

compliance with requirements of all applicable environmental laws and the status of any required permits to the extent possible. If three years have passed since the DEIS was circulated, a written reevaluation must be prepared as per 23 CFR 771.129, and the conclusion summarized in the Summary section of the document.

III. ALTERNATIVES

(See also Alternatives Guidance Papers and the NEPA/404 Agreement)

TA Guidance:

The final EIS must identify the preferred alternative and should discuss the basis for its designation as preferred (23 CFR 771.125(a)(1)). The discussion should provide the information and rationale identified in Section VIII (Record of Decision), paragraph (B). If the preferred alternative is modified after the draft EIS, the final EIS should clearly identify the changes and discuss the reasons why any new impacts are not significant.

IV. AIR QUALITY IMPACTS (pages 23-24 of TA) *Required for this project? Y or N*

- A. The FHWA must find the project in conformance with the State Implementation Plan (SIP). To conform, the project must come from a financially constrained Transportation Improvement Program (TIP)/Regional Transportation Plan (RTP).
- B. Document that the design concept and scope of the project are not significantly different from the project in the most recent conforming TIP and RTP.

V. WATERWAYS and HYDROLOGIC SYSTEMS *Required for this project? Y or N*

TA Guidance:

Where the preferred alternative requires an individual Section 404 or Section 10 permit, the final EIS should identify for each permit activity the approximate quantities of dredge or fill material, general construction grades and proposed mitigation measures.

Where the preferred alternative requires a Section 9 permit, the final EIS should identify for each permit activity the proposed horizontal and vertical navigational clearances and include an exhibit showing the various dimensions.

For all permit activities the final EIS should include evidence that every reasonable effort has been made to resolve the issues raised by other agencies regarding the permit activities. If important issues remain unresolved, the final EIS must identify those issues, the positions of the respective agencies on the issues and the consultations and other efforts made to resolve them (23 CFR 771.125(a)).

VI. WATER QUALITY IMPACTS (page 26 of the TA) *Required for this project? Y or N*

- A. If the preferred alternative impacts any State wellhead protection area, documentation is needed to demonstrate that it complies with the approved State wellhead protection plan.
- B. If an area is designated as principle or sole-source aquifer under the Safe Drinking

Water Act, and the preferred alternative affects the alternative, the FEIS needs to document that the EPA's concerns on the preferred alternative have been resolved.

TA Guidance:

The final EIS should show that EPA's concerns on the preferred alternative have been resolved. If the preferred alternative impacts wellhead protection areas, the final EIS should document that it complies with the approved State wellhead protection plan.

VII. WETLANDS/WATERS OF THE U.S. IMPACTS *Required for this project? Y or N*
(pages 27-28 of TA and NEPA/404 MOU)

A. If waters of the U.S. are not in the project area

Same information as in the draft environmental documents.

B. If waters of the U.S. are in the project area but are not affected by any of the project alternatives

Same information as in the draft environmental documents.

C. If all project alternative involvements with waters of the U.S. are nationwide 404 permit situations

Same information as in the draft environmental documents, and:

1. Written FWS preliminary agreement in the project mitigation plan as a result of Fish & Wildlife Coordination Act consultation.
2. If the preferred alternative is located in wetlands, the final EIS contains a finding required by E.O. 11990 that there are no practicable alternatives to construction in wetlands.

D. If any of the project alternative involvements with waters of the U.S. are individual 404 permit situations

Same information as in the draft environmental documents, and:

1. A final 404 Alternatives Analysis identifying the NEPA preferred/404 least environmentally damaging practicable alternative is contained in a separate section of the final EIS. (The content of a final 404 Alternatives Analysis is outlined in the NEPA-404 MOU Guidance Papers, page 23.)
2. The final EIS text identifies the section 404 "least environmentally damaging practicable alternative alignment" and references the final 404 Alternatives Analysis.
3. The final EIS includes:
 - a. A summary of the pertinent factors from the final feasibility study of mitigation sites,
 - b. Text and exhibits which identify the mitigation site location(s), and
 - c. A summary description of the conceptual mitigation plan which includes:
 - (1) habitat types and approximate hectares (acres) of impact
 - (2) plant communities and habitat to be replaced
 - (3) functions and values to be enhanced or created by the mitigation
 - (4) discussion of buffer areas and habitat linkages

- (5) general discussion of hydraulic design considerations
 - (6) listing of plant species to be used
 - (7) cost estimates
 - (8) mitigation success criteria
 - (9) monitoring criteria for evaluation of the mitigation
4. If the preferred alternative is located in wetlands, the final EIS contains a finding required by E.O. 11990 that there are no practicable alternative to construction in wetlands.
5. The following are included in the final EIS as preliminary agreement of section 404(b)(1) compliance:
- a. Written FWS preliminary agreement in the project mitigation plan as a result of Fish & Wildlife Coordination Act consultation.
 - b. If current FWS/NMFS threatened and endangered species list identifies listed species potentially in project area, written FWS/NMFS documentation of one of the following: species not present, species not likely to be affected, or non-jeopardy biological opinion.
 - c. Section 401 certification or waiver from the State Water Quality Management Agency.
 - d. Written Corps and EPA preliminary agreement on:
 - (1) the final EIS NEPA preferred/section 404 "least environmentally damaging practicable alternative";
 - (2) the project will not significantly degrade the aquatic environment; and
 - (3) the project mitigation plan and implementation schedule is adequate.

TA Guidance:

If the preferred alternative is located in wetlands, to the fullest extent possible, the final EIS needs to contain the finding required by Executive Order 11990 that there are no practicable alternatives to construction in wetlands. Where the finding is included, approval of the final EIS will document compliance with the Executive Order 11990 requirements (23 CFR 771.125(a)(1)). The finding should be included in a separate subsection entitled "Only Practicable Alternative Finding" and should be supported by the following information:

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

VIII. FLOODPLAIN IMPACTS (pages 29-30 of TA) *Required for this project? Y or N*

A. Includes Floodplain Finding, Executive Order 11988

TA Guidance:

If the preferred alternative includes a floodplain encroachment having significant impacts, the final EIS must include a finding that it is the only practicable alternative as required by 23 CFR 650, Subpart A. The finding should refer to Executive Order 11988 and 23 CFR 650, Subpart A. It should be included in a separate subsection entitled "Only Practicable Alternative Finding" and must be supported by the following information.

- (a) The reasons why the proposed action must be located in the floodplain;*
- (b) The alternatives considered and why they were not practicable; and*
- (c) A statement indicating whether the action conforms to applicable State or local floodplain protection standards.*

If the preferred alternative encroaches on a regulatory floodway, the final EIS should discuss the consistency of the action with the regulatory floodway. If a floodway revision is necessary, the EIS should include evidence from FEMA and local or State agency indicating that such revision would be acceptable.

IX. WILD AND SCENIC RIVERS

Required for this project? Y or N

TA Guidance:

The final EIS should identify measures that will be included in the preferred alternative to avoid or mitigate any impacts.

X. COASTAL ZONE IMPACTS (page 31 of TA)

Required for this project? Y or N

- A. Includes the State Coastal Zone Management (CZM) agency's determination that the preferred alternative is consistent with the State CZM Plan (or in California, because the California State CZM cannot make this determination until after the final EIS is approved, a preliminary indication that the project is "not inconsistent" or "appears to be consistent" with the plan is required).

R.C.:

-- The State's coastal management agency may not delegate the consistency determination to the local coastal management agency.

TA Guidance:

The final EIS should include the State Coastal Zone Management agency's determination on consistency with the State CZMP plan. (In some States, an agency will make a consistency determination only after the final EIS is approved, but will provide a preliminary indication before the final EIS that the project is "not inconsistent" or "appears to be consistent" with the plan.) (For direct Federal actions, the final EIS should include the lead agency's consistency determination and agreement by the State CZM agency.) If the preferred alternative is inconsistent with the State's approved CZMP, it can be Federally funded only if the Secretary of

Commerce makes a finding that the proposed action is consistent with the purpose or objectives of the CZM Act or is necessary in the interest of national security. To the fullest extent possible, such a finding needs to be included in the final EIS. If the finding is denied, the action is not eligible for Federal funding unless modified in such a manner to remove the inconsistency finding. The final EIS should document such results.

XI. THREATENED AND ENDANGERED SPECIES *Required for this project? Y or N*
(pages 31-33 of TA)

A. If formal Section 7 consultation is required, evidence and results of consultation with FWS and/or NMFS is summarized and letters included in the appendix.

B. Includes summary of conceptual mitigation plan and FWS and/or NMFS preliminary agreement on project mitigation plan.

R.C.:

-- Ensure threatened and endangered species list remains current throughout the entire environmental process (DEIS through FEIS time line). Any FWS species letter close to or greater than two years old needs to be reverified by the Federal agency or its designated non-Federal representative (State DOT only) (50 CFR 402.08, 402.12(c), (e), (i)).

TA Guidance:

If the preferred alternative is likely to jeopardize the continued existence of any proposed species or result in the destruction or adverse modification of proposed critical habitat, a conference with FWS and/or NMFS must be held to assist in identifying and resolving potential conflicts. To the fullest extent possible, the final EIS needs to summarize the results of the conference and identify reasonable and prudent alternatives to avoid the jeopardy to such proposed species or critical habitat. If no alternatives exist, the final EIS should explain the reasons why and identify any proposed mitigation measures to minimize adverse effects.

In selecting an alternative, jeopardy to a listed species or the destruction or adverse modification of designated critical habitat must be avoided (50 CFR 402.01(a)). If the biological assessment indicates that there are no listed species or critical habitat present that are likely to be adversely affected by the preferred alternative, the final EIS should evidence concurrence by the FWS and/or NMFS in such a determination and identify any proposed mitigation for the preferred alternative.

If the results of the biological assessment or consultation with FWS and/or NMFS show that the preferred alternative is likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat, to the fullest extent possible, the final EIS needs to contain: (1) a summary of the biological assessment (see data above for draft EIS); (2) a summary of the steps taken, including alternatives or measures evaluated and conferences and consultations held, to resolve the project's conflicts with the listed species or critical habitat; (3) a copy of the biological opinion; (4) a request for an exemption from the Endangered Species Act; (5) the results of the exemption request; and (6) a statement that (if the exemption is denied) the action is not eligible for Federal funding.

XII. HISTORIC AND ARCHEOLOGICAL PRESERVATION (pages 33-34 of TA) *Required for this project? Y or N*

- A. Evidence of completed effects consultation with SHPO and ACHP. Copies of letters in the Appendix.
- B. Includes summary of section 106 mitigation.
- C. References the signed Memorandum of Agreement (MOA) if applicable, copy of the executed MOU and coordination letters in the Appendix.

TA Guidance:

To the fullest extent possible, the final EIS needs to demonstrate that all the requirements of 36 CFR 800 have been met. If the preferred alternative has no effect on historic or archeological resources on or eligible for the National Register, the final EIS should indicate coordination with and agreement by the SHPO. If the preferred alternative has an effect on a resource on or eligible for the National Register, the final EIS should contain (a) a determination of no adverse effect concurred in by the Advisory Council on Historic Preservation, (b) an executed memorandum of agreement (MOA), or (c) in the case of a rare situation where FHWA is unable to conclude the MOA, a copy of comments transmitted from the ACHP to the FHWA and the FHWA response to those comments.

The proposed use of land from an historic resource on or eligible for the National Register will normally require an evaluation and approval under Section 4(f) of the DOT Act. Section 4(f) also applies to all archeological sites on or eligible for the National Register and which warrant preservation in place. (See Section on Section 4(f) evaluation.)

XIII. HAZARDOUS WASTE SITES *Required for this project? Y or N*

TA Guidance:

If the preferred alternative impacts a known or potential hazardous waste site, the final EIS should address and resolve the issues raised by the public and government agencies.

XIV. VISUAL IMPACTS *Required for this project? Y or N*

TA Guidance:

The final EIS should identify any proposed mitigation for the preferred alternative.

XV. ENERGY *Required for this project? Y or N*

TA Guidance:

The final EIS should identify any energy conservation measures that will be implemented as a part of the preferred alternative. Measures to conserve energy include the use of high-occupancy vehicle incentives and measures to improve traffic flow.

XVI. CONSTRUCTION IMPACTS (pages 35-36 of TA)

TA Guidance:

The final EIS should identify any proposed mitigation for the preferred alternative.

XVII. LIST OF AGENCIES, ORGANIZATIONS, AND PERSONS TO WHOM COPIES OF THE EIS ARE SENT

TA Guidance:

Identify those entities that submitted comments on the draft EIS and those receiving a copy of the final EIS (23 CFR 771.125(a) and (g)).

XVIII. COMMENTS AND COORDINATION (pages 37-38 of TA)

- A. Discusses public hearing and summarizes comments received from public.
- B. Includes and responds to all substantive comments received on the draft EIS.

R.C.:

-- Includes comments from the U.S. DOT Office of the Secretary (OST) in the Appendix.

TA Guidance:

1. The final EIS should include a copy of substantive comments from the U.S. Secretary of Transportation (OST), each cooperating agency, and other commentors on the draft EIS. Where the response is exceptionally voluminous the comments may be summarized. An appropriate response should be provided to each substantive comment. When the EIS text is revised as a result of the comments received, a copy of the comments should contain marginal references indicating where revisions were made, or the response to the comments should contain such references. The response should adequately address the issue or concern raised by the commentor or, where substantive comments do not warrant further response, explain why they do not, and provide sufficient information to support that position.

The FHWA and the HA are not commentors within the meaning of NEPA and their comments on the draft EIS should not be included in the final EIS. However, the document should include adequate information for FHWA and the HA to ascertain the disposition of the comment(s).

- 2. The final EIS should (1) summarize the substantive comments on social, economic, environmental, and engineering issues made at the public hearing, if one is held, or the public involvement activities or which were otherwise considered and (2) discuss the consideration given to any substantive issue raised and provide sufficient information to support that position.*
- 3. The final EIS should document compliance with requirements of all applicable environmental laws, Executive Orders, and other related requirements, such as Title VI of the Civil Rights Act of 1964. To the extent possible, all environmental issues should be resolved prior to the submission of the final EIS. When disagreement on project issues exists with another agency, coordination with the agency should be undertaken to resolve the issues. Where the issues cannot be resolved, the final EIS should identify any remaining unresolved issues, the steps taken to resolve the issues, and the positions of the respective parties. Where issues are resolved*

through this effort, the final EIS should demonstrate resolution of the concerns.

XIX. FINAL SECTION 4(f) EVALUATION
(pages 46-47 of TA)

Required for this project? Y or N

A. Includes a discussion that there are no feasible and prudent alternatives to avoid use of Section 4(f) resources. The discussion should describe the impacts from the avoidance alternatives in sufficient detail to demonstrate that impacts from alternatives that avoid a 4(f) would reach extraordinary magnitudes, 23 CFR 771.135(a)(2).

B. Includes a discussion that the project includes all possible planning to minimize harm to the Section 4(f) resources. The preferred alternative must be the alternative with the least harm on the 4(f) resources, after considering mitigation.

C. The "Coordination Section" summarizes the formal Section 4(f) coordination (DOI, HUD, Depart of Agriculture - Section 6(f) with National Park Service).

The **State DOT** ensures that this environmental document has been reviewed for completeness.

REVIEWED BY:

State DOT Project Manager

DATE: _____

The FHWA Division Office Project Manager (i.e., Transportation Engineer) and the EIS Review Team (ERT) have completed their review of this environmental document.

REVIEWED BY:

FHWA Division Project Manager

DATE: _____