U.S. Department of Transportation
Federal Highway Administration

Memorandum

Federal Highway Administration and Federal Transit Administration

Subject: Integration of Planning and NEPA Processes

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In Reply Refer To:
HCC-30

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I. ISSUE

You have asked for guidance regarding the extent to which the results of the transportation planning process can be used in and relied upon in the NEPA process. In response to your request, this memorandum outlines the current law; describes the transportation planning products that can be used in the NEPA process and under what conditions; and explains the roles of Federal agencies and the public in reviewing transportation planning products used in NEPA analyses and documents.

II. BACKGROUND

The transportation planning process required by 23 U.S.C. 134 and 135 and 49 U.S.C. 5303-5306 sets the stage for future development of transportation projects. As part of the transportation planning process, States and local metropolitan planning organizations (MPOs) must develop long-range transportation plans to address projected transportation needs. In addition, they must create transportation improvement programs (TIPs or STIPs), which identify a list of priority projects to be carried out in the next three years to implement the plan. To receive Federal funding, transportation projects must come from a TIP or STIP. As a result, much of the data and decisionmaking undertaken by state and local officials during the planning process carry forward into the project development activities that follow the TIP or STIP. This means that the planning process and the environmental assessment required during project development by the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4231 *et seq.*) should work in tandem, with the results of the transportation planning process feeding into the NEPA

process. Congress has put great emphasis on the transportation planning process for shaping transportation decisions, and has retained and refined that emphasis in surface transportation law over decades.

In practice, though, the environmental analyses produced during the NEPA process are sometimes disconnected from the analyses used to prepare transportation plans, transportation improvement programs, and supporting corridor or subarea studies. Analyses and decisions occurring during transportation planning can be ignored or redone in the NEPA process, resulting in a duplication of work and delays in implementation of transportation projects. The sharp separation between the work done during the transportation planning process and the NEPA analysis and documentation process is not necessary. In fact, current law provides authority for and even encourages the integration of the information and products developed in highway and transit planning process into the NEPA process. This memorandum provides guidance on how this information and these products can be incorporated into and relied upon in NEPA analyses and documents under existing laws.

III. LEGAL ANALYSIS OF CURRENT LAW ON INTEGRATING PLANNING AND NEPA

The transportation planning process is a detailed, Congressionally mandated procedure for developing long-range transportation plans and shorter-range transportation improvement programs. These procedures were initially enacted in the 1960s and were codified in Title 23 and Title 49 of the U.S. Code. See 23 U.S.C. 134 and 135 and 49 U.S.C. 5303-5306. In 1991, the planning provisions were substantially expanded by the Intermodal Surface Transportation Efficiency Act of 1991. They have been subsequently revisited and refined by Congress in various transportation bills, but the basic framework has remained intact. The procedures identify the State and local agencies with primary responsibility for transportation planning. They also identify agencies and other interested parties who should be given an opportunity to participate in the transportation planning process and describe their appropriate level of involvement. The statute spells out the planning factors that must be considered, including, among other factors, the protection and enhancement of the environment. 23 U.S.C. 134(f) and 135(c).[1] The transportation planning process undertaken by States and MPOs is periodically reviewed and, if found to be adequate, certified by FHWA and FTA. The Federal government does not approve the transportation plans developed by State or local officials, and although FTA and FHWA jointly approve the Statewide TIP such an approval does not constitute a Federal action subject to review under NEPA.[2] This is the process that Congress constructed to shape transportation decisions for Federally-funded projects.

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[1] Protection of the environment is reinforced in the FHWA and FTA regulations clarifying the factors to be considered in the transportation planning process (e.g., States and MPOs must analyze the "overall social, economic, energy and environmental effects of transportation decisions...." 23 CFR 450.208 and 450.316.

[2] As stated in the planning provisions of Title 23, "[a]ny decision by the Secretary concerning a plan or program described in this section shall not be considered to be a Federal action subject to review" under NEPA. 23 U.S.C. 134(o); see also 23 U.S.C. 135(i). These provisions are discussed more fully in Section V of this memorandum.

In order to be eligible for Federal funding, projects must come from a plan created by this process. Federal action subject to NEPA is needed to approve these Federal aid projects. Because of the continuity between the planning and project development processes, the NEPA analysis for a transportation project needs to be reviewed in the context of this transportation planning process.

NEPA and the government-wide regulations that carry out NEPA (40 C.F.R. Parts 1500 *et seq.*) clearly contemplate the integration of the NEPA process with planning processes. Specifically, Section 102(2)(A) of NEPA direct all Federal agencies to "utilize a systemic, interdisciplinary approach which will insure the integrated use of natural and social sciences and the environmental design arts in *planning* and decisionmaking." [Emphasis added] The regulations issued by the President's Council on Environmental Quality (CEQ) amplify the statutory directive:

- 40 C.F.R. 1501.1(a) requires decisionmakers to "integrate[e] the NEPA process *into early planning* to ensure appropriate consideration of NEPA's policies and to eliminate delay";
- 40 C.F.R. 1501.1(b) emphasizes the need for "cooperative consultation among agencies *before the environmental impact statement is prepared*", rather than "submission of adversary comments on a completed document";
- 40 C.F.R. 1501.1(d) emphasizes the importance of "[I]dentifying at an early stage the significant environmental issues deserving of study," by deemphasizing "insignificant issues" and "narrowing the scope of the environmental impact statement accordingly";
- 40 C.F.R. 1501.2 requires that Federal agencies "integrate the NEPA process with *other planning at the earliest possible time* to ensure that planning and [agency] decisions reflect environmental values...."

Likewise, the NEPA regulations adopted by the Federal Transit Administration (FTA) and the Federal Highway Administration (FHWA) emphasize the tie between NEPA and transportation planning:

- 23 C.F.R. 771.105(a) provides that "To the fullest extent possible, all environmental investigations, reviews and consultations be coordinated as a single process...."; and
- 23 C.F.R. 771.105(b) directs that "Alternative courses of action be evaluated and decisions be made in the best overall public interest based upon a balanced consideration of the need for safe and efficient transportation; of the social, economic and environmental impacts of the proposed transportation improvement; and of national, State and local environmental protection goals."

Thus, the organic statute, the government-wide NEPA regulations, and the specific FHWA and FTA regulations all strongly support the integration of the NEPA process with the transportation planning process.

Case law on the issue of the use of transportation planning studies and decisions in the NEPA process is not extensive. However, to the extent they exist, court decisions have consistently supported the reliance in the NEPA process on work done in the planning

process. For example, in *North Buckhead Civic Association v. Skinner*, 903 F. 2d 1533 (11th Cir. 1990), the Plaintiffs challenged the purpose and need articulated in the EIS for a multi-lane limited access highway connecting two existing highways. The purpose and need was derived from a series of planning studies conducted by the Atlanta Regional Commission. Plaintiffs argued that the purpose and need was crafted in a way that the proposed highway was "conclusively presumed to be required" and a rail alternative perfunctorily dismissed for its failure to fully satisfy the objectives of the project. The Court of Appeals disagreed with the Plaintiffs, stating that their objections reflected "a fundamental misapprehension of the role of federal and state agencies in the community planning process established by the Federal-Aid Highway Act." The Court went on to explain that the Federal-Aid Highway Act contemplated "a relationship of cooperation between federal and local authorities; each governmental entity plays a specific role in the development and execution of a local transportation project." The Court emphasized that federal agencies did not have responsibility for long range local planning, and found that the "federal, state and local officials complied with federally mandated regional planning procedures in developing the need and purpose section of the EIS." 903 F.3d at 1541-42. Although the Court in *Buckhead* acknowledged the validity of a purpose and need based on the results of the planning study, it did not in any way scale back the holdings of other cases relating to purpose and need which caution agencies not to write purpose and need statements so narrowly as to "define competing 'reasonable alternatives' out of consideration (and even out of existence)." *Simmons v. U.S. Army Corps of Engineers*, 120 F.3d 664 (7th Cir. 1997). (In this case, the Army Corps of Engineers failed to question city's insistence on one approach for supplying water and gave no independent thought to the feasibility of alternatives, both single source and separate source supply options. On this basis, the EIS was found to be inadequate.)

In *Carmel-by-the-Sea v. U.S. DOT*, 123 F.3d 1142 (9th Cir. 1997), the Plaintiffs challenged the sufficiency of an EIS for failing to adequately consider the proposed project's growth-inducing effects. The Ninth Circuit disagreed, finding that the EIS satisfied this requirement by referencing several local planning documents that specifically included construction of the highway in their growth plans and which discussed overall growth targets and limits. In addition, the Court found that achieving "Level of Service C," an objective derived from the local congestion management plan, was an appropriate part of the purpose and need statement (although ultimately the EIS was found inadequate on cumulative impact grounds). Similarly, in *Laguna Greenbelt, Inc. v. U.S. DOT*, 42 F.3d 517 (9th Cir. 1994), the court held that the absence of a more thorough discussion in an EIS of induced growth, an issue that was sufficiently analyzed in referenced state materials, does not violate NEPA. However, regardless of the source, the analysis of induced growth must be in sufficient detail and must provide an analytical basis for its assumptions in order to be adequate under NEPA. See *Senville v. Peters*, 327 F.Supp.2d 335, 349 (Vt. 2004) (In this case, the District Court found an FEIS, before it was supplemented by FHWA, to be inadequate because it contained only a "sketchy" discussion of induced growth and failed to support its assumptions with any analysis.)

In *Utahns for Better Transportation v. U.S. DOT*, 305 F.3d 1152 (10th Cir. 2002), *as modified on rehearing*, 319 F.3rd 1207 (10th Cir. 2003), Plaintiffs contended that the FEIS was inadequate because it failed to consider reducing travel demand through alternative land use scenarios in combination with mass transit. Noting that "reasonable

alternatives" must be non-speculative, the Tenth Circuit found that Plaintiffs had not demonstrated a deficiency in the FEIS on this basis (although it was ultimately found inadequate on other grounds). The Court stated that "Land use is a local and regional matter," and that, in this case, the corridor at issue would involve the jurisdiction of several local and regional governmental entities whose cooperation would be necessary to make an alternative land use scenario a reality. The fact that these entities had clearly declined to alter their land use plans in such a way was justification for not considering this alternative. 305 F.3d at 1172. [3]

In *Sierra Club v. U.S. Department of Transportation*, 310 F.Supp.2d 1168 (D. Nevada 2004), Plaintiffs made several challenges to the EIS for a proposed highway project. One of these challenges alleged that FHWA relied on understated population and traffic forecasts. However, the Nevada District Court found that FHWA's reliance on the forecasts and modeling efforts of the designated metropolitan planning organization responsible for developing transportation plans and programs for the area was reasonable. In addition, Plaintiffs argued that the EIS had improperly rejected a fixed guideway as a reasonable alternative under NEPA. The Court disagreed, finding that FHWA reasonably relied on a "major investment study"[4] conducted as part of its planning process to establish that such an alternative (1) would not meet the project's purpose and need, even

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[3] Note, however, an alternative is not "speculative" or "unreasonable" merely because it is outside the jurisdiction of the proposing agency. 40 C.F.R. 1402.14 (c). In some cases, an agency might be required to consider an alternative outside its jurisdiction. For example, in *Muckleshoot Indian Tribe v. United States Forest Service*, 177 F.3d 800 (9th Cir. 1999), the Ninth Circuit Court of Appeals found that the lack of funds for an alternative was not sufficient to render it "speculative" when the Forest Service could have at least made a request for additional funding. The facts in the *Muckleshoot* case are different than the *Utahns* case, where the local agencies had clearly declined to exercise the alternative.

[4] Corridor-level "Major Investment Studies" were for a time required under FTA and FHWA's planning regulations where a need for a major metropolitan transportation investment was identified and Federal funds were potentially involved. Major investment studies were intended to refine the system-wide transportation plan and lead to decisions on the design concept and scope of the project, in consultation with other interested agencies. In addition, they were intended to be used as input to EISs and EAs. 23 C.F.R. 450.318. In Section 1308 of the Transportation Equity Act for the 21st Century, the Secretary was directed to eliminate the separate requirement for major investment studies and instead to integrate it with the planning analyses required under the FTA and FHWA planning statutes "as part of the analyses required to be undertaken pursuant to the planning provisions of Title 23, United States Code and Chapter 53 of Title 49, United States Code, and the National Environmental Policy Act of 1959 (42 U.S.C. 4321 et seq.) for Federal-aid highway and transit projects.". Pub.. 105-178 (June 9, 1998). Although no longer required, "major investment studies" continue to be allowed at the discretion of the State or local agency.

It is telling, however, that a good many State and local agencies continue to prepare "major investment studies" (and similar corridor and sub-area analyses) on their own volition, because they have found it very valuable to vet the merits and weaknesses of various alternatives—both modal and alignment--before they even initiate the NEPA analyses and documentation. Moreover, FTA requires Metropolitan Planning Organizations and/or transit agencies contemplating major capital investment ("new starts") projects to prepare a planning-level corridor study, know as an "Alternatives Analysis," either before or during a Draft Environmental Impact Statement for the purpose of narrowing the range of alternatives for study in a subsequent NEPA analysis and document(s) by eliminating some alternatives from further detailed study. See also footnote 10.

when considered as part of a transportation strategy, (2) was too costly and (3) depended on connections to other portions of such a system for which construction was uncertain.[5]

As demonstrated by these cases, Courts have sanctioned the use of information from the planning process in a NEPA analysis and document. This is consistent with the opening language in NEPA advocating the integration of environmental considerations in both planning and decision-making. Consequently, products from the transportation planning process can be used in the NEPA analysis and documentation prepared for a transportation project.

IV. LEGAL GUIDANCE ON HOW PRODUCTS FROM THE PLANNING PROCESS CAN BE USED IN THE NEPA PROCESS

For studies, analyses or conclusions from the transportation planning process to be used in the NEPA process, they must meet certain standards established by NEPA. This is because the information and products coming from the planning process must be sufficiently comprehensive that the Federal government may reasonably rely upon them in its NEPA analysis and documentation. Transportation planning processes vary greatly from locality to locality. Some transportation planning processes will already meet these standards, while others might need some modification to do so. Below is a discussion of where products from the transportation planning process might be incorporated into a NEPA analysis and documentation (purpose and need, alternatives, affected environment, and, to a more limited extent, environmental consequences in terms of land use, indirect and cumulative impacts, etc.), along with the NEPA standards they must first meet.

In addition to what is discussed below, these planning products must come from a transportation planning process that complied with current transportation planning requirements (e.g., provided an opportunity for public involvement and considered relevant planning factors). Interested State, local, tribal and Federal agencies should be included in the transportation planning processes, and must be given a reasonable opportunity to comment upon the long range transportation plan and transportation improvement program. Finally, any work from the planning process must have been documented and available for public review during the planning process. Such documentation should be in a form that can easily be appended to the NEPA document or incorporated by reference.[6]

Purpose and Need

The "purpose and need statement" in a NEPA document is where the planning process and the NEPA process most clearly intersect. A sound planning process is a primary source of the project purpose and need. It is through the planning process that state and

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[5] Plaintiffs have appealed this decision, and the Ninth Circuit has stayed further construction on the project pending the outcome of the appeal. *Order Granting Stay*, Ninth Circuit Court of Appeals, No. CV-02-00578-PMP (July 27, 2004).

[6] Documents may be incorporated by reference if they do not impede agency or public review of the action. Any document incorporated by reference must be "reasonably available for inspection by potentially interested persons within the time allowed for comment." Incorporated materials must be cited in the NEPA document and their contents briefly described. 40 C.F.R. 1502.21.

local governments determine what the transportation needs of an area are, which of transportation needs they wish to address, and in what time frame they wish to address them. Indeed, that is what the law requires from the planning process and actually prevents projects that do not come from the planning process from going forward.

The purpose and need statement, at a minimum, is a statement of the transportation problem to be solved by the proposed project. It is often presented in two parts: broad goals and objectives, and a description of the transportation conditions (congestion, safety, etc.) underlying the problem. The long-range transportation plan also includes goals and objectives similar to "purpose and need" but on a broader scale, since it typically covers a wider area and spans at least twenty years. These goals and objectives are often identified through extensive public outreach, sometimes called "visioning" or "alternative futures" exercises. The purpose and need statement for a transportation project should be consistent with and based on the goals and objectives developed during the planning process.

Getting input from Federal agencies as transportation goals and objectives are developed during the planning process is advisable and would be consistent with the cooperative relationship envisioned by statute and reinforced by courts. Such participation would give Federal agencies a better insight into the needs and objectives of the locality and would also provide an important opportunity for Federal concerns to be identified and addressed early in the process. These concerns could include issues that might be raised by Federal agencies in considering permit applications for projects designed to implement the transportation plan. However, the responsibility for local planning lies with the metropolitan planning organization or the State, not the Federal government.

In many cases, the goals and objectives in the transportation plan are supported by a needs assessment and problem statement describing current transportation problems to be addressed. Although the goals and objectives in the long-range transportation plan will be broader than what is appropriate for a specific project, they can be the foundation for the purpose and need to be used in a NEPA document. For example, they can be used to generate corridor-level purpose and need statements, during planning, for use in NEPA documents. The challenge is to ensure what comes from the long-range transportation plan is not so general as to generate a range of alternatives that are not responsive to the problem to be solved.

NEPA calls for a purpose and need statement to briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action. A purpose and need statement can be derived from the transportation planning process. The purpose and need statement:

- Should be a statement of the transportation problem (not a statement of a solution);
- Should be based on articulated planning factors and developed through a certified planning process;
- Should be specific enough so that the range of alternatives developed will offer real potential for solutions to the transportation problem;
- Must not be so specific as to "reverse engineer" a solution; and

- May reflect other priorities and limitations in the area, such as environmental resources, growth management, land use planning, and economic development.

Alternatives

Under NEPA, an EIS must rigorously explore and objectively evaluate all reasonable alternatives, and briefly explain the rationale for eliminating any alternatives from detailed study.[7] "Reasonable alternatives" are described in Council on Environmental Quality (CEQ) guidance as including "those that are practical or feasible from the technical and economic standpoint and using common sense." *Forty Most Asked Questions Concerning CEQ's NEPA Regulations*, Question #2a (March 23, 1981). An alternative is not "reasonable" if it does not satisfy the purpose and need,[8] but it may be reasonable even if it is outside the jurisdiction of the proposing agency to implement.

The transportation planning process frequently takes steps to refine the purpose and need statement that results in narrowing or screening the range of alternatives. Regional planning considerations may be the basis for refining the purpose and need statement, which might then have the effect of eliminating some alternatives from detailed consideration. For example, network connectivity across a geographic barrier such as a river may dictate a particular transportation mode or a general alignment. The plan may also identify where a locality wants housing, commercial development, agriculture, etc.—all of which might drive the need for transportation improvements in particular corridors.

When a long- range transportation plan leaves open the possibility of multiple approaches to fulfill its goals and objectives, a subarea or corridor study could be conducted to "zoom in" on a particular area. This study would evaluate alternative investment strategies, engineering constraints, fiscal constraints, and environmental considerations in this area, and could narrow the range of possible alternatives to those that will meet the goals and objectives of the broader long-range transportation plan in that particular subarea or corridor. At the conclusion of such a study, the remaining alternatives might simply consist of a single corridor or mode choice with location and design options.

On a broad scale, a decision about whether projects located in particular subareas or corridors would satisfy the transportation goals and objectives of a locality can be made in these subarea or corridor studies. These studies can therefore be used in and relied on in an EIS to refine the purpose and need statement, thereby narrowing the range of alternatives to be considered by eliminating some alternatives from further detailed study. When conducting subarea or corridor screening studies during the planning process, State

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[7] 40 C.F.R. 1502.14 The term "alternatives" is also used in many other contexts (for example, "prudent and feasible alternatives" under Section 4(f) of the Department of Transportation Act, the "Least Environmentally Damaging Practicable Alternative" under the Clean Water Act, or the "Alternatives Analysis" under FTA's New Starts program). This memorandum only uses the term as defined under NEPA. At the planning stage of any project, however, a determination should be made as to whether the alternatives to be considered will need to be used to satisfy multiple requirements at the planning and NEPA review stages. If so, during planning the alternatives chosen for consideration and the analysis of those alternatives should reflect the multiple statutory objectives that must be addressed.

[8] In some cases, an alternative may be reasonable even if it just partially satisfies the purpose and need. See *NRDC v. Morton*, 458 F.2d 827, 836 (C.A.D.C. 1972).

and local agencies should keep in mind the principles of NEPA and should be sure to document their procedures and rationales. To be incorporated into an EIS, the analysis of alternatives conducted in the subarea or corridor study should be consistent with the standard of NEPA requiring consideration of reasonable alternatives. Alternatives that remain "reasonable" after the planning level analysis must be addressed in the NEPA process, even when they are clearly not the preferred alternative.[9] Alternatives passed over during the transportation planning process because they are infeasible or because they do not meet the NEPA "purpose and need" can be omitted from the detailed analysis of alternatives in the NEPA analyses and documentation, so long as the rationale for omitting them is documented in the NEPA document. That documentation can either be appended to the EIS or the specific transportation planning documents can be summarized in the EIS and incorporated by reference. The NEPA review would then have to consider the alternatives that survive the planning study, plus any additional reasonable alternatives identified during NEPA scoping that may not have been considered during the planning process. All reasonable alternatives considered in the draft and final EIS should be presented in a "comparative form" that sharply defines the issues and provides a clear basis for a choice by the decisionmaker and the public. 40 C.F.R. 1502.14.

Finally, any planning study being relied upon as a basis for eliminating alternatives from detailed study should be identified during the NEPA scoping process and available for public review. Since a major purpose of the scoping process is to identify alternatives to be evaluated, the public should be given the opportunity to comment on determinations made in the planning process to eliminate alternatives.

Therefore, if the planning process is used to screen or narrow the range of alternatives, by excluding certain alternatives from detailed study or by prescribing modes or corridors for transportation development which results in eliminating alternative modes or corridors from detailed study, then the planning-based analysis of alternatives:

- Should describe the rationale for determining the reasonableness of the alternative or alternatives;
- Should include an explanation of why an eliminated alternative would not meet the purpose and need or was otherwise unreasonable; and
- Should be made available for public review during the NEPA scoping process and comment period.

Under FTA's New Starts program, the alternatives considered during the NEPA process may be narrowed even further by eliminating alternatives from detailed study in those instances when the Alternatives Analysis required by 49 U.S.C. 5309(e) is conducted as a

[9] Under the requirements for FTA's New Starts Program, however, under the appropriate circumstances, reasonable alternatives may be eliminated from detailed study during a rigorous planning-level Alternatives Analysis (including an evaluation of environmental consequences) conducted before the issuance of a NEPA Notice of Intent to prepare an Environmental Impact Statement. This is discussed later in this section.

planning study prior to the NEPA review.[10] In fact, FTA may narrow the alternatives considered in detail in the NEPA analysis and documentation to the No-Build (No-Action) alternative and the "Locally Preferred Alternative". The following criteria must be met if alternatives are eliminated from detailed study by a planning Alternatives Analysis conducted prior to the NEPA review:

- During the planning Alternatives Analysis, all of the reasonable alternatives under consideration must be fully evaluated in terms of their transportation impacts, capital and operating costs, social, economic, and environmental impacts, and technical considerations;
- There must be appropriate public involvement in the planning Alternatives Analysis;
- The appropriate Federal, State, and local resource agencies must be engaged in the planning Alternatives Analysis;
- The results of the planning Alternatives Analysis must be documented;
- The NEPA scoping participants must agree on the alternatives that will be considered in the NEPA review; and
- The NEPA document must incorporate by reference the evaluation of alternatives from the planning Alternatives Analysis.

If, during the NEPA process, new reasonable alternatives not considered during the planning Alternatives Analysis are identified or new information about eliminated alternatives comes to light, those alternatives must be evaluated during the NEPA process.

Affected Environment and Environmental Consequences

The EIS must present a description of the environment in the area that would be affected by the proposed action and alternatives and their environmental consequences. 40 C.F.R. 1502.15 and 1502.16. In the development of the long-range transportation plan and a corridor or subarea studies, a similar assessment of the environment in the area and environmental consequences should typically have been conducted. Such planning-level assessments might include developing and utilizing geographic information system overlays of the area; providing information on air- and water-sheds; identifying the location of environmental resources with respect to the proposed project and alternatives; conducting environmental "scans" of the area of impact; and utilizing demographic trends and forecasts developed for the area. The discussion in the planning process of development growth, and consistency with local land use, growth management or development plans, as well as population and employment projections, would be particularly valuable for use in determining the affected environment and the scope of cumulative impacts assessment and possible indirect impacts of the proposed transportation improvement. Any relevant parts of such transportation planning process analysies, conducted in the planning process or by other sources and used in plan development, can be incorporated by reference and relied upon in the NEPA analysis and documentation.

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[10] FTA offers applicant sponsors the opportunity to conduct the Alternatives Analysis before NEPA begins or alternatively, to conduct the Alternatives Analysis concurrently with the NEPA DEIS.

The CEQ regulations require the action agency preparing an EIS to assess the environmental consequences of the proposed action and any reasonable alternatives. The CEQ regulation contains a detailed list of all of the types of environmental consequences that must be discussed, including direct, indirect and cumulative impacts and their significance, as well as means to mitigate adverse environmental impacts. These consequences must be discussed for each alternative and should be presented in a comparative form. 40 C.F.R. 1502.16. In transportation planning, the development of transportation plans and programs is guided by seven planning factors (23 U.S.C. 134(f)(1) and 23 U.S.C. 135(c)(1)), one of which is to "protect and enhance the environment, promote energy conservation, and improve the quality of life." As such, there generally is a broad consideration of the environmental effects of transportation decisions for a region.[11] To the extent relevant, this analysis can be incorporated into the "environmental consequences" section of an environmental assessment or impact statement performed under NEPA. However, in most cases the assessment of environmental consequences conducted during the planning process will not be detailed enough to meet NEPA standards and thus will need to be supplemented.

Nonetheless, the planning process often can be a source of information for the evaluation of cumulative and indirect impacts required under NEPA. 40 C.F.R. 1502.16, 1508.7 and 1508.8. The nature of the planning process is to look broadly at future land use, development, population increases, and other growth factors. This analysis could provide the basis for the assessment of cumulative and indirect impacts required under NEPA. Investigating these impacts at the planning level can also provide insight into landscape, watershed or regional mitigation opportunities that will provide mitigation for multiple projects.

An EIS may incorporate information regarding future land use, development, demographic changes, etc. from the transportation planning process to form a common basis for comparing the direct, indirect and cumulative impacts of all alternatives. When an analysis of the environmental consequences from the transportation planning process is incorporated into an EIS it:

- Should be presented in a way that differentiates among the consequences of the proposed action and other reasonable alternatives;
- Should be in sufficient detail to allow the decisionmaker and the public to ascertain the comparative merits and demerits of the alternatives; and
- Must be supplemented to the extent it does not adequately address all of the elements required by the CEQ and FHWA/FTA NEPA regulations.

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[11] Specifically, the FHWA/FTA transportation planning regulations (23 C.F.R. Part 450 and 49 C.F.R. Part 613) require inclusion of the overall social, economic, energy and environmental effects of transportation decisions (including consideration of the effects and impacts of the plan on human, natural and man-made environment such as housing, employment and community development, consultation with appropriate resource and permit agencies to ensure early and continued coordination with environmental resource protection and management plans, and appropriate emphasis on transportation-related air quality problems). 23 C.F.R. 450.316(a)(13).

V. LEGAL GUIDANCE ON WEIGHT TO BE GIVEN TO PLANNING PRODUCTS INCORPORATED INTO NEPA ANALYSES AND DOCUMENTS

Responsibility for NEPA analyses and documents on Federally-funded or approved highway and transit projects ultimately rests with FHWA and FTA, since they are taking the federal action subject to NEPA. FHWA and FTA have an obligation to independently evaluate and review a NEPA analysis and document, even when some of the information contained in it has been prepared by the State or other local agency. 42 U.S.C. 4332(2)(D); 40 C.F.R. 1506.5 Under NEPA and other relevant environmental laws such as the Endangered Species Act, the Clean Water Act, or the Clean Air Act, other agencies also must be given an opportunity to review and comment on NEPA documents and analysis. Federal agencies that have jurisdiction by law have an independent responsibility under NEPA and, upon the request of the lead agency, shall be "cooperating agencies."[12] Tribes and state and local agencies with jurisdiction by law and all agencies with special expertise may, upon the request of the lead agency, be "cooperating agencies" in the NEPA process. 40 C.F.R. 1501.6 and 1508.5.

However, while imposing on Federal agencies the obligation to independently evaluate information in NEPA analyses and documents, Congress also affirmed that NEPA does not apply to the transportation planning process because it is not a Federal action:

> "Since plans and programs described in this [transportation planning] section are subject to a reasonable opportunity for public comment, since individual projects included in the plans and programs are subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and since decisions by the Secretary concerning plans and programs described in this section have not been reviewed under such Act as of January 1, 1997, any decision by the Secretary concerning a plan or program described in this section shall not be considered to be a Federal action subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)."

23 U.S.C 134(o) and 135(i). The transportation planning process is a local function, which, by statute, is undertaken by State and local governments. The Department of Transportation has an oversight role, but it does not conduct the process and, therefore, there is no Federal action to trigger the application of NEPA. This is different than the "big picture" planning processes undertaken by other Federal agencies with respect to lands that they manage, where action by the Federal agency is involved and NEPA applies.[13]

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[12] Nonetheless, a cooperating agency may, in response to a lead agency's request for assistance in preparing an EIS, reply that other program commitments preclude any involvement or the degree of involvement requested in the action that is subject to the EIS. 40 C.F.R. 1501.6(c).

[13] For example, NEPA applies to the general management plans prepared and approved by the National Park Service for each unit of the National Park System (Chapter 2, "Management Policies," at www.nps.gov/policy/mp/chapter2.htm), and applies to resource management plans prepared and approved by the Bureau of Land Management to maximize resource values of federal lands and resources (43 C.F.R. 1601.0-6).

The affirmation in Sections 134(o) and 135(i) that the decisions made by State and local governments during the transportation planning process are exempt from NEPA is based on a Fifth Circuit decision, *Atlanta Coalition on the Transportation Crisis, Inc. v. Atlanta Regional Commission*, 599 F.2d 1333 (5th Cir. 1979). In this case, plaintiffs sought declaratory judgment that an EIS was required for a regional transportation plan developed by the Atlanta Regional Commission in compliance with the FHWA and FTA planning regulations. The plan proposed a comprehensive transportation system for the Atlanta area. It included an analysis of projected regional transportation needs through the year 2000 and identified the general location and the mode (i.e. highway or transit) for recommended transportation corridors to meet those needs. The Fifth Circuit denied plaintiff's request for an EIS, finding that "Congress did not intend NEPA to apply to state, local or private actions; hence, the statute speaks only to 'federal agencies' and requires impact statements only as to 'major federal actions.'" 559 F.2d at 1344. Specifically, the Court stated:

> "The fact is that the [regional plan] was developed by ARC in conjunction with state and local authorities, and no federal agency had any significant hand in determining, or made any decision concerning, its substantive aspects. Under the statutes, those decisions are entrusted to the state and local agencies, not FHWA or [FTA]. Moreover, the plan, as a plan will never be submitted to a federal agency for review or approval. And while the planning process was so structured so as to preserve the eligibility for federal funding of projects included within the resulting plan, it has been consistently held that the possibility of federal funding in the future does not make the project or projects 'major federal action' during the planning stage."

[Cites omitted] 599 F.2d at 1346. The Court further found that certification or funding of the planning process by FHWA and FTA did not amount to a "major federal action" as defined in the NEPA regulations. 559 F.3d at 1344; 40 C.F.R. 1508.18. The Court concluded by again emphasizing: "We have no doubt but that the [regional plan] embodies important decisions concerning the future growth of the Atlanta area that will have a continuing and significant effect on the human environment. But at the risk of belaboring the point, we reemphasize that those decisions have been made by state and local authorities, will not be reviewed by any federal agency, and obligate no federal funds. The defendants therefore need not prepare an impact statement on the [regional plan]." 559 F.3d at 1349.

This theme is echoed in other court decisions involving local planning processes. Early in the development of NEPA law, Courts recognized that deference to local planning was appropriate in the NEPA process. In *Maryland-National Capital Park and Planning Commission v. U.S. Postal Service*, 487 F.2d 1029 (U.S. App. D.C. 1973), the Postal Service determined that the construction of a bulk mail facility would have no significant impact since, under the locality's zoning laws, the postal facility was a "permitted use" at the location proposed by the Postal Service. In analyzing this issue, the Court noted: "The question of significance takes on a distinctive case in the context of land use planning." The Court went on to state: "When local zoning regulations and procedures are followed in site location decisions by the Federal Government, there is an assurance that such 'environmental' effects as flow from the special uses of land—the safety of the

structures, cohesiveness of neighborhoods, population density, crime control, and esthetics—will be no greater than demanded by the residents acting through their elected representatives. " 487 F.2d at 165-66. The Court acknowledged, however, that local planning was not sufficient to effectuate NEPA, and that actions of the Federal government might have implications beyond those evaluated in the planning process: "For example, whereas the Federal Government might legitimately defer to New York City zoning in matters of, say, population density, a different issue would be posed by the location within the city of an atomic reactor. Its peculiar hazards would not be limited to the citizens of New York, nor could they be controlled by them." 487 F.2d at 166. *See also Preservation Coalition, Inc. v. Pierce*, 667 F.2d 851 (C.A. Idaho 1982) (citing *Maryland-National Capital Park* and upholding a finding of no significant impact when a Federal project conformed to existing land use patterns, zoning and local plans).

The Fifth Circuit followed a similar line of reasoning in *Isle of Hope Historical Association v. U.S. Army Corps of Engineers*, 646 F. 2d 215 (5th Cir. 1981). In this case, the Court held that, in preparing an EIS, the Corps of Engineers properly relied on information and answers from the local government regarding planning and zoning issues. The Corps had consulted with county officials to determine whether planning documents had been adopted and whether there was any inconsistency between the proposed project and the local zoning regulations. Plaintiffs challenged this part of the EIS, alleging that it had not adequately discussed the planning documents at issue nor disclosed inconsistencies between the zoning regulations and the proposed project. The Court upheld the Corps' reliance on the county officials' responses, stating that "For the Corps in this case to follow planning documents which the county had not adopted or to engage independent analysis of inconsistencies which those specifically charged with zoning enforcement did not find would make the Corps in effect a planning and zoning review board....The proper function of the Corps was to assess the environmental impact of the [proposed project], not to act as a zoning interpretation or appeal board." 646 F.2d at 221.[14]

This respect for local sovereignty in making planning decisions has been reinforced more recently in the context of transportation planning. In *North Buckhead Civic Association v. Skinner* (discussed previously in Section III of this Memorandum), the 11th Circuit emphasized that "NEPA does not confer the power or responsibility for long range local planning on Federal or state agencies." 903 F. 3d at 1541-42. See also *Sierra Club v. U.S. Department of Transportation*, 350 F.Supp.2d 1168, 1193 (D. Nevada 2004), where the Court said: "[A] federal agency does not violate NEPA by relying on prior studies and analyses performed by local and state agencies." This approach is also consistent with the statutory provision describing the Federal-State relationship for the Federal-aid highway program: "The authorization of the appropriation of Federal funds or their availability for expenditure under this chapter shall in no way infringe on the sovereign rights of the States to determine which projects shall be federally financed." 23 U.S.C.

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[14] Of course, the reliance on the underlying local plan does not excuse the analysis of the impacts of the project within the context of that plan. Cf. *Sierra Club Illinois Chapter v. U.S. Department of Transportation*, 962 F. 2d 1037, 1042 (N.D. Ill. 1997).

145(a). In conducting its NEPA analysis, FHWA and FTA must take into account Congressional direction regarding its statutory authority to act. See *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190 (C.A.D.C. 1991).[15]

When it enacts a provision of law, Congress is presumed to have in mind previous laws relating to the same subject matter. To the greatest extent possible, new statutes should be read in accord with prior statutes, and should be construed together in harmony. N. Singer, *Statutes and Statutory Construction*, 6th Ed., Vol. 2B, Sec. 51.02. A Federal agency's independent obligation to evaluate planning products incorporated into the NEPA process must be performed in a way that is consistent with the Congressional direction that NEPA does not apply to local transportation planning and consistent with court decisions recognizing the sovereignty of local governments in making local transportation planning decisions. Federal agencies should ensure transportation planning decisions have a rational basis and are based on accurate data, but should not use the NEPA process as a venue for substituting federal judgment for local judgment by requiring reconsideration of systems-level objectives or choices that are properly made during the local transportation planning process.[16]

The transportation planning process and the NEPA process work in harmony when the planning process provides the basis or foundation for the purpose and need statement in a NEPA document. To the extent regional or systems-level analyses and choices in the transportation planning process help to form the purpose and need statement for a NEPA document, such planning products should be given great weight by FHWA and FTA, consistent with Congressional and Court direction to respect local sovereignty in planning. This approach is also consistent with a letter to Secretary Mineta dated May 12, 2003, from James Connaughton, Chairman of CEQ, on purpose and need statements in NEPA documents:

> "Federal courts generally have been deferential in their review of a lead agency's 'purpose and need' statements, absent a finding that an agency acted in an arbitrary or capricious manner. They have recognized that federal agencies should resepect the role of local and state authorities in the transportation planning process and appropriately reflect the results of that process in the federal agency's NEPA analysis of purpose and need [citing to *North Buckhead*]."

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[15] In this case, plaintiffs challenged the Federal Aviation Administration's EIS on an application by the Toledo Port Authority for a cargo hub in Toledo. Plaintiffs alleged that the FAA should have considered alternatives outside of Toledo. The Court disagreed, finding that Congress had made clear that the location of cargo hubs was to be made by local authorities and not by the Federal government, stating: "Where the Federal government acts, not as a proprietor, but to approve and support a project being sponsored by a local government or private applicant, the Federal agency is necessarily more limited. In the latter instance, the Federal government's consideration of alternatives may accord substantial weight to the preferences of the applicant and/or sponsor in the sitting and design of the project." 938 F.2d at 197.

[16] This would not constrain the Environmental Protection Agency's authority under Section 309 of the Clean Air Act to refer concerns to the President's Council on Environmental Quality regarding impacts on public health or welfare or environmental quality. 42 U.S.C. 7609.

Further, in his letter, the Chairman states that, even though other Federal agencies must be provided an opportunity to comment, they "should afford substantial deference to the transportation agency's articulation of purpose and need" when the proposal is a transportation project.[17]

Therefore, if transportation planning studies and conclusions have properly followed the transportation planning process, then they can be incorporated into the purpose and need statement and, further, can be used to help draw bounds around alternatives that need to be considered in detail. For example, if systems-level or other broad objectives or choices[18] from the transportation plan are incorporated into the purpose and need statement used in a NEPA document, FHWA and FTA should not revisit whether these are the best objectives or choices among other options. Rather, their review would include making sure that objectives or choices derived from the transportation plan were based on transportation planning factors established by federal law; reflect a credible and articulated planning rationale; are founded on reliable data; and were developed through a transportation planning process meeting FHWA and FTA statutory and regulatory requirements. In addition, the basis for the objectives and choices must be documented and included in the NEPA document. In such cases, alternatives falling outside a purpose and need statement derived from objectives or choices identified in the planning process do not need to be considered in detail.

FHWA and FTA should independently review regional analyses or studies of transportation needs conducted during the transportation planning process at a similar level. FHWA and FTA reviewers do not need to review whether assumptions or analytical methods used in the studies are the best available, but, instead, need to assure that such assumptions or analytical methods are reasonable and scientifically acceptable. This review would include determining whether assumptions have a rational basis and are up-to-date and data, analytical methods, and modeling techniques are reliable, defensible, and reasonably current. This approach preserves the sovereignty of state and local governments in making local planning decisions but in a way that is consistent with the principles and procedures of NEPA.

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[17] See, also, *Citizens Against Burlington, Inc. v. Busey, id.*, At 938 F.2d 190, 195-96 (C.A.D.C. 1991), stating "When an agency is asked to sanction a specific plan, see 40 C.F.R. § 1508.18(b)(4), the agency should take into account the needs and goals of the parties involved in the application. [Citations omitted];" *Louisiana Wildlife Federation, Inc. v. York*, 761 F.2d 1044 (5th Cir. 1985), stating "Under [the Corps'] Guidelines, therefore, not only is it permissible for the Corps to consider the applicant's objective; the Corps has a duty to take into account the objectives of the applicant's project. Indeed, it would be bizarre if the Corps were to ignore the purpose for which the applicant seeks a permit and to substitute a purpose it deems more suitable."

[18] Examples of such planning objectives or choices that courts have accepted for use in the purpose and need statement for a NEPA document are (1) the need for a multi-lane highway connecting two other highways (*North Buckhead Civic Association v. Skinner*, 903 F.2d at 1537) and (2) the need for a particular level of service (*Carmel-by-the-Sea v. U.S. DOT,* 123 F.3d at 1156). In *Atlanta Coalition on the Transportation Crisis v. Atlanta Regional Commission*, the court discusses the distinction between "systems" planning and "project" planning, and describes the Atlanta "systems" plan as "an analysis of projected regional transportation needs through the year 2000 [identifying] the general location and the mode (i.e., highway or mass transit) of recommended transportation corridors to meet those needs." 599 F.2d at fn.2 and at 1341.

Nonetheless, additional scrutiny may be required if the results of the planning process are more specific than needed for regional or systems-level planning. Such results might actually be part of project development, which is outside of the planning jurisdiction of local agencies. Project development often involves a Federal action and therefore would be subject to NEPA. See 23 U.S.C. 134(o) and 135(i). In addition, the information the Federal agencies rely upon in the NEPA process based on underlying transportation planning work cannot be inaccurate, false or misleading. See *Sierra Club v. U.S. Army Corps of Engineers,* 701 F. 2d 1011, 1035 (where the court required a supplementation or re-evaluation of the NEPA analyses and documentation where the Corps unquestioningly relied on inaccurate information and did not investigate, on its own, the accuracy of the fisheries data submitted to it to support a permit for a landfill in the Hudson river to accommodate the Westway highway project.)

In conducting reviews under NEPA, Federal agencies should defer to planning products incorporated into the NEPA process to the extent that they involve decisions or analysis within the jurisdiction of the local planning agency. The focus of the Federal agency's review should be whether the planning information is adequate to meet the standards of NEPA, not whether the decisions made by the planning authority are correct. This would be consistent with the specific roles assigned by Congress to local and Federal authorities and consistent with court decisions admonishing Federal agencies to respect the sovereignty of local authorities in developing local plans.

VI. CONCLUSION

This memorandum provides guidance on how transportation planning level information and products may be used to focus the documentation prepared to comply with NEPA when Federal approvals are needed to build a transportation project. Federal law and regulations and best practices ensure that much information that is relevant to the NEPA process is in fact developed during the planning process. Both Federal transportation law and NEPA law strongly suggest that to the extent practicable, the NEPA process should use and build on the decision made and information developed during the planning process. Of course, where the transportation planning process fails to address or document issues, the NEPA analyses and documentation may have to supplement the information developed during the planning process.

Original signed by D.J. Gribbin and Judith S. Kaleta

LINKING THE TRANSPORTATION PLANNING AND NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) PROCESSES

For 40 years, Congress has directed that Federally-funded highway and transit projects must flow from metropolitan and statewide transportation planning processes (pursuant to 23 U.S.C. 134-135 and 49 U.S.C. 5303-5306). Over the years, Congress has refined and strengthened the planning process as the foundation for project decisions, emphasizing public involvement, consideration of environment and other factors, and a Federal role that oversees the transportation planning process but does not second-guess the content of transportation plans and programs.

Despite this statutory emphasis on transportation planning, the environmental analyses produced to meet the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4231 *et seq.*) have often been conducted *de novo*, disconnected from the analyses used to develop long-range transportation plans, statewide and metropolitan Transportation Improvement Programs (STIPs/TIPs), planning-level corridor/subarea/feasibility studies, or FTA's planning Alternatives Analyses. When the NEPA and transportation planning processes are not well coordinated, the NEPA process may lead to the development of information during NEPA that is more appropriately developed in the planning process, resulting in duplication of work and delays in transportation improvements.

The purpose of this guidance is to change this culture, by supporting Congressional intent that statewide and metropolitan transportation planning should be the foundation for highway and transit project decisions. **This guidance was crafted to recognize that transportation planning processes vary across the country. This document provides guidance and information (both conceptually and through some illustrative "current practice" examples) on how information, analysis, and products from transportation planning can be incorporated into and relied upon in NEPA documents under existing laws.**

The guidance below is intended for use by State Departments of Transportation (State DOTs), metropolitan planning organizations (MPOs), and transit agencies to clarify the circumstances under which transportation planning level choices and analyses can be adopted or incorporated into the process required by NEPA. **Additionally, FHWA and FTA will work with Federal environmental, regulatory, and resource agencies to incorporate the principles of this guidance in their day-to-day NEPA policies and procedures related to their involvement in highway and transit projects.**

This guidance **does not** extend NEPA requirements to transportation plans and programs. The Transportation Efficiency Act for the 21st Century (TEA-21) specifically exempted transportation plans and programs from NEPA review, as reflected under 23 U.S.C. 134(o), 23 U.S.C. 135 (i), and 49 U.S.C. 5305(h). Therefore, initiating the NEPA process as part of, or concurrently with, a transportation planning study does not subject transportation plans and programs to NEPA.

Implementation of this guidance by States, MPOs, and transit agencies is voluntary. The degree to which studies, analyses, or conclusions from the transportation planning process can be

incorporated into the project development/NEPA processes will depend upon how well they meet certain standards established by NEPA regulations and guidance. While some transportation planning processes already meet these standards, others will need some modification.

The remainder of this guidance document utilizes a "Question and Answer" format, organized into three primary categories ("Procedural Guidance," "Substantive Guidance," and "Administrative Issues").

I. PROCEDURAL GUIDANCE

1. How can the products from the transportation planning process be better incorporated into the project development/NEPA process?

The transportation planning process and the environmental analysis required during project development by NEPA should work in tandem, with the results of the transportation planning process informing the NEPA process.

Under the FHWA/FTA transportation planning regulations (23 CFR 450.322(b)(6)), metropolitan long-range transportation plans must:

> *"include design concept and scope descriptions of all existing and proposed transportation facilities in sufficient detail, regardless of the source of funding, in [air quality] nonattainment and maintenance areas to permit conformity determinations under the U. S. Environmental Protection Agency's (EPA's) transportation conformity regulations (40 CFR Part 51). In all [metropolitan] areas, all proposed improvements shall be described in sufficient detail to develop cost estimates."*

Similarly for STIPs/TIPs, 23 CFR 450.216(a)(8) and 23 CFR 450.324(g)(1), respectively, require that the STIP/TIP contain *"sufficient descriptive material (i.e., type of work, termini, and length) to identify the project or phase." In addition, 23 CFR 450.324(h) requires that "In nonattainment and maintenance areas, projects included shall be specified in sufficient detail (design concept and scope) to permit air quality analysis in accordance with EPA's transportation conformity regulations (40 CFR Part 51)."*

In each case, project "design concept and scope" includes:

- mode (e.g., unrestricted highway, high occupancy vehicle facilities, light rail, commuter rail, busway, and combinations of modes);
- termini, approximate length, and general alignment;
- number of lanes or tracks; and
- degree of grade separation and access control.

This planning-level information, and the accompanying analysis and public involvement, establishes the foundation for subsequent analysis and decision-making during project development.

2. ***In what format should the planning information be included?***

To be included in the NEPA process, work from the planning process must be documented in a form that can be appended to the NEPA document or incorporated by reference. Documents may be incorporated by reference if they are readily available so as to not impede agency or public review of the action. Any document incorporated by reference must be "reasonably available for inspection by potentially interested persons within the time allowed for comment." Incorporated materials must be cited in the NEPA document and their contents briefly described, so that the reader understands why the document is cited and knows where to look for further information.

3. ***What is a reasonable level of detail for a planning product that is intended to be used in a NEPA document? How does this level of detail compare to what is considered a full NEPA analysis?***

For purposes of transportation planning alone, a planning-level analysis does not need to rise to the level of detail required in the NEPA process. Rather, it needs to be accurate and up-to-date, and should adequately support the outcome of the long-range transportation plan, in accordance with FHWA/FTA statutory and regulatory requirements on the content and products of statewide and metropolitan transportation planning processes.

However, the Environmental Assessment (EA) or Environmental Impact Statement (EIS) ultimately will be judged by the standards applicable under the NEPA regulations and guidance from the Council on Environmental Quality (CEQ). To the extent the information incorporated from the transportation planning process, standing alone, does not contain all of the information or analysis required by NEPA, then it will need to be supplemented by other information contained in the EIS or EA that would, in conjunction with the information from the plan, collectively meet the requirements of NEPA. **The intent is not to require NEPA studies in the transportation planning process.** As an option, NEPA analyses prepared for project development can be integrated with transportation planning studies *(see the response to Question 10 for additional information)*.

4. ***Should Federal, Tribal, State, and local environmental, regulatory, and resource agencies be involved in the transportation planning process in order for planning-level decisions to be more readily accepted in the NEPA process? If so, what type and extent of involvement is needed?***

Yes, FHWA and FTA highly recommend involving Federal environmental, regulatory, and resource agencies in statewide and metropolitan transportation planning. Additionally, current FHWA/FTA requirements ensure that State DOTs and MPOs coordinate with Tribal governments and State and local air quality agencies (in EPA-designated nonattainment and maintenance areas) in the development of transportation

plans and programs. Further participation by Federal, Tribal, State and local environmental, regulatory, and resource agencies during the transportation planning process would be consistent with the cooperative relationship envisioned by statute and reinforced by the courts. However, ultimately the responsibility for local and State transportation planning decisions lie with the State DOTs, MPOs, and transit agencies.

Successful examples of using planning products in NEPA analysis are based on early and continuous involvement of environmental, regulatory, and resource agencies. Without this early coordination, environmental, regulatory, and resource agencies are more likely to expect decisions made or analyses conducted in the transportation planning process to be revisited during the NEPA process. Additionally, encouraging participation early in transportation planning is advisable, since it would give environmental, regulatory, and resource agencies a better insight into the needs and objectives of the locality and also would provide an important opportunity for agency concerns to be identified and addressed early in the process. These concerns could include issues that might be raised by Federal environmental, regulatory, and resource agencies in considering permit applications for projects designed to implement the transportation plan. Additionally, Federal, Tribal, and State and local environmental, regulatory, and resource agencies are able to share data on particular resources, which can play a critical role in determining the feasibility of a transportation solution with respect to environmental impacts. The use of other agency planning outputs can result in a transportation project that could support multiple goals (transportation, environmental, and community). Further, planning decisions by these other agencies may have impacts on long-range transportation plans and/or the STIP/TIP, thereby providing important input to the transportation planning process and advancing integrated decision-making.

Whether or not Federal, Tribal, or State and local environmental, regulatory, and resource agencies participated in the transportation planning process, it is incumbent on Federal lead agencies to identify as early as practicable in the NEPA process those Federal, State, Tribal, and local government agencies that have jurisdiction by law or special expertise with respect to all reasonable alternatives or significant social, environmental, or economic impacts associated with a proposed action that requires NEPA analysis and documentation. The lead Federal agency must invite Federal agencies with jurisdiction by law and should invite the other agencies and governments (as listed above) to be cooperating agencies in the development of the EIS. The lead Federal agency also may request an agency to be a cooperating agency for an EA. As cooperating agencies, these other governmental agencies are afforded an opportunity to participate in the development of the NEPA analysis and documentation (including the review of any incorporated transportation planning products) in addition to their role as members of the public in commenting on the NEPA analysis and documentation. In summary, full engagement of environmental, regulatory, and resource agencies in relevant planning studies is desirable; however, if these agencies choose not to participate or participate only sporadically, the planning products can still be used in the EA or EIS by incorporating them by reference. *See response to Question 7 for additional elements to consider with respect to acceptance of planning products for NEPA documentation.*

5. ***What is the procedure for using decisions or analyses from the transportation planning process?***

FHWA and FTA, as the lead Federal agencies, will have the final say on what processes and consultation techniques are used to determine the transportation planning products that will be incorporated into the NEPA process. At a minimum, a robust scoping/early coordination process (which explains to Federal and State environmental, regulatory, and resource agencies and the public the information and/or analyses utilized to develop the planning products, how the purpose and need was developed and refined, and how the design concept and scope were determined) should play a critical role in leading to informed FHWA/FTA decisions on the suitability of the transportation planning information, analyses, documents, and decisions for use in the NEPA process. As part of a rigorous scoping/early coordination process, FHWA and FTA should ensure that the transportation planning results are appropriately documented, shared, and used.

6. ***To what extent can FHWA/FTA provide up-front assurance that decisions and additional investments made in the transportation planning process will pay off, allowing planning-level decisions and analyses be used in the NEPA process?***

There are no guarantees. However, the potential pay-off is greatly improved for transportation planning processes that address the "3-C" planning principles (comprehensive, cooperative, and continuous); incorporate the intent of NEPA through the consideration of natural, physical, and social effects; involve environmental, regulatory, and resource agencies; thoroughly document the transportation planning process information, analysis, and decision; and vet the planning results through the applicable public involvement processes.

7. ***What considerations will FHWA/FTA take into account in their review of planning products for acceptance in project development/NEPA?***

FHWA/FTA will give deference to decisions resulting from the transportation planning process if FHWA/FTA determine that the planning process is consistent with the "3-C" planning principles **and** when the planning study process, alternatives considered, and resulting decisions have a rational basis that is thoroughly documented and vetted through the applicable public involvement processes. Moreover, any applicable program-specific requirements (e.g., the Congestion Mitigation and Air Quality Improvement Program or the FTA New Starts Program) also must be met.

Because of our obligations under NEPA, FHWA/FTA must be able to stand behind the overall soundness and credibility of analyses conducted and decisions made during the transportation planning process if they are incorporated into a NEPA document. For example, if systems-level or other broad objectives or choices from the transportation plan are incorporated into the purpose and need statement for a NEPA document, FHWA and FTA should not revisit whether these are the best objectives or choices among other options. Rather, FHWA and FTA review would include making sure that objectives or choices derived from the transportation plan were: based on transportation planning factors established by Federal law; reflect a credible and articulated planning rationale; founded on reliable data; and developed through transportation planning processes

meeting FHWA and FTA statutory and regulatory requirements. In addition, the basis for the goals and choices must be documented and included in the NEPA document. FHWA/FTA reviewers do not need to review whether assumptions or analytical methods used in the studies are the best available, but, instead, need to assure that such assumptions or analytical methods are reasonable and scientifically acceptable. This review would include determining whether: (a) assumptions have a rational basis and are up-to-date and (b) data, analytical methods, and modeling techniques are reliable, defensible, reasonably current, and meet data quality requirements.

II. SUBSTANTIVE GUIDANCE

General Issues to be Considered:

8. What should be considered in order to rely upon transportation planning studies in NEPA?

The following questions should be answered prior to accepting studies conducted during the transportation planning process for use in NEPA. While not a "checklist," these questions are intended to guide the practitioner's analysis of the planning products:

- How much time has passed since the planning studies and corresponding decisions were made?
- Is the information still relevant/valid?
- What changes have occurred in the area since the study was completed?
- Is the information in a format that can be appended to an environmental document or reformatted to do so?
- Are the analyses in a planning-level report or document based on data, analytical methods, and modeling techniques that are reliable and defensible?
- Were FHWA/FTA, other agencies, and the public involved in the relevant planning analysis and the corresponding planning decisions?
- Were the planning products available to other agencies at NEPA scoping?
- At NEPA scoping, was a clear connection between the decisions made in planning and those to be made during the project development stage explained to the public and others? What was the response?
- Are natural resource and land use plans being informed by transportation planning products, and vice versa?

Purpose and Need:

9. ***How can transportation planning be used to shape a project's purpose and need in the NEPA process?***

A sound transportation planning process is the primary source of the project purpose and need. Through transportation planning, State and local governments, with involvement of stakeholders and the public, establish a vision for the region's future transportation system, define transportation goals and objectives for realizing that vision, decide which needs to address, and determine the timeframe for addressing these issues. The transportation planning process also provides a potential forum to define a project's purpose and need by framing the scope of the problem to be addressed by a proposed project. This scope may be further refined during the transportation planning process as more information about the transportation need is collected and consultation with the public and other stakeholders clarifies other issues and goals for the region.

The transportation planning process can be utilized to develop the purpose and need in the following ways:

(a) goals and objectives from the transportation planning process may be part of the project's purpose and need statement;

(b) a general travel corridor or general mode or modes (i.e., highway, transit, or a highway/transit combination) resulting from planning analyses may be part of the project's purpose and need statement;

(c) if the financial plan for an MPO's long-range transportation plan indicates that funding for a specific project will require special funding sources (e.g., tolls or public-private financing), such information may be included in the purpose and need statement; or

(d) the results of analyses from management systems (e.g., congestion, pavement, bridge, and/or safety) may shape the purpose and need statement.

The use of these planning-level goals and choices must be appropriately explained in the NEPA document.

Consistent with NEPA, the purpose and need statement should be a statement of a transportation problem, not a specific solution. However, the purpose and need statement should be specific enough to generate alternatives that may potentially yield real solutions to the problem at-hand. A purpose and need statement that yields only one alternative may indicate a purpose and need that is too narrowly defined.

The Maine Department of Transportation's Integrated Transportation Decision-Making Process consists of 10 steps (planning through project implementation). The first step, the Transportation Planning Process, is intended to enhance transportation planning through better communication and coordination among Federal, State and local planning, environmental, regulatory, and resource, and transportation agencies (including MPOs),

and the public. Early coordination and information sharing between the agencies provide opportunities to develop better projects, while addressing environmental and community concerns, and reducing project delays. This step also provides the opportunity to balance the purpose and need for transportation improvements with the potential impacts to the community and the environment early in the decision-making process, and allows for consistency between transportation and land use policies. This process step is expected to reduce delays by allowing agencies the ability to make informed decisions earlier in the project development process. Additional information on this example may be obtained at: http://environment.fhwa.dot.gov/strmlng/itdstat.htm.

Short of a fully integrated transportation decision-making process similar to that described above, many State DOTs develop information for their purpose and need statements when implementing interagency NEPA/Section 404 process merger agreements. These agreements may need to be expanded to include commitments to share and utilize transportation planning products when developing a project's purpose and need.

10. Under what conditions can the NEPA process be initiated in conjunction with transportation planning studies?

The NEPA process may be initiated in conjunction with transportation planning studies in a number of ways. A common method is the "tiered EIS," in which general travel corridors, modes, and/or packages of projects are evaluated at a planning level of detail, leading to the refinement of purpose and need and, ideally, selection of the design concept and scope for a subsequent project or series of projects. The tiered EIS uses the NEPA process as a tool to involve environmental, regulatory, and resource agencies and the public in these decisions, as well as to ensure the appropriate consideration of environmental factors in these planning-level decisions. Some recent examples of the tiered EIS approach include I-70 in Missouri (see http://www.improvei70.org/) and I-405 in Washington State (see http://www.wsdot.wa.gov/projects/I-405/resource/i405_0104_ProgRept_rev.pdf).

Another method of initiating NEPA in conjunction with transportation planning studies is the use of the EA/Corridor Study concept, as utilized, for example, by the Indiana Department of Transportation (INDOT). This approach is less formal than the tiered EIS, and often can be accomplished in considerably less time and at less expense. Additional information on this example may be obtained at: http://www.fhwa.dot.gov/indiv/procedur.htm.

Corridor or subarea analyses/studies are another option when the long-range transportation plan leaves open the possibility of multiple approaches to fulfill its goals and objectives. In such cases, the NEPA process could be initiated in conjunction with a corridor or subarea study. Similarly, some transit agencies developing New Starts projects perform the planning-level Alternatives Analysis required for FTA New Starts within the NEPA process and combine the Alternatives Analysis and the draft NEPA document.

Alternatives:

11. In the context of this guidance, what is the meaning of the term "alternatives?"

This guidance utilizes the term "alternatives" as specified in NEPA regulations (40 CFR 1502.14), where it is defined in its broadest sense to include everything from major modal alternatives and location alternatives to minor design changes that would mitigate adverse impacts. This guidance does not use the term as it is used in many other contexts (e.g., "prudent and feasible alternatives" under Section 4(f) of the Department of Transportation Act, the "Least Environmentally Damaging Practicable Alternative" under the Clean Water Act, or the "Alternatives Analysis" in FTA's New Starts statute).

However, as early as possible in the transportation planning stage of any project, a determination should be made as to whether the alternatives to be considered will need to be used to satisfy multiple statutory and regulatory requirements that will be addressed during the subsequent project development process as an integral part of the NEPA process. If so, during transportation planning, the alternatives chosen for consideration and the analysis of those alternatives should reflect the multiple objectives that must be addressed. For example, if a potential project would require a Section 404 permit, ideally there would be coordination with the U. S. Army Corps of Engineers and some level of agreement from them that the alternatives considered are broad enough to allow for the ultimate development of a Least Environmentally Damaging Practicable Alternative. In this case, screening of alternatives for the presence of important wetlands based on geographic information systems (GIS) or other planning-level data sources would be appropriate to support this early determination.

12. Under what circumstances can alternatives be eliminated from detailed consideration during the NEPA process based on information and analysis from the transportation planning process?

There are two ways in which the transportation planning process can begin limiting the alternative solutions to be evaluated during the NEPA process: (a) shaping the purpose and need for the project or (b) evaluating alternatives during planning studies and eliminating some of the alternatives from detailed study in the NEPA process prior to the start of the project-level NEPA process. Each approach requires careful attention, and is summarized below.

Shaping the Purpose and Need for the Project: The transportation planning process should shape the purpose and need and, thereby, the range of reasonable alternatives. With proper documentation and public involvement, a purpose and need derived from the planning process can legitimately narrow the alternatives analyzed in the NEPA process. *See the response to Question 9 for further discussion on how the planning process can shape the purpose and need used in the NEPA process.*

For example, the purpose and need may be shaped by the transportation planning process in a manner that consequently narrows the range of alternatives that must be considered in detail in the NEPA document when:

1. the transportation planning process has selected a general travel corridor as best addressing identified transportation problems and the rationale for the determination in the planning document is reflected in the purpose and need statement of the subsequent NEPA document;

2. the transportation planning process has selected a general mode (i.e., highway, transit, or a highway/transit combination) that accomplishes its goals and objectives, and these documented determinations are reflected in the purpose and need statement of the subsequent NEPA document; or

3. the transportation planning process determines that the project needs to be funded by tolls or other non-traditional funding sources in order for the long-range transportation plan to be fiscally constrained or identifies goals and objectives that can only be met by toll roads or other non-traditional funding sources, and that determination of those goals and objectives is reflected in the purpose and need statement of the subsequent NEPA document.

Evaluating and Eliminating Alternatives During the Transportation Planning Process: The evaluation and elimination of alternatives during the transportation planning process can be incorporated by reference into a NEPA document under certain circumstances. In these cases, the planning study becomes part of the NEPA process and provides a basis for screening out alternatives. As with any part of the NEPA process, the alternatives analysis to be incorporated from the process must have a rational basis that has been thoroughly documented (including documentation of the necessary and appropriate vetting through the applicable public involvement processes). This record should be made available for public review during the NEPA scoping process.

See responses to Questions 5, 6, 7, and 8 for additional elements to consider with respect to acceptance of planning products for NEPA documentation and the response to Question 13 on the information or analysis from the transportation planning process necessary for supporting the elimination of an alternative(s) from detailed consideration in the NEPA process.

For instance, under FTA's New Starts Program, the alternatives considered in the NEPA process may be narrowed in those instances that the Alternatives Analysis required by 49 U.S.C. 5309(e) is conducted as a planning study prior to the NEPA review. In fact, FTA may be able to narrow the alternatives considered in detail in the NEPA document to the No-Build (No Action) alternative and the "Locally Preferred Alternative." Alternatives must meet the following criteria if they are deemed sufficiently considered by an FTA New Starts Alternatives Analysis conducted prior to NEPA without a programmatic NEPA analysis and documentation:

- During the planning Alternatives Analysis, all of the reasonable alternatives under consideration must be fully evaluated in terms of their transportation impacts; capital and operating costs; social, economic, and environmental impacts; and technical considerations;

- There must be appropriate public involvement in the planning Alternatives Analysis;

- The appropriate Federal, State, and local environmental, regulatory, and resource agencies must be engaged in the planning Alternatives Analysis;

- The results of the planning Alternatives Analysis must be documented;

- The NEPA scoping participants must agree on the alternatives that will be considered in the NEPA review; and

- The subsequent NEPA document must include the evaluation of alternatives from the planning Alternatives Analysis.

The above criteria apply specifically to FTA's New Starts process. However, for other transportation projects, if the planning process has included the analysis and stakeholder involvement that would be undertaken in a first tier NEPA process, then the alternatives screening conducted in the transportation planning process may be incorporated by reference, described, and relied upon in the project-level NEPA document. At that point, the project-level NEPA analysis can focus on the remaining alternatives.

For example, Indiana's Streamlined EIS Procedures established the "one decision-making process" to eliminate the duplication of activities between planning studies and the subsequent environmental analysis carried out under NEPA. This process calls for early and ongoing participation by environmental, regulatory, and resource agencies to help ensure that basic issues regarding purpose and need and alternatives are addressed prior to the preparation of the DEIS. This allows the DEIS process to focus on remaining concerns such as avoidance, minimization, and other forms of mitigation. The procedures also allow the NEPA documents to satisfy permitting requirements including Section 404 and State Construction-in-Floodway permits. For many projects, INDOT and the MPO(s), through the transportation planning process, reach consensus on the need for an improvement, or project, and also agree on the proposed design concept and scope. These are cases in which there is a high level of clarity between INDOT and the MPO(s) about the transportation issue and need, along with a consensus on a limited set of reasonable alternatives. In these cases, the identified design concept and scope is made part of the MPO's long-range transportation plan and INDOT's statewide transportation plan. For other proposed projects in which the need and the design concept and scope are less clear and well-defined, a corridor-level planning study initiated as an EA is conducted. Additional information on this example may be obtained at: http://www.fhwa.dot.gov/indiv/procedur.htm.

13. What information or analysis from the transportation planning process is needed in an EA or EIS to support the elimination of an alternative(s) from detailed consideration?

The section of the EA or EIS that discusses alternatives considered but eliminated from detailed consideration should:

(a) identify any alternatives eliminated during the transportation planning process (this could include broad categories of alternatives, as when a long-range transportation plan selects a general travel corridor based on a corridor study, thereby eliminating all alternatives along other alignments);

(b) briefly summarize the reasons for eliminating the alternative; and

(c) include a summary of the analysis process that supports the elimination of alternatives (the summary should reference the relevant sections or pages of the analysis or study) and incorporate it by reference or append it to the NEPA document.

Any analyses or studies used to eliminate alternatives from detailed consideration should be made available to the public and affected agencies during the NEPA scoping process and should be reasonably available during comment periods.

Alternatives passed over during the transportation planning process because they are infeasible or do not meet the NEPA "purpose and need" can be omitted from the detailed analysis of alternatives in the NEPA document, as long as the rationale for elimination is explained in the NEPA document. **Alternatives that remain "reasonable" after the planning-level analysis must be addressed in the EIS, even when they clearly are not the preferred alternative.** When the proposed action evaluated in an EA involves unresolved conflicts concerning alternative uses of available resources, NEPA requires that appropriate alternatives be studied, developed, and described.

Affected Environment and Environmental Consequences:

14. What types of planning products provide analysis of the affected environment and environmental consequences that are useful in a project-level NEPA analysis and document?

The following planning products are valuable inputs to the discussion of the affected environment and environmental consequences (both its current state and future state in the absence of the proposed action) in the project-level NEPA analysis and document:

- regional development and growth analyses;
- local land use, growth management, or development plans; and
- population and employment projections.

The following are types of information, analysis, and other products from the transportation planning process that can be used in the discussion of the affected environment and environmental consequences in an EA or EIS:

(a) GIS overlays showing the past, current, or predicted future conditions of the natural and built environments;

(b) environmental scans that identify environmental resources and environmentally sensitive areas;

(c) descriptions of airsheds and watersheds;

(d) demographic trends and forecasts;

(e) projections of future land use, natural resource conservation areas, and development; and

(f) the outputs of natural resource planning efforts, such as wildlife conservation plans, watershed plans, and multiple species habitat conservation plans.

For example, Florida's Efficient Transportation Decision-Making (ETDM) Process established Environmental Technical Advisory Teams (ETATs) in each of the Florida Department of Transportation's (FDOT's) seven districts to provide for early interagency coordination during planning. Each ETAT is comprised of 12-20 members that represent Federal, State, and local transportation and environmental, regulatory, and resource agencies. ETAT representatives then provide agency responses to the respective transportation planning entity (FDOT and/or the affected MPO(s)). During the early phases of transportation planning, ETAT members serve largely in an advisory role. The NEPA process begins at the Programming Screen with the development of the Advance Notification package by FDOT. ETAT input provides "agency scoping" to help satisfy the requirements of NEPA and other pertinent laws that are addressed during the NEPA process. At the Programming Screen stage, ETAT members are offered the opportunity to accept or comment on the purpose and need statement, update the environmental reviews conducted at the Planning Screen, identify required technical studies, and opt out of further involvement. A key tool is the Environmental Screening Tool, which is an Internet-accessible GIS application that creates linkages between ETAT members and the Florida Geographic Data Library at the University of Florida. Project and environmental resource data are input to a database system. Standardized GIS analyses (as prescribed by each environmental, regulatory, or resource agency) are automatically performed to identify potential impacts to environmental resources. ETAT members need only an Internet connection to view and comment on results. These reports also are available to the public through a read-only website. The database system houses responses from ETAT members as well as FDOT summaries of public comments. Additional information on this example may be obtained at: http://www.dot.state.fl.us/emo/.

However, in most cases, the assessment of the affected environment and environmental consequences conducted during the transportation planning process will not be detailed enough to meet NEPA standards and, thus, the inventory and evaluation of affected

resources and the analysis of consequences of the alternatives will need to be supplemented with more refined analysis and possibly site-specific details during the NEPA process.

15. What information from the transportation planning process is useful in describing a baseline for the NEPA analysis of indirect and cumulative impacts?

Because the nature of the transportation planning process is to look broadly at future land use, development, population increases, and other growth factors, the planning analysis can provide the basis for the assessment of indirect and cumulative impacts required under NEPA. The consideration in the transportation planning process of development, growth, and consistency with local land use, growth management, or development plans, as well as population and employment projections, provides an overview of the multitude of factors in an area that are creating pressures not only on the transportation system, but on the natural ecosystem and important environmental and community resources. An analysis of all reasonably foreseeable actions in the area also should be a part of the transportation planning process. This planning-level information should be captured and utilized in the analysis of indirect and cumulative impacts during the NEPA process.

To be used in the analysis of indirect and cumulative impacts, such information should:

(a) be sufficiently detailed that differences in consequences of alternatives can be readily identified;

(b) be based on current data (e.g., data from the most recent Census) or be updated by additional information;

(c) be based on reasonable assumptions that are clearly stated; and/or

(d) rely on analytical methods and modeling techniques that are reliable, defensible, and reasonably current.

For example, the North Front Range (Greeley, Colorado) MPO currently is conducting a pilot project to link the transportation planning and NEPA processes. In addition to development of purpose and need statements for a set of regionally significant projects identified in the MPO's Year 2030 Regional Transportation Plan, this inter-disciplinary group of planners, citizens, and environmental, regulatory, and resource agency representatives will complete a cumulative impacts analysis for the entire region. This analysis is intended to be relied upon for future transportation project NEPA documents.

Environmental Mitigation:

16. How can planning-level efforts best support advanced mitigation, banking, and priorities for environmental mitigation investments?

A lesson learned from efforts to establish mitigation banks and advance mitigation agreements and alternative mitigation options is the importance of beginning interagency discussions during the transportation planning process. Development pressures, habitat

alteration, complicated real estate transactions, and competition for potential mitigation sites by public and private project proponents can encumber the already difficult task of mitigating for "like" value and function and reinforce the need to examine mitigation strategies as early as possible.

Robust use of remote sensing, GIS, and decision support systems for evaluating conservation strategies are all contributing to the advancement of natural resource and environmental planning. The outputs from environmental planning can now better inform transportation planning processes, including the development of mitigation strategies, so that transportation and conservation goals can be optimally met. For example, long-range transportation plans can be screened to assess the effect of general travel corridors or density, on the viability of sensitive plant and animal species or habitats. This type of screening provides a basis for early collaboration among transportation and environmental staffs, the public, and regulatory agencies to explore areas where impacts must be avoided and identify areas for mitigation investments. This can lead to mitigation strategies that are both more economical and more effective from an environmental stewardship perspective than traditional project-specific mitigation measures.

III. ADMINISTRATIVE ISSUES

17. Are Federal funds eligible to pay for these additional, or more in depth, environmental studies in transportation planning?

Yes. For example, the following FHWA and FTA funds may be utilized for conducting environmental studies and analyses within transportation planning:

- FHWA planning and research funds, as defined under 23 CFR Part 420 (e.g., Metropolitan Planning (PL), Statewide Planning and Research (SPR), National Highway System (NHS), Surface Transportation Program (STP), and Minimum Guarantee) and

- FTA planning and research funds (49 U.S.C. 5303 and 49 U.S.C. 5313(b)), urban formula funds (49 U.S.C. 5307), and (in limited circumstances) transit capital investment funds (49 U.S.C. 5309).

The eligible transportation planning-related uses of these funds may include: (a) conducting feasibility or subarea/corridor needs studies and (b) developing system-wide environmental information/inventories (e.g., wetland banking inventories or standards to identify historically significant sites). Particularly in the case of PL and SPR funds, the proposed expenditure must be closely related to the development of transportation plans and programs under 23 U.S.C. 134-135 and 49 U.S.C. 5303-5306.

For FHWA funding programs, once a general travel corridor or specific project has progressed to a point in the preliminary engineering/NEPA phase that clearly extends beyond transportation planning, additional in-depth environmental studies must be

funded through the program category for which the ultimate project qualifies (e.g., NHS, STP, Interstate Maintenance, and/or Bridge), rather than PL or SPR funds.

Another source of funding is FHWA's Transportation Enhancement program, which may be used for activities such as: conducting archeological planning and research; developing inventories such as those for historic bridges and highways, and other surface transportation-related structures; conducting studies to determine the extent of water pollution due to highway runoff; and conducting studies to reduce vehicle-caused wildlife mortality while maintaining habitat connectivity.

FHWA and FTA encourage State DOTs, MPOs, and transit agencies to seek partners for some of these studies from environmental, regulatory, and resource agencies, non-government organizations, and other government and private sector entities with similar data needs, or environmental interests. In some cases, these partners may contribute data and expertise to the studies, as well as funding.

18. What staffing or organizational arrangements may be helpful in allowing planning products to be accepted in the NEPA process?

Certain organizational and staffing arrangements may support a more integrated approach to the planning/NEPA decision-making continuum. In many cases, planning organizations do not have environmental expertise on staff or readily accessible. Likewise, the review and regulatory responsibilities of many environmental, regulatory, and resource agencies make involvement in the transportation planning process a challenge for staff resources. These challenges may be partially met by improved use of the outputs of each agency's planning resources and by augmenting their capabilities through greater use of GIS and remote sensing technologies (see http://www.gis.fhwa.dot.gov/ for additional information on the use of GIS). Sharing databases and the planning products of local land use decision-makers and State and Federal environmental, regulatory, and resource agencies also provide efficiencies in acquiring and sharing the data and information needed for both transportation planning and NEPA work.

Additional opportunities such as shared staff, training across disciplines, and (in some cases) reorganizing to eliminate structural divisions between planning and NEPA practitioners may also need to be considered in order to better integrate NEPA considerations into transportation planning studies. The answers to the following two questions also contain useful information on training and staffing opportunities.

19. How have environmental, regulatory, and resource agency liaisons (Federally- and State DOT-funded positions) and partnership agreements been used to provide the expertise and interagency participation needed to enhance the consideration of environmental factors in the planning process?

For several years, States have utilized Federal and State transportation funds to support focused and accelerated project review by a variety of local, State, Tribal, and Federal agencies. While Section 1309(e) of TEA-21 speaks specifically to transportation project streamlining, there are other authorities that have been used to fund positions, such as the

Intergovernmental Cooperation Act (31 U.S.C. 6505). In addition, long-term, on-call consultant contracts can provide backfill support for staff that are detailed to other parts of an agency for temporary assignments. At last count (as of 2003), 246 positions were being funded. Additional information on interagency funding agreements is available at: http://environment.fhwa.dot.gov/strmlng/igdocs/index.htm.

Moreover, every State has advanced a variety of stewardship and streamlining initiatives that necessitate early involvement of environmental, regulatory, and resource agencies in the project development process. Such process improvements have: addressed the exchange of data to support avoidance and impact analysis; established formal and informal consultation and review schedules; advanced mitigation strategies; and resulted in a variety of programmatic reviews. Interagency agreements and workplans have evolved to describe performance objectives, as well as specific roles and responsibilities related to new streamlining initiatives. Some States have improved collaboration and efficiency by co-locating environmental, regulatory, and resource and transportation agency staff.

Lessons learned from stewardship and streamlining initiatives indicate a need for greater involvement in the transportation planning process by environmental staffs. For example, in Florida, agreements are utilized for agency liaison participation in the planning-level environmental screening process within Florida's ETDM Process (see http://fdotenvironmentalstreamlining.urs-tally.com/Library/default.htm). The Oregon Department of Transportation seeks environmental, regulatory, and resource agency input through promotion of environmental stewardship, agency collaboration, and project scoping associated with Oregon's Collaborative Environmental and Transportation Agreement on Streamlining process (see http://environment.fhwa.dot.gov/strmlng/newsletters/oct01nl.htm). The North Carolina Department of Transportation has blended the transportation project development process with the watershed planning process (see http://www.ncdot.org/secretary/envsteward/performance/integration/). Additionally, the Texas Department of Transportation has focused liaison efforts on major corridor planning efforts. In each of these cases, the State DOT has taken this step only after concluding that the additional investment in up-front planning and coordination will improve the quality, timeliness, and cost effectiveness of a group of projects.

20. What training opportunities are available to MPOs, State DOTs, and environmental, regulatory, and resource agencies to assist in their understanding of the transportation planning and NEPA processes?

Both FHWA and FTA offer a variety of transportation planning, public involvement, and NEPA courses through the National Highway Institute and/or the National Transit Institute. Of particular note is the *Linking Planning and NEPA Workshop*, which provides a forum and facilitated group discussion among and between State DOT; MPO; Federal, Tribal, and State environmental, regulatory, and resource agencies; and FHWA/FTA representatives (at both the executive and program manager levels) to develop a State-specific action plan that will provide for strengthened linkages between the transportation planning and NEPA processes.

Moreover, the U. S. Fish and Wildlife Service offers *Green Infrastructure Workshops* which are focused on integrating planning for natural resources ("green infrastructure") with the development, economic, and other infrastructure needs of society ("gray infrastructure").

Robust planning and multi-issue environmental screening requires input from a wide variety of disciplines, including information technology; transportation planning; the NEPA process; and regulatory, permitting, and environmental specialty areas (e.g., noise, air quality, and biology). Senior managers at transportation and partner agencies can arrange a variety of individual training programs to support learning curves and skill development that contribute to a strengthened link of the transportation planning and NEPA processes. Formal and informal mentoring on an intra-agency basis can be arranged. Employee exchanges within and between agencies can be periodically scheduled, and persons involved with professional leadership programs can seek temporary assignments with partner agencies.

Transportation planning and NEPA courses offered by various agencies and private sources have been compiled as part of the Executive Order 13274 (Environmental Stewardship and Transportation Infrastructure Project Reviews) workgroup efforts. This list will be posted at http://www.fhwa.dot.gov/stewardshipeo/index.htm.

IV. ADDITIONAL INFORMATION ON THIS TOPIC

Valuable sources of information are FHWA's environmental streamlining website (http://environment.fhwa.dot.gov/strmlng/index.htm) and FTA's environmental streamlining website (http://www.environment.fta.dot.gov). Another source of information and case studies is NCHRP Report 8-38 (Consideration of Environmental Factors in Transportation Systems Planning), which is available at http://www4.trb.org/trb/crp.nsf/All+Projects/NCHRP+8-38. In addition, AASHTO's Center for Environmental Excellence website is continuously updated with news and links to information of interest to transportation and environmental professionals (www.transportation.environment.org).