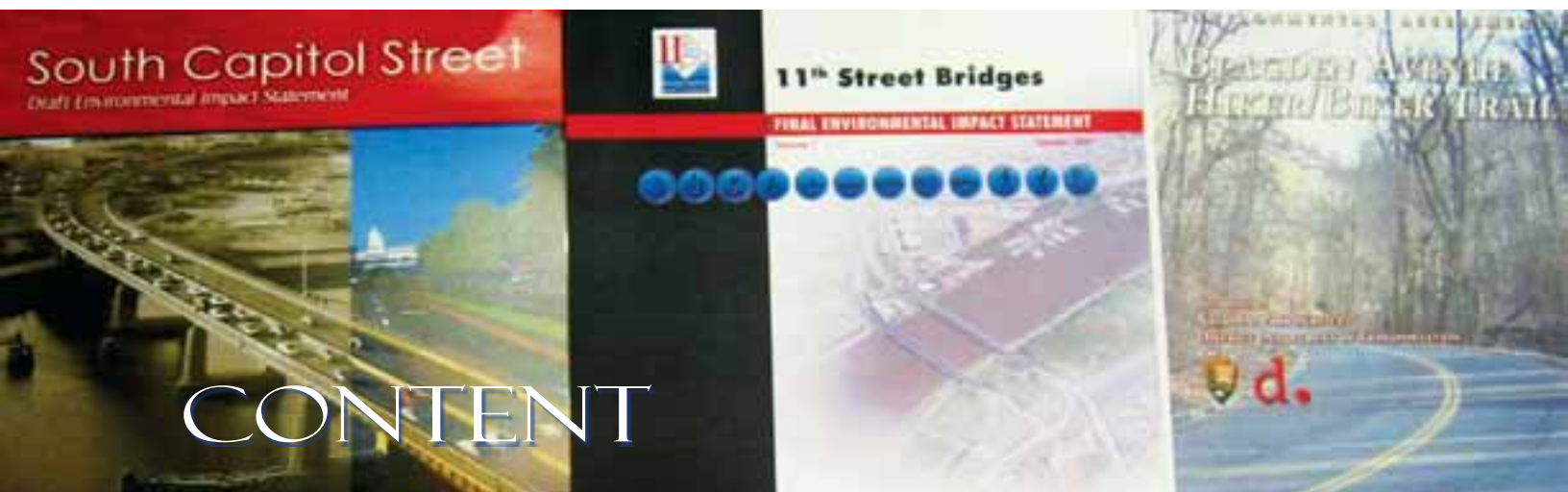


# CHAPTER 5

## DETERMINING ENVIRONMENTAL ACTION TYPES



- 5.1 Determination of Environmental Action Types
- 5.2 NEPA Action Types
- 5.3 DCEPA Action Types
- 5.4 Additional Information



# DETERMINING ENVIRONMENTAL ACTION TYPES

One of the earliest decisions the District of Columbia Department of Transportation (DDOT) must make concerning a transportation project is the appropriate class of action the project represents. This decision is important because the class of action determines the appropriate level of documentation necessary to comply with the National Environmental Policy Act of 1969 (NEPA) and the District of Columbia Environmental Policy Act (DCEPA).

If the project is using federal funding or requires federal action (such as approvals or permits) then this project must comply with NEPA. Projects that comply with NEPA automatically comply with DCEPA, as an exemption is provided under District of Columbia Municipal Regulations (DCMR) Chapter 72, section 7202.1(b). If a project is only using local funding and no federal action is required, then the project has to comply with DCEPA only. It should be remembered that other environmental laws

in addition to NEPA and DCEPA may also have to be complied with.

For projects where NEPA applies, whether the project is a Categorical Exclusion (CE), an Environmental Assessment (EA), or an Environmental Impact Statement (EIS) action depends on the “significance” of the project’s potential adverse and beneficial impacts. The Council on Environmental Quality (CEQ) regulations (40 Code of Federal Regulations [CFR] 1508.27) state that two main points should be considered in determining significance—context and intensity.

For projects (using local funding) where DCEPA applies, whether the project is an exemption, or requires an Environmental Impact Screening Form (EISF), or requires an EIS depends upon the significance of the project impacts.

This section describes the different actions and document types within NEPA and DCEPA that DDOT will use to process its transportation projects. Because DDOT will normally select an action/document type before having a thorough understanding of a project's impacts, it is important to coordinate with the Federal Highway Administration (FHWA) or other lead federal agency to obtain concurrence on the document type at the start of the project. FHWA typically is not involved if a project is locally funded.

### 5.1 Determination of Environmental Action Types

For projects using federal funding or requiring a federal action, in accordance with CEQ regulations under NEPA, each federal agency must identify those typical classes of action that:

- Require an EIS – An EIS shall be prepared for any proposed major action significantly affecting the quality of the human environment.
- Require an EA, but not necessarily an EIS – These actions require that an EA be prepared to determine the significance of the impacts. If it is concluded from the EA that the project's impacts will be significant, an EIS is required; if not, a Finding of No Significant Impact (FONSI) is prepared.
- Require the preparation of a CE – Actions that are clearly Categorical Exclusions and do not normally affect activities or resources under the jurisdiction of other agencies. The need for an environmental document and agency coordination on CE projects depends on the level of impacts associated with the project.

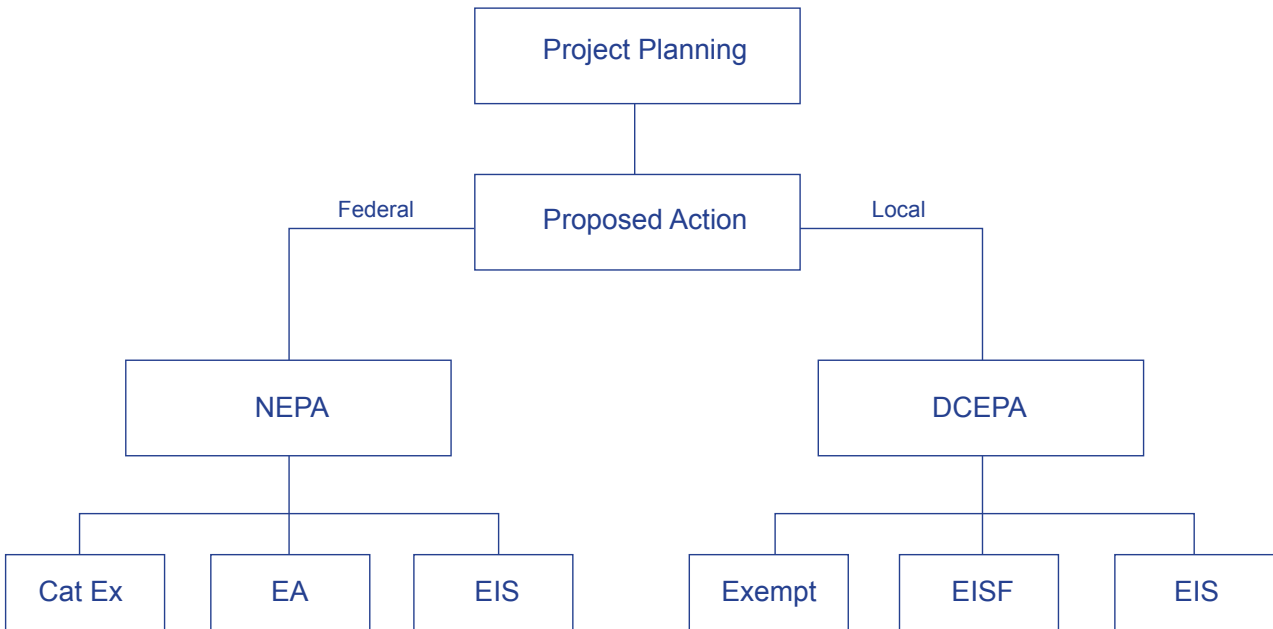
The FHWA environmental action list can be found in 23 CFR 771.115. Occasionally, a project is proposed that does not appear to fit any of the action categories. In that case, further consultation with FHWA is encouraged before an action decision is made.

For projects that only use local funding, in accordance with the District of Columbia regulations under DCEPA, DDOT has to identify whether a project will:

- Be an exemption provided in 72 DCMR 7202 – Actions for which no EISF or EIS is required. A list of actions is provided in 72 DCMR 7202 for the projects that do not require the preparation of an EISF or an EIS.
- Require the preparation of an EISF in 72 DCMR 7201 – Major actions for which EISF are required. A list of actions is provided in 72 DCMR 7201 for the projects that require the preparation of an EISF.
- Require the preparation of an EIS – Projects that do not qualify for an exemption or projects for which an EISF was submitted and the lead agency concluded that an EIS is required will have to prepare an EIS.

The scope of the improvement and the estimated significance of the impacts of DDOT's transportation projects determine the extent of the impact analysis, the type of document, and the level of public involvement. To determine the significance of an action, the entire human environment, the affected region, and the interests of the local area must be analyzed. Both short-term and long-term effects must be taken into account.

**Figure 5-1 Environmental Action Types**



**5.2 NEPA Action Types**

For projects using federal funding or requiring a federal action, in accordance with CEQ regulations under NEPA, each federal agency must identify those typical classes of action that:

- Require an EIS
- Require an EA
- Require the preparation of a CE

The FHWA environmental action list can be found in 23 CFR 771.115. Since the majority of DDOT projects require NEPA compliance, listed below is a description of the criteria used to determine the type of action DDOT is proposing and the appropriate document type for the proposed action under NEPA.

**5.2.1 Environmental Impact Statement Action**

A proposed action that is known to have significant environmental impacts will require the preparation of an EIS. This includes, but is not limited to, actions that are likely to:

- Have a significant impact on natural, ecological, or cultural resources or threatened and endangered species, wetlands, floodplains, groundwater, natural resources, or fish and wildlife resources
- Be highly controversial on environmental grounds (in other words, opposed or considered unacceptable on environmental or legal grounds by a federal or local agency or by the public)
- Have significant residential or commercial displacement impacts

- Cause substantial disruption to an established community, disrupt orderly, planned development, be inconsistent with plans or goals that have been adopted by affected communities, or adversely affect the economic vitality of an urban area
- Have a significant impact on noise levels in noise-sensitive areas
- Have a significant impact on air quality
- Have a significant impact on water quality or a surface or subsurface public water supply system

A decision to prepare an EIS for a proposed action may be made when that action clearly involves significant impacts on the human environment, when environmental studies and the results of early coordination indicate significant impacts, or when the review of an EA concludes that significant impacts would result from a proposed action. The following are examples of actions that normally require an EIS:

- A new controlled access freeway
- A highway project of four or more lanes on a new location
- New construction or extension of fixed rail transit facilities (such as rapid rail, light rail, commuter rail, or automated guideway transit)
- New construction or extension of a separate roadway for buses or high occupancy vehicles not located within an existing highway facility

See Chapter 8, The Environmental Impact Statement and Record of Decision, for details on the format and content of EISs.

### 5.2.2 Environmental Assessment/Finding of No Significant Impact Action

An EA is a public document that provides sufficient evidence and environmental analysis to determine whether to prepare an EIS or to prepare a FONSI. An EA is prepared when the significance of the impacts cannot be clearly determined, if some but not all of the EIS criteria can be met, or if the project is a large one. All actions that do not readily fall into an EIS action or meet the qualifications of a CE are evaluated as an EA.

Based on the review and findings of an EA and any public comments, an EIS is prepared if FHWA (or another federal lead agency) determines that significant impacts would occur as a result of implementing DDOT's project. A FONSI is prepared when the study concludes that the proposed action will not cause significant impacts. The FONSI is a conclusion to the EA and highlights data supporting the finding that no significant impacts will occur as a result of the action.

See Chapter 9, The Environmental Assessment and Finding of No Significant Impact, for details on the format and content of EAs/FONSIs.

### 5.2.3 Categorical Exclusion Action

CEs are actions or activities that meet the definition in 23 CFR 771.117(a) and, based on FHWA experience, do not have significant environmental effects. CEs are divided into two groups that are based on the action's potential for impacts. The first group is a list of 20 categories of actions in 23 CFR 771.117(c) that never or almost never cause significant environmental impacts. These categories are nonconstruction actions (such as planning or grants for training and research

programs) or limited construction activities (such as pedestrian facilities, landscaping, or fencing). The actions associated with them are automatically classified as CEs except when unusual circumstances are brought to FHWA's attention.

The second group consists of actions with a higher potential for impacts than the first group but, because of minor environmental impacts, still meet the criteria for CEs. In 23 CFR 771.117(d), the regulation lists examples of 12 actions that experience has shown to be appropriate for CE classification. However, the second group is not limited to these 12 examples. Other actions with similar scopes of work may qualify as CEs. For actions in this group, site location is often a key factor. Some of these actions on certain sites may involve unusual circumstances or result in significant adverse environmental impacts.

Because of the potential for impacts, these actions require some information to be provided by DDOT so that the FHWA can determine if the CE classification is proper (23 CFR 771.117[d]). The level of information to be provided should be commensurate with the action's potential for adverse environmental impacts.

Where adverse environmental impacts are likely to occur, the level of analysis should be sufficient to define the extent of impacts, identify appropriate mitigation measures, and address known and foreseeable public and agency concerns. At a minimum, the information should include a description of the proposed action and, as appropriate, its immediate surrounding area, a discussion of any specific areas of environmental concern (such as Section 4(f), wetlands, or relocations), and a list of other federal actions required, if any, for the proposal.

The CE Programmatic Agreement between FHWA and DDOT requires a certain level of documentation and an approval process for CEs. This PA allows the DDOT Environmental Program to approve various CEs, while FHWA provides a yearly review/approval of the DDOT CE approval process. However, certain types of CEs may still require individual FHWA approval. The DDOT FHWA CE PA is provided in the reference section of this manual, and the CE forms are provided in the appendices.

See Chapter 10, The Categorical Exclusion, for details on the format and content of CEs.

### 5.3 DCEPA Action Types

For projects that only use local funding, in accordance with the District of Columbia regulations under DCEPA, DDOT has to identify whether a project will:

- Be an exemption
- Require the preparation of an EISF
- Require the preparation of an EIS

#### 5.3.1 Exemption

Exemptions belong to the class of actions that are exempt (do not require) preparation of an EISF or EIS. The 1997 rule making for DCEPA provides a list of actions that are exempt from preparing an EISF or EIS for DCEPA compliance.

Most of the DDOT reconstruction, replacements, and maintenance projects within the DDOT right-of-way are covered in covered in the exemptions.

See Chapter 6, The DCEPA Process, for details on DCEPA Exemptions.

### 5.3.2 EISF

An EISF is required for actions that are not covered in the exemption of the DCEPA. The EISF form is available in Appendix C. The EISF form has to be completed by the applicant and submitted to DCRA for approval.

See Chapter 6, The DCEPA Process, for details on DCEPA EISF.

### 5.3.3 EIS

An EIS for DCEPA is required for actions that are not covered in the exemption of the DCEPA, are not covered in the EISF section (20 DCMR 7201), or for which the lead agency has made a determination that an EIS is required.

See Chapter 6, The DCEPA Process, for details on DCEPA EIS.

## 5.4 Additional Information

Federal-Aid Policy Guide, October 14, 1997, Transmittal 18, Subchapter H (Right-of-Way and Environment), Part 771 – Environmental Impact and Related Procedures:

*<http://www.fhwa.dot.gov/legsregs/directives/fapglcfr0771.htm>*

FHWA TECHNICAL ADVISORY T 6640.8A, October 30, 1987. (I. Categorical Exclusion): *<http://www.environment.fhwa.dot.gov/projdev/impTA6640.asp#ce>*