



Urban Construction Initiative Tri-Annual Meeting March 21, 2013

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NEPA & Fiscal Constraint

Fiscal constraint has remained a key component of transportation planning and program development since enactment of the Intermodal Surface Transportation Efficiency Act (ISTEA) in 1991 followed by the Transportation Equity Act for the 21st Century (TEA-21) in 1998 and most recently by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) on August 10, 2005. FHWA provided a guidance document in 2009 (Supplemental Information on ***“Transportation Planning Requirements & Their Relationship to NEPA Process Completion”***) and have been enforcing the requirement regularly since late 2012.

NEPA & Fiscal Constraint

NEPA approval can only be given when the NEPA documents meet all applicable environmental laws, Executive Orders, and other related requirements, or reasonable assurances of compliance are provided.

[23 CFR § 771.133]

NEPA & Fiscal Constraint

On March 11, 2013 FHWA and VDOT formalized an agreement outlining how VDOT would demonstrate financial constraint on federally funded projects. Per this agreement VDOT must demonstrate that a subsequent phase of funding, after the PE phase, is reasonably available and programmed in the Statewide Transportation Improvement Program (STIP) and if applicable in the project area's Metropolitan Planning Organization's Transportation Improvement Plan (TIP).

NEPA & Fiscal Constraint

Grouped Projects – STIP/TIP - No action is required by VDOT or the MPO related to "planned obligations" unless adding the phase causes the project to exceed the sliding scale. VDOT maintains a tracking sheet for each grouping for this purpose and will notify the MPO if action is required of them.

NEPA & Fiscal Constraint

All Non-Grouped Projects – STIP/TIP: Subsequent phase of project development includes planned obligations in STIP/TIP. For most projects, this will be indicated by planned obligations for the right of way phase.

Phase and "planned obligations" should be added to the STIP. Action will be handled as "administrative adjustment" or amendment depending upon the sliding scale and MOA guidelines.

Phase and "planned obligations" should be added to TIP. Action will be handled as "administrative adjustment" or amendment depending upon the MPO's policy for adjustment/amendments (projects to be included in TIP).

NEPA & Fiscal Constraint

So what does it all mean?

Communicate - Project Manager

PIMS Group

Environmental POC

Locality

Start Early - Recommend that funding questions be raised early in project development to ensure there are no surprises.

Continue to Communicate - Waiting until the last minute may result in delay in receiving NEPA approval. 30 days for Programming to process a STIP amendment, and up to 90 days for an MPO to process a TIP amendment.

Post NEPA Requirements

Coordination with state and federal regulatory agencies and completion of NEPA documents may result in environmental commitments that must be implemented during design, construction, or post-construction. It is the responsibility of the LPA to ensure environmental process steps or environmental commitments made to regulatory agencies are implemented. VDOT's oversight responsibility is limited to those items identified in this manual and items identified in VDOT's plan for the oversight of environmental elements of locally administered projects.

LAP Manual Chapter 15.12.1

Post NEPA Requirements

- **Avoiding impacts to archaeological sites**
- **Using historically appropriate materials in building rehabilitation**
- **Avoiding impacts to T&E species**
- **Minimizing impacts to water / wetlands**
- **Time of Year Restrictions during construction**
- **Submitting preliminary design plans to agency for final acceptance**
- **Proper disposal of hazardous materials (asbestos, lead, petroleum)**

Post NEPA Requirements

Prior to Construction

- Applicant obtains water quality permits; copies to VDOT
- VDOT performs Environmental Certification (R/W Re-evaluation, PS&E, EQ-103)
 - Checks scope/footprint still the same
 - Verifies any environmental commitments have been implemented or accounted for in construction plans
- If project changes have not been covered in NEPA document, can delay construction

Post NEPA Requirements

During Construction

- Applicant responsible for complying with water quality permit conditions
- Applicant must comply with any environmental commitments
 - Avoiding impacts to Threatened & Endangered Species
 - Using architecturally appropriate materials on historic building rehabilitations
 - Time of Year Restrictions for in-stream work
- If NEPA commitments are not complied with federal funds can be jeopardized
- If changes are made to the scope of the project NEPA may need to be revisited.

Post NEPA Requirements

The LPA must ensure that project modifications do not require additional NEPA evaluation for federal-aid projects. Any additional work outside the originally identified project footprint would require additional evaluation. Additional project needs for any federal-aid project must be coordinated with VDOT staff prior to issuing a notice to proceed to the contractor.

Modifications to the engineering design may require a design exception or, at a minimum, review and approval by the Engineer of Record. Any design modification of this nature must be submitted to the VDOT Construction Project Monitor prior to finalization.

-LAP Manual Chapter 13.1.5.5 Field Modification to Approved Design

Post NEPA Requirements

The LPA must develop a process for managing change orders and include the process within their contract documents for any federal-aid project. Subsequently, any change order must follow the process specified in their contract. The LPA shall notify the VDOT CPM when processing Change Orders, as outlined below. When applicable, typically for federal oversight projects, the VDOT ACE will notify and receive concurrence from the Federal Highway Administration (FHWA) on federally funded projects as required.

The LPA must receive concurrence from the VDOT CPM for any change order which:

- (1) Will result in the need for additional federal or state-aid beyond the funding identified in the project administration agreement; or
- (2) Requires a design exception or waiver; or
- (3) Is federal-aid and may result in work outside the project limits identified in environmental documentation (the NEPA documentation); or
- (4) When a previously approved pay-item is being removed or replaced.

-LAP Manual Chapter 13.3 CHANGE ORDERS

Post NEPA Requirements

- **Identify the party responsible for compiling and maintaining environmental documentation for an administrative record for this project.**
- **Describe how the administrative records for the environmental document for this project are being maintained?**
- **If there were environmental commitments for this project, how did the locality ensure full implementation of those commitments? How were the commitments communicated to both locality and VDOT coordinators?**
- **Were there any changes in project scope that impacted the original project footprint? If so, how were they documented and what communication was made to VDOT regarding the change.**