. The Conceptual Stage Relocation Plan (CSRP) from which information is summarized should be referenced in the draft EIS.

Guidance specific to preparation of a CSRP can be found in the WisDOT Real Estate Program Manual Section

5.2.

- <https://wisconsin.gov/Pages/doing-business/eng-consultants/cnslt-rsrcs/re/repn.aspx>
- In addition to the summary of information included in the CSR, the following two statements must be included.
- A statement regarding abandonment of septic tanks, drain fields or wells on acquired properties must be included. The complete verbiage to be used for the statement can be found on the BTS-EPDS website.
- A statement regarding survey for and disposal of asbestos and lead paint in buildings to be demolished must be included. The complete verbiage to be used for the statement can be found on the BTS-EPDS website.

The statements referenced in the above bullets can be found at:

<https://wisconsin.gov/Pages/doing-business/eng-consultants/cnslt-rsrcs/environment/formsandtools.aspx>

Commercial and Industrial

The commercial and industrial discussion should describe existing businesses and industries located within and adjacent to the project corridor.

The commercial and industrial impacts discussion should identify displacements. Information from the project CSR should be summarized in sufficient detail to adequately describe required relocations and any anticipated problems and proposed solutions. The CSR should be referenced in the draft EIS but not attached.

Access to commercial and industrial properties both during construction and following construction should also be discussed. This will also involve identifying if a business or industry serves and/or employees an Environmental Justice (EJ) population (see [FDM Chapter 25](#) Socio-Economic Factors). EJ populations include low-income or minority groups.

Where a proposed project will result in displacements, the following information regarding businesses and industries should be discussed for each alternative under consideration commensurate with the level of impacts and to the extent they are likely to occur:

- An estimate of the numbers, descriptions, types of occupancy (owner/tenant), sizes (number of employees)
- A discussion of whether any owner, tenant or employee is elderly, handicapped, low-income or a member of a minority group
- The discussion should identify; (1) sites available in the area to which the affected businesses and industries may relocate, (2) likelihood of such relocation, and (3) potential impacts on individual businesses caused by displacement or proximity of the proposed highway if not displaced.
- Factors which may require special relocation considerations and the measures proposed to resolve these relocation concerns.
- A discussion of the measures to be taken when the existing business and industry inventory is insufficient, does not meet relocation standards or is not within the financial capability of the business or industry being displaced. A commitment to last resort relocation should be included when a sufficient comparable replacement is not available.
- A discussion of the results of contacts, if any, with local governments, organizations, groups and individuals regarding relocation impacts, including any measures or coordination needed to reduce general and/or specific impacts. These contacts are encouraged for projects with large numbers of relocations or complex relocation requirements. Specific financial and incentive programs or opportunities (beyond those provided by the Uniform Relocation Act) to those being relocated to minimize impacts may be identified, if available through other agencies or organizations.
- A statement that (1) the acquisition and relocation program will be conducted in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and (2) relocation resources are available to those being relocated without discrimination. The complete verbiage to be used for the statement can be found on the BTS-EPDS website.
- A statement regarding abandonment of septic tanks, drain fields or wells on acquired properties must be included. The complete verbiage to be used for the statement can be found on the BTS-EPDS website.
- A statement regarding survey for and disposal of asbestos and lead paint in buildings to be demolished must be included. The complete verbiage to be used for the statement can be found on the BTS-EPDS website.

The statements referenced in the above bullets can be found at:

<https://wisconsin.gov/Pages/doing-bus/eng-consultants/cnslt-rsrcs/environment/formsandtools.aspx>

Institutional and Public Services

The institutional and public services discussion should describe existing fire, ambulance and police protection, schools, libraries, places of worship, assisted-care and assisted-living facilities, cemeteries, hospitals, community centers, food pantries and facilities located within and adjacent to the project corridor.

Impacts to each of these and any others identified in the study area needs to be investigated and discussed.

The project team should be aware that EJ populations are often served by places such as food pantries and community centers.

Measures to minimize and mitigate adverse institutional and public services impacts should include discussion of compensating for relocating their facilities.

Coordination should continue with roadway-dependent institutional and public services providers to avoid or minimize interruptions to access during and following construction.

Socio-Economic Characteristics

The socio-economic characteristics discussion should describe existing population demographics located within and adjacent to the project corridor and should include the following as appropriate:

- Numbers of households
- Age profile
- Disability profile
- Homeless population
- Income and poverty levels
- Vehicle ownership, if needed
- Racial distribution
- Language
- Employment

The impacts to socio-economic characteristics discussion for each alternative should include as appropriate:

- Neighborhood and community cohesion
- Changes in travel patterns
- Changes to bicycle and pedestrian accommodations
- Changes in property values
- Changes in access
- Changes in tax base
- Effects on social groups, including seniors, people with disabilities, homeless, non-drivers and people who are transit-dependent

Mitigation of adverse socio-economic impacts should include discussions of coordination efforts with communities and stakeholders regarding avoidance, minimization and compensation of impacts. Often mitigation measures for socio-economic impacts are discussed as part of other resource categories in this section. If this is the case, refer to those resource categories in this discussion. Typical resource categories that include socio-economic mitigation measures are:

- Indirect effects and cumulative effects
- Noise
- Environmental justice
- Residential displacements
- Business and industry displacements
- Construction impacts

Environmental Justice (EJ)

The EJ discussion should begin with an overview of Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" and FHWA Order 6640.23A, *FHWA Actions to Address Environmental Justice in Minority Population and Low-Income Populations*, issued in 2012. A brief overview of Title VI of the Civil Rights Act of 1964 should also be included.

Executive Order 12898 can be downloaded at:

<http://www.archives.gov/federal-register/executive-orders/pdf/12898.pdf>

FHWA Order 6640.23A can be downloaded at:

<http://www.fhwa.dot.gov/legsregs/directives/orders/664023a.cfm>

Title VI of the Civil Rights Act of 1964 can be downloaded at:

<http://www.justice.gov/crt/about/cor/coord/titlevistat.php>

Environmental justice is based on three fundamental principles:

- To avoid, minimize or mitigate disproportionately high and adverse human health and environmental effects, including social and economic effects, on minority populations and low-income populations.
- To ensure the full and fair participation by all potentially affected communities in the transportation decision-making process.
- To prevent the denial of, reduction in or significant delay in the receipt of benefits by minority and low-income populations.

The next step in an environmental justice analysis is to identify if an EJ population(s) exists within the study area. All EJ populations will need to be identified and described. A good faith effort is required to look to see if any EJ groups live within the study area or are served within the study area.

If it is determined that no EJ populations are located in the study area, clearly discuss the methodology used to make the determination.

If it is determined an EJ population(s) is located in the study area, further analysis should be discussed within the EJ resource category discussion to assess the extent and magnitude of the effects within each resource category, i.e., residential, business and industry, socio-economic, agricultural, indirect effects, cumulative effects, etc., to further determine whether the impacts will be disproportionately high as compared to the effects on non-EJ populations within the project area. This approach provides necessary assurance that environmental justice considerations are not treated as an afterthought, but rather as an integral part of the environmental documentation process.

In carrying out the analyses, the analyst should recognize that the size of the affected minority or low-income groups within the project area is not the issue in making an environmental justice determination. Rather, it is the magnitude or severity of the impacts that is important.

If it is determined that impacts will not be disproportionately high and adverse as compared to the effects on non-EJ populations within the study area clearly discuss the methodology used to make the determination.

If it is determined that impacts in a specific resource category will be disproportionately high and adverse as compared to the effects on non-EJ populations within the study area, the environmental justice resource category discussion should spell out how disproportionately high and adverse impacts on minority populations and low-income populations are to be avoided or mitigated.

If it is determined that a disproportionate high and adverse effect to an EJ population will occur in a specific resource category, a brief summary should be included as part of that resource category discussion. However, the discussion of disproportionately high and adverse effects on EJ populations under these resource categories may not substitute for the EJ resource category discussion of this section, no matter how detailed the discussion.

The EJ resource category should also include a discussion of the coordination with the populations and the methodologies used to promote full participation in the process.

Agricultural Resources

The agricultural resources discussion should describe existing agricultural lands located within and adjacent to the corridor. Agricultural resources are further discussed in [FDM 20-45](#).

Any covenants or deed restrictions on agricultural lands along the corridor should be investigated and discussed.

Measures to avoid, minimize and mitigate adverse agricultural resource impacts should be discussed including compensation for any land or building acquisitions or relocations.

Visual Character and Aesthetics

The visual and aesthetics discussion should begin with a description of the current setting, geography and viewshed.

An assessment of the visual and aesthetic impacts of the alternatives, including the view from the road and the

view of the road should follow. Where relevant, the EIS should document the consideration given to design quality, art and architecture in the project planning. Include a discussion of tree removals and proposed replacement plantings or reasons why none are proposed. This is especially needed for an urban/residential setting.

Measures to avoid, minimize and mitigate adverse visual character and aesthetic impacts should be discussed including any Community Sensitive Solution (CSS) elements if applicable. See [FDM 11-3](#) for a discussion of CSS.

Water Resources

The water resources discussion should begin with a description of the current surface waters and fisheries, stormwater runoff conditions, and groundwater and water supply including identification of any principal or sole source aquifers. See [FDM 24-5](#) for additional information.

Wild and Scenic Rivers

The Wild and Scenic Rivers discussion should only be included if a Wild and Scenic River is present in the project area. The discussion should begin with a description of Wild and Scenic Rivers in the study area.

A discussion of coordination with the United States Department of the Interior's (DOI) National Park Service (NPS), the United States Forest Service (USFS), or United States Fish and Wildlife Service (USFWS), whichever has land management responsibility, is required if a river included in the National Wild and Scenic Rivers System, or a river listed in the Nation-wide Inventory of Rivers with potential for inclusion in the National Wild and Scenic Rivers System is in the study area. This includes projects that are within the viewshed of a Wild and Scenic River.

Potential adverse effects on the natural, cultural, economic and recreational values of the river should be identified and discussed. Potential adverse effects include alteration of the free-flowing nature of the river, alteration of the setting or deterioration of water quality.

Conceptual mitigation of adverse effects to a Wild and Scenic River agreed upon during agency consultation should be identified. Include a commitment to additional coordination with resource agencies to finalize mitigation measures.

If it is determined that the proposed action could foreclose options to designate the river under the Act, the EIS should reflect the consultation with the NPS or USFS on avoiding or mitigating the impacts.

Wild and Scenic River designations may include a Recreational River Area classification. If the Wild and Scenic River designation included the Recreational River Area classification in its entirety or portions thereof, the portion/s containing the Recreation River Areal classification are protected by Section 4(f). Discussion should be included in this section of the Wild and Scenic River designation and classifications of the River. If portions of the River are protected by Section 4(f) detail should be included in the Section 4(f) and Section 6(f) evaluations section of the draft EIS.

Additional information on Section 4(f) applicability can be found in the FHWA Section 4(f) Involvements, Wild and Scenic Rivers Memorandum June 6, 1978.

<https://www.environment.fhwa.dot.gov/guidebook/vol1/doc15d.pdf>

Floodplains and Hydraulics

Begin the floodplains and hydraulics discussion with a general description of floodplains and floodways when these resources are present in the project area.

Identification through maps and other exhibits of the floodplain and floodway locations is required when these resources are located in the study area.

Begin the floodplains and floodways potential impacts analysis with an overview of Executive Order 11988 on Floodplain Management and 23 CFR 650, Subpart A - Location and Hydraulic Design of Encroachments on Flood Plains. Continue with a discussion of the WisDOT - WDNR cooperative agreement as it relates to the determination of impacts on the 100-year flood elevation from new or modified bridges and box culverts.

Continue with a discussion of the potential impacts on floodplains, including area within the 100-year floodplain impacted by alternative. Consider both upstream and downstream potential impacts.

Mitigation of adverse impacts to a floodplain agreed upon during agency consultation should be identified. Include a commitment to additional coordination with resource agencies to finalize mitigation.

Coastal Zones

The coastal zones discussion should begin with identification of whether the study area is in an area covered by

the Wisconsin Coastal Zone Management Program (CZMP) approved by the Department of Administration. No additional discussion is necessary if the proposed project is not located in a CZMP.

When the study area is within or may affect land or water uses within the area covered by a CZMP, the discussion should briefly describe the CZMP plan, identify the potential impacts and include evidence of coordination with the state coastal zone management agency or appropriate agency with jurisdiction. The EIS should include the state coastal zone management agency's determination as to whether the project is consistent with the state CZMP plan.

If it is determined that the proposed action is inconsistent with the state's approved CZMP, FHWA will not approve the action except upon a finding by the Secretary of the Department of Administration that the proposed action is consistent with the purposes or objectives of the Coastal Zone Management Act or is necessary in the interest of national security.

Mitigation of adverse impacts to coastal zones agreed upon during agency consultation should be identified.

Wetlands

The wetlands discussion should begin with the discussion with a definition of wetlands per the USACE Wetlands Delineation Manual (1987)

Continue the discussion with the identification of whether there are wetlands in the study area.

Consultation will be required with USACE, and WDNR, and potentially with USFWS if there are potential impacts on wetlands resulting from a proposed action.

A draft EIS for projects involving new construction in or adjacent to wetlands should include sufficient information to:

- Identify the classification of wetlands involved
- Describe the impacts on the wetlands
- Evaluate alternatives that would avoid the wetlands
- Identify practicable measures to minimize harm to the wetlands

Exhibits showing the wetlands in relation to the alternatives should be provided, including the alternatives to avoid construction in the wetlands.

Address the following two issues when evaluating the impact of the proposed project on wetlands:

- The importance of the impacted wetlands
- The significance of this impact on the wetlands

Mitigation of adverse impacts to wetlands should begin with a discussion about Executive Order 11990, Protection of Wetlands and the Clean Water Act's Section 404(b)1 Guidelines for Specification of Disposal Sites for Dredged or Fill Material (40 CFR 230).

Measures to minimize harm must first discuss avoidance and minimization. The draft EIS should then identify conceptual wetland compensation for unavoidable impacts per the WisDOT-WDNR memorandum of understanding titled Compensatory Mitigation for Unavoidable Wetland Losses Resulting from State Transportation Activities.

The discussion of compensation occurring at a wetland bank should be framed using the Wetland Mitigation Banking Technical Guideline located at:

<https://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rsrcs/environment/wetland-waters.aspx>

Include a commitment to additional coordination with resource agencies to finalize mitigation measures.

A brief discussion of permits required should also be provided. Permit requirements for proposals affecting wetlands may include the following;

- Section 402 of the Clean Water Act - Pertains to a discharge subject to a national or state Pollutant Discharge Elimination System permit pursuant to the Clean Water Act when the surrounding environment is a wetland.
- Section 404 of the Clean Water Act - All wetlands draining into navigable waters are included as waters of the United States for the purpose of this act.
- Section 10 of the Rivers & Harbors Act of 1899 - Under this Act, wetlands may also fall under the permit requirements of the USACE due to obstruction or alteration of navigable waters of the United States.
- Chapter 30 - Under this chapter of the Wisconsin Statutes, permits are required for certain alterations

to waterways and navigable waters. Most highway-related activities carried out by WisDOT are exempt from these requirements provided that coordination with WDNR is carried out through established liaison procedures.

A formal wetland finding is required and prepared by FHWA for all projects that involve construction in wetlands. For additional information on a formal wetland finding see [FDM 20-45-25](#).

The final EIS must include a discussion titled "Wetlands - Only Practicable Alternative Finding." The topics in this discussion include:

- a reference to Executive Order 11990;
- an explanation why there are no practicable alternatives to the proposed action;
- an explanation why the proposed action includes all practicable measures to minimize harm to wetlands; and
- a concluding statement that: "Based upon the above considerations, it is determined that there is no practicable alternative to the proposed construction in wetlands and that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use."

Threatened and Endangered Species

The threatened and endangered species discussion should begin with identification of state-listed, federally-listed or proposed species, or designated or proposed critical habitat in the study area. The official species list can be generated using IPaC (<https://ecos.fws.gov/ipac/>) or through accessing the USFWS website (<http://www.fws.gov/>). Early consultation and/or coordination with the WDNR Natural Heritage Conservation Bureau is also beneficial. Potential impacts to threatened and endangered species resulting from each alternative should be evaluated and discussed including impacts to habitat that supports these species.

An effect determination must be made by WisDOT on behalf of FHWA for each federally listed or proposed threatened or endangered species, or designated or proposed critical habitat, identified by USFWS on the Official Species List.

Mitigation of adverse effects to threatened and endangered species agreed upon during agency consultation should be identified.

Additional information on Threatened and Endangered Species can be found in [FDM Chapter 24](#), Land and Water Resource Impacts.

Other Natural Resources

The discussion of other natural resources should begin with identification of environmental corridors, natural areas and unique woodland and wildlife habitats in the study area.

Early coordination with WDNR, USFWS and Metropolitan Planning Organizations is necessary to ensure that these habitats are identified and potential for impact evaluated.

Impacts to these resources must be quantified and analyzed.

Mitigation of adverse impacts to natural areas agreed upon during agency coordination should be identified.

Noise

The document preparer should be familiar with [FDM Chapter 23](#) Noise, when developing the noise discussion for the draft and final EIS.

The noise discussion should begin with a discussion of the basics of acoustics.

The existing sound environment should be described. Receptor types should be described. Include an aerial map showing locations of receptors. Field measurements must be taken and evidence of noise model validation using those field measurements should be provided.

Existing and future sound levels must be modeled using the latest approved traffic noise model program. Comparison of these levels and identification of impacts should occur in a tabular format.

Mitigation for noise impact should be discussed per [FDM 23-35](#). Mitigation of noise impacts through the use of noise barriers must include a discussion of barrier feasibility and reasonableness. Include the following language if mitigation through construction of a noise barrier(s) is found to be feasible and reasonable;

A final decision about whether to install abatement measure(s) would be made upon completion of the project's final design and through the public involvement process, which would solicit input from residents and property owners who would benefit from construction of the feasible and reasonable noise barrier(s).

Air Quality

The document preparer should be familiar with [FDM Chapter 22](#) Air Quality, when developing the air quality discussion for the draft and final EIS.

The air quality discussion should begin with an overview of the Clean Air Act of 1970. Areas designated non-attainment and maintenance for ozone and particulate matter PM_{2.5} in the study area must be identified.

Evidence of project conformity with the approved regional transportation plan (RTP) and transportation improvement program (TIP) in areas designated non-attainment and maintenance for ozone and PM_{2.5} must be demonstrated for each alternative. For a new, non-exempt project that is not included in a currently conforming RTP and TIP (or a project approved in the NEPA process that was included but has changed in design concept and scope) it will be necessary for the respective Metropolitan Planning Organization (MPO) to amend the RTP and TIP to include the project. To meet Clean Air Act transportation conformity requirements, the MPO and FHWA must make a new conformity determination on the amended RTP and TIP.

Potential for carbon monoxide and PM_{2.5} hot-spot impacts must be evaluated as appropriate.

Potential for mobile source air toxics (MSATs) must also be analyzed as appropriate.

Mitigation of adverse impacts to air quality agreed upon during the inter-agency air quality consultation process should be identified. The discussion of potential construction-related air quality impact mitigation should be included as part of the Construction resource category.

Contaminated Sites

The document preparer should be familiar with [FDM Chapter 21](#) Contaminated Site Assessment and Remediation when developing the contaminated sites discussion for the draft and final EIS.

Contaminated sites include hazardous waste sites regulated under the Resource Conservation and Recovery Act (RCRA) or the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as well as those sites contaminated by other hazardous materials such as petroleum or asbestos which are governed by state and federal regulations.

Early coordination should include the appropriate EPA regional office and WDNR if a RCRA or CERCLA regulated hazardous waste site is impacted.

The contaminated sites discussion should begin with a summary of the relative location of contaminated sites identified within the study area following the processes outlined in FDM Chapter 21 Contaminated Site Assessment and Remediation. The names and addresses of potentially contaminated sites should not be disclosed in the draft or final EIS. The location should also not be identified on included maps.

The affected environment discussion of the study area should summarize:

- Types of sites identified during Phase I assessments
- Additional analysis completed for identified sites
- Those sites requiring further analysis
- Results of asbestos surveys conducted for roadway structures

Contaminated site impact analysis should include commitments to:

- Additional investigations if a build alternative is selected as the preferred alternative
- Remediation measures for sites that can't be avoided
- Surveying all buildings acquired to be moved or demolished for the presence of asbestos

Standard verbiage is provided in FDM Chapter 21 Contaminated Site Assessment and Remediation for these commitments.

Historic Properties

The document preparer should be familiar with [FDM Chapter 26](#) Cultural Resource Preservation, when developing the historic properties discussion for the draft and final EIS.

The historical properties discussion should begin with a brief summary of the Area of Potential Effect (APE) and overview of the requirements to identify structures and districts in or determined eligible for inclusion in the National Register of Historic Places (NRHP) including eligibility criteria. If the draft EIS is being prepared for a state-only project, then explanation should be made that only those structures and districts defined by Wisconsin Statute §.44.40 will be included for discussion/analysis.

The affected environment discussion should include a summary of each structure or district found to be listed in or determined eligible for inclusion in the NRHP. Include the property/structure/district name, address and

description.

The impacts on listed and eligible structures and districts should be identified in the draft EIS for each alternative. The analysis of effects should be the basis of this discussion.

Section 106 of the National Historic Preservation Act requires that consultation with the State Historic Preservation Officer (SHPO) and Tribes should be included as a topic, and remaining consultation required to bring the Section 106 process to a conclusion, should be summarized.

Include agreed upon or potential mitigation measures for effects to eligible historic properties in the draft or final EIS if known. Mitigation for adverse effects to historic properties is outlined in the Memorandum of Agreement (MOA) or Project Specific Programmatic Agreement (PSPA). The MOA must be signed by required signatories prior to the signing of the ROD.

Archaeological and Burial Sites

The document preparer should be familiar with [FDM Chapter 26](#) Cultural Resource Preservation, when developing the archaeological and burial sites discussion for the draft and final EIS.

The archaeological and burial sites discussion should begin with a brief summary of the proposed project study area, results of the burial site searches and an overview of efforts to identify archaeological sites or districts found to be determined eligible for inclusion in the NRHP.

The affected environment discussion should include an overview of the results of the archaeological survey(s) (i.e. Phase I, Phase II, etc.), burial site search(s) and their significance for the study area. Care should be taken to avoid specifically identifying the location of sensitive areas.

Impacts to burial sites, and eligible archaeological sites/districts should be identified in the draft EIS for each alternative if possible.

Include a summary of remaining consultation with the consulting parties required to bring Section 106 process to conclusion.

Include agreed upon or potential mitigation measures for effects to eligible archaeological sites in the draft or final EIS if known. Mitigation for effects to archaeological or burial sites is outlined in the MOA.

These mitigation measures must be agreed upon and included in the ROD prior to signature. Identification of burial site impacts, authorization to disturb and any agreed upon mitigation required per Wisconsin Statute §.157.70 should also be discussed in the ROD.

Recreational Resources and Public Land Uses

The discussion included for this resource category should be brief. Reference should be made to a detailed discussion in the Section 4(f) Evaluation section of the draft and final EIS.

The recreational resources and public land uses discussion should begin with a brief summary of the resources located in the study area. There may be recreational lands used by the public that are not protected by Section 4(f). Discussion of these lands should be included in this section.

The impacts discussion should provide a brief summary of the impacts of each alternative on the resources.

The mitigation of adverse impacts to recreational resources and public land uses discussion should be an overview of the avoidance and minimization measures with reference to additional detailed information in the Section 4(f) evaluation of the draft and final EIS.

Construction

The construction discussion should begin with a brief summary of the construction activities and duration of those activities.

Factors that should have a separate discussion by alternative include;

- Construction Costs (in current year and year of construction dollars)
- Operation and Maintenance Costs
- Construction Employment
- Construction Impacts and Mitigation

The Construction Impacts and Mitigation factor should include a detailed discussion of these sub-factors;

- Noise
- Air Quality (Emissions and Dust)
- Traffic/Conceptual Construction Staging

- Transit, Pedestrian and Bicycle Impacts
- Erosion Control and Water Quality
- Material Source/Disposal Sites
- Inadvertent Cultural Resource Discoveries

Indirect Effects and Cumulative Effects

Preparation of a draft EIS requires a detailed analysis of indirect effects and cumulative effects.

The preparer of these discussions should be familiar with and use processes identified in WisDOT's documents Guidance for Conducting an Indirect Effects Analysis and Guidance for Conducting a Cumulative Effects Analysis. These documents can be found at:

<https://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rsrces/environment/ind-cum-impacts.aspx>

The indirect effects discussion should include a summary of the information included in the Indirect and Cumulative Effects Analysis Report. The summary should include information on the six-step process outlined in WisDOT's Guidance for conducting an Indirect Effects Analysis.

The cumulative effects discussion should include a summary of the information included in the Indirect and Cumulative Effects Analysis Report. The summary should include information from the CEQ 11 step process outlined in WisDOT's Guidance from conducting a Cumulative Effects Analysis.

Relationship of Local Short-Term Uses Versus Long-Term Productivity

Short-term uses refer to the immediate consequences of a project, while long-term productivity relates to direct and indirect effects on future generations. "Both positive and negative effects should be addressed for each alternative in this section.

Irreversible and Irretrievable Commitments of Resources

This section should discuss in general terms the proposed action's irreversible and irretrievable commitment of resources. This general discussion may recognize that the build alternatives would require a similar commitment of natural, physical, human, and fiscal resources. Example text that could be used is below:

NO-BUILD ALTERNATIVE

The No-Build Alternative would involve substantial commitments of resources to maintain the existing deteriorating pavement and structures and to make spot safety improvements.

BUILD ALTERNATIVES

Under the build alternatives, land acquired for highway construction is considered an irreversible commitment during the time period such land is used for highway purposes. Considerable amounts of fossil fuel, labor and highway construction materials such as cement, aggregate and asphaltic material would be required. Considerable labor and natural resources would be used in the fabrication and preparation of construction materials. These resources generally are not retrievable. However, they are expected to remain in adequate supply.

Expenditure of public funds for construction of the build alternatives is considered an irretrievable commitment. In addition, land converted from private to public use would reduce local tax revenues.

As an alternative to total use of new resources, WisDOT would consider using clean construction demolition materials and recycled cement or asphaltic materials. Depending on current technology at the time a project would be constructed, alternative types and sources of materials may be available. The proposed commitment of resources under the build alternatives is based on the concept that residents in the study area, region and state would benefit by the improved quality of the highway. Benefits, which are expected to outweigh the commitment of resources, would include improved safety, preservation of an important transportation corridor, and improved travel reliability.

10.2.7 Section 4(f) and 6(f) Evaluations

Section 4(f) and Section 6(f) evaluations are prepared as a stand-alone section of the draft and final EIS for projects that will have Section 4(f) and/or Section 6(f) resource impacts.

The document preparer should be familiar with 23 CFR 774, the FHWA Section 4(f) Policy Paper, the FHWA Technical Advisory T 6640.8a, "Guidance for Preparing and Processing Environmental and Section 4(f) Documents", [FDM 20-45-5](#), [FDM 20-45-10](#) and [FDM Chapter 26](#) Cultural Resource Preservation, when developing the Section 4(f) and 6(f) Evaluation discussions for the draft and final EIS.

FHWA has codified Section 4(f) through 23 CFR 774.23 CFR 772 can be downloaded at:

http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title23/23cfr774_main_02.tpl

The Section 4(f) Policy Paper supplements FHWA regulations governing the use of land from publicly owned parks, recreation areas, wildlife and waterfowl refuges, and public or private historic sites for federal highway projects. This Section 4(f) Policy Paper was written primarily to aid FHWA personnel with administering Section 4(f) in a consistent manner and help State Highway Agencies (SHAs) fulfill their responsibilities where a SHA has assumed the FHWA responsibility for Section 4(f) compliance. WisDOT has not assumed FHWA responsibility for Section 4(f) compliance. The Section 4(f) Policy Paper can be downloaded at:

<http://www.environment.fhwa.dot.gov/4f/4fpolicy.asp>

The purpose of the Technical Advisory is to provide guidance to FHWA field offices and to project applicants on the preparation and processing of environmental and Section 4(f) documents. The Technical Advisory can be downloaded at:

<http://environment.fhwa.dot.gov/projdev/impta6640.asp>

A Finding of *De Minimis* Impact for one or more Section 4(f) resources in the project study area should be referenced and summarized in this section. The finding of de minimis impact form should be attached to the draft EIS. A Programmatic Section 4(f) evaluation if approved by FHWA, should be attached to the draft EIS. These templates can be found on the BTS-EPDS web page:

<https://wisconsin.gov/Pages/doing-bus/eng-consultants/cnsit-rsrces/environment/formsandtools.aspx>

Draft Section 4(f) Evaluation

The Draft Section 4(f) discussion should begin with a brief overview of 23 U.S.C. 138 and 49 U.S.C. 303 which were originally enacted as Section 4(f) of the Department of Transportation Act of 1966 and are still commonly referred to as Section 4(f).

The section should then include these topics;

- Proposed Action
- Section 4(f) Property Description
- Impacts on the Section 4(f) Property(ies)
- Avoidance Alternatives
- Measures to Minimize Harm
- Coordination

Note: The conclusion that there are no feasible and prudent alternatives is not made in the draft Section 4(f) evaluation. The draft may contain a preliminary assessment. The preliminary assessment may help focus comments from the public and agencies if they disagree that there are no feasible or prudent avoidance alternatives. The conclusion is made only after the draft Section 4(f) evaluation has been circulated and coordinated and any identified issues adequately evaluated.

Final Section 4(f) Evaluation

When the preferred alternative uses Section 4(f) land, the Final Section 4(f) Evaluation must contain the following;

- All the above information for a draft evaluation.
- A discussion of the basis for concluding that there are no feasible and prudent alternatives to the use of the Section 4(f) land. The supporting information must demonstrate that "there are unique problems or unusual factors involved in the use of alternatives that avoid these properties or that the cost, social, economic, and environmental impacts, or community disruption resulting from such alternatives reach extraordinary magnitudes" (23 CFR 771.135(a)(2)). This language should appear in the document together with the supporting information.
- A discussion of the basis for concluding that the proposed action includes all possible planning to minimize harm to the Section 4(f) property. When there are no feasible and prudent alternatives which avoid the use of Section 4(f) land, the final Section 4(f) evaluation must demonstrate that the preferred alternative is a feasible and prudent alternative with the least harm on the Section 4(f) resources after considering mitigation to the Section 4(f) resources.
- A summary of the appropriate formal coordination with the Headquarters Offices of DOI (and/or appropriate agency under that Department) and, as appropriate, the involved offices of United States Department of Agriculture and United States Department of Housing and Urban Development.
- Copies of all formal coordination comments and a summary of other relevant Section 4(f) comments received an analysis and response to any questions raised. Where new alternatives or modifications to

existing alternatives are identified and will not be given further consideration, the basis for dismissing these alternatives should be provided and supported by factual information. Where Section 6(f) land is involved, the NPS's position on the land transfer should be documented.

- Concluding statement as follows: "Based upon the above considerations, there is no feasible and prudent alternative to the use of land from the (identify Section 4(f) property) and the proposed action includes all possible planning to minimize harm to the (Section 4(f) property) resulting from such use."

Section 6(f) Evaluation and Other Uniquely Funded Lands

The use of Section 4(f) land may involve concurrent requirements of other federal and state agencies. Examples include approval of land conversions for lands purchased or lands improved under:

- Section 6(f) of the Land and Water Conservation Fund Act
- Dingell-Johnson Act
- Pittman-Robertson Act
- Wetland Reserve Program
- North American Wetlands Conservation Act
- Knowles-Nelson Stewardship Program

The Description of Section 4(f) Properties discussion should also include identification of whether or not Section 6(f) or other or other unique funding sources apply to the property being acquired. It is also possible that Section 6(f) or other or other unique funding sources may apply to the property without the property being considered a Section 4(f) property. The property should still be included as part of the Description of Section 4(f) Properties discussion in these situations, but the reason why Section 4(f) does not apply should also be evidenced.

The mitigation plan developed for the project should include measures which would satisfy the various requirements. For example, Section 6(f) directs the NPS to assure that replacement lands of equal value, location, and usefulness are provided as conditions to approval of land conversions. Therefore, where a Section 6(f) land conversion is proposed for a highway project, replacement land will be necessary. Regardless of the mitigation proposed, the Draft and Final Section 4(f) evaluations should discuss the results of coordination with the public, official having jurisdiction over the Section 6(f) land and document the NPS's position on the Section 6(f) land transfer, respectively. Section 6(f) is further discussed in [FDM 20-45](#).

10.2.8 Community Involvement and Agency Coordination

The document preparer should be familiar with [FDM Chapter 6](#), Public Involvement, when developing the Community Involvement and Agency Coordination discussion for the draft and final EIS.

A detailed description of the public involvement process and agency coordination is a separate section of the EIS. This section should describe the efforts made to seek input from the general public as well as minority or low-income populations. Results of completed agency coordination, responses to comments and issues remaining to be resolved should be identified.

This section should be separated into these topics:

- Community Involvement During Draft EIS Preparation (Draft EIS)
- Agency Coordination During Draft EIS Preparation (Draft EIS)
- Comments and Coordination Following Draft EIS Availability and Public Hearing (Final EIS)

The Community Involvement during Draft EIS Preparation section should include a detailed discussion of these sub-topics as applicable:

- Summary of Community Outreach Activities
- Committees
- Stakeholder Outreach
- Local Government Outreach
- Public Involvement Meetings
- Study Mailing or Comment Database
- Fact Sheets, Newsletters and Other Project Mailings
- Advertising
- Project Website
- Dedicated Study Email Address and Comment Forms
- Summary of Comments and Responses to Comments

The Agency Coordination during Draft EIS Preparation section should include a detailed discussion of these sub-topics as applicable:

- Summary of Cooperating and Participating Agencies
- Agency Meeting Summary
- Agency Input on Purpose and Need Statement and Responses
- Agency Input on Range of Alternatives Considered and Responses
- Agency Input on Preferred Alternative and Responses (when preparing a combined final EIS/ROD)
- Coordination with Tribal Chairs and THPOs - Discussions and Responses

The Comments and Coordination following Draft EIS Availability and Public Hearing section should include a detailed discussion of these sub-topics as applicable;

- Public Hearing (dates public hearing notice and document availability published, papers of publication, document availability period, date/time/location of public hearing, hearing format type, testimony/comment methods, list of public hearing exhibits, etc.)
- Summary of Public Comments (use a Comment and Response format to address comments most frequently cited)
- Federal, State and Local Government Comments (a tabular format identifying agency, comment and response works well for this sub-topic)
- Summary of Project Meetings Since Draft EIS Approval

Attach agency coordination letters provided both during draft EIS preparation and following draft EIS availability in an appendix. Attach evidence of coordination with the Tribes in that appendix also.

10.2.9 List of Environmental Impact Statement Recipients

A tabular format works well for this section. The table should be separated by;

- Federal Agencies
- State Agencies
- Federal and State Elected Officials
- Indian Tribes
- Local Units of Government
- Local Libraries

10.2.10 List of Prepares

This section will include a list of principal contributors and reviewers of the EIS. All personnel, including consultants and sub-consultants, who were responsible for preparing or reviewing the EIS or conducting environmental studies will be listed. Include their academic qualifications and related experience. A tabular format works well for this section. The table should be separated by:

- FHWA
- WisDOT - Central Office
- WisDOT - Region
- Consultant Staff

10.2.11 References

Include a bibliographic listing of all references and resources used to compile the data for the document. Research papers, studies, journals, newspaper articles, plans, guides, etc. used to prepare the document or specifically cited in the EIS should be part of this section.

10.2.12 Index

An alphabetical listing and page citations of important subjects and areas of major impacts must be included in this section so that the reviewer need not read the entire EIS to obtain information on a specific subject or impact of concern.

10.2.13 Appendices

Any documentation supporting statements in the body of the EIS, including methodologies and statistical supporting data, may be appended. Material prepared as appendices to the EIS should:

- Consist of material specifically prepared for the EIS
- Consist of material which substantiates an analysis fundamental to the EIS

- Be analytic and relevant to the decision to be made
- Be circulated with the EIS within FHWA, to EPA (Region), and to cooperating agencies and be readily available on request by other parties. Other reports, memorandums or studies referred to in the EIS should be readily available for review or for copying at the WisDOT Region Office.

10.2.14 DVD, CD or Other Digital Media

Lengthy studies and analysis that are referenced or summarized in the EIS may be included on a DVD, CD or other digital media that is included with the EIS. Include a summary of the contents on the accompanying DVD or CD as part of the EIS Table of Contents.

FDM 20-30-15 Options for Preparing Final EISs

March 16, 2018

Traditionally, and in accordance with the CEQ Regulations (40 CFR 1506.10(b)(2)), final EIS and ROD documents are issued as separate documents with a minimum 30-day period between the final EIS and ROD. This process is now the exception to the rule.

Section 1319(b) of *Moving Ahead for Progress in the 21st Century Act (MAP-21)*, Accelerated Decision making in Environmental Reviews directs the lead agency, to the maximum extent practicable, to combine the final EIS and ROD into a single document unless:

- The final EIS makes substantial changes to the proposed action that are relevant to environmental or safety concerns; or
- There are significant new circumstances or information relevant to environmental concerns and that bear on the proposed action or the impacts of the proposed action.

This provision is applicable to all proposed projects for which a final EIS is issued. Whether combining the final EIS and ROD is practicable is a determination specific to the EIS process for a proposed project. FHWA will consider the facts and circumstances relevant to the EIS process when deciding whether the use of a combined final environmental impact statement FEIS/ROD process for a project is practicable.

TRANS 400 does not allow WisDOT to combine an FEIS/ROD for state only funded EISs. According to TRANS 400.11(4) a ROD cannot be published sooner than 30 days after the date of publication of the notice of availability of the FEIS or 90 days after the date of publication of the notice of availability of the draft environmental impact statement (DEIS).

FHWA published Interim Guidance on Map-21 Section 1319, Accelerated Decision making in Environmental Reviews, January, 14, 2013. The interim guidance contains additional information on a combined FEIS/ROD. It can be found at:

<https://www.fhwa.dot.gov/map21/guidance/guideaccdecer.cfm>

15.1 Traditional Approach

Under this approach, the combined final EIS and ROD or separate final EIS incorporates the draft EIS (essentially in its entirety) with changes made as appropriate throughout the document to reflect the selection of a preferred alternative (separate final EIS process), modifications to the project, updated information on the affected environment, changes in the assessment of impacts, the selection of mitigation measures, wetland and floodplain findings, the results of coordination, comments received on the draft EIS and responses to these comments, etc. Since so much information is carried over from the draft EIS to the final EIS, important changes are sometimes difficult for the reader to identify. Nevertheless, this is the approach most familiar to participants in the NEPA and WEPA process. Methods, such as highlighting added or modified text and the use of sidebars, may be used to clarify changes from the draft EIS to the final EIS.

15.2 Draft EIS Errata Sheets

Section 1319(a) *Moving Ahead for Progress in the 21st Century Act (MAP-21)*, Accelerated Decision-making in Environmental Reviews allows for the use of errata sheets attached to the draft EIS in-lieu of a final EIS.

This approach to preparing the final EIS is not new. It is currently allowed by CEQ regulation and guidance (see 40 CFR 1503.4(c)), as well as under the existing FHWA Technical Advisory T6640.81, Section VI - Options for Preparing Final EIS's (Abbreviated Version of Final EIS). Section 1319(a) does include additional criteria for when the option is appropriate, and specifies content of the errata sheets.

15.3 Condensed Final EIS

This approach avoids repetition of material from the draft EIS by incorporating, by reference, the draft EIS. The final EIS is, thus, a much shorter document than under the traditional approach; however, it should afford the reader a complete overview of the project and its impacts on the human environment.

The crux of this approach is to briefly reference and summarize information from the draft EIS which has not changed and to focus the final EIS discussion on changes in the project, its setting, impacts, technical analysis, and mitigation that have occurred since the draft EIS was circulated. In addition, the condensed final EIS must identify the preferred alternative, explain the basis for its selection, describe coordination efforts, and include agency and public comments, responses to these comments, and any required findings or determinations (40 CFR 1502.14(e) and 23 CFR 771.125(a)).

The format of the final EIS should parallel the draft EIS. Each major section of the final EIS should briefly summarize the important information contained in the corresponding section of the draft, reference the section of the draft that provides more detailed information, and discuss any noteworthy changes that have occurred since the draft was circulated.

At the time that the final EIS is circulated, an additional copy of the draft EIS need not be provided to those parties that received a copy of the draft EIS when it was circulated. Nevertheless, if, due to the passage of time or other reasons, it is likely that they will have disposed of their original copy of the draft EIS, then a copy of the draft EIS should be provided with the final EIS. In any case, sufficient copies of the draft EIS should be on hand to satisfy requests for additional copies. Both the draft EIS and the condensed final EIS should be filed with EPA for notice in the Federal Register under a single final EIS cover sheet.

FDM 20-30-20 Record of Decision

March 16, 2018

The Record of Decision (ROD) is the final approval needed before an action analyzed in an EIS may be implemented.

A ROD is prepared by FHWA in cooperation with WisDOT on federally funded projects. FHWA approves the ROD. A ROD is prepared and approved by WisDOT for state funded-only projects.

The ROD must identify the selected preferred alternative. It must briefly summarize each alternative analyzed in the EIS. The discussion must also identify the environmentally preferable alternative (the alternative that causes the least damage to the biological and physical environment). In cases where the selected alternative differs from the environmentally preferable alternative and lands protected by Section 4(f) influenced the preferred alternative selection, the ROD should identify this. Other important factors in the selection of the preferred alternative should be identified as well.

The ROD should summarize the basis for any Section 4(f) approval. Key information related to the approval should be summarized as well.

The ROD should describe any specific measures to minimize environmental harm. The ROD should also state if all measures to minimize environmental harm have been incorporated into the selected alternative. If they have not state the reasons why.

If separate FEIS and ROD are prepared for the project, the ROD should summarize substantive comments and provide responses.

The ROD should document any requirements, such as Section 4(f) and Section 106 approvals. The ROD must identify all alternatives that were considered, specifying the alternative or alternatives which are considered environmentally preferable. The environmentally preferable alternative is the alternative that will promote the national environmental policy as expressed in NEPA Section 101. Ordinarily, this means the alternative that causes the least damage to the biological and physical environment. It also means the alternative which best protects, preserves, and enhances historic, cultural, and natural resources.

If FHWA or WisDOT subsequently wishes to take an action which was not identified as the proposed action in the draft or final EIS, or proposes to make substantial changes to the mitigation measures or findings discussed in the ROD, a revised ROD shall be processed.

20.1 ROD for Federal-Aid Projects

Refer to [FDM 6-15-45](#) for a description of the Public Hearing Record and certification process.

No formal decision on a proposed federal action requiring an EIS shall be made or recorded by a federal agency until the later of the following dates:

- Ninety (90) days after publication of the Notice of Availability of a Draft EIS
- Thirty (30) days after publication of the Notice of Availability of a Final EIS described in the preceding procedure. This thirty (30) day period does not apply if a combined final EIS and ROD is issued.

20.2 ROD for State Funded Projects

WisDOT shall complete and sign a ROD no sooner than 30 days after the date of the publication of the Notice of

Availability of the Final EIS and no sooner than 90 days after publication of the Notice of Availability of the Draft EIS. The Region shall prepare a draft of the ROD and transmit it to BTS-EPDS at the same time as it publishes the Notice of Availability of the Final EIS. BTS-EPDS shall review the ROD and upon completion of the public availability period of the final EIS, will recommended approval by the Division Administrator.

The Draft ROD shall contain the following information:

- A statement of the decision.
- Identification of all alternatives considered by the department in reaching its decision, specifying which one is considered environmentally preferable.
- A statement on the intent of Title VI of the Civil Rights Act and of EO 12898 (i.e., “Federal law prohibits discrimination on the basis of race, color, age, sex, or country of national origin in the implementation of this action. It is also federal and state policy that no group of people bears the negative consequences of this action in a disproportionately high and adverse manner without adequate mitigation”), and the conclusions of the environmental justice analysis.
- A statement indicating that all practicable means to avoid or mitigate environmental harm have been adopted, and if not so adopted, a statement specifying the reasons for not adopting such means. If the Department of Transportation 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 ROD, a revised ROD shall be processed.

FDM 20-30-25 Statute of Limitations

March 16, 2018

FHWA may issue a 150-day statute of limitations (SOL) on claims against USDOT and other federal agencies for certain environmental and other approval actions. The 150-day SOL starts from the date that notice is published in the Federal Register by FHWA. A SOL notice can be used for a highway project regardless of the category of documentation used under NEPA.

FDM 20-30-30 Draft and Final EIS Review, Approval and Circulation Process

March 16, 2018

30.1 Review

The timing of the review process will vary with the complexity of the project, the controversy associated with the impacts, and the number of reviewers. Project teams are encouraged to coordinate with BTS-EPDS and FHWA early regarding document methods, format and content to avoid subsequent delays resulting from requested changes.

The REC and WisDOT Project Manager will review and comment on the draft-version of the EIS. Once their comments are addressed and they are satisfied that the document is complete, the REC submits the document to the BTS-EPDS liaison for review and comment. Working with the Region to incorporate their comments and satisfied that the document is legally sufficient, the BTS-EPDS liaison submits the document to the designated FHWA staff for review and comment.

Concurrent review by BTS-EPDS and FHWA may occur if the project team believes expedited review is necessary and both BTS-EPDS and FHWA agree. A meeting between the reviewers and the authors can be held to facilitate communication as warranted. Also, a brief review of the document, impacts and final selected alternative can be held to inform the signing authorities at both WisDOT and FHWA.

30.2 Approval

When FHWA is satisfied that the document is legally sufficient, the project team submits a camera-ready cover sheet to BTS-EPDS for signature. BTS-EPDS then transmits the cover sheet to FHWA for signature. When all required signatures are acquired, the cover sheet is returned to the project team for production of the EIS.

30.3 Circulation

Prior to or on the date of publication of the availability of the document in the Federal Register and legal notice of availability in the newspaper(s), the project team must ensure that copies of the document are available at the locations referenced in each notice.

Refer to [FDM 6-15-20.4](#) for a description of the Federal Register Announcement process and [FDM 6-15-20.3](#) for a description of the legal notice for a public hearing process.

The appropriate regional clearinghouse will act as a local review agency of approved EISs, pursuant to the President's Executive Order 12372. The Wisconsin Department of Administration as the agency responsible for coordinating the requirements under Executive Order 12372. A list of state clearinghouses and the counties they serve is found in [FDM 5-1-5](#).

Those agencies which have jurisdiction over an area or which have a responsibility to a particular interest or area of concern, including Cooperating and Participating Agencies should also receive a copy of the approved EIS for review and comment.

The project team should also make a good faith effort to ensure that all those identified on the List of Environmental Impact Statement Recipients in the EIS have a copy of the approved EIS before publication of the notices.

BTS-EPDS and FHWA should be consulted to determine the number of additional EISs needed for their offices.

The project team should also consider making copies of the EIS on DVD, CD or other digital media for others that may request a copy.

Posting of the EIS on a project website is also a valuable method for making the EIS available to the public.

FDM 20-30-35 Tiered EIS

March 16, 2018

The basic concept of tiering an EIS is straightforward. Rather than preparing a single EIS as the basis for approving the entire project, the agency conducts two or more rounds, or "tiers", of environmental review.

The National Cooperative Highway Research Program (NCHRP), Transportation Research Board (TRB) prepared NCHRP Guidelines on the use of Tiered Environmental Impact Statements for Transportation Projects. This document, which can be found using the link below, contains general guidelines for preparing a Tiered EIS.

[http://onlinepubs.trb.org/onlinepubs/nchrp/docs/NCHRP25-25\(38\)_FR.pdf](http://onlinepubs.trb.org/onlinepubs/nchrp/docs/NCHRP25-25(38)_FR.pdf)

The NCHRP guidelines are not policy or regulations, nor are they endorsed specifically by WisDOT or FHWA. They should be used as appropriate with frequent coordination with your REC, LPMC and BTS-EPDS Liaison.

In Tier 1, the agency typically prepares an EIS that analyzes a program or large project on a broad scale. In Tier 2, the agency prepares one or more additional NEPA documents, which examine individual projects or sections in greater detail.

The challenge in preparing a tiered study is determining the details of the tiered approach. The agencies preparing a tiered study must make several important decisions and clearly define them, such as:

- What decisions will be made in each tier?
- How much detail is appropriate in each tier?
- How will non-NEPA requirements, e.g., Section 4(f), historic preservation consultation, endangered species consultation, and wetlands permitting, be addressed at each tier?
- How will agencies and the public be involved in the tiered process?
- What will be done to educate agencies and the public about the tiered process?

Tiering is typically adopted for these main reasons:

- Complexity of managing the NEPA process for lengthy corridors;
- Desire to authorize corridor preservation, where construction is not anticipated for many years;
- Lack of funding to complete a traditional EIS which require more detailed studies than is typically required for a Tier 1 EIS and
- To prevent the numerous studies associated with a traditional EIS from becoming outdated because the funding shortage prevents the project from moving forward, which usually coincides with a lack of funding.

Regulations specific to tiering are discussed in 40 CFR 1502.20.

Prior to beginning a Tiered EIS the Region should consult with BTS-EPDS and FHWA.



FDM 20-35-1 Introduction

March 16, 2018

All environmental documents are tracked by the Wisconsin Department of Transportation (WisDOT) and the Federal Highway Administration (FHWA). At a minimum, the Region Environmental Coordinator (REC) should review and track all environmental documents produced at the WisDOT region offices and the Bureau of Technical Services (BTS) - Environmental Process and Document Section (EPDS) should review and track all documents produced within Central Office (CO). The Local Roads Management Consultant must track all local roads projects that receive state or federal money. The review and approval process varies somewhat depending on the funding and authority for each project.

1.1 Federally Approved Documents

A federally approved document is one that either has federal funding and/or involves a federal permit or approval process (federal undertakings), such as needing a USACE Section 404 permit or an approval for a change in interstate access. In the case of federal permitting the document level needs to be discussed with the permitting agency and should be coordinated through the appropriate environmental staff. All environmental documents produced for a federal undertaking at WisDOT requires review and approval. The following table (Table 1.1) lays out the review and approval signatures needed for each level of documentation.

Table 1.1 NEPA Undertaking Environmental Document Review Process

Document Type	Region *	BTS-EPDS	FHWA
CEC	X		
CEC with 4(f)**	X	X	X
PCE	X		
PCE with 4(f)**	X	X	X
ER	X		X
ER with 4(f)	X	X	X
EA	X	X	X
EIS	X	X	X

* The REC must review all documents prior to region office signature and the LRMC must review all local roads prior to the WisDOT Project Manager signature.

** CEs with 4(f) are reviewed for information not approval by BTS - EPDS and FHWA, only the 4(f) is approved by FHWA.

1.2 State Approved Documents

A state approved document is one that is funded using only state funds and require no FHWA approvals. All environmental documents produced for a state action must follow WisDOT's review and approval process. If a federal permit or approval is required (USACE 404 Permit), that agency may request WisDOT to conduct environmental analysis and documentation or they may do it themselves. Close coordination with that agency can help clarify and streamline the process. The following table (Table 1.2) lays out the review and approval signatures needed for each level of documentation.

Table 1.2 WEPA Action Environmental Document Review Process

Document Type	Region *	BTS-EPDS	FHWA
CEC	X		
PCE	X		
ER	X	X	
EA	X	X	
EIS	X	X	

* The REC must review all documents prior to region office signature and the LRMC must review all local roads prior to the WisDOT Project Manager signature.

Any questions or concerns on needed reviews or signatures can be directed to the REC, LRMC or BTS-EPDS liaison.



FDM 20-40-1 Introduction

March 16, 2018

A re-evaluation is a continuation of the National Environmental Policy Act (NEPA) and Wisconsin Environmental Policy Act (WEPA) as part of the project development process. The re-evaluation, required at certain key points, allows the project sponsor to determine whether the existing environmental document, determination or final project decision remains valid for subsequent federal and state actions. A re-evaluation aids in determining whether or not the preparation of a new Categorical Exclusion Checklist (CEC), Environmental Report (ER), Environmental Assessment (EA), EIS or Supplemental Environmental Impact Statement (SEIS) is necessary in order to advance the project to the next stage.

In assessing re-evaluation level and type, give attention to determining what changes have occurred since the most recent environmental document for the project was approved, including:

- Changes in the scope or design of the project
- Changes to the existing environment
- Changes to project impacts and mitigation
- New or modified laws, regulations or policies
- New information, in general

The final determination made in a re-evaluation is one of the following conclusions;

- The previous NEPA/WEPA decision remains valid,
- A supplemental environmental document is required, or,
- A new environmental document is required.

When there are no or few changes, additional analysis can be incorporated into the re-evaluation to support and document the following:

- A conclusion that there are no new significant impacts
- The NEPA/WEPA document remains valid for the requested action for the next phase of project development.

FDM 20-40-5 Major Action Approvals

March 16, 2018

A review of the most recently approved environmental document must occur before each subsequent major action approval can be made including:

- Proceeding with final design
- Purchasing substantial right of way
- PS&E signature
- Construction authorization
- Project programming and funding approvals in the Statewide Transportation Improvement Program (STIP) and federal electronic accounting system.

Typically, the conclusion of this review is incorporated into the documents associated with these approvals and do not normally require a standalone written re-evaluation unless any of the circumstances included in [FDM 20-40-10.1](#) have also occurred.

FDM 20-40-10 When is a Re-evaluation Required

March 16, 2018

23 CFR 771.129 sets forth criteria for when a NEPA document requires a re-evaluation. Wisconsin Administrative Code Chapter Trans 400.14 sets forth criteria for when a WEPA document requires a re-evaluation.

10.1 Consultation

Consultation with the Region Environmental Coordinator (REC), the Bureau of Technical Services Environmental Process and Documentation Section Liaison (EPDS) and FHWA staff, as appropriate, should occur to determine the appropriate type of environmental document re-evaluation under the following

circumstances;

- Change in the scope, design or location of the project from what was described in the original environmental document.
- Change in environmental conditions in the vicinity of the project such that new impacts or changes in impacts may occur which were not previously considered
- Change in project impacts or the environmental mitigation measures or commitments contained in the approved environmental document
- New or modified laws, regulations, or policies specify additional steps for compliance that apply to the project and were not considered in the original analysis
- New or updated information (traffic volumes, design standards, public/government/agency interactions, etc.) is available that could change previously made decisions
- If three (3) years have elapsed between approval of a draft environmental document and the final environmental document
- If three (3) years have elapsed since the last major action approval

10.2 Consultation Format

The REC or EPDS liaison, as appropriate, will assist the project manager in deciding the appropriate contacts for and format of consultation. Consultation formats include;

- Conference call
- Email
- Memo
- Face to face meeting

Discuss the following information as part of consultation;

- Previous environmental document type and date(s) of approval
- Any major project action approval that has occurred since signature of the most recent environment document
- Changes in the project scope
- Changes in project design
- Applicable new or modified laws, regulations or codes
- Changes to the existing environment
- Changes to project impacts and mitigation
- If the original document is no longer valid, does it need to be formally rescinded

10.3 Consultation Documentation

The consultation process used and decision made should be documented in the re-evaluation, supplemental environmental document or new environmental document.

FDM 20-40-15 Types of Environmental Documentation Re-evaluations

March 16, 2018

15.1 Introduction

Consultation will determine if the appropriate type of environmental document re-evaluation required is;

- A Memo to File
- A written re-evaluation using the WisDOT Information for Re-Evaluation of Environmental Document Validity template ([DT2095](#)).

or, consultation may lead to a determination that the changes are substantial or significant without preparing a re-evaluation and that the project team should prepare;

- A supplemental environmental document, or
- A new environmental document is required.

15.2 Memo to File

A Memo to File may serve as the appropriate re-evaluation document if consultation determines;

- Less than three (3) years have elapsed since the last major project action approval as identified in [FDM 20-40-5](#)
- Less than three (3) years have elapsed between approval of a draft environmental document and the

final environmental document

- A review conducted of the most recently approved environmental document indicates changes as identified in [FDM 20-40-10.1](#) are not significant
- Additional agency coordination and public involvement is not required

The Memo to File must include appropriate documentation to support the consultation decision that changes are not significant. The Memo to File should end with a statement describing whether the changes will result in a new significant impact and whether the original environmental decision remains valid. The Memo to File must be reviewed and transmitted in the same manner as the original environmental document.

The Memo to File should be sent to BTS-EPDS and FHWA as appropriate.

15.3 Information for Re-Evaluation of Environmental Document Validity Template

If consultation determines that a re-evaluation is required, a re-evaluation must be prepared using the Information for Re-Evaluation of Environmental Document Validity template, or higher-level documentation as appropriate, for the following conditions:

- Three (3) years have lapsed since the last major action approval
- Less than three (3) years have lapsed since the last major action approval, but consultation including a review conducted of the most recently approved environmental document determines changes as identified in [FDM 20-40-10.1](#) are substantial and require more documentation, coordination and public involvement than a Memo to File.

Prepare the re-evaluation using the Information for Re-Evaluation of Environmental Document Validity template found at:

<https://wisconsin.gov/Pages/doing-business/eng-consultants/cnsit-rsrcs/environment/formsandtools.aspx>

The Information for Re-Evaluation of Environmental Document Validity document must be reviewed by the REC prior to transmittal to BTS-EPDS and FHWA.

The Information for Re-Evaluation of Environmental Document Validity document will result in a determination regarding whether the analysis included in the re-evaluation is sufficient documentation or if a supplemental or new environmental document is required. Signature on the cover page by BTS-EPDS and FHWA, as appropriate, indicates concurrence in the decision made through the Information for Re-Evaluation of Environmental Document Validity process.

Phased construction may also require preparation of a re-evaluation using the Information for Re-Evaluation of Environmental Document Validity template. A re-evaluation for phased construction should focus on determining the validity of the original environmental document project decision with respect to the current construction phase of the project. Before making a final NEPA/WEPA validity determination, the re-evaluation must also consider any changes that might result to future construction phases from changes to the phase currently being evaluated including updates to cumulative impacts.

15.4 Supplemental Environmental Impact Statement

15.4.1 Introduction

The conclusion of the Information for Re-Evaluation of Environmental Document Validity process or EA prepared as the re-evaluation for a draft or final environmental impact statement (DEIS or FEIS) could be that the project would result in new significant impacts. In these instances, a supplemental environmental impact statement (SEIS) is required.

The SEIS is processed in the same way as the original DEIS or FEIS, except that there is no requirement for formal scoping. See [FDM 20-30](#) for EIS processing procedures.

Consultation may lead to a decision to prepare a supplemental environmental document without preparing an Information for Re-Evaluation of Environmental Document Validity document or EA may also occur.

15.4.2 Format and Content of Supplemental Environmental Impact Statement

An SEIS should be developed using the same process and format as an original EIS. The SEIS should provide sufficient information to briefly describe the proposed action, the reason(s) why a supplement is being prepared, and the status of the previous DEIS or FEIS. The SEIS needs to address those changes or new information that are the basis for preparing the SEIS and were not addressed in the previous EIS.

Consultation may lead to a determination that referencing and summarizing the previous EIS is preferable to repeating unchanged, but still valid, portions of the original document. For example, some items such as affected environment, alternatives, or impacts which are unchanged may be briefly summarized and referenced.

New environmental requirements which became effective after the previous EIS was prepared need to be addressed in the SEIS as applicable.

Previous approvals such as permits, Memoranda of Agreement, etc. associated with those aspects of the proposed action that have not changed from the earlier document are likely to remain valid. New approvals will likely be required for those aspects of the project that have changed since the original document.

Additionally, to provide an up-to-date status of compliance with NEPA, it is recommended that the SEIS summarize the results of any re-evaluations that have been performed for portions of or the entire proposed action. By this inclusion, the SEIS will reflect an up-to-date consideration of the proposed action and its effects on the human environment.

When a previous EIS is referenced, the SEIS transmittal letter and public notices should indicate that copies of the original DEIS or FEIS are available and will be provided to all requesting parties.

15.4.3 Distribution of a Supplemental EIS

A SEIS will be reviewed and distributed in the same manner as a DEIS and FEIS (23 CFR 771.130(d)). See [FDM 20-30](#) and [FDM Chapter 6](#) Public Involvement for detailed discussion of the review and distribution process.

15.5 New Environmental Document

If the Information for Re-Evaluation of Environmental Document Validity document or EA concludes that a new environmental document is required, consult with your REC, BTS-EPDS and FHWA as appropriate, to determine the appropriate environmental document type. It may be determined that a CE, EA or EIS could serve as the appropriate new document type for a re-evaluated CE, EA, DEIS or FEIS to adequately document the proposed project changes identified in [FDM 20-40-10.1](#).

A decision to write a new environmental document without preparing an Information for Re-Evaluation of Environmental Document Validity document may also occur. Consult with your REC, BTS-EPDS and FHWA, as appropriate, for concurrence in this decision by the project team.

Portions of the re-evaluated document may still be applicable and included in the new environmental document. The analysis and documentation to be included should be checked to ensure all information is still valid.

Previous approvals such as permits, Memoranda of Agreement, etc. associated with those aspects of the proposed action that have not changed from the earlier document are likely to remain valid. New approvals will likely be required for those aspects of the project that have changed since the original document.

The original document may need to be rescinded. This should be determined in consultation with EPDS and FHWA, and what format the rescindment must follow.

The new environmental document will be reviewed and distributed in a manner appropriate to the new environmental document type prepared. See [FDM 20-20](#), [FDM 20-25](#), [FDM 20-30](#) and [FDM Chapter 6](#) Public Involvement for the review and distribution process.

FDM 20-40-20 Resource Agency, Tribal, Public and Governmental Coordination

March 16, 2018

20.1 Introduction

The level of additional coordination required with resource agencies, Tribes, the public and governmental entities depends on the specific circumstances and purpose of the re-evaluation.

Consult with the REC, BTS-EPDS and FHWA, as appropriate, regarding required additional coordination for a re-evaluation.

20.2 Resource Agencies

Continued consultation at certain key points with resource agencies is required throughout the project development process. Additional coordination shall occur with an agency having jurisdiction or special expertise related to a resource that is affected or has the potential to be affected, by any change identified in [FDM 20-40-10.1](#).

Document decisions made through resource agency coordination in the re-evaluation.

For example, if the project footprint is expanded beyond the original area surveyed for historic resources or project design changes have the potential to create new effects not originally evaluated on identified historic resources, then complete additional State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer (THPO), consulting party and other agency coordination as appropriate. For this situation, a new or revised Section 106 Review form, additional Determinations of Eligibility, if necessary, and any other required

Section 106 Review documentation should be attached as an appendix to the re-evaluation.

20.3 Tribes

Substantive changes in project scope or design require a new Tribal Coordination Letter be sent to the applicable tribes as outlined in [FDM Chapter 26](#) Historic Preservation. There may also be additional public involvement efforts with tribes that need to be completed per [FDM Chapter 6](#) Public Involvement.

Attach proof of coordination and any responses from the tribes as an appendix to the re-evaluation.

If a project falls within reservation boundaries or on tribal lands, coordination is much more extensive as the tribe is equivalent to a sovereign nation. Work closely with your Region Tribal Liaison and REC, BTS-EPDS and FHWA as appropriate.

20.4 Public and Governmental Involvement

The level of additional public and governmental involvement should be commensurate with the level of changes identified in [FDM 20-40-10.1](#) and anticipated or known level of controversy associated with the proposed action.

For example, a change that results in taking an additional two-foot strip of right of way at three properties may only require a meeting with the three landowners to get their feedback on the proposed new taking, while changing the design from a previously approved signalized intersection to a roundabout may require holding additional local officials and public involvement meetings.

If an opportunity to request a public hearing was offered or a public hearing was held on the previous environmental document, complete consultation with BTS-EPDS and FHWA to determine if a proposed scope or design change rises to the level of requiring a new public hearing.

Document proof of public and governmental coordination and decisions made in the re-evaluation.



FDM 20-45-1 Introduction

March 16, 2018

Other documents may be required in some circumstances to fulfill legal requirements of the environmental process. This section discusses the circumstances when other documents are necessary and completion requirements.

FDM 20-45-5 Section 4(f) of the Department of Transportation Act of 1966

March 16, 2018

5.1 Introduction

Section 4(f) of the Department of Transportation Act of 1966 (Section 4(f)) has been codified in 23 USC 138 and 49 USC 303. Section 4(f) regulations specific to FHWA are found in 23 CFR 774. 23 CFR 774 can be found at:

http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title23/23cfr774_main_02.tpl

Section 4(f) applies to any agency operating within USDOT. For purposes of this section, FHWA will be referenced as the agency with decision making authority over Section 4(f). If your project involves another agency operating within USDOT contact the Region Environmental Coordinator (REC), Local Roads Program Management Consultant (LRMC) or Bureau of Technical Services (BTS) - Environmental Process and Document Section (EPDS), as applicable.

To assist the document preparer in understanding and complying with Section 4(f), FHWA has developed the following documents;

- "Section 4(f) Policy Paper", July 20, 2012
- FHWA Technical Advisory T 6640.8a, "Guidance for Preparing and Processing Environmental and Section 4(f) Documents", October 30, 1987 (Technical Advisory)

The Section 4(f) Policy Paper supplements FHWA regulations governing the use of land from publicly owned parks, recreation areas, wildlife and waterfowl refuges, and public or private historic sites for Federal highway projects. This Section 4(f) Policy Paper was written primarily to aid FHWA personnel with administering Section 4(f) in a consistent manner and help State Highway Agencies (SHAs) fulfill their responsibilities where a SHA has assumed the FHWA responsibility for Section 4(f) compliance. The Section 4(f) Policy Paper can be downloaded at:

<http://www.environment.fhwa.dot.gov/4f/4fpolicy.asp>

The purpose of the Technical Advisory is to provide guidance to FHWA field offices and to project applicants on the preparation and processing of environmental and Section 4(f) documents. The Technical Advisory can be downloaded at:

<http://environment.fhwa.dot.gov/projdev/impta6640.asp>

5.2 Section 4(f) Purpose

Section 4(f) states that the U.S. Secretary of Transportation shall not approve any project or program which involves the use of any publicly owned land from a public park, recreation area, historic site (public or privately owned), or waterfowl or wildlife refuge of national, state, or local significance (as determined by the officials having jurisdiction) unless;

- there is no feasible and prudent alternative to the use of such land, and,
- project design includes all possible planning to minimize harm, or
- Secretary determines that the use of the property, including any measure(s) to minimize harm (such as any avoidance, minimization, mitigation, or enhancement measures) will have a de minimis impact on the property.

Any approval of the use of Section 4(f) property is subject to a legal sufficiency review by the Federal Highway Administration (FHWA) Office of Chief Council with exception of the following;

- A use with a de minimis impact determination
- A use processed with an existing programmatic Section 4(f) evaluation

Projects not receiving any funding from USDOT or requiring USDOT approval are not subject to Section 4(f).

5.3 Section 4(f) Applicability

FHWA has final determination authority on Section 4(f) applicability. Coordination with your REC, LRMC or BTS - EPDS, as applicable, is required due to the complex nature of making Section 4(f) applicability determinations. See Section 4(f) Policy Paper for more discussion.

<https://www.environment.fhwa.dot.gov/4f/4fpolicy.asp>

Section 4(f) properties requiring consideration per the regulation include:

- Parks and recreational areas of national, state, or local significance that are publicly owned and open to the public
- Publicly owned wildlife and waterfowl refuges of national, state, or local significance which are open to the public to the extent that public access does not interfere with the primary purpose of the refuge
- Historic properties which are listed in or determined eligible for inclusion in the National Register of Historic Places (NRHP) in public or private ownership, regardless of whether they are open to the public

Section 4(f) generally does not apply to parks, recreational areas or wildlife and waterfowl refuges when owned by private institutions, organizations or individuals even if they are open to the public. However, there are exceptions. For example, if a government body has a permanent proprietary interest on the property, including a permanent easement, and the property functions as a Section 4(f) protected property, it may be determined that Section 4(f) applies. FHWA will determine on a case-by-case basis whether the property should be considered publicly owned, thereby making Section 4(f) applicable.

Properties which meet the definition of Section 4(f) are presumed to be significant unless the jurisdictional authority over the property concludes the entire property is not significant. FHWA makes an independent evaluation to assure the jurisdictional authority's finding is reasonable. In a situation where FHWA's determination disagrees and overrides the jurisdictional authority, the reason for FHWA's determination should be documented in the project file and discussed in the environmental document.

Section 4(f) properties need to be identified as early as possible in the planning and project development process to ensure the Section 4(f) property is given full and fair consideration and to allow adequate time for all required procedural steps to complete a Section 4(f) evaluation. Historic properties need to be identified and evaluated to determine if they are listed on or eligible for inclusion in the NRHP. This needs to occur early enough in project development to determine if Section 4(f) is applicable and to allow adequate time for all required procedural steps to complete a Section 4(f) evaluation ([FDM 26-25-5](#)).

5.4 Assessing Use of Section 4(f) Properties

23 CFR 774 identifies impacts to Section 4(f) properties as a "use" of the Section 4(f) property. Impacts to properties are referred to as a use throughout this section.

The most common type of use occurs when land from a Section 4(f) property is incorporated into a transportation facility whether it is purchased outright as right of way or acquired through a permanent easement for permanent access onto the property. Temporary occupancy is the second form of use and occurs when a Section 4(f) property is required for project construction related activities, in part or in whole. There are conditions under which temporary occupancy is so minimal as not to constitute a use as defined per 23 CFR 774.13(d). Work closely with your REC, LPMC or BTS-EPDS as appropriate, to determine if these criteria are met. Written concurrence on use is required in certain circumstances. See Section 4(f) Policy Paper 1.2.2 for additional information.

The third and final type of use is called constructive use. A constructive use involves no actual physical use of the Section 4(f) property via permanent incorporation of land or a temporary occupancy of land into a transportation facility. A constructive use occurs when the proximity impacts of a proposed project adjacent to, or nearby, a Section 4(f) property result in substantial impairment to the property's activities, features, or attributes that qualify the property for protection under Section 4(f). As a general matter, this means that the value of the resource, in terms of its Section 4(f) purpose and significance, will be meaningfully reduced or lost. Coordination with the REC, LRMC or BTS-EPDS, as applicable, is required if the project team believes a Section 4(f) constructive use may occur. An example could be construction of a large transportation structure adjacent to a Section 4(f) property that does not directly touch it yet is a visual and or noise impact to the resource. Constructive use is extremely rare and would require a determination by FHWA.

5.5 Role of Jurisdictional Authority

Coordination with the officials having jurisdiction over a potential Section 4(f) property is required to assist FHWA in making a Section 4(f) applicability determination and assessing the use of the property if Section 4(f) is determined applicable. The regulations identify the entities that are considered the officials with jurisdiction for

various types of Section 4(f) properties (23 CFR 774.17). For a full discussion of this topic see Section 4(f) Policy Paper Section 1.2.2:

<https://www.environment.fhwa.dot.gov/4f/4fpolicy.asp>

5.5.1 Historic Properties

For a full discussion of historic properties see [FDM Chapter 26](#) Historic Preservation. For historic properties, the officials with jurisdiction are the SHPO or Tribal Historic Preservation Officer (THPO). When the ACHP is involved in consultation concerning a Section 106 eligible property for review pursuant to 36 CFR 800, the ACHP is also an official with jurisdiction for the purposes of Section 4(f). If the property is owned by another federal entity, such as the US Post Office, their Historic Preservation Officer would also be an official with jurisdiction. In addition, if the property under consideration is a National Historic Landmark (NHL), the designated official of the NPS is also considered an official with jurisdiction over the property for the purposes of Section 4(f) in addition to what has been described above.

5.5.2 Parks, Recreation Areas and Wildlife and Waterfowl Refuges

With regards to public parks, recreation areas, and wildlife and waterfowl refuges, the officials with jurisdiction are the official of the agency or agencies that own or administer the property under consideration and represent the agency on matters related to the property.

5.5.3 General Coordination

The regulations require coordination with the jurisdictional officials for the following situations:

- Prior to making approvals (23 CFR 774.3(a))
- Determining least overall harm (23 CFR 774.3(c))
- Applying certain programmatic Section 4(f) evaluations (23 CFR 774.5)
- Applying Section 4(f) to properties that are subject to federal encumbrances (23 CFR 774.5(d))
- Applying Section 4(f) to archaeological sites discovered during construction (23 CFR 774.9(e))
- Determining if a property is significant (23 CFR 774.11(c))
- Determining application to multiple-use properties (23 CFR 774.11(d))
- Determining applicability of Section 4(f) to historic properties (23 CFR 774.11(e))
- Determining constructive use (23 CFR 774.15(d))
- Determining if proximity impacts will be mitigated to equivalent or better conditions (23 CFR 774.15(f)(6))
- Evaluating the reasonableness of measures to minimize harm (23 CFR 774.3(a)(2) and 774.17).

The regulations also require a finding demonstrating the jurisdictional authorities have been consulted and have not objected to the following situations:

- When applying the exception to historic properties for restoration, rehabilitation, or maintenance of transportation facilities (23 CFR 774.13(a))
- When applying the exception for archaeological sites of minimal value for preservation in place (23 CFR 774.13(b)(2))

The regulations require written concurrence of the jurisdictional authority in the following situations:

- A finding of no adverse effect on the involved historic property pursuant to 36 CFR 800 prior to making a de minimis impact determination (23 CFR 774.5(b))
- Applying the exception for temporary occupancy (23 CFR 774.13(d)(5))
- Applying the exception for transportation enhancement activities and mitigation activities (23 CFR 774.13(g))
- Prior to making a de minimis impact determination to public parks, recreation areas, or wildlife and waterfowl refuges

5.6 Section 4(f) Approval Methods

There are three methods by which FHWA approves the use of a Section 4 (f) property;

- Preparing a de minimis impact determination
- Applying a programmatic Section 4(f) evaluation
- Preparing an individual Section 4(f) evaluation

Each method is discussed in detail in the following sections.

5.6.1 De Minimis Section 4(f) Impact Determination Documentation

A de minimis Section 4(f) impact determination may apply when;

- A Section 106 finding of no adverse effect or no historic properties affected; or
- A determination that the project would not adversely affect the activities, features or attributes which qualify the Section 4(f) resource for protection under Section 4(f).

A de minimis Section 4(f) impact determination is demonstrated through preparation of or inclusion in the following documents as appropriate;

- The Section 4(f) chapter of the Draft Environmental Impact Statement (DEIS) and Final Environmental Impact Statement (FEIS) and one of the following two documents.
 - The Wisconsin-Federal Highway Administration Finding of de minimis Impact on Parks, Recreation Areas, and Wildlife and Waterfowl Refuges template
 - The Wisconsin-Federal Highway Administration Finding of de minimis Impact on Historic Property
- Factor Sheet B-8: Section 4(f) and Section 6(f) or Other Unique Area and one of the following two documents are prepared for EA's, ER's, PCE's and CEC's.
 - The Wisconsin-Federal Highway Administration Finding of de minimis Impact on Parks, Recreation Areas, and Wildlife and Waterfowl Refuges template
 - The Wisconsin-Federal Highway Administration Finding of de minimis Impact on Historic Property

Factor Sheet B-8 and the de minimis impact determination templates can be found at:

<https://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rsrcs/environment/section4f6f.aspx>

Guidance language has been created for the determination of de minimis impact on a historic property and for the determination of de minimis impact on parks, recreation areas, and wildlife and waterfowl refuges. Both may be found at:

<https://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rsrcs/environment/section4f6f.aspx>

A separate determination of de minimis impact document must be prepared for each Section 4(f) property considered.

A de minimis impact determination can be approved by FHWA without the need to develop and evaluate alternatives that avoid using the Section 4(f) property.

A de minimis impact determination must be supported with the necessary information included in the project file to demonstrate compliance with 23 CFR 774.7(b).

5.6.2 Programmatic Section 4(f) Evaluations

Programmatic Section 4 (f) evaluations are a time-saving procedure for assessing certain minor uses of specific types of Section 4(f) properties by applying a specified set of criteria including project types, specific avoidance alternatives degree of use and effects. An approved programmatic Section 4 (f) evaluation may cover a project type if the specific conditions in that programmatic evaluation are met.

There are five nationwide programmatic Section 4(f) evaluations that cover the following types of projects.

- Programmatic Section 4(f) Evaluation and Approval for FHWA Projects that Necessitate the Use of Historic Bridges
- Final Nationwide Section 4(f) Evaluation and Approval for Federally-Aided Highway Projects with Minor Involvements with Historic Sites
- Final Nationwide Section 4(f) Evaluation and Approval for Federally-Aided Highway Projects with Minor Involvements with Public Parks, Recreation Lands, Wildlife and Waterfowl Refuges
- Section 4(f) Evaluation and Approval for Transportation Projects That Have a Net Benefit to a Section 4(f) Property. Section 4(f) Statement and Determination for Independent Bikeway or Walkway Construction Projects

The Use of Historic Bridges, Minor Involvements with Historic Sites and Minor Takes of Public Parks, Recreational Lands, Wildlife and Waterfowl Refuges and Net Benefit programmatic forms can be found at:

<https://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rsrcs/environment/section4f6f.aspx>

The Section 4(f) Statement and Determination for Independent Bikeway or Walkway Construction Projects can be downloaded at:

<http://www.environment.fhwa.dot.gov/4f/4fbikeways.asp>

Programmatic Section 4(f) Evaluations can be used with an Environmental Assessment (EA), Environmental Report (ER), Programmatic Categorical Exclusion (PCE) and Categorical Exclusion Checklist (CEC) and may be used in EIS's in certain circumstances if approved by FHWA. Complete the Section 4(f) and 6(f) Or Other Unique Areas factor sheet and the appropriate programmatic form. Include these completed sheets in the environmental document.

Include the letter from the official having jurisdiction over the Section 4(f) property. The letter must agree with the physical impacts, temporary impacts and the proposed measures to minimize harm for the programmatic Section 4(f) evaluation to apply.

Completed separate programmatic forms if multiple Section 4(f) property types are impacted by a project (e.g., project proposes to affect both an historic site and recreation lands) and a programmatic Section 4(f) applies.

5.6.3 Individual Section 4(f) Evaluations

Contact the REC, LRMC or BTS-EPDS when a determination has been made that an individual Section 4(f) evaluation is required. The REC, LRMC or BTS-EPDS as appropriate will coordinate with FHWA to determine if an individual Section 4(f) evaluation is appropriate for the project.

Preparation requirements of individual Section 4(f) individual evaluations are more complex than what can be captured in this discussion. For a complete explanation of individual Section 4(f) evaluations, the preparer should refer to Section 4(f) Policy Paper and Technical Advisory;

<https://www.environment.fhwa.dot.gov/4f/4fpolicy.asp>

<https://www.environment.fhwa.dot.gov/projdev/impTA6640.asp#f4>

5.7 Document Distribution and Approval

If an EIS is prepared, and a Section 4(f) evaluation is required, draft Section 4(f) evaluations are submitted by the REC/LPMC to the BTS-EPDS liaison along with the DEIS. The final Section 4(f) evaluation can be submitted along with the FEIS. Signature of the DEIS and FEIS serves as FHWA approval of the draft and final Section 4(f) evaluations. The final signature must be completed prior to the signature of the Record of Decision (ROD).

If an EA is prepared, and a Section 4(f) evaluation is required, the draft and final Section 4(f) evaluations are typically submitted by the region office and the BTS-EPDS as stand-alone documents that accompany the draft or final EA. The draft and final Section 4(f) evaluations are approved by FHWA independent of the draft and final EA, but the final Section 4(f) evaluation must be signed before the final EA and FONSI (if appropriate) is approved.

If an ER is prepared, and a Section 4(f) evaluation is required the draft and final Section 4(f) evaluations are typically submitted by the region office and the BTS-EPDS as stand-alone documents that accompany the ER. The Section 4(f) evaluations are approved by FHWA independent of the ER, but the final Section 4(f) evaluation must be signed before the ER is approved.

If a CEC or PCE are prepared that include a finding of *de minimis* impact or a programmatic evaluation for a Section 4(f) property, the Section 4(f) documentation must be submitted to BTS-EPDS for review FHWA for approval prior to the region approving the CEC or PCE.

If an ER, EA, or EIS is prepared that includes a finding of *de minimis* impact or a programmatic evaluation for a Section 4(f) property, the Section 4(f) documentation must be submitted to BTS-EPDS for review prior to FHWA review and approval.

FDM 20-45-10 Land and Water Conservation Act Fund Lands and Section 6(f)

March 16, 2018

Section 6(f) of the Land and Water Conservation Fund Act of 1965 (LWCF) mandates property acquired or developed with LWCF funds shall not be converted to uses other than for public outdoor recreation uses. Acquisition of any land for which LWCF funds have been used for prior acquisition or improvements invokes Section 6(f) protection. Coordination with the WDNR is necessary as the state agency responsible for administering LWCF funds and enforcing the related requirements.

Section 6(f) requirements do not apply to easements acquired under the National Wild & Scenic Rivers Act of 1968 unless separate LWCF funds were used. The DOI administers its own funds for purchasing easements along these rivers.

10.1 Section 6(f) Conversion Policy

The DOI, NPS LWCF Section 6(f) Conversion Policy is documented in Chapter 8 of the NPS, DOI, Land and

Water Conservation Fund, State Assistance Program, Federal Financial Assistance Manual, which can be found at the link below:

https://www.nps.gov/subjects/lwcf/upload/lwcf_manual.pdf

If a highway project requires the acquisition of Section 6(f) lands, the lands acquired must be replaced with other property of at least equal fair market value and of reasonably equivalent utility and location. Section 6(f) lands are often Section 4(f) lands and, in that case, should be addressed as such in environmental documents. Include the areas under consideration for replacement and the recommended replacement land in the evaluation of the impacts of the acquisition of LWCF lands in the environmental document. Coordinate all issues related to Section 6(f) or Section 4(f) with the REC or LRMC or BTS-EPDS as appropriate. Coordination with DNR needs to occur early if the project may impact a property that may be protected by Section 6(f).

10.2 Section 6(f) Small Conversion Policy

The Small Conversion Policy, established in 1990, was created to reduce administrative burden for both the National Park Service (NPS) and the States (including the territories and the District of Columbia) when processing these smaller conversions.

The DOI, NPS LWCF Section 6(f) Small Conversion Policy is documented in Chapter 8 of the NPS, DOI, Land and Water Conservation Fund State Assistance Program Federal Financial Assistance Manual, a link is included above in FDM 20-45-10.1. An update memorandum specific to small conversions was distributed to LWCF State Liaison Officers January 3, 2017.

Contact the REC, LRMC or BTS-EPDS if the project impacts may fall under the small conversion policy.

Coordination with DNR needs to occur early if the project may impact a property that may be protected by Section 6(f).

FDM 20-45-15 Specially Funded Properties

March 16, 2018

If a property that has or may have special funds involved needs to be purchased in fee, permanent limited easement or temporary limited easement the deed to the that property and the grant information should be reviewed to the special funds and their requirements. These funds require unique coordination and have processes that must be followed if the property will be impacted. It is not uncommon that these properties are also protected under Section 4(f). These funding sources most frequently include:

- Dingell-Johnson Act funds are primarily used for fishery conservation programs and are usually public recreational areas. Capital improvements can be substituted for replacement (see [FDM 20-5-5.1](#)).
- Pittman-Robertson Act funds are used for wildlife programs that might include public use recreational uses. Capital improvements can be substituted for replacement (see [FDM 20-5-5.1](#)).
- Wetland Reserve Program (WRP), North American Wetlands Conservation Act (NAWCA), Knowles-Nelson Stewardship Program, etc. When these types of funds are encountered, contact the REC, LRMC or BTS-EPDS as appropriate.
- WDNR Knowles-Nelson Stewardship funds are used to preserve valuable natural areas and wildlife habitat, protect water quality and fisheries, and expand opportunities for outdoor recreation.

Contact the REC, LRMC or BTS-EPDS if the project may impact a property that has special funding involve. Coordination with DNR and other agencies with jurisdiction over the property and the special funding should occur as early in the project development process as possible.

FDM 20-45-20 Section 106 of the National Historic Preservation Act of 1966

March 16, 2018

Section 106 of the National Historic Preservation Act of 1966 (36 CFR 800) (Section 106) requires federal agencies to take into account the effects of their undertakings on historic properties and afford the ACHP a reasonable opportunity to comment on such undertakings. The regulation defines how federal agencies meet their statutory responsibilities. The Section 106 review process seeks to accommodate historic preservation concerns with the needs of the federal undertaking through the consultation process among the agency official and other parties with an interest in the effects of the undertaking on historic properties.

Specific information regarding the format, content and processing of this documentation is discussed in detail in [FDM Chapter 26](#) Historic Preservation.

Wetlands are recognized and protected by legislation and Executive Order (Executive Order 11990, Protection of Wetlands and U.S. DOT Order 5660.1A, Preservation of the Nations Wetlands) as critical resources. As such, they should be avoided, where possible ([FDM 24-5-10.3](#) and [FDM 24-5-10.4](#)). The FHWA Technical Advisory T6640.8A, Guidance for Preparing and Processing Environmental and Section 4(f) Documents and 23 CFR 777 should be referenced for the required information that needs to be included in environmental documents which addresses alternatives to wetland encroachment and measures to minimize harm when it is not practicable to avoid them.

Even though FHWA wetland requirements are separate from those of Section 404 of the Clean Water Act ([FDM-20-50](#)), both share a definition of wetlands that is very similar: *"Wetlands are areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas"*. For administrative purposes, all wetlands subject to the requirements of Section 404 (except seasonally flooded areas) require documentation per FHWA guidelines. This includes wetlands subject to the Nationwide Permit Program, general permits, or individual permit applications.

25.1 Requirements

The FHWA Division Administrator shall make a finding for projects which the wetland policy applies when:

- There is no practicable alternative to such construction in wetlands.
- The proposed project includes all practicable measures to minimize harm to the wetlands which may result from such use.

To prepare a wetland finding provide the FHWA Division Administrator with accurate information concerning the practicability of alternatives that avoid wetlands and what measures were taken to minimize harm. This information is available in the environmental document and associated wetland impacts documentation.

FDM 20-45-30 FHWA Floodplain Report

March 16, 2018

FHWA regulations under 23 CFR 650 Subpart A, Location and Hydraulic Design of Encroachments on Floodplains requires transportation actions encroaching on the 100-year floodplain be assessed at a level of detail proportionate to the scope of the proposed undertaking.

The following information is required for floodplain actions:

- Whether the action involves a longitudinal or crossing encroachment.
- Whether the action is significant.
- Minimize Impacts which adversely affect floodplains.
- Whether the action would encourage another floodplain development.
- Whether the action is consistent with the intent of the Standards and Criteria of the National Flood Insurance Program, where appropriate.
- Whether the action is in conformance with state and local floodplain regulations.
- Measures to minimize harm or to enhance natural beneficial floodplain values.

The documentation required for an EA or ER is provided on Factor Sheet C-2, Rivers, Streams and Floodplains Evaluation. Floodplain information in an EIS is included in the Floodplains and Hydraulics discussion.

Since avoidance of floodplains (except by a no build alternative) is not feasible for most transportation facilities, FHWA's policy is focused on avoiding longitudinal and crossing encroachments that constitute significant encroachments.

A significant encroachment is defined by the transportation action itself and any attendant secondary development due to the facility which might involve one or more of the following factors:

- A significant potential for interrupting or terminating a transportation facility needed for emergency vehicles or which provides a community's only evacuation route.
- A significant probability of flooding with a potential for property loss and hazard to life.
- A significant adverse impact on natural floodplain values, such as flood storage, fish and wildlife habitat, open space, agriculture, natural beauty, or scientific areas.

A Proposed Action that includes a significant encroachment on a floodplain require FHWA to prepare a Finding

of No Practicable Alternatives (Finding). Although the Finding is prepared by FHWA, the supporting information shall be provided in the environmental document for FHWA to fulfill their statutory obligations in preparing a Finding. The following needs to be included in the environmental document:

- The reason why the project must be in the floodplain.
- Alternatives considered and why these were not practicable.
- A statement as to whether the action is in conformance with state and local floodplain standards.

If a significant floodplain encroachment is identified, include a detailed statement emphasizing there are no practicable alternatives to the undertaking being located within the floodplain in the environmental document.

FDM 20-45-35 Agricultural Impact Statement

May 15, 2019

Per Wis. Stat. 32.035 and the Cooperative agreement between the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP), DATCP must be notified of any project which may involve the acquisition of an interest in land from a farm operation through eminent domain (condemnation). Please note that "Town Highway" projects are exempt from the Agricultural Impact Statement (AIS) process by statute.

35.1 Agricultural Impact Notice

WisDOT and DATCP have developed the Agricultural Impact Notice (AIN) for Highway Projects to assist DATCP in determining whether an Agricultural Impact Statement (AIS) needs to be prepared for a project. The AIN can be found at:

https://datcp.wi.gov/Pages/Programs_Services/AISNotificationForms.aspx

The AIN is used to transmit the required information for all WisDOT projects acquiring over five acres (two hectares) from a farm operation. The AIN form is also used for projects acquiring between one and five acres from a farm operation. Projects that would acquire only land defined as non-significant do not need to use the AIN form. Non-significant acquisitions are defined later in this procedure.

By statutory definition, farm operation means any activity conducted solely or primarily to produce one or more agricultural commodities in sufficient quantity to can contribute materially to the operator's support. Therefore, cropland, pasture, idle or fallow fields, specialty farmland and other agricultural land do does not fit into the previously described categories. Acquisition of easements, fee simple rights, and leasehold interests in a farm may trigger the need to complete an AIS if the interests are actually or potentially acquired by WisDOT through condemnation.

WisDOT projects acquiring five acres (two hectares) or less from a farm operation requires the AIN sent directly to DATCP. DATCP will determine within 10 days of receiving a complete notification from WisDOT whether an AIS will be prepared. If more information is needed, DATCP will request additional information in a timely fashion.

Attach appropriate correspondence from DATCP to the environmental document. The REC, LPMC or BTS-EPDS liaison, as appropriate, can assist in defining appropriate correspondence.

35.2 Notification of Non-Significant Acquisitions

Non-Significant Acquisitions are typified as minor amounts of land, the loss of which would not have a significant adverse effect on a farm operation and include the following types of acquisitions. Non-Significant Acquisitions include:

1. Projects that require the acquisition of one acre or less from a farm operation and will not have a significant effect on any farm operation.
2. Linear corridor acquisitions such as highways or railroads that are typified by narrow strips along and generally parallel to existing rights-of-way for maintaining or improving existing transportation facilities or service.
3. Non-linear acquisitions such as airport, wayside, weigh station or building construction that are typified by having small acquisitions contiguous to existing rights-of-way or other publicly-owned land for maintaining or improving an existing transportation facility, structure, building or service.

An AIN does not need to be sent to DATCP when all acquisitions are non-significant. DATCP must be notified using a summary format the includes the following information as relevant to the project.

Send the following summary information to DATCP for all projects acquiring only non-significant interests in farm operations:

- WisDOT Project ID number or Airport Layout Plan ID number
- Highway number or name or project name
- Starting and ending points of the project or general description of the project location
- Location (county, town, village, city)
- Number of farms affected
- Acres to be acquired from each affected farm operation
- Project location map with property acquisition areas clearly identified.

35.3 Processing an AIS

Notify DATCP as early as possible in the project development process to avoid delays. This is important because Wis. Stat. 32.035 specifies DATCP shall prepare an AIS within 60 days of receiving all necessary information and only DATCP determines when it has received all necessary information. In addition, the statute specifies a condemning agency, such as WisDOT, may not negotiate with an owner or make a jurisdictional offer until 30 days after the AIS is published. Therefore, early notification of DATCP will prevent 60- and 30-day periods from interfering with later real estate activities.

If a proposed project involves the actual or potential acquisition of more than five acres (two hectares) of land from any one farm operation, the DATCP is required to prepare an AIS which describes and analyzes the potential effects of the undertaking on farm operations and agricultural resources. If a proposed undertaking involves from 1 to 5 acres (0.4 to 2 hectares) from any one farm operation, an AIS may be prepared at the DATCP's discretion.

DATCP has 60 days within which to prepare an AIS once it has determined that all the information necessary to complete the AIS has been received.

Local or regional units of government having jurisdictional authority over the area affected by the project are required to post the AIS in the place normally used for public notices.

Although an AIS is prepared and published separately, it may be appended to the environmental document.

35.3.1 Environmental Impact Statements

When an EIS is to be prepared for a project, preliminary discussions should occur with DATCP when the Impact Analysis Methodology Report is under development for the project.

If DATCP and WisDOT agree it is prudent to delay an AIS until the FEIS, the DEIS should include appropriate information developed in consultation with DATCP. The FEIS shall not be approved without inclusion of the information supplied by DATCP, or evidence that an AIS has been completed, in accordance with Wis. Stat. 32.035.

35.3.2 Environmental Assessments and Environmental Reports

DATCP should be notified of the project during the agency coordination process. If impacts to farm operations are possible as a result of any of the alternatives considered during the alternative analysis phase of an ER or EA DATCP should be notified as appropriate. The results of DATCP coordination should be included in the ER or EA. The results of coordination with DATCP must be included in the revisions to the EA.

35.4 Miscellaneous

DATCP must be notified of any changes to projects which result in changes to impacts to farm operations. If changes occur, it is important to provide DATCP with the information sufficient to evaluate effects and to determine whether additional information or a supplement to the AIS is warranted. Such notification is not required if the change results from a request by the landowner who will be affected.

FDM 20-45-40 Natural Resources Conservation Service Farmland Conservation Impact Rating *March 16, 2018*

The Federal Farmland Protection Act (FPPA) is intended to minimize the impact Federal programs have on the unnecessary and irreversible conversion of farmland to nonagricultural uses. It assures that to the extent possible federal programs are administered to be compatible with state, local units of government, and private programs and policies to protect farmland. The FPPA can be accessed by clicking the link below:

https://www.nrcs.usda.gov/wps/PA_NRCSCconsumption/download?cid=stelprdb1042432&ext=pdf

When a federal funds are involved in a project and the project would require acquisition of or may affect prime, unique, statewide or locally important farmland one of the following must be completed:

- Farmland Conversion Impact Rating for Corridor Type Projects (Form NRCS-CPA-106), or,
- Farmland Conversion Impact Rating (Form AD-1006)

Form NRCS-CPA-106 is used for most transportation projects. This form can be downloaded at:

http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1045395.pdf

Form AD-1006 should be used for block of land type impacts. This form can be downloaded at:

http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1045394.pdf

The NRCS regulations require WisDOT to send a copy of the completed form to NRCS when the project would affect lands protected by the FPPA. The review requirement also applies for any acquisition of farmland which has an NRCS easement or encumbrance on it.

Send the form to NRCS regardless of the point score developed in Part VI of the form. The transmittal of the form serves to keep NRCS informed of any effects to farmland.

40.1 Instructions for Completing Form NRCS-CPA-106 or Form AD-1006 When Part VI Is Less Than 60 Points

These forms have step by step instructions and can be found here:

http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1045395.pdf

http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1045394.pdf

- Part I - This section will be completed by either the WisDOT region office or its consultant. In completing the "County and State" block, list all the local governments that are responsible for local land use controls where site(s) are evaluated.
- Part II - This section would be completed by the NRCS if the score in Part VI totaled 60 or more points.
- Part III - The consultant or the WisDOT region office will complete this section. In completing item "B" of this part, include the following:
 - Acres that will not be directly converted, but which would no longer be capable of being farmed because of restricted access caused by the conversion.
 - Acres expected to receive services from an infra-structure project, such as highways, bridges, or utilities which would cause a direct conversion from farmland to nonagricultural use.
- Parts IV and V - These sections would be completed by the NRCS if the score in Part VI totaled 60 or more points.
- Part VI - The WisDOT region office or its consultant will complete this section.
- Part VII - The consultant or the WisDOT region office will complete this part only when the score in Part VI is 60 or more points and after coordination with the NRCS.

For further information refer to 7 CFR 658 as amended. See [FDM 5-5-5.3](#) for information on projects that score 60 or more points in Part VI.

FDM 20-45-45 Deed Restrictions and Easements

March 16, 2018

As early in the environmental document process as possible, project teams should identify any properties that may be acquired and determine if any special deed restrictions or protective easements exist. Deed restrictions or special easements may have serious restrictions on what can happen with the land, and if related to a federal program, can restrict purchase or use of the land. In all cases, first identify the origin of the funding behind the restriction or easement; second, if the funding source is a federal or state agency, begin coordination with that agency immediately to identify the restrictions that will apply.



FDM 20-50-1 Permits

March 16, 2018

1.1 Introduction

In addition to the environmental documents and reports required and outlined in other sections of this chapter, federal and state laws also require the issuance of special permits for projects affecting certain environmental resources. Early planning and coordination with the Wisconsin Department of Natural Resources (WDNR), the U.S. Army Corps of Engineers (USACE), the U.S. Coast Guard (USCG) and the U.S. Fish and Wildlife Service (USFWS), regarding permit requirements are essential to avoid unnecessary delays.

FDM 20-50-5 Federal Water Resource Permits

August 15, 2019

Federal permits are required for projects affecting waters of the United States and associated special aquatic sites, including wetlands. Waters of the U.S. are under the jurisdiction of the USACE and Environmental Protection Agency (EPA). Following the *Rapanos v. United States* (2006) and *Carabell v. United States* (2006) Supreme Court decisions, the definition of waters of the United States was clarified to include the following:

- Traditionally navigable waters
- Wetlands adjacent to traditional navigable waters
- Non-navigable tributaries of traditional navigable waterways that are relatively permanent where the tributaries typically flow year-round or have continuous flow at least seasonally
- Wetlands adjacent to such tributaries that have a continuous surface connection

Additionally, the USACE and EPA use their discretion based on fact-specific analysis to determine whether the following areas are under their jurisdiction:

- Non-navigable tributaries that are not relatively permanent
- Wetlands adjacent to non-navigable tributaries that are not relatively permanent
- Wetlands adjacent to, but not directly abutting a relatively permanent non-navigable tributary

EPA and USACE will generally not have jurisdiction over the following areas:

- Swales or erosion control features (e.g., gullies, small washes characterized by low volume, infrequent, or short duration flow)

Traditionally navigable waters are defined as waters of the United States that are subject to the ebb and flow of the tide shoreward to the mean high-water mark, and/or are presently used, or have been used in the past, or may be susceptible to use to transport interstate or foreign commerce (33 CFR 322.2).

<http://www.gpo.gov/fdsys/pkg/CFR-2011-title33-vol3/xml/CFR-2011-title33-vol3-sec322-2.xml>

A list of traditionally navigable waters of the United States within Wisconsin may be found at the St. Paul District USACE website.

<http://www.mvp.usace.army.mil/Portals/57/docs/regulatory/RegulatoryDocs/navigable%20waters%20wi.pdf>

See USACE and EPA guidance documents for additional information regarding waters of the U.S.

http://www.usace.army.mil/Portals/2/docs/civilworks/regulatory/cwa_guide/rapanos_guide_memo.pdf

The permits discussed in detail below include Section 404 of the Clean Water Act, and Section 9 and Section 10 of the Rivers and Harbors Act of 1899. Before a Section 404 permit is granted, a Section 401 Water Quality Certification (WQC) must be granted by the authorized state agency (i.e. WDNR) or tribe if the proposed activity will result in the discharge of dredged or fill material in waters of the U.S. Although a federal requirement, Section 401 WQC is delegated to the State DNR and certain tribes in Wisconsin and discussed in more detail in FDM 20-50-20. For guidance on which areas are under the jurisdiction of the USACE see:

<http://www.mvp.usace.army.mil/Missions/Regulatory/Delineation.aspx>

Activities occurring in various classes of waters of the U.S. require different permits. For example, activities that propose to discharge dredged or fill materials into non-navigable waters of the U.S. may require a Section 404 permit. Alternately, activities that propose to discharge dredged or fill material into navigable waters of the U.S. **may** require both a Section 10 and Section 404 permit. Projects that propose to excavate material from a

navigable water of the U.S., but will not discharge materials into the same water, may only require a Section 10 permit. Additionally, some activities are considered to have minimum environmental impacts and may only require a Section 404 general permit or a letter of permission. This information is summarized in Table 1.1 below.

Table 5.1 Permit Applicability

Water Category	Activity	
	Excavate from Waters	Fill into Waters
Navigable Waters of U.S.	Section 10	Section 10/404
Waters of the U. S. (non-navigable)	-----	Section 404

5.1 Section 404 Permits

Section 404 of the Clean Water Act requires permit authorization from the USACE for the discharge of dredged or fill material into waters of the United States, including wetlands which are often considered waters of the United States. Discharge of dredged material means the addition of dredged material into, including redeposit of dredged material other than incidental fallback within, the waters of the U.S. (40 CFR Part 323.2).

<http://www.nap.usace.army.mil/Portals/39/docs/regulatory/regs/33cfr323.pdf>

Discharge of fill material is defined as the placement of any material, including rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining activities, or materials used to create any structure or infrastructure, into waters of the United States for the purpose of converting an aquatic site to dry land or raising the bottom elevation of a water body (40 CFR Part 232.2).

<https://www.gpo.gov/fdsys/pkg/CFR-2013-title40-vol26/pdf/CFR-2013-title40-vol26-sec232-2.pdf>

A 404 Permit is required regardless of whether the project area is located on public or private property, regardless of funding source, and regardless of the type of environmental action. Permits discussed in detail in the following sections, include general permits, letters of permission, and other individual permits.

Information on Section 404 permits specific to WisDOT transportation projects can be found by clicking the following link:

<https://wisconsin.gov/Pages/doing-bus/eng-consultants/cns/it-rsrcs/environment/wetland-waters.aspx>

5.1.1 Discharges Not Requiring Permits

In general, any discharge from any of the following activities is not prohibited by, or otherwise subject to, regulation under Section 404.

<https://www.gpo.gov/fdsys/pkg/CFR-2013-title40-vol26/pdf/CFR-2013-title40-vol26-sec232-2.pdf>

- Normal farming, silviculture, and ranching activities such as plowing, seeding, cultivating, minor drainage, harvesting for production of wood, fiber, and forest products, or upland soil and water conservation practices;
- Maintenance, including emergency reconstruction of recently damaged parts, or currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures;
- Construction or maintenance of farm or stock ponds or irrigation ditches, or maintenance of drainage ditches;
- Construction of temporary sedimentation basins on a construction site which does not include placement of fill into navigable waters;
- Construction or maintenance of farm or forest roads and temporary roads for moving mining equipment;
- And discharge of materials into waters that are not under the jurisdiction of the USACE may not require federal permits (Rapanos v. U.S. and Carabell v. U.S. Guidance).

http://www.usace.army.mil/Portals/2/docs/civilworks/regulatory/cwa_guide/rapanos_guide_memo.pdf

The WisDOT team, including the REC, BTS-EPDS, or ESS, should contact the USACE and obtain official confirmation that the exemption for maintenance activities applies to the project before commencing construction activities.

For more information on discharges not requiring permits, see 33 CFR 323.4.

<http://www.nap.usace.army.mil/Portals/39/docs/regulatory/regs/33cfr323.pdf>

5.1.2 General Permits

Discharges of dredged or fill materials into waters of the U.S. may be authorized by USACE district engineers on a national or regional basis and for a specified period of time (usually 5 years). If a discharge of dredged or fill material is not exempted by Part 323.4 or permitted by a nationwide or regional general permit (33 CFR Part 330), an individually processed 404 Permit will be required.

The USACE authorizes general permits after consultation with the WDNR and EPA. A nationwide general permit (NWP) is a type of permit issued throughout the country for activities that are substantially similar in nature and cause minimal individual and cumulative adverse impacts. These permits are issued to expedite permit processing. Regional general permits are used for the same purpose but apply to specific geographic regions.

5.1.3 Regional General Permits

Regional general permits (GPs) apply to all waters of the United States in Wisconsin and areas within the exterior boundaries of Indian Reservations.

Regional general permits typically take about 60 days to process but should be applied for approximately 6 months prior to PS&E to avoid delays.

In 2018, the USACE St. Paul District issued seven new regional general permits for Wisconsin and Minnesota, including an RGP specific to transportation projects, called the transportation regional general permit (TRGP). The TRGP includes five categories of activities: minor maintenance - linear transportation, modification - linear transportation, new construction - linear transportation, non-linear transportation projects and transportation surveying. Each category identifies eligible activities, activity restrictions and requirements for submitting pre-construction notification to the USACE. The RGP also includes a series of exclusions, restricting the use of the RGP for certain activities or categories of waterways. Details are available on the St. Paul District's website: <https://www.mvp.usace.army.mil/missions/regulatory/rgp/>

A pre-construction notification (PCN), also referred to as a permit application, may be required based on the type of activity, location or anticipated impacts. Certain activities, described in the TRGP, do not require submittal of a PCN to the USACE. For projects that do not require PCN submittal to the USACE, the project team must clearly document compliance with the permit terms and conditions by including a memo in the project file describing the project details, location and justification for why a PCN was not required. Projects that do not require PCN submittal may require compensatory mitigation and coordination with the Corps regarding mitigation. This is typically accomplished by submitting the completed wetland impact tracking form (WITF) to the Corps request mailbox. Contact the appropriate REC or BTS-ESS for additional guidance on determining if a PCN is required, documentation necessary for projects that do not require a PCN to the USACE, and guidance on completing and submitting the wetland impact tracking form to the USACE.

5.1.4 Letters of Permission

Letters of permission are abbreviated individual permits, and as such, require application to and response from the USACE. Projects that cannot be authorized by the previously described general permits or a letter of permission must be individually processed. Letter of permission permit applications typically take at least 90 days to process, but should be applied for at least 9 months before PS&E to avoid delays. A full description of current LOP can be found on the USACE, St. Paul District permitting website.

<http://www.mvp.usace.army.mil/Missions/Regulatory/Permitting-Process-Procedures/>

Proposed activities that will occur within the exterior boundaries of Indian Reservations in Wisconsin, that are not eligible for general permits, may be eligible for current letters of permission.

The USACE retains discretionary authority to require individual permit review for any activity meeting letter of permission criteria. If a letter of permission authorization is needed, authorization may be granted after completing the Water Resource Application for USACE 404 Permit and WDNR 401 WQC;

<http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Obtain-a-Permit/>

and sending to the USACE St. Paul District office and WDNR. Information on Section 404 permits specific to WisDOT transportation projects can be found by clicking the following link:

<https://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnsIt-rsrces/environment/wetland-waters.aspx>

5.1.5 Individual Permits

If an activity is not covered by an exemption, general permit, or letter of permission, it will likely require an individual Section 404 Permit. Individual permits will require more time to process and typically receive higher scrutiny than general permits or letters of permission. Individually processed permits typically take 120 days to process but should be submitted to the USACE and WDNR at least 12 months before PS&E if possible to avoid delays.

Several actions need to be taken by the WisDOT permit applicant before beginning a construction project covered by an individual permit. Below is a list of steps to be taken when an individual permit is needed.

- A pre-application meeting with a WDNR Liaison and the appropriate USACE project manager should take place before applying for an individual permit. Some items that should be discussed during this meeting include the purpose, need and scope of the proposed project, preliminary scope of considered alternatives, application requirements (e.g., wetland delineation, practicable alternatives analysis, and mitigation requirements), expected project schedule, and approximate wetland impacts, if known. See the WDNR website for additional details.
http://dnr.wi.gov/topic/waterways/construction/wetland_IP/wetland_pre_application_checklist.pdf
- Prepare the Water Resource Application for USACE 404 Permit and WDNR 401 WQC.
<http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Obtain-a-Permit/>
- Send the completed application with all required materials to the appropriate WDNR Transportation Liaison and USACE project manager.
- Provide additional information and documents as requested by WDNR and USACE.

Refer to the individual permit process flow chart (Figure 1.1) for additional details on the permitting process. Contact the appropriate WDNR liaison, REC, LPMC or BTS-ESS for more guidance on individual permits within the state of Wisconsin.

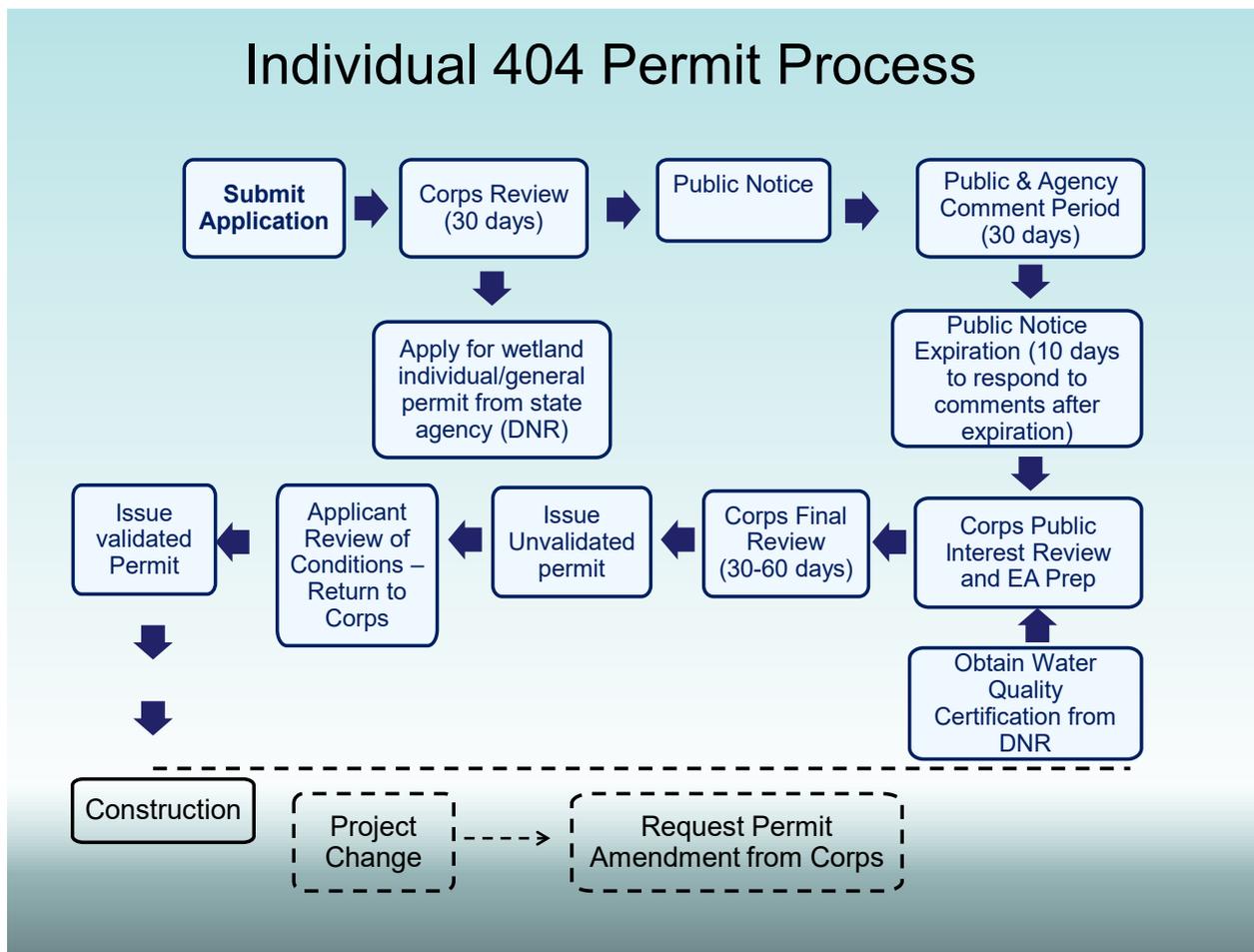


Figure 1.1 Individual 404 Permit Flowchart

5.1.6 Application for Section 404 Permits and Section 401 Water Quality Certification

The 404 permit process is closely tied to 401 WQC. The 404 permit is not valid without 401 WQC. Also, when a 404 permit applies to a project, the 401 WQC is not valid without the 404 permit. For a more detailed discussion of 401 WQC see FDM 20-50-15. Early coordination with the WDNR and the USACE is recommended whenever a wetland, floodplain, stream, river, or water body is likely to be impacted by the discharge of dredged or fill material.

The scope of the project is coordinated with the local WDNR liaison and may be coordinated with the appropriate USACE project manager early in the planning or design process to avoid delays near project completion. Coordination with WDNR is done through the established liaison process, as outlined in the Cooperative Agreement between WDNR and WisDOT. Involve your REC, LPMC or BTS-EPDS or ESS liaison as appropriate for WDNR and USACE coordination on all wetland issues.

The WDNR can grant, waive, or deny a Section 401 WQC. The Section 401 WQC process is usually initiated in conjunction with the Section 404 permitting process by submitting the Water Resource Application for USACE 404 Permit and WDNR 401 WQC to the appropriate WDNR liaison and the regulatory branch of the USACE St. Paul District.

<https://www.mvp.usace.army.mil/Missions/Regulatory/District-Boundaries-Contact/>
<http://dnr.wi.gov/topic/Sectors/documents/transportation.html>

The WDNR may assist in coordinating the certification with the USACE during the Section 404 permit process.

The amount of time it takes the USACE to review a routine Section 404 Permit application is variable. Larger projects and individual permits will require closer coordination with the WDNR liaison and USACE and can take longer to process. If the project is controversial or involves major impacts to wetlands or water bodies, coordinate closely with the WDNR and the USACE by requesting pre-application consultation, a meeting or a field review on the project. Close and early coordination will assist in reducing potential delays. Coordinate with the REC, LPMC or BTS-EPDS/ESS for assistance with agency coordination.

When WisDOT is conducting the preliminary engineering for a local unit of government, WisDOT may submit an application on the applicant's behalf. For all WisDOT supervised projects, the state project identification number should be present on exhibits and the heading of the transmittal letter. If WisDOT is not doing the preliminary engineering or supervising the project, the local unit of government or their consultant is responsible for preparing and submitting the application. If the project does not fall under the Cooperative Agreement between WDNR and WisDOT, additional coordination and application material may be needed.

5.1.7 Guidelines for 404 Permits Application

A complete 404 permit application consists of the application form, exhibits and drawings, information on compensatory mitigation via WisDOT's wetland impact tracking (WITF), and attachments. Water Resource Application for USACE 404 Permit and WDNR 401 WQC:

<http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Obtain-a-Permit/>

Specific guidance for Section 404 permits applications for WisDOT transportation projects can be found at the following link:

<https://wisconsin.gov/Pages/doing-business/eng-consultants/cns/lt-rsrcs/environment/wetland-waters.aspx>

5.1.8 Application Submittal

The permit application should be addressed and sent to the USACE St. Paul District request mailbox for Wisconsin ([USACE Requests WI@usace.army.mil](mailto:USACE_Requests_WI@usace.army.mil); for additional information, refer to the link provided below) and WDNR liaison responsible for the county in which the project is primarily located. Upon receipt of the request, USACE will notify the application of the assigned USACE project manager via email.

The appropriate transportation liaison for each county is available on the WDNR website.

<http://dnr.wi.gov/topic/Sectors/documents/transportation/Liaisons.pdf>

5.1.9 Section 404 Permit Process Stages

1. Submit completed application.
2. The USACE reviews the application and determines 404 jurisdiction and completeness of information. The USACE may also request Section 401 WQC from WDNR. The WDNR should make a preliminary determination at this time or defer to a time later in the process.
3. For Individual Permits and Letters of Permission, a Public Notice is written and issued by the USACE for a period of 30 days. During this period, the public is invited to comment on the permit application.

An opportunity for a public hearing is stated. The purpose of the public hearing is to obtain additional information to complete the public interest review. Usually the information is complete before the Public Notice is issued and hearings are seldom held.

4. During the public notice period for Individual Permits, EPA and USFWS may comment to the USACE on the permit application as defined in the Public Notice. If there is no comment, there is no action from those agencies. Any written comment(s) that indicates an adverse concern from EPA or USFWS will be sent to WisDOT for response. Response to EPA and USFWS comment is directed to the USACE. Written response to comments from other entities will depend on how that comment may influence the permit. The USACE should be consulted on the necessity to respond in writing.
5. For Individual Permits, the public notice period will have a set expiration date. (Note: This date may be extended by EPA or USFWS if an adequate reason is given.) The WisDOT contact or authorized agent responsible for monitoring the application should contact the USACE project manager following the expiration date to determine if the public notice expiration date has been extended, if any public comments were received, and request an update on the status of the application.
6. For Individual Permits, the USACE conducts an internal public interest review based on public comment and prepares an environmental assessment.
7. For Individual Permits, USACE returns the signed, validated permit and instructions. This concludes the permit process. The entire process may take anywhere from 60 to 120 days or longer, depending on if the application is for a general permit, letter of permission, or individual permit.

Note the permit expiration date; this expiration date may differ depending on which type of permit is obtained. The validity of the permit usually does not exceed five years and may be less than five years depending on when the permit was issued. If a project has not been started or completed before the permit expiration date, the permit may be extended provided the project has not changed with respect to the discharge of fill in the waters of the U.S. The extension can be accomplished by requesting an extension in writing from the USACE Project Manager assigned to the project, stating the circumstances and indicating if there are changes to the project. The USACE 404 permit identification number must be cited for the USACE to retrieve the project file. For more information on the permit process stages, see the permit process flow chart in Figure 1.1.

5.1.10 Distribution of Copies after Application Approval

Copies of the public notice, validated permit, and the engineer's packet for construction must be placed in the Region project file.

5.2 Section 9 Permits and Application

Section 9 of the Rivers and Harbors Act identifies that construction of a new bridge or causeway or the reconstruction or modification of an existing bridge or causeway or construction of a temporary bridge or causeway across navigable waters of the U.S. without congressional approval. Administration of Section 9 has been delegated to the U.S. Coastguard. In Wisconsin, navigable waters of the U.S. are waters of the United States that are subject to the ebb and flow of the tide shoreward to the mean high-water mark, and/or are presently used, or have been used in the past, or may be susceptible to use to transport interstate or foreign commerce (33 CFR 322.2).

<http://www.gpo.gov/fdsys/pkg/CFR-2011-title33-vol3/xml/CFR-2011-title33-vol3-sec322-2.xml>

If the Coast Guard has jurisdiction over the waterway where the bridge or causeway is to be constructed, a Section 9 permit will be required for the structure. Attendant features requiring excavation of and fill into commercially navigable waters will require coordination with the USACE and possible application for a Section 10, Section 404 individual or general permit.

To determine if a section of the waterway is under Coast Guard jurisdiction, contact the Coast Guard at either one of the two Coast Guard districts within Wisconsin. As a rule, waterways that enter Lake Michigan and Lake Superior are in the 9th district in Cleveland and those that enter the Mississippi River are in the 8th district in St. Louis.

For minor exceptions, the applicant will be referred by one district to the other. For information on current USCS contacts refer to region environmental coordinator.

Section 9 waterways are within Section 10 jurisdiction. The list of Navigable Waters of the United States within Wisconsin can be used as a guideline when contacting the Coast Guard on their jurisdiction.

<http://www.mvp.usace.army.mil/Portals/57/docs/regulatory/RegulatoryDocs/navigable%20waters%20wi.pdf>

The information needed for a Coast Guard Section 9 permit is found in the Bridge Permit Application Guide on the U.S. Coast Guard website.

<https://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Prevention-Policy-CG-5P/Marine-Transportation-Systems-CG-5PW/Office-of-Bridge-Programs/Bridge-Permit-Application-Process/>

5.3 Section 10 Permits

Section 10 of the Rivers and Harbors Act states that any work in or affecting navigable waters of the United States (commercially navigable waters) requires a permit from the USACE. Such work includes dredging, channelization, excavation, filling, construction of piers, breakwaters, bulkheads, revetments, power transmission lines, aids to navigation, and sewer outfalls over commercially navigable waters.

If a Section 10 Permit is needed for the discharge of dredged or fill material, a Section 404 Permit, and a Section 401 WQC from the WDNR (FDM 20-50-15) would also be required. Both permit applications are submitted to the USACE simultaneously as a Section 10/404 application and can be found on the USACE St. Paul District website.

<http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/>

Individual inquiries on a project basis should be made to the USACE project manager assigned to the project or to the general request mailbox (usace_requests_wi@usace.army.mil) if a USACE contact has not been assigned.

A Section 401 WQC from the WDNR is required for a joint Section 10/404 Permit. Refer to the procedures for a Section 404 application earlier in this chapter.

If a Section 10 Permit is needed for excavation in navigable waters of the United States and there is no discharge of fill, a Section 404 permit would not be required. A Section 10 permit application would be submitted using the same procedure as the Section 10/404 permit application.

Waters covered by Section 10 of the 1899 Rivers and Harbors Act within Wisconsin can be found at the USACE, St. Paul District website.

<http://www.mvp.usace.army.mil/Portals/57/docs/regulatory/RegulatoryDocs/navigable%20waters%20wi.pdf>

FDM 20-50-10 Other Federal Permits

March 16, 2018

10.1 Migratory Bird Treaty Act of 1918

The Migratory Bird Treaty Act (MBTA) of 1918 protects all migratory birds, including their nests and eggs, as identified in 50 CFR 10.13. In Wisconsin, the cliff swallow, barn swallow and eastern phoebe are migratory birds that commonly nest on bridges. Construction or maintenance operations on bridges occupied by these species may come into conflict with the MBTA. Other migratory birds, such as rough-winged and bank swallows, nest in burrows formed in surface face cuts or cliff faces, which may be found on borrow sites associated with WisDOT projects.

During the environmental documentation phase of preliminary design, bridges or other structures, or cliff or bluff faces that have the potential to serve as a surface or nesting habitat for migratory birds should be evaluated to determine occupancy or use by migratory birds. Documented or assumed occupancy or use of a structure or area by migratory birds should be described in the environmental document. Prior to the bridge replacement or destruction, the bridge should be investigated for the presence of nesting migratory birds. Arrangements, such as removal of inactive nests in the early spring, fall or winter, and/or preventing birds from creating active nests, such as scrapping off or hosing off inactive nests, or netting during the inactive season, may be required.

Destruction of active nests is a violation under the Act. The USFWS may permit incidental destruction of nests during the non-nesting season, which is usually between August 30 and May 1. Coordinate with USFWS through the REC, LPMC or BTS-ESS as appropriate.

If nests are present, set up the project schedule to avoid impact to nests, or include contract special provisions for the county or contractor to net the bridge to deter birds from nesting or as a last resort, obtain a depredation permit. All effort should be made in project planning, timing and construction site preparation to avoid conditions requiring the need for depredation permits. Designers should only apply for a USFWS depredation permit when public safety is involved and methods to prevent nesting cannot be implemented.

For greatest efficiency, the application for the permit should be initiated with the U.S. Department of Agriculture-Wildlife Services (USDA-WS). The project team should contact the appropriate USDA-WS district office.

http://www.aphis.usda.gov/wps/wcm/connect/8e353103-e8ee-4d3b-8cbf-db421e5d9822/distmap+3-13-2012_1533.jpg?MOD=AJPERES

Request an application form and the information sheet that will provide guidance in completing the application. Return the completed application to the USDA-WS office. The USDA-WS will do an on-site evaluation for

USFWS and then submit the application with the evaluation to USFWS for permit review.

USFWS Division of Migratory Birds will review the permit application and either issue or deny the permit. They may also apply specific conditions to the permit after coordination with the applicant. Contact your REC, LPMC, BTS-EPDS liaison or BTS-ESS Ecologist (608) 266-1017 (for specific guidance).

10.2 The Bald and Golden Eagle Protection Act of 1940

The Bald and Golden Eagle Protection Act (16 U.S.C. 668-668c), enacted in 1940, and amended several times since then, prohibits anyone, without a permit issued by the Secretary of the Interior, from "taking" bald eagles, including their parts, nests, or eggs. The Act provides criminal penalties for persons who "take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or any manner, any bald eagle ... [or any golden eagle], alive or dead, or any part, nest, or egg thereof." The Act defines "take" as "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb."

"Disturb" means: "to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, 1) injury to an eagle, 2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or 3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior."

In addition to immediate impacts, this definition also covers impacts that result from human-induced alterations initiated around a previously used nest site during a time when eagles are not present, if, upon the eagle's return, such alterations agitate or bother an eagle to a degree that interferes with or interrupts normal breeding, feeding, or sheltering habits, and causes injury, death or nest abandonment.

If any nest sites are present within a project area coordinate immediately with your REC, LPMC, BTS-EPDS liaison or BTS-ESS Ecologist. For guidance on the law and necessary permits see:

<https://www.fws.gov/midwest/midwestbird/eaglepermits/index.html>

FDM 20-50-15 Tribal Permits

March 16, 2018

Each tribe within the state has its own set of permit requirements on tribal owned property. They vary widely in the range of applicability to transportation projects. For the most current information on permits required on tribal owned lands coordinate closely with the Region Tribal Liaison.

<https://wisconsindot.gov/Documents/doing-bus/civil-rights/tribalaffairs/tribal-liaison-map.pdf>

Some tribes have EPA approval to administer their own water quality standards (WQS) program, part of that approval is the authority over 401 certifications which a requirement of the clean water act. FDM 20-50-20 that follows outlines the 401 certification requirements and submittal process. A list of tribes with WQS program authority can be found at the link below. The list includes all federally recognized tribes with delegated authority and is not specific to Wisconsin.

<https://www.epa.gov/wqs-tech/epa-approvals-tribal-water-quality-standards-and-contacts>

FDM 20-50-20 State Permits

March 16, 2018

20.1 WDNR 401 Water Quality Certification/Final WDNR Concurrence

The 401 certification is a requirement of the Clean Water Act. Any 401 certification requires DNR to certify that the proposed discharge of dredged or fill materials into waters of the United States will not have a significant effect on the quality of the water.

The 401 certification must be obtained before the 404 permit will be issued by the USACE. It is necessary, however, to get a sense of whether WDNR will grant, waive, or deny 401 certification during the environmental process of the project. WDNR should be consulted on 401 certification throughout the development of a project. Contact the REC or TSS-ESS staff for guidance on WDNR consultations.

The 401 submittal, to be sent to the WDNR liaison for the county of your proposed project, will also serve as part of your request for Final Concurrence for the proposed project. All WisDOT projects require Final WDNR Concurrence, regardless of funding source or whether there are wetland impacts. If there are no wetland impacts, work with the REC, LPMC or BTS-EPDS to determine what is needed for a Final Concurrence submittal.

Final Concurrence Request - No Wetland Impacts

Submittal at a minimum should include:

- Completed DNR/DOT Project Review form

<https://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rsrcs/environment/formsandtools.aspx>

- On the DNR/DOT Project Review Form, under the category “Type of Review Requested,” check “Final Concurrence.”
- If there are no wetland impacts, state that there are no impacts.
- Describe any waterway crossings that have been coordinated with WDNR
- Describe any stormwater management features being implemented as a part of the project
- Include discussions of any erosion control measures unique to the project
- If there are any issues that require special provisions (i.e. adherence to in-stream disturbance or migratory bird protection dates) or notes in the plan, identify them and state how they are addressed in the plan.
- Project Location Map
- Plan and Profile

Section 401 Water Quality Certification Request - Wetland Impacts

Submittal is identical to what is submitted to COE for the 404 permit application (FDM 20-50-5). Since the submittal materials are identical, when the 404 permit application is submitted to the USACE include WDNR on that submittal as a Courtesy Copy (CC).

When you receive the final concurrence letter from your liaison, the letter will include a statement that it also serves as the 401 Water Quality Certification.

Filing of Approved Section 404 Permits/Section 401 Water Quality Certification/Final Concurrence Letter

The Wetland Impact Tracking Form (WITF)

<https://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rsrcs/environment/formsandtools.aspx>

and Permit/Water Quality Certification packet (401/404) is needed for end of the year WisDOT mitigation bank debiting and annual reporting to WDNR and USACE.

Once the approved 404 permit and 401 Water Quality Certification are received, submit a packet to the REC responsible for tracking wetland mitigation for your Region. The packet will contain:

- Completed WITF
- Plan and Profile with cross hatched area calling out permanent impacts and temporary impacts
- Signed 404 permit from USACE (include entire letter and sheet(s) showing wetland impacts)
- Approved 401 WQC from WDNR (contained in the Final Concurrence letter for the project – attach entire letter)

20.2 WisDOT Exemptions from WDNR Permits

In recognition of the WDNR and WisDOT’s responsibilities to protect and enhance the state’s natural resources and furnish the public with a safe, economical and efficient transportation system, a Cooperative Agreement between WDNR and WisDOT was developed to facilitate streamlined coordination.

<http://dnr.wi.gov/topic/sectors/documents/dnrdotcooperativeagreement.pdf>

This agreement serves to provide basic guidance and policy direction for liaison procedures for coordination of transportation projects. In that spirit and, more specifically, because of 30.2022 Wisconsin Statutes,

<https://docs.legis.wisconsin.gov/statutes/statutes/30/III/2022/2>

WisDOT activities in connection with highway, bridge, or other transportation project design, location, construction, reconstruction, maintenance, and repair are not subject to the prohibitions or permit approval requirements established under the following Wisconsin Statutes:

- Chapter 29.601 - Noxious Substances
- Chapter 30.11 - Establishment of Bulkhead Lines
- Chapter 30.12 - Structures and Deposits in Navigable Waters
- Chapter 30.123 - Bridges and Culverts
- Chapter 30.19 - Enlargement and Protection of Waterways
- Chapter 30.195 - Changing of Stream Courses
- Chapter 30.20 - Removal of Material from Beds of Navigable Waters
- Chapter 59.692 - Zoning of Shorelands on Navigable Waters

- Chapter 61.351 - Zoning of Wetlands in Shorelands
- Chapter 62.231 - Zoning of Wetlands in Shorelands
- Chapter 87.30 - Floodplain Zoning
- Chapter 281 - Water and Sewage
- Chapter 285 - Air Pollution
- Chapter 289 - Solid Waste Facilities
- Chapter 299 - General Environmental Provisions