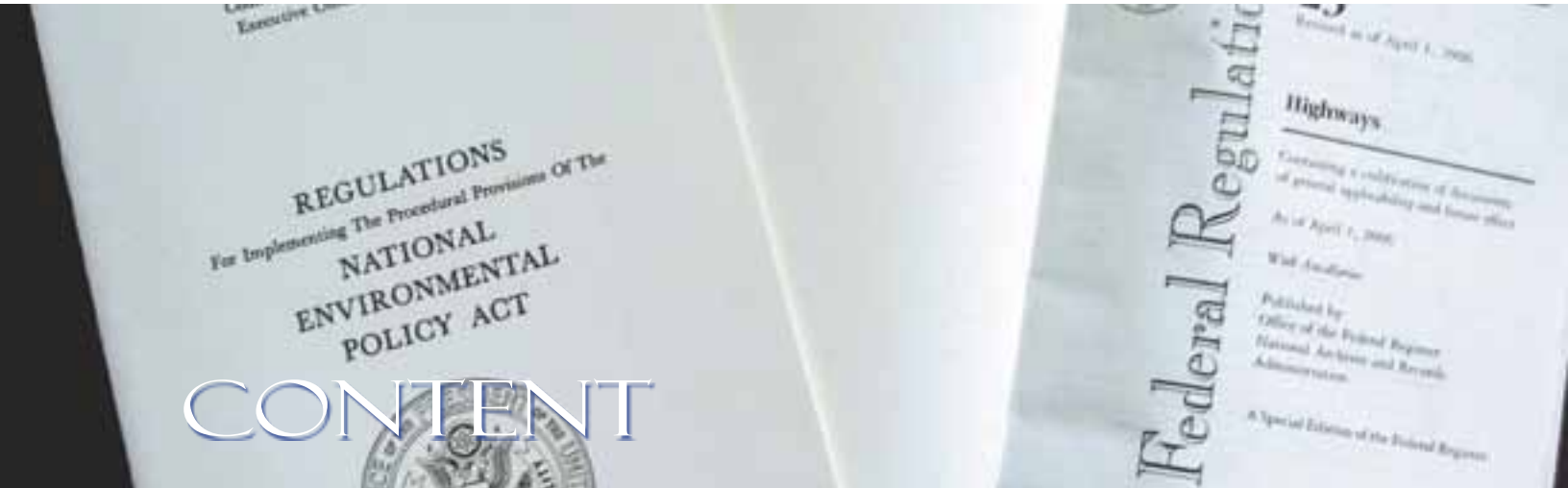


THE NEPA PROCESS

CONTENT

- 
- 7.1 Lead and Cooperating Agencies
 - 7.2 Notice of Intent
 - 7.3 Scoping Process
 - 7.4 Review and Approval Process
 - 7.5 Notice of Availability and Notice of Public Hearing
 - 7.6 Public Hearing
 - 7.7 Record of Decision
 - 7.8 Reevaluating Documents
 - 7.9 Supplemental EIS
 - 7.10 The National Park Service Environmental Process
 - 7.11 External Environmental Document Review Process
 - 7.12 Additional Information

THE NEPA PROCESS

After the District of Columbia Department of Transportation (DDOT) determines the appropriate action type for its proposed project, the development of the subsequent environmental document (Environmental Impact Statement [EIS], or Environmental Assessment [EA]) follows a review and approval process prescribed by federal environmental regulations. The process for the EIS, EA and Categorical Exclusion (CE) action types is shown in Figure 7-1 NEPA Documentation Process. The figure basically shows the National Environmental Policy Act (NEPA) process from project initiation through final approval.

This section explains the individual steps in the NEPA process. As might be expected, the complexity of the process to gain approval for a CE action type is less than for an EIS action type. Following the steps outlined in this section and maintaining regular contact with the Federal Highway Administration (FHWA) and the project's other key federal and local agencies will greatly reduce the likelihood of having to backtrack to complete a missed step.

Please note that most of the steps described below will not be required for CE action types. The focus of this section is the process that EA and EIS action types should follow. The format and content of those reports can be found in the following chapters.

- Chapter 8, The Environmental Impact Statement and Record of Decision
- Chapter 9, The Environmental Assessment and Finding of No Significant Impact
- Chapter 10, The Categorical Exclusion

7.1 Lead and Cooperating Agencies

At the federal level, the lead agency is usually the federal agency responsible for the preparation of the appropriate environmental document for a particular federal action, such as a federally funded highway project. FHWA would fill that role on DDOT's federally funded transportation projects, but depending on the circumstances surrounding DDOT's projects, the lead agency could be another federal agency such as the National Park Service (NPS). At the local level (District of Columbia) where no federal funds are involved,

DDOT would function as the lead agency responsible for the preparation of a project’s environmental document. In either case, other federal, state, or local agencies may, under the proper circumstances, act as joint lead agencies to prepare an environmental document.

A cooperating agency is any federal or local agency, other than a lead agency, that has special expertise or regulatory authority with respect to any environmental impact and which is requested by a lead agency to be a cooperating agency.

Any federal or state agency having or expected to have permit approval or concurrence authority on an action (DDOT project) should be requested to be a cooperating agency for an EIS or an EA. Agencies such as the United States Army Corps of Engineers (USACE), NPS, and the United States Fish and Wildlife Service (USFWS) could serve as cooperating agencies. More information about the roles and responsibilities of agencies in the NEPA process is found in Chapter 4, Environmental Laws, Regulations, and Guidance (Federal and Local).

7.2 Notice of Intent

As soon as practicable after the decision has been made to prepare a federally funded EIS, and prior to scoping, DDOT, in coordination with FHWA, should prepare a Notice of Intent (NOI) to prepare an EIS. The NOI, which is published in the Federal Register, initiates the EIS and the scoping process.

This notice shall briefly:

- Describe the proposed action and alternatives
- Describe the intent of Title VI of the Civil Rights Act and of Executive Order 12898, included below.

- Federal law prohibits discrimination on the basis of race, color, age, sex, or country of national origin in the implementation of this action. It is also Federal policy that no group of people bears the negative consequences of this action in a disproportionately high and adverse manner without adequate mitigation

- Describe the proposed scoping process, including, if known, any scheduled scoping or public information meetings
- State the name, address, and phone number of a contact person who can provide information about the project and document

FHWA is responsible for submitting the NOI to the Federal Register; however, as the applicant, DDOT personnel or a DDOT consultant will prepare the NOI for FHWA’s submittal. An NOI is also prepared and published in the Federal Register when a supplement to a Final EIS is initiated; however, it is not necessary when preparing a supplement to a Draft EIS.

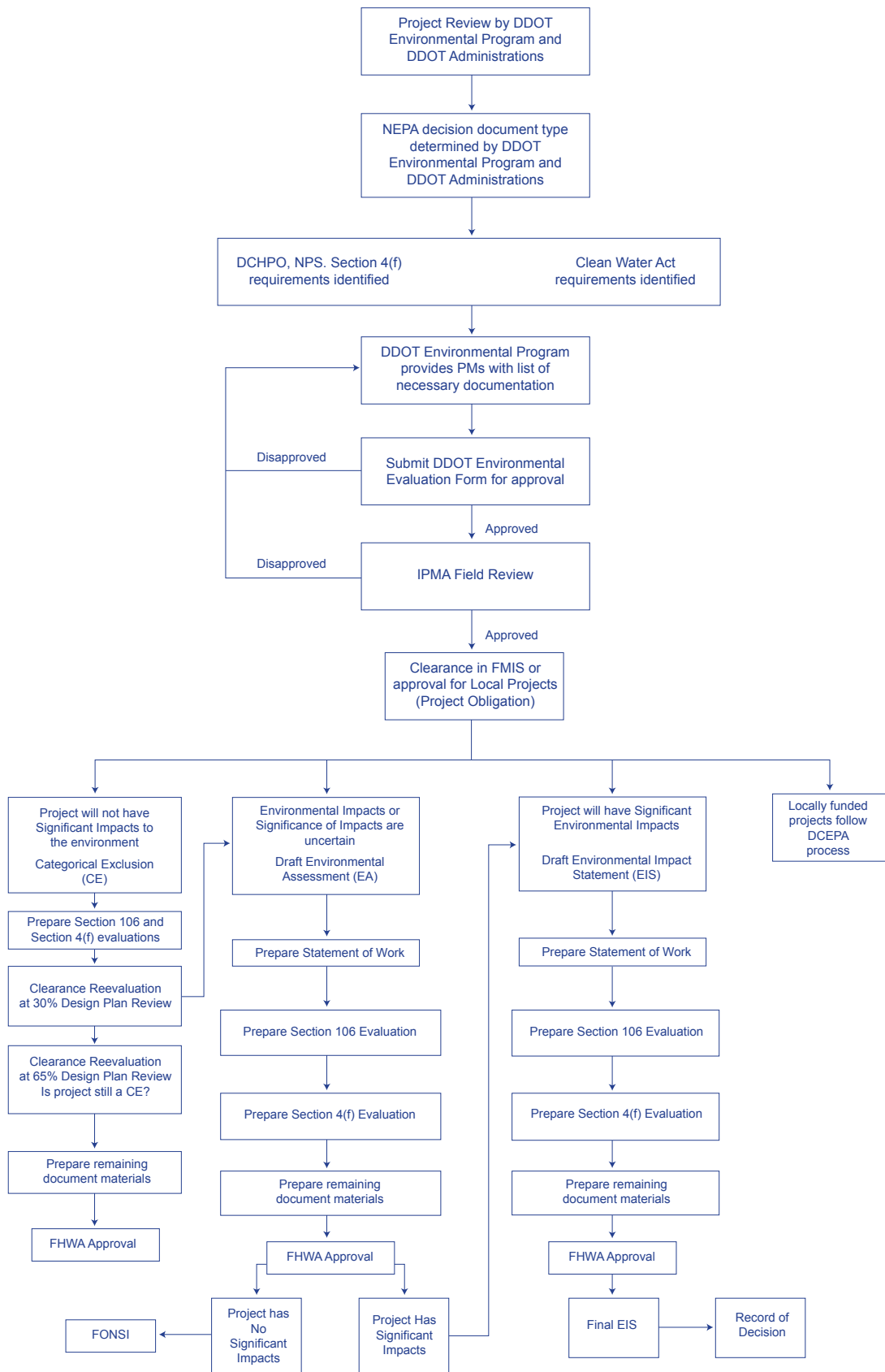
Announcement of the intent to prepare an EIS at the local level is encouraged and can be accomplished by means of a notice in local newspapers.

Appendix B of FHWA Technical Advisory T6640.8A discusses the format, content, and processing of an NOI in more detail. See Appendix D of this manual for an example of an NOI prepared for a DDOT project.

7.3 Scoping Process

Scoping is an early and open process of communication required by Council on Environmental Quality (CEQ) and FHWA regulations. The purpose of scoping is to identify significant issues and the range of alternatives to be addressed during environmental analyses very early in the process.

FIGURE 7-1 NEPA Documentation Process



Scoping is required for all actions for which a decision to prepare an EIS has been made. Because scoping is a good source of early information and is a useful coordination tool, it is also recommended for EAs and CEs that require documentation.

Scoping is accomplished largely through meetings, field interviews, telephone conversations, community outreach, and written communication. The innovative approach to scoping in the regulations is that the process is open to the public and state and local governments, as well as to affected federal agencies. This open process gives rise to important new opportunities for better and more efficient NEPA analyses and simultaneously places new responsibilities on the public and agency participants alike to express their concerns early. Scoping helps ensure that real problems are identified early and are properly studied, that issues that are of no concern do not consume time and effort, that the Draft EIS is balanced and thorough, and that the delays occasioned by redoing an inadequate Draft EIS are avoided. Scoping does not create problems that did not already exist; it ensures that problems that would have been raised anyway are identified early in the process.

During the scoping process, related environmental requirements, such as Section 404 permits, Section 10, Section 4(f) evaluations, Section 6(f) determinations, noise study reports, Section 106 Documentation for Consultation, and Section 7 Endangered Species Consultation requirements shall be identified so that required analyses and studies can be undertaken concurrently and integrated into the environmental document. Environmental justice concerns may also be identified during this process.

It is important to identify potential stakeholders when determining whom to invite to a scoping meeting. Examples of potential stakeholders include but are not limited to:

- Federal, state, and local agencies
- Other local interest groups
- Minority and low-income populations

Invite these groups to the scoping meeting when applicable. Notification by personal letter helps to assure maximum participation.

Scoping meetings may be conducted either alone or as part of early planning meetings to involve interested parties when determining the scope of a complex project involving several federal agencies. Scoping reports can also illustrate the decisions made on scoping-related issues as well as the opinions of participating agencies.

For many projects, a scoping meeting (which may be integrated with any other early planning meeting DDOT conducts) may be held early in the process to meet the requirements of 40 Code of Federal Regulations (CFR) Part 1501.7. Further, it may be appropriate for some projects to hold two scoping meetings, one with resource agencies and one with other interested parties. However, the scoping process does not have to include a meeting; it may be done via letters.

Correspondence between coordinating agencies pertaining to the scoping process should be well documented and included in the “Comments and Coordination” section of the EIS.

7.4 Review and Approval Process

7.4.1 Review Agencies

For all DDOT transportation facilities development projects involving federal funding or federal aid assistance, the appropriate federal agency (normally FHWA) will be a joint lead and approving agency. All cooperating agencies should also review and comment on the project’s environmental document. Federal and local agencies that are not

cooperating agencies, but that have jurisdiction over an area (or resource in the study area), or that have a responsibility to a particular interest or area of concern, may also be considered a review agency.

Public officials, private interest groups, and members of the public, including minority populations and low-income populations that are potentially affected by or express an interest in the DDOT project, should be given the opportunity to review EISs and EAs.

7.4.2 Approval and Timing

The timing of an environmental document's review process will vary with the complexity of the DDOT project, the controversy associated with the impacts, and the number of local and federal reviewers. It is recommended that DDOT submit a preliminary draft of the environmental document to FHWA (or another lead agency) for early review to avoid subsequent delays and to avoid changes in methods, format and content. Based on comments obtained from FHWA's preliminary review, DDOT (or its consultant) will complete the draft document and submit it to FHWA for final review and approval and for circulation to cooperating and affected agencies for concurrent review. The appropriate number of review copies needed will vary depending on agency interest and demand.

7.5 Notice of Availability and Notice of Public Hearing

After the appropriate agencies have reviewed and approved the DDOT Draft and Final EISs, a Notice of Availability (NOA) is published in the Federal Register. It is not required to publish an NOA in the Federal Register for EAs.

Regardless of whether a public hearing is conducted, an NOA must be published in the area newspaper(s) for a Draft EIS, a Final EIS, an EA, or a Supplemental EIS. An

NOA is not required for a Finding of No Significant Impact (FONSI) or a CE. It is good NEPA practice to distribute the NOA to as many community outreach organizations (such as religious organizations, schools, public libraries, project-area residences, or minority business associations) as possible.

The NOA in the local newspapers and other appropriate media shall advise the public where the document is available for review, how copies may be obtained, and to whom comments should be sent. Appendix E contains an example of an NOA. The full participation of the public, including minority and low-income populations, should be encouraged to avoid any perception of discrimination in the decision-making process.

The public NOA shall establish a period for the return of comments of not less than 45 days for a Draft EIS or 30 days for an EA. When a public hearing is required, both a Draft EIS and an EA must be made available to the public a minimum of 15 days before the hearing and a minimum of 15 days after the hearing.

The comments received will be given consideration, and appropriate responses will be prepared for inclusion in DDOT's final document: FONSI, Final EIS, or Record of Decision (ROD).

Because a public hearing is required for a Draft EIS, the NOA and the Notice of Public Hearing may be combined for publication in the local newspapers. If DDOT decides to conduct a public hearing for an EA, the local publication of the NOA and Notice of Public Hearing would be treated like an EIS action. If DDOT has not committed to conduct a public hearing for an EA, it must offer the opportunity for a public hearing. In such a case, the NOA and the opportunity to request a public hearing are normally combined for publication in the local newspaper. More

information about the Notice of Public Hearing is found in Chapter 11, Public Involvement.

7.6 Public Hearing

A public hearing is required for a Draft EIS. A public hearing for an EA may not be needed if appropriate opportunities for the public to comment have been provided. The requirements for a public hearing on an EA may be satisfied by either conducting the hearing or publishing a notice of opportunity for a public hearing and holding one if substantial requests are received.

Refer to Chapter 11, Public Involvement, for more information on public hearings.

7.6.1 Public Comment Period

The public shall be provided a period of not less than 45 days in which to submit oral or written comments on the Draft EIS (or 30 days for an EA). The public will be informed in writing on the cover of the Draft EIS and by announcement at the hearing as to whom to send their comments and the deadline for submission of the comments.

Draft and Final EISs and EAs should be made available for public inspection at DDOT's offices and at public or community center locations. CEs and FONSI are public documents that may be inspected at DDOT's offices.

7.7 Record of Decision

No federal-aid DDOT project shall proceed until the following actions have been completed.

The FHWA has received and accepted the public hearing transcripts and certifications required by 23 USC 128 (applies to all environmental documents for which a hearing has been held).

Either the action has been classified as a CE, a FONSI has been adopted, or a Final EIS has been published and made available for the prescribed length of time, and a ROD for an EIS action has been signed by FHWA.

7.7.1 Timing

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

- 90 days after publication of the NOA of a Draft EIS (see Section 7.6)
- 30 days after publication of the NOA of a Final EIS

7.7.2 Record of Decision Document

A ROD is prepared by FHWA in conjunction with DDOT on federally funded EIS projects. The ROD should document any requirements, such as Section 4(f) and Section 106 (historic properties) approvals. The ROD is the final approval necessary before the proposed action can begin. However, administrative actions taken to secure further project funding and other actions can be initiated before the ROD is signed.

In cases where an EIS has been prepared, the ROD must identify all alternatives that were considered, “. . . specifying the alternative or alternatives which were considered to be environmentally preferable.” The environmentally preferable alternative is the alternative that will promote the national environmental policy as expressed in NEPA, Section 101. Ordinarily, this means the alternative that causes the least damage to the biological and physical environment; it also means the alternative which best protects, preserves, and enhances historic, cultural, and natural resources.

If the FHWA subsequently wishes to take an action that was not identified as the proposed action in the Final EIS

or proposes to make substantial changes to the mitigation measures or findings discussed in the ROD, a revised ROD shall be processed. Information about the content of the ROD is found in Chapter 8, The Environmental Impact Statement and Record of Decision.

7.7.3 Mitigation and Monitoring

Federal agencies (such as FHWA) may provide for monitoring to assure that their decisions are carried out. Mitigation and other conditions established in DDOT EISs or EAs or during their review, and committed to as part of the decision, will be implemented by the lead agency or other appropriate consenting agency. The lead agency will:

- Include appropriate conditions, grants, permits, or other approvals
- Condition funding of actions on mitigation
- Inform cooperating or commenting agencies about the implementation of those mitigation measures they proposed and which were adopted by the agency making the decision
- Make the results of monitoring available to the public

7.8 Reevaluating Documents

For reevaluation of an EA, DEIS, FEIS, or similar document, the same format and table of contents should be used as was used in the original environmental documents. All sections in the environmental document should be included; however, details should be provided only in those sections where there are changes. Sections where there are no changes should be handled briefly with text such as “No changes in this section.”

7.8.1 Draft EIS Reevaluations

A written evaluation of the Draft EIS shall be prepared by DDOT in cooperation with FHWA if an acceptable Final EIS is not submitted to FHWA within 3 years from the date of the Draft EIS circulation. The purpose of this evaluation is to determine whether a supplement to the Draft EIS or a new Draft EIS is needed.

This evaluation (or reevaluation) must demonstrate that there have not been significant changes in the proposed action, the alternatives considered, the affected environment (including the human environment), the anticipated impacts, or the proposed mitigation measures. If there have been changes in these factors that would be considered significant, a supplement to the Draft EIS or a new Draft EIS should be prepared and circulated. See Section 7.9 for a discussion of Supplemental EISs.

7.8.2 Final EIS Reevaluations

A written evaluation of the Final EIS will be required before further approvals may be granted if major steps to advance the action (such as authority to undertake final design, authority to acquire a significant portion of the right-of-way, or approval of the plans, specifications, and estimates) have not occurred within 3 years of the approval of the Final EIS, Final EIS supplement, or the last major FHWA approval or grant.

If major steps to advance the action have not occurred within 5 years from the date the Final EIS or Final EIS supplement was approved, or within the time frame specified in the Final EIS, a written reevaluation will be prepared and forwarded for review and action to the same offices that approved the original Final EIS.

The following questions should be addressed during a reevaluation of an old federal document.

- Are there any changes in the proposed project from the action as proposed in the EIS?
- Are there any changes in the existing setting in the vicinity of the project from that described in the EIS (for example, has previously undeveloped land become developed and to what extent)?
- If there are changes, are these changes likely to result in different social, economic, and environmental effects from those described in the EIS?
- Have there been any changes in legislation since the EIS was prepared that will have an effect on the proposed project?
- Have there been any changes in federal or state policies, procedures, or regulations that warrant updating the EIS (for example, was EO12898 on Environmental Justice issued within the time frame for the reevaluation of the Final EIS)?
- Has the mitigation specified in the EIS been changed?

Note that new legislation, policies, procedures, or regulations would not necessarily require a new EIS for a particular project but should be an important part of a reevaluation of the EIS or, in special cases, a Supplemental EIS.

If any changes are made to the proposed action and if it is uncertain if a reevaluation of the EIS or a Supplemental EIS is required, appropriate environmental studies may be necessary. If necessary, an EA can be used as a reevaluation tool to assess whether the impacts of such changes are significant.

If it is determined that the changes result in significant environmental impacts that could not be identified from reviewing the initial EIS, a Supplemental EIS will be prepared. If no Supplemental EIS is required after the studies or the EA has been completed, the findings will be indicated in the project file. Close coordination between DDOT and FHWA is essential in expediting this determination.

7.8.3 EA Reevaluations

Reevaluation requirements shall apply to EAs that have not been approved or have not progressed to the EIS or FONSI stage. Reevaluation requirements should also apply to FONSI for which major activities have not commenced. It is recommended, but not required, that DDOT reevaluate a CE project before approval is sought for major actions.

7.9 Supplemental EIS

FHWA regulation 23 CFR 771.130 requires preparation of a Supplemental EIS if a substantial change in a proposed action that is relevant to environmental concerns has occurred or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. However, a Supplemental EIS will not be necessary if the project is an alternative adequately covered in the Final EIS, but not identified as the proposed action. The decision to prepare a supplement to the Final EIS shall not require withdrawal of the previous approvals for those aspects of the proposed action not directly affected by the changed condition or new information. A Supplemental EIS shall be prepared for either a Draft or a Final EIS if, at any time:

- There are substantial changes in the proposed action that are relevant to environmental concerns.
- There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

The supplement shall be developed using the same process and format, (that is, Draft EIS, Final EIS, and ROD) as an original EIS, with the exception that scoping is not required. A new or amended ROD will also be prepared. A Supplemental EIS shall not be necessary where:

- The changes to the proposed action, new information, or new circumstances result in a lessening of adverse environmental impacts evaluated in the EIS without causing other environmental impacts that are significant and were not evaluated in the EIS.
- The decision is made to approve an alternative fully evaluated in an approved EIS but not identified as the preferred alternative. In such a case, a revised ROD shall be prepared. See Chapter 8, The Environmental Impact Statement and Record of Decision, for more information about the content of a ROD.

7.10 The National Park Service Environmental Process

Although FHWA will be the lead federal agency on many, if not most, of DDOT's projects, other federal agencies have served as the lead agency on DDOT projects. As an example, NPS served as the lead federal agency on the Blagden Avenue Draft EA, which evaluated the potential impacts from the construction of a hiker/biker trail along Blagden Avenue within Rock Creek Park. Rock Creek Park is an administrative unit of NPS.

Although NPS also follows NEPA, it is beneficial for DDOT project managers to understand that NPS has an environmental manual titled The Director's Order 12 Handbook (also called DO 12). This handbook never conflicts with the CEQ regulations, although NPS has added some requirements that go beyond those imposed by CEQ. The handbook can be found at <http://www.nps.gov/policy/DOOrders/RM12.pdf>.

Projects that require an NPS permit, approval, or action (land transfer, funding, and similar functions) are subject to NEPA even though they may be funded by DDOT local funds. For such projects, close coordination with NPS is needed. It should be remembered that the list of CEs under

23 CFR 771.117 are for FHWA/FTA only and may not be accepted by NPS. NPS has its own NEPA regulations which are described in the NPS NEPA Guidelines, DO 12. Please refer to DO 12 (in addition to FHWA guidelines) whenever a project involves NPS. DO 12 has a list of CEs and guidelines on preparing EAs and EISs. DDOT environmental staff and NPS staff should work together closely on such projects. Most of the time, projects involving NPS require Section 4(f) evaluations. For details on Section 4(f) evaluations, refer to Chapter 22, Section 4(f) – Parks, Recreation Areas, Historic Sites, and Wildlife and Waterfowl Refuges.

7.11 External Environmental Document Review Process

In addition to preparing environmental documents for its own actions, DDOT is also involved in reviewing and commenting on other agency environmental documents (EA, EIS, and others). In some cases, DDOT also accepts the role of a cooperating agency. To review an outside environmental document, the following process should be used.

- Upon receiving an Environmental document (EA, EIS, or similar submittal) from an external agency (local, state, or federal) the Project Development and Environment (PDE) Branch staff will coordinate with DDOT administrations for comments. These comments will be generated mainly by the Planning, Policy and Sustainability Administration (PPSA), Infrastructure Project Management Administration (IPMA), Mass Transit Administration (MTA), and Traffic Operations Administration (TOA).
- The PDE staff will inform the appropriate staff members at the relative administrations of the request for comments. The administration heads will also be copied on the correspondence.

- For IPMA, the correspondence for review will be sent to the team leaders, while for PPSA, the ward planner will be notified as well.
- All administrations will receive 2 weeks or less for comments.
- The comments will be collected by the PDE staff and combined into a response to the agency that submitted the environmental document.
- PDE staff will coordinate a meeting between the reviewers, if needed, before submitting official comments.
- The official comments will be submitted through the DDOT director.
- The PDE Staff will complete the DDOT External Environmental Document Review Form (provided in Appendix I) and keep it in files to document the review process for each document.

The DCEPA EISF for external agency projects will continue to go to the PDE branch for reviews unless the PDE branch is required to comment on environmental issues.

7.12 Additional Information

Code of Federal Regulations, Title 23, Volume 1, Part 771
Environmental Impact and Related Procedures [Revised as of
April 1, 1999]

http://www.gpo.gov/nara/cfr/waisidx_99/23cfr771_99.html

FHWA Technical Advisory, T 6640.8A, October 30,
1987(Sections I-IV and Sections XI and XII)

<http://www.environment.fhwa.dot.gov/projdev/impTA6640.asp#ce>

The Director's Order (DO) 12 Handbook.:

<http://www.nps.gov/policy/DOrders/RM12.pdf>