

Commission Briefing Paper 8D-01

Options for Reducing Project Delivery Times

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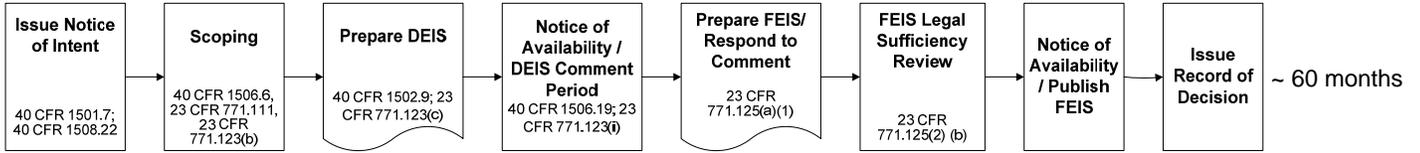
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INTRODUCTION

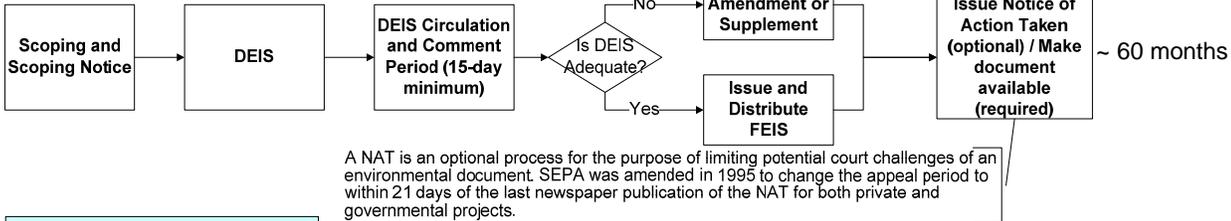
Information compiled by FHWA reveals that major highway projects take about 13 years to get from project initiation to open to traffic. A substantial portion of this time, historically about 3 years and currently about 5 years, is consumed by preparing an environmental impact statement (EIS). Reducing this time, in conjunction with other measures, has the potential to substantially reduce the overall project delivery time. This paper provides background on the challenge and outlines legislative and regulatory concepts for the Commission's consideration.

I. FLOWCHARTS

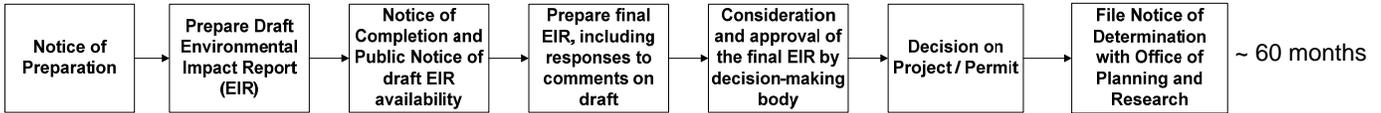
Federal EIS Process



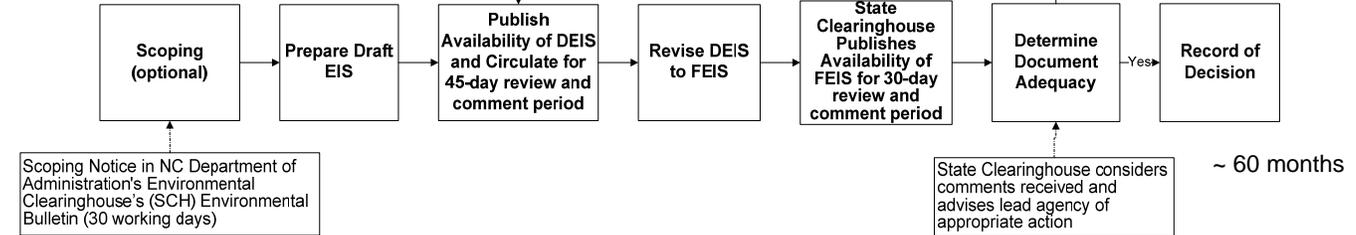
WSDOT SEPA Process



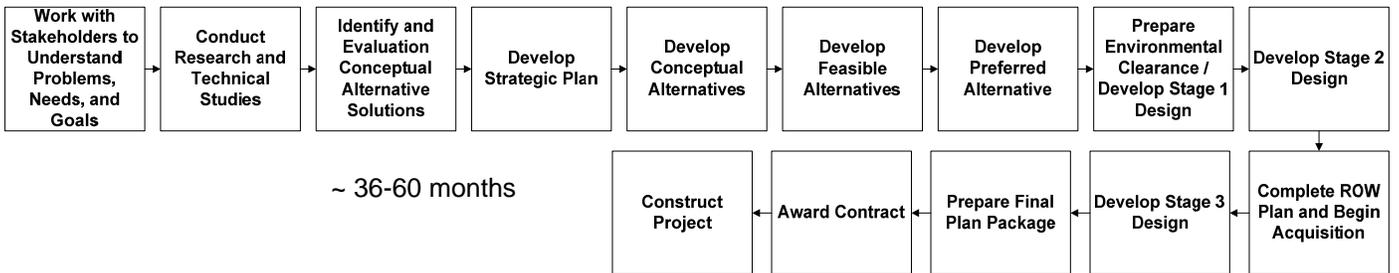
California CEQA Process



North Carolina SEPA Process



Ohio Project Development Process – Major Projects (These projects have the potential for high or significant environmental impacts, but are not necessarily actions requiring an EIS.)



II. BOTTLENECK IDENTIFICATION

A. 4f and other permit processes can add significant time to EISs

- FHWA historical data shows that EISs with 4f took almost 2 years longer than EISs without 4f; EISs with 404 permits also took almost 2 years longer than EISs without 404 permits
- 4f and Section 404 are different decision making frameworks
 - Unlike other permits, they have an open-ended standard requiring agency to "prove a negative"
- Difficult for agency to demonstrate standard has been met
- Focus of 4f and Section 404 on avoidance of a specific resource can result in less important resources driving decision, missing opportunity for achieving greater overall public good

B. EIS expectations

- Minimum level of analysis in all environmental areas regardless of project issue areas
- Robust documentation for all resource areas
- Time allowance needed for developing documentation level

C. Environmental document length and quality

- EISs have gotten longer but not necessarily better
- Regulations can require an analysis of some alternatives that may not be realistic
- Fear of litigation has resulted in over documentation
- Currently, extensive editing of the FEIS occurs to address litigation vulnerability

D. NEPA Process Redundancies

- DEISs represent the culmination of several years of public involvement, coordination and collaboration with resource agencies, and planning some of which could be done prior to NEPA formally beginning to ensure it is fully recognized in the NEPA process
- Current process can create a need to backtrack in order to revisit alternatives that were previously rejected and/or to duplicate environmental analyses that were previously endorsed during planning and/or scoping and may not be formally recognized by other agencies when done outside the formal NEPA process
- Repetitive preparation of additional analyses and studies for issues that have already been adequately addressed prior to the start of the NEPA process

III. OPTIONS TO ADDRESS

Two types of options for addressing the issues described above are offered:

- Statutory Options – Statutory options would require revision to the United States Code (USC), either amending Section 4(f) of the Department of Transportation Act of 1966 (49 USC Section 1653(f)) or creating a new documentation standard for less complex EIS projects
- Regulatory Options – Options in this category would require modification to existing regulations, specifically (1) Clean Water Act Section 404 Regulations and (2) CEQ’s Regulations for Implementing NEPA (40 CFR 1500-1508)

Statutory Options

A. Revise Section 4f of the Department of Transportation Act of 1966

- Change decision-making framework so agency must demonstrate that they are acting in the public interest instead of having to prove a negative (i.e., instead of having to prove that there is "no feasible and prudent alternative")
- Change emphasis on avoiding 4f resource by clarifying that "prudent alternatives" do not include those that have a greater adverse effect on other important resources or community values

B. Provide for a Simplified NEPA Class of Action

- Legislatively communicate (to the courts as well to executive agencies) that the Congress expects focused and simplified EIS documentation for projects with few and relatively low significant impacts

Regulatory Options

A. Revise 404 Regulations

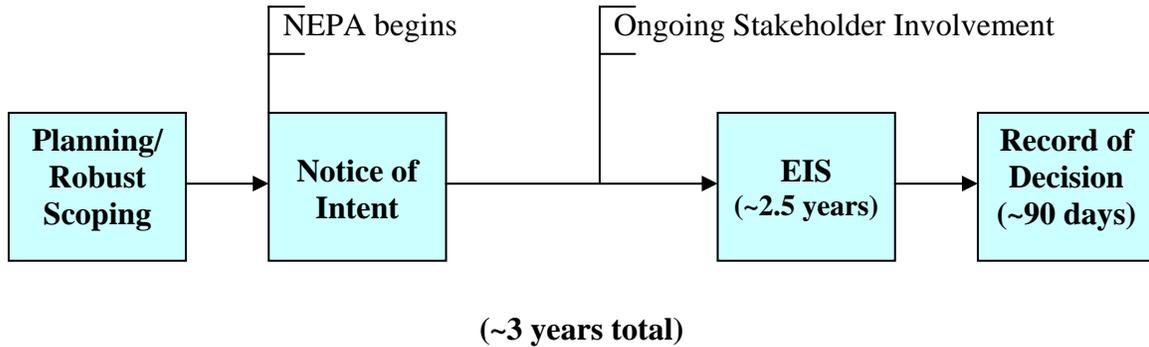
- Revise regulations to give greater emphasis to balancing the determination of the least environmentally damaging practicable alternative (LEDPA) with other considerations
- Revise regulations to give proposing federal agency greater role in determining the LEDPA

B. Revise CEQ regulations on "all reasonable alternatives"

- Provide additional factors to allow narrowing of number of alternatives considered to “reasonable alternatives”
 - Alternatives should be appropriate for project level (rather than planning-level) decisions
 - Alternatives should reflect community values
 - Alternatives should reflect funding realities
- Combine DEIS/FEIS

C. *Revise CEQ Regulations for Implementing NEPA to allow for a single EIS rather than the current requirement for a draft and final EIS:*

REVISED EIS PROCESS



- I. In parallel with revisions to CEQ regulations, FHWA would set minimum conditions for what must occur during a “robust scoping” period before publishing the NOI and formally beginning NEPA. Some requirements could include:
 - i. Determination on general project location
 - ii. Determination of mode choice
 - iii. Development of a risk management plan
- II. Handle impacts identification and mitigation issues early by considering them in an integrated fashion looking at overall resources rather than in a sequential, project-by-project basis
- III. Addressing some of the major issues upfront, such as alternatives and mitigation, to provide for a more comprehensive EIS and fewer comments on the document, proceeding to a Record of Decision.