

Executive Order 13274 Purpose and Need Work Group

Baseline Report

Revised Draft

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Executive Summary

This report presents baseline information developed for the Purpose and Need Work Group to report to the Task Force established under the Executive Order (EO) 13274, *Environmental Stewardship and Transportation Infrastructure Project Review*. At the conclusion of the report are the Work Group's recommendations for next steps for Task Force consideration.

The identification and documentation of the purpose and need for a proposed transportation infrastructure project are important components of environmental review under the National Environmental Policy Act (NEPA) and under certain other environmental laws and regulations. This report is intended to provide an understanding of requirements and resources relevant to purpose and need statements and of the associated challenges. While the great majority of transportation projects do not experience problems related to purpose and need, there have been sufficient instances of problems and project delays attributed to purpose and need to frustrate applicants and agencies, and to warrant further examination and corrective action.

The report presents a summary of laws, regulations, and executive orders that are related to purpose and need for transportation projects, as a foundation for understanding the roles and responsibilities of Federal agencies and how agencies interact on purpose and need. The report identifies challenges and impediments that may result in agency disagreements and project delays, based on a review of a sample of Environmental Impact Statements (EIS), analysis of case law, and discussions with agency practitioners. The report also identifies attributes of good purpose and need statements and opportunities for improvements. Finally, the report contains information on guidance documents and selected training programs, including an assessment of guidance and training needs.

Laws, Regulations, and Executive Orders

Laws, executive orders, and regulations do not appear to conflict or call for different approaches to the formulation or content of purpose and need statements. The 404(b)(1) Guidelines issued under Section 404 of the Clean Water Act, for permits by the U.S. Army Corps of Engineers for discharges of dredged or fill material into waters of the United States, including wetlands, is the only requirement outside of NEPA that specifically calls for the development of a purpose statement. Other laws, regulations, and executive orders identified in the report may indirectly affect purpose and need. Section 4(f) of the Department of Transportation Act, for example, imposes a substantive duty to determine there is no feasible and prudent alternative, which implicitly requires a robust project purpose and need to justify the determination.

Various agency responsibilities play a role in the Federal scrutiny applied to purpose and need. Under Section 309 of the Clean Air Act, the U.S. Environmental Protection Agency (EPA) has the obligation to review and publicly comment on the environmental impacts of major Federal actions, and EPA's implementing guidance includes EPA's review of the technical adequacy and accuracy of the methodology used to demonstrate

the need for a project in cases where this affects the identification of reasonable and feasible alternatives. Other instances arise due to agency statutory responsibilities for protecting particular resources. Resource agencies take a harder look to be satisfied that a project's purpose and need provides a reasonable justification for potential adverse effects on protected resources.

While impediments to purpose and need statements and the disagreements that sometimes arise among Federal agencies do not appear to stem from differences or conflicts written into the underlying laws, multiple laws do assign to different Federal agencies environmental review and permitting responsibilities that either explicitly or implicitly include purpose and need considerations. In turn, these multiple agency responsibilities sometimes result in different agency interpretations of how a purpose and need statement should be scoped and written to meet statutory requirements, what the statement should include, and whether the statement for a particular project is justified and described appropriately. Interlocking Federal agency responsibilities can frustrate agencies and applicants alike when conflicting views of purpose and need for an individual transportation project cause long delays, extra work, and interagency disagreements that are aired in a contentious public arena.

Challenges Associated with Developing Purpose and Need Statements

The challenges identified in the baseline report are categorized under three subheadings: 1) crafting a purpose and need statement, 2) purpose and need integration/coordination with other laws, and 3) economic development as part of the transportation purpose and need.

Crafting a Purpose and Need Statement

Issues that sometimes arise relate to the appropriate complexity and length of a purpose and need statement, the proper scope of purpose and need (e.g., a narrow statement versus a broad need statement), and the justification supporting purpose and need.

A good purpose and need statement should be concise, easy to read, readily understandable, and focus on the essential needs and goals of the project which generally relate to transportation issues (e.g., mobility, capacity, safety, reliability). It should be supported by data justifying the need and should focus on the transportation problem without being so narrowly focused that it constrains the range of reasonable alternatives. Overly long and rambling statements muddy the purpose and need and confuse reviewers. They may also heighten suspicion that wordiness masks a weak project purpose and need.

Transportation agencies and resource agencies may add environmental elements to purpose and need statements as desired goals or benefits of the proposed project, without making them part of the stated purpose. While environmental protection in general or protection of a particular resource is important for any project and is the reason environmental reviews are required, an environmental protection goal should not be part

of the purpose and need statement unless it is a primary purpose of a transportation project (e.g., FAA has authority to approve grants for airport noise projects, so noise mitigation would be a primary purpose in such a case).

The scope of the purpose and need statement is important. Resource agencies have expressed concern that transportation agencies are too narrowly focused on the proposed project solution and define purpose and need accordingly. Broader purpose and need statements might allow for a wider range of reasonable alternatives. For example, it makes a difference if the need is for improved ground transportation from Point A to Point B, instead of the more specific need for a highway. Similar examples can be provided for major airport infrastructure projects. On the other hand, transportation agencies find that very broad definitions of purpose and need, as well as wide-ranging alternatives, are usually not within the range of what is reasonable, feasible, or prudent. At the same time, broader scope should not be neglected where it is appropriate. There is fertile ground for improved interagency guidance on the proper scoping of purpose and need, including when statements are too narrow and when broader statements are unreasonable.

Purpose and Need Integration/Coordination with Other Laws

FHWA and FTA have issued a joint legal memorandum and guidance (February 2005) that present how the transportation planning process can be linked with the NEPA decision making process, especially for purpose and need statements and alternative development. The transportation planning process and the NEPA process work in harmony when the planning process provides the basis or foundation for the purpose and need statement in a NEPA document. To the extent regional or systems-level analyses and choices in the transportation planning process help to form the purpose and need statement for a NEPA document, such planning products should be given great weight by FHWA and FTA, consistent with Congressional and Court direction to respect local sovereignty in planning.

In addition to NEPA, DOT and other Federal agencies are responsible for complying with other environmental laws that have requirements influencing purpose and need. These include, but are not limited to, the Clean Water Act, Clean Air Act, Endangered Species Act, etc. Interagency disagreements over purpose and need can occur as agencies view projects through the lens of their particular interests and strive to comply with multiple laws as individually interpreted by the different agencies. Questions arise about the appropriate level of discretion for a lead agency, the underlying need for a proposed action, and the appropriate level of review by and authority of resource agencies. The most common disagreements are between DOT agencies and the resource agencies that have jurisdiction over a potentially affected resource.

The deference due to the lead agency and the responsibility of the lead agency in the development of project purpose and need has received recent attention. Vision 100—Century of Aviation Reauthorization Act, signed into law in December 2003, directly addresses this issue by establishing a coordinated environmental review process for

airport capacity enhancement projects and designated aviation safety and security projects. Notwithstanding any other provision of law, agencies participating in such a coordinated environmental review process shall be bound by the project purpose and need as defined by the Secretary of Transportation with respect to any environmental review, analysis, opinion, permit, license, or approval.

In 2003, the Council on Environmental Quality (CEQ) in a letter exchange with DOT addressed agency deference for the NEPA process. According to the 2003 letter from CEQ's James Connaughton to Secretary Mineta, "Joint lead or cooperating agencies should afford substantial deference to the DOT agency's articulation of purpose and need." FTA/FHWA guidance issued in 2003 expands on some of the points made in the letter from CEQ by stating that other Federal agencies should only raise questions regarding DOT's purpose and need statements when those questions relate to substantive or procedural problems important to that agency's independent legal responsibilities.

However, there still remain outstanding questions about the practical application of deference as agencies carry out their environmental review and permit responsibilities at the project level. Interagency guidance offering more practical details on deference, perhaps using case study examples, would be useful.

The report cites the NEPA/404 merger process as an example of how the NEPA environmental review process can be consolidated with another requirement, obtaining a permit for discharge of dredged or fill material into waters of the U.S., under Section 404 of the Clean Water Act. This has proved to be a useful and fairly efficient approach for many highway projects, where Section 404 purpose and need issues are most commonly encountered. However, experience in some states is mixed and there continues to be rough spots. Under NEPA, a purpose and need statement should be written broadly enough to support a reasonable range of alternatives. Under Section 404, a project purpose statement must support an evaluation of "practicable" alternatives. "Reasonable" and "practicable" are defined by the regulations implementing NEPA and Section 404, respectively. Ideally, to streamline the environmental review process, the alternatives considered under NEPA would satisfy Section 404 requirements. In practice, this does not always happen, for example, because the NEPA project purpose and need statement, from which project alternatives are identified, is developed before the Section 404 permitting process is initiated. As a result, the alternatives considered under NEPA may be different than those considered during the Section 404 environmental review process. Problems arise when the least environmentally damaging practicable alternative (LEDPA) to the aquatic environment, as identified under Section 404, was not included in the NEPA evaluation of alternatives. While merger agreements get all decision makers to the table early, which is helpful in understanding the overall purpose and need for the transportation project, it is also important to identify aquatic resources involvement as early as possible. This allows for a Section 404 project purpose statement to be identified in a timely fashion that results in an analysis of alternatives complementary to the NEPA analysis.

An issue worthy of further exploration is the extent to which differences in the application of NEPA and Section 404 by Federal agencies actually drive differences in

approaches to purpose and need. It can be problematic for a project, as well as confusing and frustrating for an applicant, if a Section 404 project purpose is different from the transportation purpose of the lead agency and leads to different alternatives that may not address the key transportation needs.

Economic Development as part of the Transportation Purpose and Need

Although not a common occurrence, the inclusion of economic development as a sole purpose and need can be controversial and raise uncertainties for both the transportation agency and resource agencies. In these cases, the primary issue is the question of whether or not economic development is an appropriate justification for transportation projects. It is not a primary or sole justification used for airport or transit infrastructure projects. Other issues involve the range of alternatives (especially non-transportation), and the degree of examination of indirect impacts associated with secondary development. Conflicts may also arise when economic development is considered as part of a project purpose and need and further examination of these cases is warranted.

Guidance and Training

While various individual agency guidance materials and a number of training courses include purpose and need, they do not specifically address how to manage the cross-agency purpose and need concerns identified by agencies and applicants, and described in this baseline report. Individual agency interpretative guidance on purpose and need, in fact, appears to be a contributing factor to a stovepipe approach that can lead to disconnects and disagreements among Federal agencies.

Recommendations

Based on the information compiled in this baseline report and building upon the existing guidance issued by CEQ in 2003 and Vision 100 legislation as appropriate, the Purpose and Need Work Group recommend additional work in order of priority that should be endorsed and promoted by the Task Force agencies.

- 1) That additional investigation should focus on the extent to which Federal agency interpretations and applications of laws and other requirements within their jurisdiction are causing purpose and need conflicts, the key drivers of the conflicts (e.g., different approaches to purpose and need under NEPA and Section 404), and options for avoiding or resolving conflicts. Case studies of previous projects that experienced substantial problems may be used to identify areas that need particular attention. Case studies of complex or controversial projects that successfully avoided conflicts at purpose and need may also illustrate good practices of where the process worked well.
- 2) That additional guidance should be developed to clarify the roles of lead transportation agencies and other engaged agencies in achieving purpose and need statements for transportation projects that give appropriate deference to

transportation agencies so that projects are not subjected to long delays as agencies grapple with differences. When dealing with deference, it is important to maintain the integrity of other agencies' responsibilities and to comply with all applicable environmental requirements. Case studies may also be useful for this task.

- 3) That the Work Group begin to develop interagency guidance addressing the need for responsibly scoped, concise, and clearly written purpose and need statements. The guidance should include examples of appropriate and well-crafted purpose and need statements. The guidance should also provide advice on what special considerations apply, if any, in two circumstances: 1) if economic development is the sole purpose and need for a project; and 2) when economic development is considered as part of the purpose and need for a project.

1. Purpose of Report

This report presents baseline information developed for the Purpose and Need Work Group established under Executive Order (EO) 13274, *Environmental Stewardship and Transportation Infrastructure Project Reviews*. This document is designed for the EO Task Force and for practitioners in transportation and resource agencies to provide a baseline understanding of requirements and resources relevant to purpose and need statements, challenges being faced that sometimes lead to project delays, and mechanisms to improve the development of purpose and need statements. Drawing on the results of literature reviews, reviews of environmental impact statements (EISs), and discussions with over 40 practitioners (federal transportation agencies, federal resource agencies, state departments of transportation, metropolitan planning organizations, and consultants), the report describes laws and regulations, case law, guidance documents, and selected training available relevant to purpose and need. It is organized in three main sections:

2. *How Laws and Regulations Address Purpose and Need Statements (Section 2)* – This section presents a summary of laws, regulations, and executive orders as they relate to project purpose and need for transportation projects, as a basis for understanding the roles and responsibilities of Federal agencies in the context of these requirements.
3. *Challenges Associated with Developing Purpose and Need Statements (Section 3)* – This section provides a summary of key issues and impediments faced when developing purpose and need statements, based on a review of EISs, analysis of case law, and discussions with practitioners. This section is organized around three issues identified in the Purpose and Need Work Group’s Work Plan: 1) crafting a purpose and need statement; 2) purpose and need integration/coordination with other laws, and 3) economic development as part of the purpose and need. It identifies attributes of good purpose and need statements and opportunities to improve development of such statements.
4. *Guidance Materials and Training Programs (Section 4)* – This section contains information on guidance documents and selected training programs relevant to purpose and need. It also includes an assessment of guidance and training needs, based on discussions with staff from Federal, State, and local agencies.

The report concludes with *Recommended Next Steps (Section 5)* for Task Force review.

2. How Laws and Regulations Address Purpose and Need Statements

The Council of Environmental Quality's (CEQ) regulations for implementing NEPA (40 CFR 1502.13) require a brief discussion of "purpose and need" of a proposed action in order to provide context and understanding of alternatives developed. The regulations state that the purpose and need statement "shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action." The purpose and need statement is essentially the foundation of the NEPA decision-making process. It provides the rationale and justification for undertaking a major federal action. It also affects the range of alternatives to be studied, and ultimately, the selected alternative. The purpose and need and the alternatives are weighed against potential environmental impacts in agency environmental reviews and decision-making processes.

Several laws, regulations, and Executive Orders directly or indirectly address the purpose and need statement. A well-crafted and justified purpose and need statement is needed in order to assess the adequacy of alternatives being considered, which is vital to meeting legal requirements.

The DOT is the "lead federal agency" under NEPA for transportation projects that it funds or approves, and as such, has the responsibility to define the purpose and need. At the same time, DOT and other federal agencies may have responsibilities under other laws and regulations that relate to the purpose and need statement.

Having a well-justified purpose and need is vital to meeting the requirements of several laws and regulations, including Section 404 of the Clean Water Act, Section 4(f) (49 U.S.C. 303), Section 309 of the Clean Air Act, and Section 106 of the National Historic Preservation Act. Although the development of a purpose and need statement is not specifically addressed in some of these law and regulations, several of them have requirements regarding the consideration of alternatives, which in turn, requires a well-defined project purpose and need statement to frame the development of alternatives. Without a well-defined and justified purpose and need, it will be difficult to determine which alternatives are reasonable, prudent and practicable, and it may be impossible to dismiss the no-build alternative. *Appendix A* includes a summary description of all laws, regulations, and executive orders identified that relate to the development of purpose and need statements. These include the following:

- Under Section 404 of the Clean Water Act, the U.S. Army Corps of Engineers is responsible for defining the purpose of the project in consideration of issuance of a permit for discharge of dredged or fill material into waters of the United States, including wetlands. The project purpose is used for evaluating practicable alternatives under the Section 404(b)(1) Guidelines, the substantive environmental criteria used in evaluating such discharges. The Section 404(b)(1) Guidelines requires the Corps to prepare the project purpose statement; determine if there are alternatives to first avoid, and then minimize adverse impacts to aquatic resources;

and select the least environmentally damaging practicable alternative (LEDPA). The Corps permit regulations (33 CFR 320-331) state that, as a general matter, the Corps assumes that proposed projects are economically viable and that there is need for a project. However, the regulations also state that the Corps may question the need for the project from the public interest perspective, if circumstances warrant it. Under its CWA Section 404 authorities, EPA is responsible for the development and interpretation of the environmental criteria used by the Corps in evaluating permit applications and maintains a review and comment role in the issuance of Section 404 permits.

- Under Section 4(f), DOT may not approve the use of land from a significant publicly owned public park, recreation area, or wildlife and waterfowl refuge, or any significant historic site unless a determination is made that: (i) There is no feasible and prudent alternative to the use of land from the property; and (ii) The action includes all possible planning to minimize harm to the property resulting from such use.
- Under Section 309 of the Clean Air Act, EPA has the obligation to review and publicly comment on the environmental impacts of major federal actions including actions that are the subject of EISs. According to EPA guidance on its review responsibilities, as part of its review, EPA may comment on the technical adequacy and accuracy of the methodology used to demonstrate the need of the project in cases where this affects the identification of reasonable and feasible alternatives.
- Under Section 106 Regulations of the National Historic Preservation Act, SHPO/THPOs, Indian tribes, and Native Hawaiian organizations, other consulting parties, and organizations and individuals who may be concerned with the possible effects of an agency action on historic properties should be prepared to consult with agencies early in the NEPA process, when the purpose of and need for the proposed action as well as the widest possible range of alternatives are under consideration. (36 CFR 800.8(a)(2))
- Executive Order 11990 on Wetlands directs agencies to avoid to the extent possible the long and short term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative.
- Executive Order 11988, Floodplain Management, as amended by Executive Order 12148, directs agencies, in furtherance of NEPA, the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, to avoid to the extent possible the long and short term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative.

The various laws, regulations, and executive orders do not appear to conflict with NEPA in regard to how purpose and need statements should be written or what content should be included in order to comply with legal requirements. The Section 404(b)(1) Guidelines are the only regulations outside of NEPA's implementing regulations that specifically call for development of a purpose statement. In accordance with the Application for

Department of the Army Permit (33 CFR 325), block 19, Project Purpose, and its associated instructions, the applicant must “Describe the purpose and need for the proposed project. What it will be used for and why? Also include a brief description of any related activities to be developed as the result of the proposed project. Give the approximate dates you plan to begin and complete all work.” All the other laws, regulations, or executive orders primarily relate to examination and selection of alternatives for the project, which in turn, must rely on a valid and supported purpose and need statement.

As a result, it appears that any impediments to developing purpose and need statements, and disagreements that sometimes arise among Federal agencies do not stem from differences or conflicts in the underlying laws. However, multiple laws do assign to different Federal agencies environmental review and permitting responsibilities that either explicitly or implicitly include purpose and need considerations. In turn, these multiple agency responsibilities sometimes result in different agency interpretations of how a purpose and need statement should be scoped and written to meet statutory requirements, what the statement should include, and whether the statement for a particular project is justified and described appropriately. Interlocking Federal agency responsibilities can frustrate agencies and applicants alike when conflicting views of purpose and need for an individual transportation project cause long delays, extra work, and interagency disagreements that are aired in a contentious public arena.

Disagreements sometimes engender disputes over the roles and responsibilities of resource agencies with respect to the purpose and need statement, and to what extent they should defer to the lead transportation agency. There have been recent efforts both within the executive and legislative branch to address this issue. In 2003, CEQ issued a letter addressing the deference that should be afforded by joint lead or cooperating agencies to DOT on transportation projects in the NEPA process. Joint FTA/FHWA guidance, also issued in 2003, expands on some of the points in the CEQ letter.

Vision 100—Century of Aviation Reauthorization Act, signed into law in December 2003, directly addresses this issue by establishing a coordinated environmental review process for airport capacity enhancement projects and designated aviation safety and security projects. Notwithstanding any other provision of law, agencies participating in such a coordinated environmental review process shall be bound by the project purpose and need as defined by the Secretary of Transportation with respect to any environmental review, analysis, opinion, permit, license, or approval.

There still remain outstanding questions about the practical application of deference as agencies carry out their environmental responsibilities at the project level.

3. Challenges Associated with Developing Purpose and Need Statements

The Purpose and Need Work Group identified three issues as potential sources of interagency disagreement and delay in the environmental review process related to purpose and need:

- 1) *Crafting a Purpose and Need Statement* – Questions often arise regarding what information and justification should be included in a purpose and need statement, and how broad or narrow the scope should be in order to satisfy the requirements of the NEPA and other laws.
- 2) *Purpose and Need Integration/Coordination With Other Laws.* As noted earlier, in addition to NEPA, DOT is responsible for complying with environmental laws that have particular requirements governing purpose/need and alternatives, and other Federal agencies also have responsibilities under NEPA and other environmental laws that bear on transportation projects. Agency disagreements over project purpose and need can result in disparate judgments on reasonable alternatives, and different agency judgments on alternatives that need to be considered to comply with applicable laws can raise basic questions on project purpose and need.
- 3) *Economic Development as part of the Transportation Purpose and Need.* There is confusion over the identification of economic development as part of the purpose and need for a transportation project.

This section discusses each of these issues, and other related observations regarding the state of the practice related to purpose and need statements, drawing from a review of case law, discussions with NEPA practitioners from both DOT and resource agencies (see *Appendix B* for a list of discussion questions), and through a review of transportation related EISs (see *Appendix C* for a list of EISs reviewed). It discusses common characteristics of purpose and need statements and characteristics that transportation and resource agency staff agree make for a good purpose and need statement. It also addresses the NEPA/404 merger process, and how this has worked to resolve or create challenges in regard to developing purpose and need statements.

Throughout this discussion, it is important to note that while DOT and resource agency staff indicated that they do encounter impediments on some projects, many of the staff members stated that purpose and need statements are not a source of project delay for most projects. The projects that do encounter impediments tend to be large and controversial, and may have notable effects on wetlands, threatened or endangered species, or land use. In general, FTA projects tend to have fewer interagency disagreements associated with purpose and need statements than FAA and FHWA projects, likely because transit projects typically occur in built environments with comparatively less impact on regulated natural resources (e.g., wetlands or threatened or endangered species) than highway or aviation projects, and tend to face less controversy regarding evaluation of alternatives compared to other transportation projects.

3.1 Crafting a Purpose and Need Statement

Questions often arise regarding what information should be included in a purpose and need statement in order to satisfy the requirements of NEPA and other laws. Issues that sometimes arise relate to: (1) the appropriate complexity and length of a purpose and need statement, (2) the scope of the statement (e.g., a narrow statement versus a broad statement), and (3) the justification supporting the purpose and need, among other issues.

In addition to DOT, purpose and need statements for transportation purposes are shaped by the State departments of transportation (State DOTs), metropolitan planning organizations (MPOs), and transit and airport authorities that propose projects. For highway projects, FHWA and the State DOTs tend to work as a team in preparing the purpose and need statement, with the State DOT usually crafting the statement and FHWA reviewing and advising on the statement. The level of involvement of the FHWA staff varies by project. For airport projects, FAA is a granting agency that reviews the purpose and need statement provided by an applicant (i.e., sponsor of a public use airport) in comparison to FAA's forecast of aviation need. FAA must be satisfied and take responsibility for the purpose and need statement in the NEPA document.

Some uncertainties or problems that have been encountered in the development of purpose and need statements may relate to poor understanding of characteristics of good purpose and need statements by project sponsors or others. In other cases, there are interagency disagreements about how the purpose and need is defined.

3.1.1 Characteristics of Good Purpose and Need Statements

Practitioners generally agree on characteristics that make a good purpose and need statement:

- The statement should be concise, easy-to-read, and readily understandable.
- It should focus on essential needs and goals for the project, which generally relate to transportation issues (e.g., mobility, safety, reliability); it should be careful to delineate other desirable elements (e.g., environmental protection, scenic improvements) as separate from the purpose and need.
- It should be supported by data that justifies the need. The data may be included in a discussion of background, as an appendix or on file in the administrative record.
- It should focus on the problems that need to be addressed, and for which a proposed project is being considered, (e.g., the purpose is to improve safety along a highway segment that has a high accident rate), and should not be written in a way that focuses on the solution or too narrowly constrains the range of alternatives (e.g., the purpose is to widen the highway).

Although these characteristics seem “common sense”, purpose and need statements often fall short in some of these areas, particularly regarding the length and complexity of the

statement. The discussion below describes some of the common problems encountered and some of the opportunities for improvement.

3.1.2 Appropriate Complexity and Length of a Statement

One of the larger problems with purpose and need statements (and some would say with EISs in general) is their length and complexity. Many purpose and need statements for proposed transportation projects are over ten pages long and encompass a wide range of different purposes and needs, making it difficult for the public and resource agencies to discern the core needs motivating the proposed project. Although the purpose and need statement is designed to provide a concise description to the public and decision makers about why the project is being proposed, it often becomes difficult to identify the primary need if a wide range of needs are discussed.

The following is a brief summary of the purpose and need statements from EISs reviewed for this report:

- FTA – Of eight EISs reviewed, the purpose and need statements tended to be long (more than 10 pages) with detailed background and historical information.
- FAA – Of six EISs reviewed, the purpose and need statements tended to focus on the role of FAA to approve or not approve the proposal brought before the Agency by a project sponsor (e.g., airport authority); the statements focused on safety considerations, airport capacity, airspace constraints, and noise issues associated with the proposals.
- FHWA – Of the 17 EISs reviewed, the length of the purpose and need statements varied from 5 to 32 pages. Most of these documents had a brief purpose statement followed by a detailed and much more lengthy need statement.

The general consensus among DOT and resource agency staff members participating in discussions was that the purpose and need statement should be concise, meaning no more than about one page in length, although it could be supported by a discussion of background/context or more detail on the problems being addressed. Recent guidance documents from CEQ and FHWA call for the development of a short statement. According to a letter from James Connaughton of CEQ to DOT Secretary Mineta (May 2003), the purpose and need statement should “typically be only one or two paragraphs long.” In its Joint Guidance on Purpose and Need, FHWA and FTA acknowledge, “While a short purpose and need statement may not be possible for a few transportation projects, every effort should be made to develop a concise purpose and need statement that focuses on the primary transportation challenges to be addressed.”

Common problems occur when purpose and need statements do not focus on the primary purpose and need for a project and mix secondary goals and objectives with the purpose and need. Some of the FHWA EISs that were reviewed included a discussion of all possible elements that can be considered benefits of the project rather than addressing the main need. Extraneous information can lead to imprecise, long, and confusing purpose and need statements. Such statements are perceived by some resource agencies as not

disclosing the underlying need and either purposely or inadvertently clouding the issues that form the basis for the proposed action.

Sometimes jargon and complex language also make the statement difficult to read. Staff charged with writing the purpose and need statement need to know how to write clearly and in simple terms. The statement needs to be written for the general public, and not use overly complex terminology. The CEQ NEPA regulations require agencies to write documents in plain English and make them accessible to the general public. Lengthy and disorganized purpose and need statements hinder both public and resource agency understanding of the need for and purpose of a proposed transportation project. Without a clear understanding of the primary purpose and need, resource agencies will sometimes provide comments on possible alternatives that do not always match the DOT agency's desired range of alternatives based on the primary need.

The general consensus among the agency staff members participating in the discussions is that the purpose and need for a project should focus on the primary transportation problem(s) and goal for the project. It should lay out clearly:

- 1) the "purpose," which states why the project is being proposed and articulates the positive outcomes that are intended;
- 2) the "need," which describes the key problem or problems that are being addressed.

Typically, the purpose and need statement should be preceded by a background section that provides the context and sets the stage for the purpose and need statement. Such information could include information on the long-range transportation plans that were used to support the purpose and need, background on an existing facility, or the role and authority of the agency.

Following the purpose and need statement, a section on "desirable" outcomes that are not the central purpose can be identified. The discussion of secondary goals and objectives should be distinct from the purpose and need. These attributes should not be used as the main factor in determining which alternatives should be analyzed or carried forward but can be used in order to support selection of a preferred alternative. Staff members suggested that safety, mobility, and capacity should usually be the main purposes of transportation projects, and that clearly identifying the essential

Sample Structure for Purpose & Need Section of an Environmental Document

Introduction / Background – A short discussion of the context for the project, including location, background on an existing facility;

Purpose – A very clear, concise description of the primary goals the project is expected to attain (usually no more than one or two paragraphs);

Need – A description of the problems or unsatisfactory conditions that currently exist or are expected with the existing facility or project area;

Other Goals and Objectives – A description of desired outcomes that are not central to the purpose and need, but are nonetheless important considerations.

needs rather than a long list of desirable attributes would provide for a clear and concise purpose and need statement.

Several examples of muddled purpose and need statements were provided by practitioners. For instance, one State DOT staff person described a project where safety was clearly the primary purpose of a highway improvement project, but the purpose and need was expanded to include other issues. In this case, the facility was in a mountainous area on a roadway with a high rate of crashes and serious fatalities, including conflicts between personal vehicles and 18-wheeler trucks. Based on input from environmental and community groups, the desire for recreational opportunities for hikers and bicyclists in the area also made its way into the purpose and need statement. This created problems because each of the alternatives being developed then included hiker/biker trails, even though incorporating such facilities into the terrain and maintaining the focus on safety would be extremely difficult. Ultimately, the purpose and need was revised to recognize the core need of the project was safety and other aspects fell in the category of “desirable” attributes or objectives.

Another individual described a project to replace a crumbling bridge in the vicinity of a historically important and heavily used state park. Although the primary purpose of the project was clearly to make the bridge safe, preservation of the park also made its way in as part of the purpose and need statement. In this case, it took six months of discussions to reach agreement on the purpose and need, which ultimately included twelve objectives related to preservation of the park. In this case, agency negotiations were perceived as adding delay in a case where the primary purpose and need was clear and should have been simple to develop.

For certain projects, environmental protection may be the primary purpose. For example, FAA has legislative authority to fund airport noise compatibility projects and certain airport emissions projects. However, for the bulk of transportation projects, most staff across federal agencies agreed that although environmental protection and community enhancement are important goals, these issues should not be a part of the purpose and need statement itself. This approach is supported by guidance documents from Utah and Oregon DOTs that promote inclusion of a goals and objectives section that can include information beyond the core purpose and need.

3.1.3 Scope of the Statement

Disagreements can sometimes arise regarding the scope of the statement and its degree of specificity. This problem sometimes arises if the purpose and need statement is written too narrowly focusing on the solution rather than the problems that the proposed action is designed to address.

Court decisions indicate that the purpose and need for a proposed project cannot be defined in terms so unreasonably narrow that only one alternative would accomplish the goals of the project (*City of New York v. U.S. Department of Transportation*, 715 F.2d 732 (2nd Cir 1983), appeal dismissed 465 U.S. 1055 (1984)). In *Citizens Against Burlington v. Busey*, 938 F.2d 190, 198 (DC Cir 1991), the Court ruled that an agency

“may not define the objectives of its action in terms so unreasonably narrow that only one alternative...would accomplish the goals of the agency's action, and the EIS would become a foreordained formality. Nor may any agency frame its goals in terms so unreasonably broad that an infinite number of alternatives would accomplish these goals and the project would collapse under the weight of the possibilities.”

Courts typically defer to agency judgment in defining goals of proposed projects so long as the statement is reasonable. The court in *Trout Unlimited v. Morton*, 509 F. 2d 1276 (9th Cir. 1974) found that an agency need not consider all of the possible alternative actions in the environmental analysis; it is only required to look at those that are reasonable in light of the project’s stated purpose. In *Citizens Against Burlington v. Busey*, 938 F.2d 190, 199 (DC Cir 1991), the Court ruled that the decision focused on whether or not to approve an airport plan, and not on the applicant’s rationale for selecting which airport to expand. The D.C. Circuit stated that “NEPA commands agencies to discuss alternatives to the proposed ‘major Federal actions . . . and not to alternatives to the applicant's proposal.’”(See *Appendix D* for a summary of case law addressing purpose and need.)

In some cases, resource agencies have expressed concern that transportation agencies are too narrowly focused on solutions that address only one mode, or fail to recognize options that do not involve development of infrastructure. For instance, FHWA may be proposing a highway project, but some resource agency staff feel that the project purpose and need statement should be written in a way that allows non-highway infrastructure alternatives, such as consideration of transit, demand management, and improved transportation system management. For example, rather than stating that “the purpose of the proposed project is to expand highway capacity from point A to point B” a broader statement may read “the purpose of the proposed project is to improve mobility of people, goods, and services between point A and point B.” Broader statements might allow for alternatives to highway capacity, such as providing enhanced transit services and demand management to improve mobility and reduce congestion, or reducing speed limits to improve safety.

Transportation agency staff acknowledge the difficulty of examining multi-modal alternatives and options that extend beyond infrastructure development. Development of multi-modal alternatives is often challenging or nonproductive due to the obstacles in responding to a transportation demand with an alternate modal solution. The transportation agency view is that very broad definitions of purpose and need, as well as wide-ranging alternatives, are usually not within the range of what is reasonable, feasible, or prudent—but broader scope should not be neglected where it is appropriate. Institutional factors can also play a role, given the modal structure of most transportation authorities and agencies, and the expertise of staff involved in the study. An example of a NEPA document considering multimodal alternatives is a Federal Railroad Administration’s EIS that looked at building a high speed rail system through most of California. In this case, the purpose and need statement was written broadly enough to allow for the consideration of alternatives in the EIS that involved a combination of airport and highway expansion to move people between the various locations studied for

the rail system. The nature of a high-speed rail system is somewhat unique. Most surface transportation projects come out of a long-range planning process, and the modal option is already determined by the time a project is going through an EIS.

FHWA staff sometimes struggle to resolve issues regarding the proper scope of the purpose and need statement and consideration of broader alternatives with resource agencies. In an attempt to resolve these issues when they involve cooperating agencies, FHWA has consulted with the CEQ on the deference that should be provided to the lead Federal agency in the preparation of the purpose and need statement during the NEPA process. Also, FHWA/FTA encourage the transportation planning process for long range plans to review different modes of transportation and link the various modes of transportation. In some metropolitan areas, the highway agencies are trying to engage the resource agencies in the transportation planning process so that they have earlier input on purpose and need statements.

Similarly, for FAA projects that involve siting new airports or increasing major airport capacity, resource agencies sometimes perceive that FAA purpose and need statements are too narrowly focused. They would like to see statements that allow for a broader range of alternatives, such as expansion of a different airport or alternate airport locations. However, FAA's view is that far-reaching alternatives are not usually reasonable when evaluated in light of a thorough knowledge of aviation factors, the growing national and international demand for air transportation, practical and environmental expansion constraints of other airports, and the inability of such alternatives to be implemented. For airport projects, the purpose and need and range of alternatives are also constrained by the nature of the mode (i.e., alternative airports are extremely difficult to locate and to finance) and the lack of alternative project applicants, which are generally local airport authorities and air service providers. FAA conducts discussions to educate FAA project staff of the concerns of the resource agencies, as well as to educate the staff of the resource agencies of the aviation factors and extent of authority of FAA.

3.1.4 Justification Supporting the Purpose and Need

Data to support the stated need for a project is important in order to justify the need and ensure greater interagency and public understanding of why the project is being proposed. The inclusion of vague or suspect information into a purpose and need statement and the lack of data were identified as deficiencies that sometimes lead to interagency disagreement and/or project delays. As an example, one FHWA staff person identified a project where safety was initially identified as a project purpose, but the accident data did not support the need. As a result, the statement was revised to focus on economic development.

One point of disagreement that sometimes occurs regarding justification for a purpose and need statement is the use of local plans and zoning. Resource agencies in some cases are uncomfortable when DOT agencies use these documents as justification for a project's need since a jurisdiction may have re-zoned an area to make way for and support future development that is contingent on a highway project. Therefore, using the

local planning documents to support the need for a project may create a self-fulfilling prophesy. In such cases, the resource agencies may note that it was the highway project that caused the rezoning or expected development. Transportation agencies, on the other hand, feel that they must rely on the local land use plans as a baseline for growth that is expected or desired for a region.

Aviation forecasting data is usually an important input into demonstrating the need for an airport project. For FAA projects, resource agency staff indicated that they sometimes question whether FAA performs its own analysis of the forecast data provided by an applicant, as such data are often the basis for the purpose and need statement. FAA staff indicated that they do independently analyze the data provided by an applicant, and a review of airport EISs found that FAA typically includes an extensive background discussion within the purpose and need section that clarifies the role, authority, and procedure implemented by FAA in preparing an EIS, which includes a review of planning and forecast data provided by an applicant in comparison with FAA's own data. FAA performs additional analysis, as necessary to be satisfied that the underlying support for the purpose and need of a proposed project is sound. In cases where FAA and the project sponsor disagree on the forecast data that underlies the need for a project, the difference of opinion is normally resolved based on further analysis. Both the FAA and sponsor positions may be presented in the EIS. In a few rare cases where FAA did not find sufficient aviation need to support a grant and there were no environmental or other reasons to prohibit the project, FAA, approved the airport layout plan to allow the sponsor to implement the project with its own funds, but did not commit Federal financial resources to implement the project.

3.1.5 Relationship to Transportation Planning Process

FHWA and FTA have issued a joint legal memorandum and guidance (February 2005) that present how the transportation planning process can be linked with the NEPA decision making process. Most of the remainder of this section is excerpted from the legal memorandum from D.J. Gribbin, Chief Counsel of FHWA to Cindy Burbank and David Vossolo.

The transportation planning process and the NEPA process work in harmony when the planning process provides the basis or foundation for the purpose and need statement in a NEPA document. To the extent regional or systems-level analyses and choices in the transportation planning process help to form the purpose and need statement for a NEPA document, such planning products should be given great weight by FHWA and FTA, consistent with Congressional and Court direction to respect local sovereignty in planning.

The transportation planning process required by 23 U.S.C. 134 and 135 and 49 U.S.C. 5303-5306 sets the stage for future development of transportation projects. As part of the transportation planning process, States and local metropolitan planning organizations (MPOs) must develop long-range transportation plans to address projected transportation needs. In addition, they must create transportation improvement programs (TIPs or STIPs), which identify a list of priority projects to be carried out in the next three years to

implement the plan. To receive Federal funding, transportation projects must come from a TIP or STIP. As a result, much of the data and decision making undertaken by state and local officials during the planning process carry forward into the project development activities that follow the TIP or STIP. This means that the planning process and the environmental assessment required during project development by the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4231 *et seq.*) should work in tandem, with the results of the transportation planning process feeding into the NEPA process. Congress has put great emphasis on the transportation planning process for shaping transportation decisions, and has retained and refined that emphasis in surface transportation law over decades.

Transportation agency staff and others indicated that ideally, the purpose and need for highway and transit projects should come out of the long-range transportation planning process. That is the point at which systemwide needs are analyzed and projects are moved forward for programming. In practice, though, the environmental analyses produced during the NEPA process are sometimes disconnected from the analyses used to prepare transportation plans, transportation improvement programs, and supporting corridor or subarea studies. Analyses and decisions occurring during transportation planning can be ignored or redone in the NEPA process, resulting in a duplication of work and delays in implementation of transportation projects. However, transportation practitioners acknowledge that the hand off between planning and project development is not often done well and resource agencies may not accept planning decisions and analysis for use in NEPA.

The Major Investment Study (MIS) process was supposed to help create the linkage between long-range planning and project development by requiring an MIS study to be conducted as part of the metropolitan planning process. The MIS focused on a single major investment or corridor and involved identification of a “locally preferred alternative.” In practice, however, when an MIS was conducted prior to NEPA, the results often did not transfer directly to the NEPA document, and when the MIS was conducted during the NEPA process, little value was added. As a result, the MIS requirement was eliminated by Congress in TEA-21.

For studies, analyses or conclusions from the transportation planning process to be used in the NEPA process, they must meet certain standards established by NEPA. This is because the information and products coming from the planning process must be sufficiently comprehensive that the Federal government may reasonably rely upon them in its NEPA analysis and documentation. Transportation planning processes vary greatly from locality to locality. Some transportation planning processes will already meet these standards, while others might need some modification to do so. The purpose and need statement in a NEPA document is where the planning process and the NEPA process most clearly intersect. A sound planning process is a primary source of the project purpose and need. It is through the planning process that state and local governments determine what the transportation needs of an area are, which of transportation needs they wish to address, and in what time frame they wish to address them. Indeed, that is what

the law requires from the planning process and actually prevents projects that do not come from the planning process from going forward.

The purpose and need statement, at a minimum, is a statement of the transportation problem to be solved by the proposed project. It is often presented in two parts: broad goals and objectives, and a description of the transportation conditions (congestion, safety, etc.) underlying the problem. The long-range transportation plan also includes goals and objectives similar to “purpose and need” but on a broader scale, since it typically covers a wider area and spans at least twenty years. These goals and objectives are often identified through extensive public outreach, sometimes called “visioning” or “alternative futures” exercises. The purpose and need statement for a transportation project should be consistent with and based on the goals and objectives developed during the planning process.

Getting input from Federal agencies as transportation goals and objectives are developed during the planning process is advisable and would be consistent with the cooperative relationship envisioned by statute and reinforced by courts. Such participation would give Federal agencies a better insight into the needs and objectives of the locality and would also provide an important opportunity for Federal concerns to be identified and addressed early in the process. These concerns could include issues that might be raised by Federal agencies in considering permit applications for projects designed to implement the transportation plan. However, the responsibility for local planning lies with the metropolitan planning organization or the State, not the Federal government.

In many cases, the goals and objectives in the transportation plan are supported by a needs assessment and problem statement describing current transportation problems to be addressed. Although the goals and objectives in the long-range transportation plan will be broader than what is appropriate for a specific project, they can be the foundation for the purpose and need to be used in a NEPA document. For example, they can be used to generate corridor-level purpose and need statements, during planning, for use in NEPA documents. The challenge is to ensure what comes from the long-range transportation plan is not so general as to generate a range of alternatives that are not responsive to the problem to be solved.

Despite the challenges, there are several examples of innovative approaches to better tie the project purpose and need to work coming out of the planning phase. For example:

- In the Transportation Improvement Program (TIP) prepared by the Metropolitan Transportation Commission (MTC), the metropolitan planning organization for the San Francisco Bay Area, there is a one to two sentence purpose and need statement for each project included in the TIP. The statement identifies the primary goals (e.g., safety, capacity), and can be used as a good starting point in developing the purpose and need for a project as part of the NEPA process.
- North Carolina DOT developed purpose and need guidelines for developing planning-level purpose and need statements for projects that have received transportation planning assistance by the Statewide Planning (SWP) Branch of NCDOT. This effort

aims to more efficiently transition from transportation planning to project planning. Planning level purpose and need statements will only include information that is typically generated during the systems planning process, and will be used to develop project level purpose and need statements that are sufficient to comply with NEPA.

- Caltrans' *Purpose and Need Team Final Report and Recommendations*, dated July 2003, explains how quality purpose and need statements are developed and refined iteratively from planning through project approval. According to the document, broad participation from many functional units as members of the Project Development Team, and data retention and transmission, are key factors in the successful development and refinement of sound purpose and need statements. The purpose and need within a specific corridor is further refined in the Transportation Concept Report, and during the Project Initiation Document (PID) phase, the purpose and need for individual projects is developed based on the earlier system or corridor planning. Project purpose and need takes its final and most refined form during the Project Approval and Environmental Document (PA&ED) phase.
- The Idaho Transportation Department (ITD) developed the Idaho Corridor Planning Guidebook (1998), which describes how to conduct transportation corridor planning to integrate transportation planning with land-use planning, and to coordinate local and state transportation planning efforts. Chapter 5 of the guidebook focuses on establishing a statement of purpose and need, and identifying the goals for the corridor, which could then be used to support project purpose and need in the NEPA process.

For FAA projects, the planning process is performed by the airport operator, typically local or regional airport authorities. Airport master plans, which are funded by FAA grants and involve FAA technically, rely heavily on the forecasted operations (flights) at a particular airport or for a particular region. These master plans are used to develop proposed airport expansion projects. Planning on a larger scale may also be undertaken to evaluate the need for the development of a new airport. Planning studies provide information that feeds into project purpose and need statements.

3.1.6 Evolving / Iterative Process for Developing the Statement

Several transportation practitioners described the purpose and need statement as something that can evolve from planning through the project development process, as new information is collected and developed. They noted that the statement does not need to be static. It can be and should be reexamined, and the lead agency should be fluid enough to consider changes to the purpose and need. Several transportation agency staff identified examples of cases where the purpose and need changed as a project matured.

This approach is consistent with FHWA's document, "The Importance of Purpose and Need in Environmental Documents" (September 18, 1990), which states:

The purpose and need section of the project may, and probably should, evolve as information is developed and more is learned about the project and the corridor. For example, assume that the only known information with regard to purpose and need is that additional capacity is needed

between points x and y. At the outset, it may appear that commuter traffic to a downtown area is the problem and only this traffic needs to be served. A wide range of alternatives may meet this need. As the studies progress, it may be learned that a shopping center, university, major suburban employer, and other traffic generators contribute substantially to the problem and require transportation service. In this case, the need is further refined so that not only commuter trips but also student, shopping, and other trips will be accommodated.

These refinements would clearly reduce and limit the number of alternatives which could satisfy the project's purpose and need, thereby reducing the number and range of reasonable, prudent and practicable alternatives. If an alternative is suggested that does not serve the university or other traffic generator, and such service is a vital element of the project, the alternative may be eliminated from future study since it does not meet the need for the project.

Resource agencies, however, sometimes are skeptical of changes in the purpose and need for a project, since it appears that the need is being crafted to fit the project rather than the other way around. This can lead to disagreement or lack of trust between the resource agency and the DOT agency. Disagreements sometimes occur if the purpose and need statement was revised to reflect local land use plans that have changed over time, particularly if there are questions about induced growth due to the project and if it appears that land use plans were revised to reflect the transportation project.

Several states recommend use of an iterative process to develop the project purpose and need. For example, as noted earlier, Caltrans' *Purpose and Need Team Final Report and Recommendations*, explains how quality purpose and need statements are developed and refined iteratively from planning through project approval. It explains how the purpose and need for a project evolves from system or corridor planning through the Project Initiation Document (PID) phase, through the Project Approval and Environmental Document (PA&ED) phase. During PA&ED, Environmental Planning prepares the environmental document that publicly discloses the intent and the supporting evidence for the project. By the end of PA&ED the purpose and need has been finalized.

As another example of an interactive process, Oregon developed the Collaborative Environmental and Transportation Agreement for Streamlining (CETAS). The agreement was approved in April 2001 by ten agencies, including the Oregon Department of Transportation (ODOT), the Federal Highway Administration (FHWA), the US Army Corps of Engineers, the US Environmental Protection Agency, the US Fish and Wildlife Service (FWS), the National Marine Fisheries Service (NMFS), and several state resource and regulatory agencies. Agencies scope projects to determine if they should follow the Major Transportation Projects Agreement, a part of the CETAS which guides the review of projects likely to require an Environmental Assessment or Environmental Impact Statement. At monthly meetings, agencies receive project briefings and concur on Purpose and Need, Range of Alternatives, Criteria for Selection, and Preferred

Alternative. Once concurrence is reached, issues are not revisited unless major changes occur, such as ODOT project changes or new endangered species listings. Scoping projects standardizes the review process, keeping agencies on track and allowing time and resources to be used efficiently on projects with significant environmental impacts.

3.1.7 Examples of Well-Crafted Purpose and Need Statements

Appendix E provides two examples of statements from highway EIS that generally follow the characteristics of good purpose and need statements. Many of the other EISs reviewed for this report contained some characteristics of good statements but fell short in some areas. It would be useful to collect additional examples to highlight good practices for a range of different types of highway, transit, and airport projects.

3.2 Purpose and Need Integration/Coordination with Other Laws

As noted earlier (in Section 2), in addition to NEPA, DOT is responsible for complying with environmental laws that have requirements influencing purpose and need and alternatives. Equally important, DOT is responsible for its own statutory responsibilities for safety, mobility, economic productivity and security, all of which influence purpose and need. Other Federal agencies also have responsibilities under NEPA and other environmental laws (e.g., Clean Water Act, Clean Air Act, Endangered Species Act, Historic Preservation Act) that bear on transportation projects.

Interagency disagreements over purpose and need can occur as agencies strive to comply with multiple laws as interpreted by the different agencies. Agency disagreements on a transportation project's purpose and need can result in disparate judgments on the range of reasonable alternatives that would satisfy the purpose and need. Likewise, different agency judgments on alternatives that need to be considered to comply with applicable laws can raise basic questions on project purpose and need. Questions about the appropriate level of discretion for a lead agency in the development of a purpose and need statement, the underlying need for a proposed action, the appropriate level of review by and authority of resource agencies, and the appropriate level of consideration to state/local zoning, fiscal, land use and other policies have been a source of disagreement and delay.

Questions arise most often on highway projects where 404 permits must be issued, and where the Army Corp has the ability to approve or deny permits to discharge fill into waters of the U.S., including wetlands. For transit and airport projects, 404 permit issues centering on purpose and need are less numerous than for highway projects, and only encountered on a small proportion of their proposed projects. However, when permit issues do occur, they can have sizeable repercussions in terms of interagency conflicts, disparate Federal messages to applicants and the public, and delays. For highway projects, in order to reduce duplication and potential delays associated with development of divergent NEPA purpose and need statements and Section 404 project purpose statements, a number of states have implemented NEPA and 404 merger agreements. The 404 merger agreements call for the concurrent completion of the NEPA document

and the 404 permit application for FHWA projects. However, in some cases, the NEPA/404 merger process has also led to disagreements as the merger process calls for concurrence on the project purpose and need.

This section summarizes observations on issues associated with the discretion of the lead Federal agency in responding to comments on the purpose and need statement by resource agencies, and issues that have arisen where a NEPA/404 merger process has been implemented.

3.2.1 Deference to Lead Agency

Disagreements sometimes have occurred between the DOT agencies and the resource agencies with jurisdiction by law over a potentially affected resource. On the one hand, the DOT agencies have statutory mission to improve the nation's transportation system and have authority as the lead agency for the NEPA document of a transportation project, with the technical expertise to define the transportation purpose and need for the project. On the other hand, the resource agencies have statutory authority to protect their respective resources (e.g., EPA reviews the adequacy of EISs under Section 309 of the Clean Air Act and has other authority under the Clean Air Act and Clean Water Act, the USACE and EPA have the authority to protect waters of the U.S. under Section 404 of the Clean Water Act, USFWS has authority under the Endangered Species Act, etc).

The resource agencies often see the purpose and need in advance of the Draft EIS (e.g. during scoping or during regulatory consultations), and view their review of the purpose and need statement as one of their primary opportunities to help frame the alternatives under consideration. Alterations of the purpose and need statement proposed by a resource agency are often designed to provide additional alternatives that would potentially avoid or minimize the adverse impact on a protected resource. This, in turn, can be a source of disagreement between agencies if there are divergent opinions on how the purpose and need should be framed.

Questions about the role and responsibilities of agencies in crafting a purpose and need statement have sometimes been at the center of disagreements. In response to critical comments on purpose and need statements, DOT staff often noted that resource agencies do not have transportation mission responsibility or the technical expertise to comment on the underlying needs analysis and that comments are sometimes unsubstantiated. Many DOT staff indicated that the development of the purpose and need statement should be a solely DOT agency function and that the resource agencies should not question the purpose and need statement. Other DOT staff acknowledged the desire of resource agencies to comment on purpose and need statements for proposed actions that may have significant effects on natural resources and other areas. Comments provided by resource agencies tend to question the underlying need for the action and highlight the value of the resource under their protection in relation to the need for the action, e.g. preserving wildlife habitat or corridors versus the need to build a new or bigger road to reduce traffic. Many of the resource agency staff emphasized the importance of their input into purpose and need statements as part of the NEPA process and meeting their statutory requirements.

Resource agencies sometimes act as cooperating agencies. Given questions about the roles and responsibilities of federal agencies in the development of the purpose and need statement, DOT Secretary Mineta requested clarification from CEQ regarding cooperating agencies. According to the 2003 letter from CEQ's James Connaughton to Secretary Mineta, for the NEPA process, "Joint lead or cooperating agencies should afford substantial deference to the DOT agency's articulation of purpose and need." The 2003 joint FTA/FHWA guidance addresses some of the points made in the letter from CEQ:

Due to the deference afforded the lead agency in developing the EIS, other Federal agencies should only raise questions regarding DOT's purpose and need statements when those questions relate to substantive or procedural problems (including omission of factors) important to that agency's independent legal responsibilities. Such questions should be raised immediately, and, if necessary, elevated to higher level decision-makers within both the DOT and the commenting agency.

For proposed transportation actions where other Federal agencies do not have separate decision making responsibilities, FHWA or FTA has the sole authority and responsibility for defining the purpose and need statement. While it is entirely appropriate for other agencies to comment on the purpose and need statement, both during early coordination and in response to the draft environmental impact document, other agencies cannot require FHWA or FTA to alter the purpose and need statement.

In the case of airport projects, when resource agencies have questioned the FAA's purpose and need statements, FAA works with those agencies to better explain the aviation factors, rationale for the airport development, and their statutory authority and role in airport development. New provisions in FAA's Vision 100 legislation give the Secretary of Transportation additional authority to be the final arbiter of the purpose and need for airport capacity enhancement projects and designated aviation safety and security projects, as described in Section 2 of this report.

3.2.2 NEPA/404 Merger Process

Background on the Merger Process

The NEPA/404 merger process is designed to consolidate the environmental review process associated with documents prepared under NEPA and individual permits prepared under Section 404 of the Clean Water Act. The consolidation of the environmental review process is designed to expedite the overall environmental review process by concurrently preparing the NEPA document and the Section 404 permit application. FHWA pursued the merger agreements with the states, EPA, USACE and other parties as the majority of the FHWA projects involve waters of the U.S., including

wetlands. The merger process mostly affects FHWA, because FAA and FTA are not included as signatories in the merger agreements, as noted below.¹ As of September 2002, 29 states had adopted agreements to merge the FHWA NEPA process and the CWA permitting process (Section 404) administered by the USACE with oversight by EPA.

The merger agreements tend to have three or four concurrence points including:

1. Purpose and Need Statement
2. Alternatives Carried Forward (analyzed in EIS)
3. Selection of Preferred Alternative under NEPA and Least Environmental Damaging Practicable Alternative (LEDPA) under Section 404 of the CWA
4. Impact Minimization (note, this is sometimes included with number 3 and termed “mitigation plan”)

These concurrence points are considered sequentially, with each point building upon the previous one. At each concurrence point, a signatory to the merger agreement is able to review the items associated with each concurrence point and provide comments. Included with each merger agreement is a dispute settlement process. The design of the merger agreements anticipates that concurrence at each concurrence point will be achieved. However, in more controversial projects, the probability of non-concurrence may increase. Therefore, a process is needed to resolve disputes at any one of the concurrence points when one or more agencies do not concur. Merger agreements in Illinois, Iowa, and Nebraska specify that for such situations, within 30 days of a finding of non-concurrence at one of the designated points, the FHWA and state DOT will meet with the agencies involved to determine the direction for resolution of the dispute. The direction for resolution will be agreed upon through consensus of the agencies involved.

Depending on the specific merger agreement for dispute resolution or non-concurrence, the NEPA document or Section 404 permit process may continue whether or not attempts to reach concurrence are successful. However, if the dispute remains unresolved, any agency in non-concurrence retains the option to elevate its concerns through existing, formalized dispute elevation procedures. This will encourage all participating agencies to very carefully consider and accommodate the concerns raised by the resource agencies prior to finalization of a NEPA document and submission of a Section 404 permit application.

¹ For FTA and FAA, 404 permit issues focusing on purpose and need were not identified as commonly affecting the NEPA process, as is the case for highway projects. Although FTA is signatory to a NEPA/404 Merger agreement in Region 9, this is an option with limited applicability, because FTA’s transit projects typically do not involve waters of the U.S. The FAA does experience aquatic resources or wetlands on airports and encourages and implements early consultation with resource agencies. The FAA supports concurrent NEPA and 404 processes, but does not use a formal merger process. Airport sponsors sometimes prefer to wait until late in, or even after, FAA’s NEPA process to initiate the Section 404 permitting because of the uncertainty over the proposed project’s footprint.

Issues Faced in the Merger Process

In general, practitioners involved in the NEPA / 404 Merger Process state that the process, as intended, has helped to expedite the environmental review process by ensuring that concurrence on purpose and need occurs during the early phases of EIS development. Since the purpose and need statement is the foundation for the identification and selection of alternatives for consideration, this avoids potential backtracking and aids in defining practicable alternatives to meet the requirements of a Section 404 permit.

DOT agency and resource agency staff generally indicated that although there may be a period of learning how the process works and how to work with DOT and resource agency staff, after a NEPA / 404 merger process has been active for a few years, it becomes a fairly effective process. Such efficiencies result primarily from the establishment of working relationships, and understanding the values and meeting the expectations of the resource and DOT agencies. One of the most commonly cited benefits of the merger process is increased communication and understanding of issues, which enables issues to be addressed cooperatively and early on.

Resource agency staff and other stakeholders indicated that early participation in project planning has proven to be effective in the early identification and resolution of project issues. FHWA staff indicated that a benefit from merger agreements has been that the process gets the agencies involved and achieves concurrence at key points in the process, which eliminates having to revisit issues that were agreed upon previously. For some USACE districts, the merger agreement has streamlined the process by concentrating the issues at one meeting rather than several time-consuming reviews and also has helped reduce redundancy. One of the clearest benefits to project development comes from improved communication, which can help to ensure that environmental concerns are addressed early and help to strengthen environmental stewardship; these issues are most often raised during consideration of project alternatives.

On the other hand, in some cases, agencies have found that the merger process can create some of its own difficulties. Concerns expressed by transportation agency staff regarding the merger process seem to primarily relate to three issues: 1) allowing too much transportation decision making authority to resource agencies; 2) elevating 404/wetlands issues above other environmental and community concerns; and 3) delay associated with gaining concurrence with all parties involved in the agreement.

In some cases, DOT staff members have indicated that they believe the 404 merger agreements have provided resource agency staff too much authority in crafting the purpose and need of a transportation project. Since the merger process requires concurrence of all parties involved, some transportation agencies have felt that it gives resource agencies an opportunity to question purpose and need even when concerns do not relate to the 404 permit. Some DOTs perceived that resource agency staff sometimes attempt to control the process (e.g., stop a highway project from proceeding or advance an environmental agenda) through objections to the purpose and need statement. In cases where broader environmental concerns are being raised, philosophical differences

regarding the need for the highway project versus other non-highway alternatives can lead to delay, which works against the goal of the merger process itself.

Without the merger agreement, resource agencies would comment on the purpose and need statement, but need not concur. In such cases, recent guidance by FHWA/FTA based on consultation with CEQ, indicates that cooperating agencies should give substantial deference to the DOT in defining the transportation project purpose and need. However, unresolved issues may resurface later during the environmental review process (e.g., during the public comment period of an EIS). Addressing resource agency comments on purpose and need later in the process could lead to project delays that merger agreements were intended to minimize. With the merger process, more time may be required to craft the purpose and need statement. For instance, staff from Caltrans indicated that the merger process often requires a large amount of back and forth discussions and negotiation in order to come to agreement on the purpose and need. Without the merger agreement, this staff indicated that Caltrans would consult with the agencies, but would not expend as much time and resources in negotiation.

Some states have chosen not to participate in the merger process. For example, Texas DOT has signed a merger agreement but chose not to implement the merger process since it prefers to have the resources agencies comment on the purpose and need statement, without the responsibility of concurrence. Caltrans staff suggested the merger agreement should be applied more selectively and depend on the project scope and possible size of impacts. Small and medium-size projects, for instance, may not need to go through the NEPA/404 merger agreement since the purpose and need, alternatives, and impacts are more straightforward. In general, staff members indicated that the development of alternatives, rather than the development of a project purpose statement is more challenging and controversial. However, the merger process sometimes can slow down the process by requiring discussion and negotiation at each point, and issues relating to alternatives often come up early in discussion of purpose and need.

Another issue faced in the NEPA / 404 Merger Process relates to differences in how the NEPA purpose and need is defined in relation to the Section 404 project purpose. Under NEPA, a purpose and need statement should be written broadly enough to support a “reasonable” range of alternatives. Under Section 404, a project purpose statement must support an evaluation of “practicable” alternatives. “Reasonable” and “practicable” are defined by the regulations implementing NEPA and Section 404, respectively. Ideally, to streamline the environmental review process, the alternatives considered under NEPA would satisfy Section 404 requirements. In practice, this does not always happen, for example, because the NEPA project purpose and need statement, from which project alternatives are identified, is developed before the Section 404 permitting process is initiated. As a result, the alternatives considered under NEPA may be different than those considered during the Section 404 environmental review process. Problems arise when the least environmentally damaging practicable alternative (LEDPA) to the aquatic environment, as identified under Section 404, was not included in the NEPA evaluation of alternatives. Therefore, while a merger agreement gets all the decision makers to the table early, which is helpful in developing understanding of the overall purpose and need

for the transportation action, it is also important to identify aquatic resource involvement as early as possible. This allows for a Section 404 project purpose statement to be identified in a timely fashion and results in an analysis of alternatives complementary to the NEPA analyses.

An issue worthy of further exploration is the extent to which differences in the application of NEPA and Section 404 by Federal agencies actually drive differences in approaches to purpose and need. It can be problematic for a project, as well as confusing and frustrating for an applicant, if a Section 404 project purpose is different from the transportation purpose of the lead agency and leads to different alternatives that may not address the key transportation needs.

At least one State DOT indicated that the Army Corps in some cases wants to include its project purpose in the NEPA purpose and need statement. This can be problematic if the Section 404 project purpose focuses on water resource issues and does not really address the key needs associated with the proposed transportation project. Since several State DOTs indicated that some resource agencies have tried to incorporate environmental goals into the purpose and need statement, it appears that additional guidance and training may be needed regarding the proper scope of the statement and roles in the NEPA/404 merger process.

3.3 Economic Development as part of the Transportation Purpose and Need

The inclusion of economic development as a purpose and need can be controversial, and raise uncertainties both for the transportation agency proposing the project and for resource agencies that review the statement. Uncertainties generally relate to three issues:

- 1) Questions about whether economic development is an appropriate justification for transportation projects, given limited analytical information about whether a transportation project can actually fulfill the stated purpose and deliver on its promises of economic development;
- 2) Questions about the range of alternatives that should be considered, and specifically, whether non-transportation options should be examined; and
- 3) Questions about the extent to which indirect impacts associated with secondary development must be examined, and how to address all of the development-related impacts given other statutory requirements.

In cases where economic development is not the primary purpose and need but is one of several goals, questions have also sometimes arisen over how, and whether, the DOT is presenting economic development within the purpose and need statement.

Throughout this discussion, it is important to note that inclusion of economic development in the purpose and need statement is not a common occurrence. Based on discussions with agency staff, it appears that economic development has been used as the primary purpose and need in only a few EISs, and has appeared more often as a secondary goal or ancillary benefit. Projects where economic development is the primary

purpose were usually highway projects in rural areas. Agency staff from both FTA and FAA indicated that they cannot fund or advance projects with economic development as the sole stated purpose and need; they must have a primary transportation need. However, FAA will acknowledge the economic development goals of an applicant for an airport project, and so economic development goals have been incorporated into the purpose and need statement for some airport projects.

3.3.1 Appropriate Use of Economic Development in the Purpose and Need Statement

Although most transportation projects stem from a transportation-related need (e.g., congestion problems, lack of access, safety problems), transportation agencies recognized that economic development can be the primary purpose and need for highway projects in rural areas, and for certain projects mandated by Congress. Justifying these projects on the basis of a transportation problem would simply not be possible, since data would not substantiate a traffic or safety problem. In these cases, the transportation needs are inextricably linking to the underlying need for economic development in economically depressed or underutilized areas.

Several examples of highway projects where economic development was a key component of the project purpose and need were noted, including:

- I-73 in Southwestern Virginia (Martinsville to Roanoke)
- Mon-Fayette Highway in Southwestern Pennsylvania
- Lackawanna Valley Industrial Highway in Pennsylvania

One of the challenges faced by transportation agencies is that it is often difficult to analytically demonstrate that a transportation project will result in the economic development that it is intended to bring. Resource agency staff may not be comfortable with research available linking road building with economic development and may want to see more data. Consequently, transportation agency staff have sometimes been placed in an awkward position of defending a highway project for economic development purposes that were pushed by local governments or Congress. Such projects and the political pressure that sometimes accompanies those projects can pose a challenge for both DOT and resource agencies in terms of defining an adequate purpose and need statement.

DOT and resource agency staff generally agreed that economic development should not be included in the purpose and need statement unless it is the primary reason for proposing the project. Inclusion of economic development in the statement is not useful if development is simply a goal or would result from the implementation of the project, but not the primary justification for a project. In these cases, inclusion of economic development in the purpose and need statement can create confusion among the public and resource agency staff. Some staff said that economic development should be more appropriately considered ancillary benefits, not as the purpose and need for a transportation project.

In response to concerns of this nature, for example, on the I-69 EIS, in Texas, the document was revised to say that the project will ‘enhance’ economic development, but the focus of the purpose and need statement is on transportation needs. Also, for the Kentucky TransAmerica Corridor (Future I-66) project, FHWA and Kentucky DOT are making an effort to distinguish “needs” from “benefits.” In crafting the purpose and need statement, FHWA and Kentucky DOT have decided that the project’s purposes are transportation-related but that economic development will be a benefit to many communities in the corridor.

Although this approach seems agreeable to most agency staff, some resource agency staff felt that DOT agencies take pains to justify projects on the basis of transportation needs, even when economic development is a primary motivator. As a result, there is some perception, rightly or wrongly, that economic development is being given less profile than it should be as a motivator for the project, and that a more open and forthright discussion of economic development as one of the purposes for the project should be included to better inform the public and decision makers about why the project is being proposed.

3.3.2 Range of Alternatives that Should be Considered

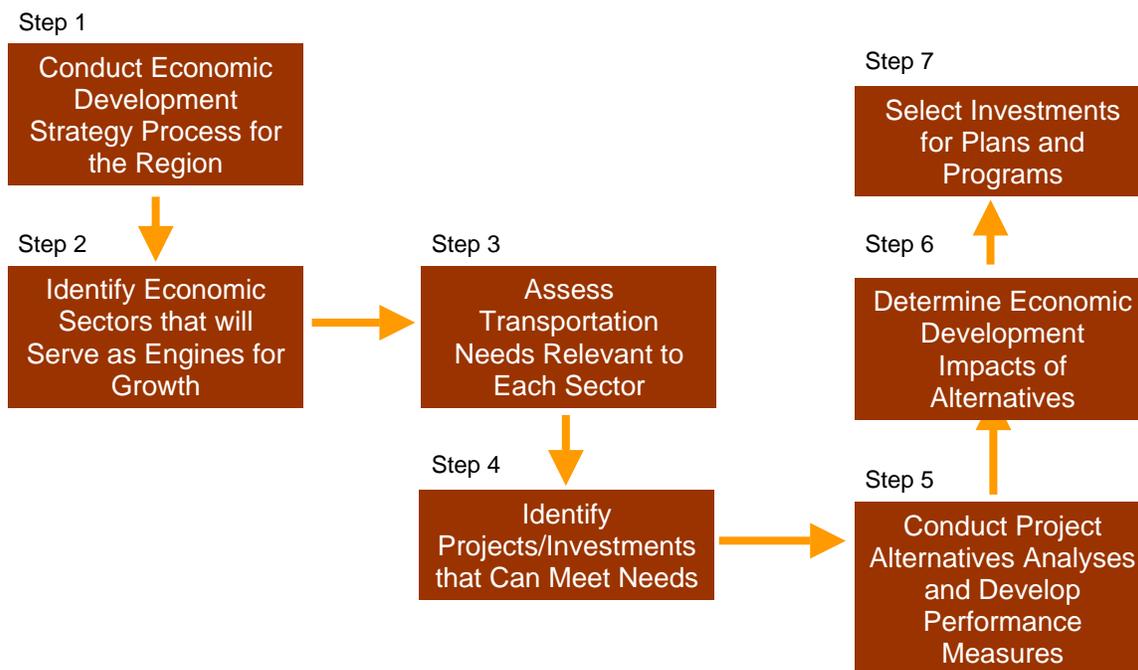
One of the most difficult issues raised when economic development is a primary purpose and need for a project is what range of alternatives should be examined. Specifically, should non-transportation infrastructure strategies be examined? If the primary need does not relate to transportation system function, but economic conditions, perhaps options such as education programs, workforce training, etc. could help to address some of the underlying causes. Some resource agency staff felt if economic development really is the need, the highway agency proposing the project should examine other ways to stimulate development. This is problematic from the perspective of FHWA due to limitations in expertise on non-transportation strategies and its inability to fund non-transportation projects.

There is some recognition among all agency staff that it would be very difficult for FHWA to analyze broad alternatives beyond transportation projects. However, examining some of the issues surrounding regional economic development strategies at the planning phase could help to identify whether the transportation project really does help to meet the need and what other actions are necessary or might be more effective. Understanding the region’s economic development strategy helps in determining the extent to which the strategy is reliant on improvements to the transportation infrastructure system. Thus, exploring the economic development potential of a transportation project early in the environmental review and planning process can support the development of a more substantiated purpose and need statement.

As depicted in the figure below, a region’s economic development strategy defines the economic sectors that will serve as the primary focal points for development (such as agriculture, manufacturing, telecommunications, etc.). Once a region has identified those sectors (based on indicators such as comparative advantage), transportation and other

infrastructure needs can be assessed, specific investments can be identified, alternative investments can be weighed against one another, and the economic development impacts of alternatives can be determined by demonstrating the reliance of specific development initiatives on highway improvements and/or by investigating the incremental benefits that can be accrued from investments in highways. This approach allows for a more direct link between specific development initiatives and highway needs, and can supplement analyses that are based on more conventional approaches such as benefit-cost analysis.

Linkages Between Economic Development Strategy and Transportation Needs Assessment



3.3.3 Concerns About Addressing Indirect Effects

Indirect and cumulative effects to resources from development need to be addressed under NEPA regulations regardless of the project purpose. Including economic development in the purpose and need statement can raise questions about the level of analysis that should be devoted to indirect environmental effects associated with the proposed action. If the purpose and need statement is based on economic development, the NEPA document should be specific in stating where the economic development is expected to occur and what environmental impacts are expected from the secondary development. However, as noted in the Indirect and Cumulative Impacts Work Group Baseline Report, many EISs historically have not provided detailed analyses of indirect impacts. When economic development is part of the stated purpose and need, limited analyses of indirect impacts are perceived by some resource agencies as a substantial weakness that needs to be addressed. This has been an issue on both highway and airport projects.

4. Existing Guidance and Training on Purpose and Need Statements

4.1 Guidance Documents

While the laws, regulations, and Executive Orders do not provide significant detail on how a purpose and need statement should be developed, there is some guidance on the subject. *Appendix F* contains a bibliography of some NEPA guidance that includes modules on purpose and need statements.

4.1.1 *Federal Guidance*

There are several Federal-level guidance documents focused on the purpose and need statement within NEPA documents in Appendix F. These guidance documents address issues such as the content of the purpose and need statement and agency roles and responsibilities in the development of purpose and need statements. For instance, in 1990, FHWA developed a paper on “The Importance of Purpose and Need in Environmental Documents”, which describes basic elements of a purpose and need statement, and includes a list of items which may assist in the explanation of the need for the proposed action, such as an explanation of project status, transportation demand, modal interrelationships, and social demands or economic development. EPA’s guidance on “Policy and Procedures for the Review of Federal Actions Impacting the Environment” provides information on EPA’s role and responsibilities for reviewing the technical adequacy and accuracy of the EIS’s methods for estimating the need for the proposed action in cases where this affects the definition of reasonable and feasible alternatives.

Correspondence between DOT Secretary Mineta and James Connaughton of CEQ in May 2003 focused on the issue of the appropriate exercise of authority by lead and cooperating agencies in determining purpose and need for the NEPA process. This document, in turn, was followed by the FTA-FHWA “Joint Guidance on Purpose and Need,” which addressed the points made in the letter from James Connaughton, such as how much deference should be given to DOT’s articulation of purpose and need by joint lead or cooperating agencies and when it is appropriate for such agencies to raise questions about DOT’s purpose and need statements. The guidance concentrates on the deference that should be given to lead agencies by cooperating agencies in the development of purpose and need statements, and also provides guidance on appropriate statement length, style, and scope.

4.1.2 *State-level Guidance*

Several State DOTs have also developed guidance documents focused on the purpose and need statement, and generally focus on the form and content of the purpose and need statement. For instance, Utah and Oregon have produced similar documents that defined “purpose,” “need,” and “goals and objectives.” The definitions are explicit in that the “goals and objectives” section is the only appropriate place for project elements beyond the identified state transportation issues, such as environmental protections, and that the

purpose and need should be reserved for the expression of and supporting evidence for a transportation problem.

The State-level guidance documents also offer specific advice on the process of crafting the purpose and need statement. For instance, the Caltrans “Purpose and Need Team Final Report and Recommendations” presents examples of helpful information sources to reference when developing supporting information for purpose and need statements (e.g., Regional Transportation Plans, California Transportation Plan, and Statewide and Federal Systems & Designations). North Carolina DOT’s guidance provides an example outline of a purpose and need section (i.e., Introduction, Summary of Need, Summary of Purpose, Background Information, Roadway Conditions, Safety Analysis, System Linkages, and Social and Economic Conditions), and then details what each element in the outline should contain.

4.2 Available Training Programs

In addition to guidance documents, training programs can be important in helping to communicate the concepts and approaches outlined in guidance documents into practices. A compilation of training courses relevant to purpose and need is included in *Appendix G*. The compilation includes information on topics covered in each course, course duration, target audience, locations, and contact information.

This compilation serves two roles: 1) it can be made available to staff in State DOTs, FHWA, State and Federal resource agencies, and consultants to raise their awareness of the various training opportunities available; and 2) the Task Force can use the information in order to identify opportunities for interagency coordination or adoption of training programs and to help ensure that any new guidance or recommendations that come from the Task Force can be incorporated into relevant training programs.

Discussion of purpose and need is generally included in general or introductory NEPA courses, and typically appears to consume between five and ten percent of the course content. Consequently, there appears to be relatively little formal training available regarding development of the NEPA purpose and need statements for transportation projects, or for coordination between the NEPA purpose and need and the Section 404 project purpose statement.

4.3 Guidance and Training Needs

DOT and resource agency staff generally indicated that there is not a need for formal training programs dedicated solely to the purpose and need statement, but several staff indicated that new Federal guidance and related improved training modules within courses would be helpful to clarify issues related to crafting a purpose and need statement.

Specifically, it would be helpful to have more clear guidance on how to write a purpose and need statement clearly. The existing guidance documents may be a source of confusion on this point, with some staff interpreting the guidance as encouraging discussion of a wide range of needs. According to the 1990 FHWA paper on “The Importance of Purpose and Need in Environmental Documents”:

The purpose and need should be as comprehensive and specific as possible. For example, rather than simply stating that additional capacity is needed between two points, information on the adequacy of current facilities to handle the present and projected traffic, (e.g., what capacity is needed and the level of service for the existing and proposed facilities) should be discussed. Other information on factors such as safety, system linkage, social demands, economic development, and modal interrelationships, etc., that the proposed project will attempt to address, should be described as fully as possible.

Similarly, the FHWA Technical Advisory T 6640.8A (1987) seems to imply that a wide range of different factors should be discussed in the purpose and need statement. It contains a list of nine items “which may assist in the explanation of the need”: 1) Project Status, 2) System Linkage, 3) Capacity, 4) Transportation Demand, 5) Legislation, 6) Social Demands or Economic Development, 7) Modal Interrelationships, 8) Safety, and 9) Roadway Deficiencies.

The range of factors that are listed in these documents may be responsible for some of the confusion regarding the extent to which a wide variety of goals should be incorporated into the purpose and need statement. Some staff members noted that FHWA guidance documents are probably being misinterpreted by some as implying that all of these factors should be addressed and described in the purpose and need statement, thereby contributing to long and confusing discussions of purpose and need.

The 2003 joint FHWA/FTA guidance states that “The purpose and need statement should be as concise and understandable as possible.... [E]very effort should be made to develop a concise purpose and need statement that focuses on the primary transportation challenges to be addressed.” However, several state DOT and other staff indicated that it would be helpful to have more specific guidance related to crafting a quality purpose and need statement. They pointed out that it would be particularly helpful to identify lessons learned in crafting a purpose and need statement, and to document examples of good purpose and need statements.

5. Recommendations for Next Steps

Based on the information compiled in this baseline report and building upon the existing guidance issued by CEQ in 2003 and Vision 100 legislation as appropriate, the Purpose and Need Work Group recommend additional work in order of priority that should be endorsed and promoted by the Task Force agencies.

- 1) That additional investigation should focus on the extent to which Federal agency interpretations and applications of laws and other requirements within their jurisdiction are causing purpose and need conflicts, the key drivers of the conflicts (e.g., different approaches to purpose and need under NEPA and Section 404), and options for avoiding or resolving conflicts. Case studies of previous projects that experienced substantial problems may be used to identify areas that need particular attention. Case studies of complex or controversial projects that successfully avoided conflicts at purpose and need may also illustrate good practices of where the process worked well.
- 2) That additional guidance should be developed to clarify the roles of lead transportation agencies and other engaged agencies in achieving purpose and need statements for transportation projects that give appropriate deference to transportation agencies so that projects are not subjected to long delays as agencies grapple with differences. When dealing with deference, it is important to maintain the integrity of other agencies' responsibilities and to comply with all applicable environmental requirements. Case studies may also be useful for this task.
- 3) That the Work Group begin to develop interagency guidance addressing the need for responsibly scoped, concise, and clearly written purpose and need statements. The guidance should include examples of appropriate and well-crafted purpose and need statements. The guidance should also provide advice on what special considerations apply, if any, in two circumstances: 1) if economic development is the sole purpose and need for a project; and 2) when economic development is considered as part of the purpose and need for a project.

Appendix A: Laws and Implementing Regulations, and Executive Orders

Laws and Implementing Regulations, and Executive Orders	Agency	Summary	Relation to Purpose and Need
General Laws and Regulations			
National Environmental Policy Act: 42 U.S.C. 4321-4335 40 CFR Part 1500 23 CFR 771 49 CFR 520	CEQ	NEPA declares it a national policy to encourage productive and enjoyable harmony between man and the environment and promote efforts to better understand and prevent damage to ecological systems and natural resources important to the nation. Agencies are required to prepare a detailed environmental impact statement for any major Federal action significantly affecting the environment. The Act also establishes the Council on Environmental Quality to review government policies and programs for conformity with NEPA.	The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action. (Sec. 1502.13)
Executive Order 12898 - Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations	EPA, All Agencies	Requires each Federal agency to make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States.	Relates to selection of an alternative, which in turn depends on a well-justified purpose and need statement.
Transportation Laws and Regulations			
Transportation Equity Act for the 21st Century of 1998 (TEA-21) and Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) 23 U.S.C. 103(i)(13) 23 U.S.C. 133(b)(11) 16 U.S.C. 1261 23 CFR 771 23 CFR 777: Mitigation of	DOT	TEA-21 builds on the initiatives established in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), which was the previous major authorizing legislation for surface transportation. This new Act combines the continuation and improvement of current programs with new initiatives to meet the challenges of improving safety as traffic continues to increase at record levels, protecting and enhancing communities and the natural environment as we provide transportation, and advancing America's economic growth and competitiveness domestically and internationally through efficient and flexible transportation. The National Intermodal Transportation System shall: Consist of all forms of transportation in a unified, interconnected	Provides general objectives for transportation projects. May be used to support the purpose of a project.

Laws and Implementing Regulations, and Executive Orders	Agency	Summary	Relation to Purpose and Need
Impacts to Wetlands and Natural Habitat		<p>manner, including the transportation systems of the future, to reduce energy consumption and air pollution while promoting economic development and supporting the Nation's preeminent position in international commerce. Include a National Highway System which consists of the National System of Interstate and Defense Highways and those principal arterial roads which are essential for interstate and regional commerce and travel, national defense, intermodal transfer facilities, and international commerce and border crossings. Include significant improvements in public transportation necessary to achieve national goals for improved air quality, energy conservation, international competitiveness, and mobility for elderly persons, persons with disabilities, and economically disadvantaged persons in urban and rural areas of the country. Provide improved access to ports and airports, the Nation's link to world commerce. Give special emphasis to the contributions of the transportation sector to increased productivity growth. Social benefits must be considered with particular attention to the external benefits of reduced air pollution, reduced traffic congestion and other aspects of the quality of life in the United States. Must be operated and maintained with insistent attention to the concepts of innovation, competition, energy efficiency, productivity, growth, and accountability. Practices that resulted in the lengthy and overly costly construction of the Interstate and Defense Highway System must be streamlined. Be adapted to ``intelligent vehicles'', ``magnetic levitation systems'', and other new technologies wherever feasible and economical, with benefit cost estimates given special emphasis concerning safety considerations and techniques for cost allocation.</p> <p>Calls out Wetlands Mitigation Banks: Sec. 1006-1007</p>	

Laws and Implementing Regulations, and Executive Orders	Agency	Summary	Relation to Purpose and Need
<p>Vision 100—Century of Aviation Reauthorization Act (Vision 100)</p> <p>49 U.S.C. 47171(j) 49 U.S.C. 47106(c)(1)(C)</p>	<p>DOT</p>	<p>Vision 100 continues the requirement dating from 1970 aviation legislation that the Secretary may approve an application for funding for an airport development project involving the location of an airport, runway, or major runway extension that has a significant adverse effect on natural resources (including fish and wildlife, natural, scenic, and recreation assets, water and air quality, or another factor affecting the environment) only after finding that no possible and prudent alternative to the project exists and that every reasonable step has been taken to minimize the adverse effect.</p> <p>New provisions in Vision 100 establish an expedited, coordinated environmental review process for airport capacity projects at congested airports and certain aviation safety and security projects designated by the FAA Administrator. With respect to these categories of projects, a Federal or State agency that is participating in the coordinated environmental review process shall be bound by the project purpose and need as defined by the Secretary for any environmental review, analysis, opinion, permit, license, or approval that must be issued by the agency, notwithstanding any other provision of law.</p>	<p>Broad mandate for agencies to be bound by the Secretary’s determination of purpose and need for projects specified for the coordinated environmental review process in Vision 100. No specific mention of purpose and need for new airport, runway, or major runway extension projects; it is a compliance issue that may influence the selection of an alternative.</p>
<p>Transportation Act (Section 4(f)): 49 U.S.C. 303</p> <p>23 CFR 771.135</p>	<p>DOT</p>	<p>The Section 4(f) legislation provides protection for publicly owned parks, recreation areas, historic sites (regardless of ownership), wildlife and/or waterfowl refuges from conversion to a transportation use. The Federal Highway Administration (FHWA) may not approve the use of land from a significant publicly owned park, recreation area, or wildlife and waterfowl refuge, or any significant historic site unless a determination is made that:</p> <p>i) There is no feasible and prudent alternative to the use of land from the property; and (ii) The action includes all possible planning to minimize harm to the property resulting from such use. (Sec. 771.135(a))</p>	<p>Relates to selection of an alternative, which in turn depends on a well-justified purpose and need statement in order to assess feasible and prudent alternatives.(</p>

Laws and Implementing Regulations, and Executive Orders	Agency	Summary	Relation to Purpose and Need
Air, Land, and Water Laws and Regulations			
<p>Clean Air Act (as amended), Transportation Conformity Rule: 23 U.S.C. 109(j) 42 U.S.C. 7521 (a) Sanctions: 42 U.S.C. 7509, sec.179 (b) sec. 110 (m) (P.L. 101-549) 40 CFR 93</p>	<p>EPA</p>	<p>The primary objective of the Clean Air Act is to establish Federal standards for various pollutants from both stationary and mobile sources and to provide for the regulation of polluting emissions via state implementation plans. In addition, the amendments are designed to prevent significant deterioration in certain areas where air quality exceeds national standards, and to provide for improved air quality in areas which do not meet Federal standards ("nonattainment" areas).</p> <p>Section 309 of the CAA directs EPA to review and comment on both the adequacy of the analysis and the environmental impacts of certain federal actions, including those subject to NEPA's EIS requirement, and to make those reviews public. Under section 309, EPA evaluates both the nature of the impacts and the sufficiency of the environmental analysis. If the proposing agency (the "lead" agency) does not make sufficient revisions and the project remains environmentally unsatisfactory, EPA may refer the matter to the President's Council on Environmental Quality for mediation.</p>	<p>No specific mention of purpose and need.</p> <p>EPA's review of an EIS focuses on the adequacy of the EIS and the impact evaluation.</p>
<p>Wilderness Act: 16 U.S.C. 1131-1136</p> <p>36 CFR 293: Wilderness-- primitive areas 43 CFR 19; Wilderness Preservation, 43 CFR 8560: Management of Designated Wilderness Areas 50 CFR 35: Wilderness preservation and management</p>	<p>DOI and USDA</p>	<p>DOI and USDA to review every roadless area of 5,000 or more acres and every roadless island (regardless of size) and determine its suitability and establish restrictions on activities that can be undertaken on a designated area.</p>	<p>Relates to selection of an alternative, which in turn depends on a well-justified purpose and need statement.</p>

Laws and Implementing Regulations, and Executive Orders	Agency	Summary	Relation to Purpose and Need
<p>Wild and Scenic Rivers Act: 16 U.S.C. 1271-1287</p> <p>36 CFR 297: Wild and Scenic Rivers</p>	<p>DOI and USDA</p>	<p>Establishment of a National Wild and Scenic Rivers System for the protection of rivers with important scenic, recreational, fish and wildlife, and other values. Rivers are classified as wild, scenic or recreational. The Act designates specific rivers for inclusion and prescribes the methods and standards by which additional rivers may be added. The Act contains procedures and limitations for control of lands in Federally administered components of the System and for disposition of lands and minerals under Federal ownership. Hunting and fishing are permitted in components of the System under applicable Federal and state laws.</p>	<p>Relates to selection of an alternative, which in turn depends on a well-justified purpose and need statement.</p>
<p>Executive Order 11990: Protection of Wetlands</p> <p>23 CFR 777 DOT Order 5660.1A</p>	<p>All Agencies</p>	<p>Directs agencies in furtherance of the National Environmental Policy Act of 1969, in order to avoid to the extent possible the long and short term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative.</p>	<p>Relates to selection of an alternative, which in turn depends on a well-justified purpose and need statement in order to assess practicable alternatives.</p>
<p>Section 10 of the Rivers and Harbors Act of 1899: 33 U.S.C. 401</p> <p>23 CFR 650, Subparts D & H</p> <p>33 CFR 114-115</p>	<p>USACE, USCG</p>	<p>The Act prohibits the construction of any structure or dredging in navigable waterways of the U.S. without a permit from the Corps. Administration of section 10 for bridges and causeways has been delegated to the Coast Guard.</p> <p>The Fish and Wildlife Coordination Act provides authority for the U.S. Fish and Wildlife Service to review and comment on the effects of proposed federal activities on fish and wildlife.</p>	<p>Relates to selection of an alternative, which in turn depends on a well-justified purpose and need statement. (</p>
<p>Federal Water Pollution Control Act (1972), as amended by the Clean Water Act (1977 & 1987): 33 U.S.C. 1251-1376</p> <p>33 CFR 401 Subpart B, 771</p>	<p>USACE, EPA, State</p>	<p>The Clean Water Act, among other things, authorizes Federal financial assistance for municipal sewage treatment plant construction and creates various programs designed to enhance and restore water quality. The latter programs include permitting programs for discharges of dredged or fill material under Section 404, which is administered by the Army Corps of Engineers and the States; the national pollutant discharge elimination system</p>	<p>The permit required under Section 404 of the Act requires the development of a project purpose statement. Section 404 requires alternatives analysis, and the selection of the least environmentally damaging practicable alternative (LEDPA).</p>

Laws and Implementing Regulations, and Executive Orders	Agency	Summary	Relation to Purpose and Need
<p>33 CFR 209, 320-323, 325, 328, 329</p> <p>40 CFR 121-125, 129-131, 133, 135-136, 230-231</p> <p>DOT Order 5660.1A</p>		<p>(NPDES) program administered by EPA and the States under section 402, ocean discharges regulated under Section 403, the total maximum daily load program (TMDL) and water quality standards programs under Section 303.</p>	<p>Thus in its consideration of project purpose and alternatives, the Section 404 permit program considers many of the same factors as NEPA.</p>
<p>Executive Order 11988: Floodplain Management, as amended by Executive Order 12148</p> <p>23 CFR 650, Subpart A</p> <p>23 CFR 771</p> <p>DOT Order 5650.2</p>	<p>All Agencies</p>	<p>Directs agencies, in furtherance of the National Environmental Policy, the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, in order to avoid to the extent possible the long and short term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative.</p>	<p>Relates to selection of an alternative, which in turn depends on a well-justified purpose and need statement in order to assess practicable alternatives.</p>
<p>Safe Drinking Water Act: 42 U.S.C. § 300f et seq., 6939b</p> <p>15 U.S.C. § 1261 et seq.</p> <p>40 CFR 141-143</p>	<p>EPA</p>	<p>The Act, establishes a Federal program to monitor and increase the safety of the nation's drinking water supply. The SDWA authorizes the U.S. Environmental Protection Agency (EPA) to set and implement health-based standards to protect against both naturally occurring and man-made contaminants in drinking water. The EPA is also responsible for assessing and protecting drinking water sources; protecting wells and collection systems; making sure water is treated by qualified operators; ensuring the integrity of distribution systems; and making information available to the public on the quality of their drinking water.</p>	<p>Relates to selection of an alternative, which in turn depends on a well-justified purpose and need statement.</p>
<p>Farmland Protection Policy Act of 1981: 7 U.S.C. 4201-4209</p>	<p>NRCS</p>	<p>Minimize impacts on farmland and maximize compatibility with state and local farmland programs and policies.</p>	<p>Relates to selection of an alternative, which in turn depends on a well-justified purpose and need statement.</p>

Laws and Implementing Regulations, and Executive Orders	Agency	Summary	Relation to Purpose and Need
7 CFR 658			
Wildlife Laws and Regulations			
<p>Endangered Species Act of 1973: 16 U.S.C.1531-1543</p> <p>7 CFR 355</p> <p>50 CFR 17, 23, 81, 222, 225-227, 402, 424, 450-453</p>	USFWS, NOAA	<p>The Act provides broad protection for species of fish, wildlife and plants that are listed as threatened or endangered in the U.S. or elsewhere. Provisions are made for listing species, as well as for recovery plans and the designation of critical habitat for listed species. The Act outlines procedures, described in the next paragraph, for Federal agencies to follow when taking actions that may affect listed species. The Act also provides exemptions and exceptions for scientific research, enhancement of species, and incidental takes. The Endangered Species Act also is the enabling legislation for the Convention on International Trade in Endangered Species of Wild Fauna and Flora, commonly known as CITES.</p> <p>All other Federal agencies, in consultation with and with the assistance of the Secretary, also must use their authorities in furtherance of the purposes of the Act by carrying out programs for the conservation of listed species. All Federal agencies, in consultation with and with the assistance of the Secretary, must insure that any action authorized, funded or carried out by the agency (agency action) is not likely to jeopardize the continued existence of an endangered or threatened species, or result in destruction or adverse modification of a critical habitat of a species.</p>	<p>Relates to selection of an alternative, which in turn depends on a well-justified purpose and need statement.(</p> <p>All Federal departments and agencies shall seek to conserve protected species, and use their authorities to further the goals of the ESA. Federal agencies must ensure that activities that they undertake or permit do not jeopardize the continued existence of any protected species or destroy or adversely modify critical habitat.</p>
Cultural Laws and Regulations			
<p>National Historic Preservation Act: 16 U.S.C. 470 et seq.</p> <p>24 CFR 900 (Section 106</p>	ACHP	<p>The National Historic Preservation Act (NHPA) created the Advisory Council on Historic Preservation (ACHP), an independent Federal agency, to advise the President and Congress on matters involving historic preservation. Under Section 106, Federal agencies are required to take into account the effects of their undertakings on</p>	<p>Relates to selection of an alternative, which in turn depends on a well-justified purpose and need statement.</p> <p><i>Consulting party roles: SUDQ/THPOs, Indian tribes</i></p>

Laws and Implementing Regulations, and Executive Orders	Agency	Summary	Relation to Purpose and Need
Regulations)		<p>properties eligible or listed in the National Register of Historic Places, and to afford the ACHP a reasonable opportunity to comment on actions that may affect such properties.</p> <p>The regulations define how Federal agencies meet Section 106 statutory responsibilities. The section 106 process seeks to accommodate historic preservation concerns with the needs of Federal undertakings through consultation among the agency official and other parties with an interest in the effects of the undertaking on historic properties, commencing at the early stages of project planning.</p>	<p>and Native Hawaiian organizations, other consulting parties, and organizations and individuals who may be concerned with the possible effects of an agency action on historic properties should be prepared to consult with agencies early in the NEPA process, when the purpose of and need for the proposed action as well as the widest possible range of alternatives are under consideration. (Section 800.8(a)(2))</p>

**Appendix B:
Agency Interview
Discussion Questions**

1. Are there purpose and need statements that you think of as good examples?
 - Why do you think they were good (e.g., appropriate length; inclusion of data on existing conditions or future no-build conditions that support the statement of need; inclusion of secondary goals and objectives; considerations relevant to using the purpose and need as the benchmark in developing alternatives; considerations relevant to using the purpose and need in evaluating alternatives).
 - Are there situations where these characteristics would be less beneficial or problematic? If so, explain.
 - For DOT agencies: are there any examples of purpose and need statements with a modal choice such as Traffic Demand Management and Traffic System Management?

2. Are there examples of purpose and need statements that you think could have been improved and/or were challenged (successfully or unsuccessfully) during the environmental review process or during litigation? Please explain why.
 - Are there situations where these characteristics would have been more beneficial or advantageous? If so, explain.
 - Were there attributes that could have been improved to make the purpose and need statement more defensible and if so what were they?

3. *For FHWA only:* how well does the transportation planning process provide the background information on project need?
 - What type of record is used in the linkage of planning and project need, i.e., public input, environmental factors, etc?

4. *For FHWA only:* is the State DOT transportation planner involved in the development of purpose and need statements?
 - What improvements should be made to link transportation planning and the development of purpose and need statements for NEPA?

5. Are you aware of the FHWA/FTA Interim Guidance on purpose and need statements?
 - How has this guidance affected the development and coordination of purpose and need statements?

6. Do the states that you work with have a NEPA/404 merger agreement?
 - If yes, how does it address purpose and need coordination?

- If not, do you believe an agreement would be useful for coordination of project purposes for 404/NEPA?
7. *For DOT agencies:* what is your role in the development of a purpose and need statement? For example, are you responsible for the development of the statement, are you typically consulted regarding specific elements of the purpose and need statement, or do you typically review and comment on purpose and need statements?
 8. *For DOT agencies:* who else in your agency is involved in preparing or reviewing purpose and need statements and when do those reviews occur?
 9. *For regulatory agencies:* do DOT agencies ask you to review purpose and need statements before they begin the NEPA process, during scoping, or after the Draft EIS is issued?
 10. Provide examples of interagency coordination (both successful and challenging) during the development of purpose and need statements in order to help us pinpoint impediments and successful techniques for overcoming them.
 - *For DOT agencies:* do you typically consult with regulatory agencies during the development of a purpose and need statement, and if so, which agencies and what type of information or support do you request? Do regulatory agencies frequently request that you provide more information? What type of information?
 11. *For DOT agencies:* if there are impacts to wetlands involved in the proposed project, in relation to the development of the NEPA purpose and need statement, when do you consult with the USACE so that they can develop the project purpose under Section 404(b)(1) of the Clean Water Act?
 - Is EPA also consulted regarding to the project purpose under section 404? If so, when do you consult EPA?
 12. *For the USACE and EPA:* are you able to use language from the NEPA purpose and need statements to develop (if it's the Corps) or review (if it's EPA) the project purpose statements under Section 404(b)(1) of the Clean Water Act?
 13. In your opinion does the NEPA purpose and need statement and the alternatives derived from it typically provide the boundaries of Section 404(b)(1) project purpose statement and the subsequent selection of Least Environmentally Damaging Practicable Alternative (LEDPA)? Why or why not? Please provide examples.
 14. Are there any laws, regulations, formal policy statements, technical guidance documents, or case law that you rely on when developing or reviewing purpose

and need statements? For example, FHWA Guidance for Developing Purpose and Need Statements, or state DOT Purpose and Need Guidelines.

- Have you developed or do you follow a particular approach to resolving conflicts that arise during the development of purpose and need?
15. Do you feel there is a need for additional guidance to aid in the development of purpose and need statements?
16. Is there any training available that covers transportation purpose and need exclusively (not likely) or within a general NEPA course or other broader curriculum that you have found useful?
17. Have you prepared or have you been involved in projects where economic development has been the primary project purpose?
- If so, how was this presented in the analysis of project need and the subsequent development of alternatives?
 - What specific concerns were raised, if any, by the use of economic development as the purpose?
18. To what extent, if at all, should purpose and need statements reflect natural resource law or other guiding policy or mandates?

Are there any issues related to purpose and need that we have not discussed today that you would like to discuss

Appendix C: List of EISs Reviewed

**Executive Order 13274 – Interagency Transportation Infrastructure
Streamlining Task Force
Review of EISs for Purpose and Need and Indirect
and Cumulative Impacts**

The following list of EIS documents were reviewed for both Purpose and Need and for Indirect and Cumulative Impacts. The selection of EISs for review was based on the recommendations of Agency staff (FAA, FHWA, and FTA), and for EPA OFA, the selection was based on the issues addressed in the EIS, e.g. Section 404 permits or projects that crossed National Forests. Additionally, EISs that were litigated and were included in the case law summary were also identified as a priority for review.

Location	Title	Date
EPA - OFA	Final EIS - Colorado Forest Highway 80, Guanella Pass Road, Colorado	Aug. 2002
	Final EIS - U.S. 287/26 Improvements Project, Moran Junction to 12 miles west of Dubois through Bridger-Teton and Shoshone National Forests, Wyoming	Oct 2003
	Draft EIS - Reference Post 13 Interchange and City Road Project, Washington County, UT	Sept 2002
	Draft Supplemental EIS - U.S. 189, Utah Valley to Herber Valley Widening and Realignment, Utah and Wasatch Counties, Utah	Sept 2002
	Draft EIS and 4(f) Evaluation - Improvements to I15 from 31 st Street to 2700 North, Weber County, Utah	Oct 2003
	Final EIS and Section 4(f) Statement - Wyoming Forest Highway 4, U.S. 212 Beartooth Highway, Park County, Wyoming	Sept 2003
	Final EIS - MO-19, MO-107, and U.S. 54 Improvements and Extensions, U.S. 61 near Bowling Green and New London, Pike, Monroe, Ralls, and Audrain Counties, Missouri	June 2002
	Final EIS - Louisiana I Improvements Golden Meadow to Prot Fourchon	Oct 2002
	Final EIS - U.S. 67 (FAP 310) Between Jacksonville and Macomb; Morgan, Cass, Schuyler, and McDonough Counties, Illinois	May 2002
	Final EIS and Final Section 4(F) Statement; South and East Beltways, Lincoln, Nebraska, Project No. DPU-3300(1)	June 2002
	Final EIS - WV 65 Corridor G to Naugatuck, Mingo County, West Virginia - Federal Project No. STP-0065 (008) EQ, State Project No. U230-65-7.74 02	May 2002
	Final EIS - State Route 120 Oakdale Expressway Project, City of Oakdale, California	Sept 2002
	Draft SEIS - Jamestown Bridge Replacement Project, Rhode Island	Feb 2003
	Draft EIS - Interstate 15 Corridor, Montana City to Lincoln Road, Montana	Feb 2003
	Final EIS - East Harrison County Connector, I-10 to U.S. 90, Harrison County, Mississippi	Jan 2003
Draft EIS - Fairfield to Dupuyer Corridor Study in Teton and Pondera Counties (between Yellowstone National Park and Glacier National Park), Montana	Aug 2002	
FTA	Draft SEIS - MTA New York City Transit Second Avenue Subway, New York	March 2003
	Final EIS - New Britain-Hartford Busway New Britain, Newington, West Hartford, and Hartford, CT	Dec 2001

Location	Title	Date
	Draft EIS - Central Link Light Rail Transit Project between North Seattle and the City of Sea Tac, Washington	Dec 1998
	Final EIS - LA Eastside Corridor, Los Angeles County, California	Jan 2002
	Draft EIS - Permanent WTC Port Authority Trans-Hudson (PATH) Terminal	May 2004
	Draft EIS - Weber County to Salt Lake City Commuter Rail Project, Utah	April 2004
	Draft EIS - MTA Long Island Railroad East Side Access, New York	May 2000
	Draft EIS - Fulton Street Transit Center, New York	May 2004
FAA	Final EIS - Establishment of air cargo hub, Toledo Express Airport, Toledo, Ohio	May 1990
	Final SEIS - Indianapolis international airport	March 2001
	Final EIS for the proposed runway 5L/23R, proposed new overnight express air cargo sorting and distribution facility, and associated developments at Piedmont Triad International Airport (PTIA), North Carolina	Nov 2001
	Draft EIS - Cincinnati/Northern Kentucky International Airport, Construction of new and expansion of existing runway and support facilities, Ohio	July 2000
	Final EIS - Disposal and Reuse of Homestead Air Force Base, Florida	Feb 1994
	Final EIS - Master Plan Development and FAR Part 150 Noise Compatibility Update, Charlotte Douglas International Airport, Charlotte, NC	Nov 1999
FHWA	Final EIS and Section 4(f) Evaluation - I-69 Evansville to Indianapolis, Indiana Tier 1	Dec 2003

Appendix D: Case Law

Summary of Purpose and Need Cases

For the case law review, a search was conducted within LexisNexis², an electronic database of state and Federal case law and court documents, for cases relevant to the purpose and need of transportation projects. This search was supplemented by reviews of relevant legal texts, specifically, Daniel Mandelker's NEPA Law and Litigation, and Roger Findley and Daniel Farber's Cases and Material on Environmental Law, as well as the NEPA Net Case Law Review, an environmental case law source compiled by the National Association of Environmental Professionals. Finally, Work Group members were asked to contribute any known legal decisions that had not been covered by the other case law sources.

The attached table includes cases where the courts considered issues related to NEPA purpose and need statements for transportation projects. The table, while comprehensive, is not exhaustive in that it does not include every case related to these issues. The table is organized chronologically and includes the case titles and citations, identifies the Federal litigants, and summarizes the issues and holdings of each case.

The following bullets highlight the key themes derived from the case law.

- Generally, agencies need follow only a “rule of reason” in preparing an environmental impact statement. This rule of reason governs both which alternatives the agency must discuss, and the extent to which it must discuss them. The agency bears the responsibility for defining at the outset the objectives of an action.
- The purpose and need for a proposed project may not be defined either in terms so unreasonably narrow that only one alternative would accomplish the objectives of the agency's action or in terms so unreasonably broad that an infinite number of alternatives would accomplish those objectives.
- Courts have held that an agency need not consider all of the possible alternative actions in the environmental analysis, but is only required to look at those that are reasonable in light of the stated purpose and need of the project. Courts defer to agency judgment in defining objectives of proposed projects as long as the statement is reasonable.
- Courts will examine on the adequacy of data used to support the purpose and need of the proposed project. For example, a single forecast used to support the project need may not rely on the assumption that the project will be completed, thereby creating a self-fulfilling prophecy for the proposed project. Courts also examine whether the consideration of alternatives is adequate to support the purpose and need of the proposed project.

² The query used the following key words: National Environmental Policy Act; transportation; airport; runway; highway; interstate; bridge; rail; transit; purpose and need.

- Some courts use a broader approach to assess an agency's purpose and need statement finding that NEPA requires courts to evaluate the "alternative means to accomplish the general goal of an action...not the alternative means by which a particular applicant can reach his goals." Using this approach, a court may look beyond the project's stated purpose and focus on the project's general goal or statutory objective.

Purpose and Need			
Case Title and Citation	Federal Litigants	Issue	Holding
Trout Unlimited v. Morton, 509 F.2d 1276 (9 th Cir. 1974)	DOI	Trout Unlimited alleged that the EIS for the Teton Dam and Reservoir project was inadequate because it failed to adequately discuss alternatives.	The court ruled in favor of the DOI and stated that the "range of alternatives that must be considered need not extend beyond those reasonably related to the purposes of the project." The primary purposes of the project are to control flooding in the Lower Teton Valley and to provide a source of irrigation water, and the secondary purposes are to provide hydro-electric power and recreational benefits. The EIS considered various alternatives to meet the stated purpose and the court stated that the range of alternatives considered by the EIS was adequate and that compliance with NEPA has been achieved.
City of New York v. United States Department of Transportation, 715 F.2d 732 (2d Cir. 1983), appeal dismissed, 465 U.S. 1055 (1984)	DOT	City of New York sued because EA/FONSI did not include, as an alternative, barging radioactive materials around NY city.	The court decided in favor of DOT. The purpose and need was to establish national levels of public safety for the transport of hazardous materials, not for how to transport the radioactive material. Therefore, it was not necessary for DOT to consider alternatives involving other modes of transportation (e.g., such as the "barging" alternative proposed by plaintiffs). In reaching its decision, the Court relied on the fact that the legislative authority under which DOT was acting directed DOT to establish national safety regulations for transporting hazardous materials on <u>each</u> mode of transportation. Consistent with the legislative direction, DOT issued regulations establishing safety standards for transporting hazardous materials on highways (regulations relating to other modes were to be drafted later). The Court also observed that, since DOT had conducted an Environmental Assessment concluding in a Finding of No Significant Impact, it was permitted to consider a narrower range of alternatives than otherwise would have been

Purpose and Need			
Case Title and Citation	Federal Litigants	Issue	Holding
			required if the action would have caused a significant impact. Finally, the Court took into account that the proposed regulations allowed consideration of locally-tailored environmental alternatives (like the barging alternative proposed for NYC) at a later date.
Residents in Protest of I-35E v. Dole, 583 F. Supp. 653 (D. Minn. 1984)	DOT - FHWA	Selection of highway alternative not prejudiced by emphasis on transportation goals.	The court ruled in favor of the FHWA and stated that a reasonable alternative is one which will effectuate the purposes of the project....If an alternative does not implement the purposes of the project, it certainly is not reasonable and no purpose would be served by requiring a detailed discussion of its environmental effects since the alternative will never be adopted....While it is true that it is not permissible to define the goals in such a manner so as to preordain the outcome, the...selection of criteria must be given some weight....Since a reasonable alternative is one which serves the underlying goals of a project...and the project under consideration involved transportation, it is only natural that transportation policies would predominate. As noted above, it would not serve any interest to conduct a detailed environmental analysis of a corridor that is not feasible.
Van Abbema v. Fornell, 807 F.2d 633 (7 th Cir. 1986)	USACE	The plaintiffs argued that the USACE environmental analysis for a proposed coal transport facility was inadequate because it failed to consider various alternatives.	The court ruled against the USACE, vacated the grant of the permit and remanded for reconsideration of economic factors involved in the public interest review and further consideration of the economics of the alternatives. The court stated that the "evaluation of 'alternatives' mandated by NEPA is to be an evaluation of alternative means to

Purpose and Need			
Case Title and Citation	Federal Litigants	Issue	Holding
			accomplish the general goal of an action; it is not an evaluation of the alternative means by which a particular applicant can reach his goals." The court found that the proposal's "general goal is to deliver coal from mine to utility. In some discussion of alternatives to the proposal, the USACE has suggested that an alternative may not be feasible at least partly because the applicant does not own the necessary land or perhaps cannot gain access to it. The fact that this applicant does not now own an alternative site is only marginally relevant (if it is relevant at all) to whether feasible alternatives exist the applicant's proposal."
Sierra Club v. Marsh, 714 F.Supp. 539 (D. Me 1989)	DOT - FHWA	Plaintiffs sought an injunction against the construction of a marine dry cargo terminal because the FHWA failed to consider certain alternatives. The FEIS identified "the 'general goals' of the project as '1) creat[ion of] a modern, efficient cargo facility that will enhance the economic competitiveness of central Maine industries, and 2) provi[sion of] additional employment in a region of the State where chronic unemployment is a significant problem.' The FEIS further identifie[d] seven 'public purpose objectives' the State of Maine considers in its evaluation of cargo port facility investments."	The court found in favor of the plaintiffs and granted the injunction. The court stated that "In order for an environmental impact statement to be more than an exercise in frivolous boilerplate the concept of alternatives must be bounded by some notion of feasibility. The feasibility component is concerned with whether a particular alternative can meet the goals of the proposed action." The court found that the "central project goals identifiable in the present FEIS contemplate an efficient marine dry cargo (containerized and neo-bulk) terminal in the Searsport area, to compete with modern dry cargo terminals in the region, capable of handling the kinds of cargo which would enhance the competitiveness of Maine industries, particularly the wood products industry and other basic Maine industries (e.g., agriculture and fishing). Although MDOT amply demonstrates that it 'desires' a terminal facility capable of expansion to six berths, unless its preferences bear a rational relationship to the technical and economic integrity of the project

Purpose and Need			
Case Title and Citation	Federal Litigants	Issue	Holding
			they would not warrant the exclusion of some otherwise 'reasonable alternative' from analysis under NEPA. A project's principal goals must override the stated preferences of the applicant for purposes of NEPA's 'reasonable alternatives' analysis." The court further states that the "evaluation of alternatives mandated by [NEPA] is to be an evaluation of alternative means to accomplish the general goal of an action; it is not an evaluation of the alternative means by which a particular applicant can reach his goals."
North Buckhead Civic Association v. Skinner, 903 F. 2d 1533 (11 th Cir 1990)	DOT - FHWA	The North Buckhead Civic Association claimed that the EIS was inadequate because the FHWA failed to consider all reasonable alternatives.	The court ruled in favor of the FHWA and stated that Federal, state, and local officials complied with Federally mandated regional planning procedures in developing the need and purpose section of EIS for a proposed multi-lane highway with a median designed to handle heavy rail mass transit. The Federal agencies consulted and cooperated with local authorities and there was no evidence in the record to indicate that the FHWA officials acted arbitrarily in certifying the project. The court recognized that Federal agencies should respect the role of local and state authorities in the transportation planning process and appropriately reflect the results of that process in the Federal agency's NEPA analysis of purpose and need. The court also said that a discussion of alternatives that only partly meet purpose and need but have less environmental impacts, allows decision makers to evaluate trade-offs. However, such a discussion was not a necessity in this case.
Citizens Against Burlington, Inc. v.	DOT - FAA	The FAA considered only the alternatives of approving the plan and doing nothing, rather than	The court ruled in favor of the FAA and upheld the FAA's approval of the airport expansion project

Purpose and Need			
Case Title and Citation	Federal Litigants	Issue	Holding
Busey, 938 F.2d 190, 198 (D.C. Cir 1991)		the possibility of expanding the airport in other ways, changing the flight patterns, or expanding other airports. FAA defined the goal for the action as "helping to launch a new cargo hub in Toledo and thereby helping to fuel the Toledo economy." The FAA then eliminated all alternatives that did not promote that goal. This narrow definition of purpose was upheld as reasonable because the EIS explained why the agency eliminated the other alternatives. The reasoning put forth in the explanation fully supported the FAA's decision to evaluate only the preferred alternative and the no action alternative.	where the FAA considered only the alternatives of approving the plan and doing nothing, rather than the possibility of expanding the airport in other ways, changing the flight patterns, or expanding other airports. "The goals of an action delimit the universe of the action's reasonable alternatives." Therefore, the court held that an agency "may not define the objectives of its action in terms so unreasonably narrow that only one alternative from among the environmentally benign ones in the agency's power would accomplish the goals of the agency's action, and the EIS would become a foreordained formality. Nor may any agency frame its goals in terms so unreasonably broad that an infinite number of alternatives would accomplish these goals and the project would collapse under the weight of the possibilities."
Grapevine v. United States Dep't of Transp., 17 F.3d 1502 (D.C. Cir. 1994), cert. denied, 115 S. Ct. 635 (1994).	DOT - FAA	The Dallas-Fort Worth Airport sought funds from the FAA to build two new airport runways, two new terminal buildings, and other facilities in order to accommodate increased airport demand. Petitioners argued that FAA improperly defined the purpose of the project and that consideration of alternatives was circumscribed by the stated purpose. Specifically, petitioners challenged FAA's determination that the project's purpose included the economic development of the Dallas-Fort Worth area on the grounds that consideration of such a purpose was inappropriate.	The court ruled in favor of the FAA and found that the FAA acted properly in considering the sponsor's goals when evaluating the alternative courses of action and gave reasoned consideration to off-site alternatives.

Purpose and Need			
Case Title and Citation	Federal Litigants	Issue	Holding
Laguna Greenbelt, Inc. v. United States Dep't of Transp., 42 F.3d 517 (9 th Cir. 1994)	DOT - FHWA	An expert affiliated with the plaintiff organization submitted comments on the proposed project. The EIS rejected the proposal for a four-lane highway because the proposal would not meet the project's goal of reducing traffic congestion, even if expert's special pricing mechanisms were used.	The court ruled in favor of the FHWA and stated that expert proposal for smaller, four-lane alternative to proposed toll road was properly rejected in the EIS as not reasonably related to the purposes of the project.
Clairton Sportsmen's Club v. Pennsylvania Turnpike Comm'n, 882 F. Supp. 455, 476 (W.D. Pa. 1995)	DOT - FHWA	Plaintiffs asserted that the FHWA failed to fully consider an alternative to the route ultimately chosen. They argue that the alternative they cite is reasonable on a variety of grounds: it is less expensive than the preferred alternative; it will preserve farmland; it will reduce the danger from mine subsidence; it may reduce the loss of residents and businesses from the metropolitan area; it would fare better on a cost-benefit comparison of transportation projects in the region; and would avoid disrupting an adjacent town. Having these reasonable qualities, they contend, it was unreasonable for the FHWA not to consider it in detail. Plaintiffs also argue that the FHWA improperly confined the goals of the project to a small geographic area rather than the region as a whole.	The court ruled in favor of the FHWA and found that the rejected alternative was not considered a reasonable alternative to meet the project area transportation needs of solving congestion, safety and access problems in the project area. The court held that it has no power to choose the FHWA's transportation goals. Given the FHWA's transportation goals to solve congestion, safety, and access problems, the rejected alternative to the selected highway construction project was not a reasonable alternative, and therefore was not required to be considered in detail. The court deferred to the agency's decision in choosing the transportation goals.
Sierra Club v. United States Dep't of Transp., 962 F. Supp. 1037 (N.D. III. 1997)	DOT - FHWA	Plaintiffs argue that the stated objectives in the FEIS are excessively narrow. For example, the final impact statement asserts that the project's objectives include: (1) providing a "north-south transportation corridor linking Interstate Route 55 and Interstate Route 80", and (2) completing a project that has been "an element of regional and county transportation plans for over thirty years." FHWA argued that FEIS relies on broader objectives when analyzing and ultimately dismissing various	The court rules in favor of the plaintiff and stated that these goals could only be satisfied by the proposed tollroad. Numerous alternatives could satisfy some of the FHWA's objectives. For example, a rail system could alleviate many of the identified problems to some degree. The final impact statement simply concludes that such alternatives do not meet the objectives as well as the tollroad. Given that the rejection of alternatives was based in large part on these broader and more general

Purpose and Need			
Case Title and Citation	Federal Litigants	Issue	Holding
		<p>alternatives to construction, including the need to improve local travel, accommodate increasing freight demand, relieve congestion at critical locations on the interstate system, provide a north-south transportation corridor, accommodate shifting locations of employment; and enhance community linkage.</p> <p>Plaintiffs also argued that even if the FEIS's description of the project's purposes is not excessively narrow, the general objectives upon which FHWA relies are not supported by the available evidence. As a result, plaintiffs argue that there was no rational basis for analyzing alternatives to the tollroad. Specifically, plaintiffs point out that FHWA relied on a single population forecast and that the forecast was used to analyze the build and no-build scenarios.</p>	<p>objectives, this court cannot conclude that the FEIS's description of objectives is excessively narrow.</p> <p>However, the FEIS contains a socioeconomic forecast that assumes the construction of a highway such as the tollroad and then applies that forecast to both the build and no-build alternatives. The result is a forecast of future needs that only the proposed tollroad can satisfy. As a result, the FEIS creates a self-fulfilling prophecy that makes a reasoned analysis of how different alternatives satisfy future needs impossible. Therefore, the court found that the EIS was inadequate.</p>
Alaska Center for the Environment v. Armbrister, 131 F.3d 1285 (9 th Cir. 1997)	DOT - FHWA	Alaska Center for the Environment challenged the decision to construct and fund a road from Portage to Whittier, Alaska. Pursuant to a joint state-Federal transportation project, the FHWA approved the construction of the road and agreed to provide funding for the construction.	The court ruled in favor of FHWA and found that FHWA's definition of purpose for joint state-Federal transportation project, to meet demand access to remote community, and its analysis of alternatives to building road across protected recreational areas, including improved rail system, did not violate NEPA.
Carmel-by-the-Sea v. U.S. DOT, 123 F.3d 1142 (9 th Cir. 1997)	DOT - FHWA	The EIS for the proposed project stated that "The purpose of the project is to relieve current traffic congestion, lessen emergency vehicle response time, reduce crossing conflicts at local intersections and driveways, improve safety, ameliorate air quality, and bring the rural road character back to the local area."	The court ruled in favor of the FHWA on the agency's alternative analysis, stating that the range of alternatives analyzed in the EIS for the proposed highway construction project satisfied NEPA, notwithstanding challengers' claim that only one alternative met project goals. Each alternative achieved goals to some degree, no one alternative fulfilled all goals completely, and the proposals considered spanned the spectrum of reasonable

Purpose and Need			
Case Title and Citation	Federal Litigants	Issue	Holding
			alternatives. The court held that the agency did not define its objectives in unreasonably narrow terms.
Morongo Band of Mission Indians v. Federal Aviation Admin., 161 F.3d 569, 579-580 (9 th Cir. 1998)	DOT - FAA	The EA discussed a number of alternatives that would have bypassed the Morongo reservation, but found them unsuitable for accomplishing the primary purpose of the project, which was to define a new airspace sector.	The court ruled in favor of the FAA and found that the EA was adequate because the alternative flight paths were infeasible and did not meet the project objectives.
City of Alexandria v. Slater, 198 F.3d 862 (D.C. Cir. 1999)	DOT - FHWA	The City of Alexandria challenged the FHWA's compliance with NEPA in its approval of plans to replace the Woodrow Wilson Memorial Bridge, which connects Virginia and Maryland over the Potomac River. The City argued that a 10-lane river crossing was a reasonable alternative that should be considered in the EIS.	The court ruled in favor of the FHWA and found that the 10-lane river-crossing alternative was not a "reasonable alternative." The reasonableness of an alternative is judged in light of the objectives of the Federal action. A Federal agency can properly exclude those alternatives that do not bring about the ends of the Federal action. The court also found that the purpose and need were particular and focused on traffic needs projected for the year 2020, and the 10-lane alternative did not fit those needs. Upholding transportation and safety objectives for new bridge and rejecting argument that agency should have prioritized environmental goals.
City of Bridgeton v. Slater, 212 F.3d 448 (8 th Cir. 2000)	DOT - FAA	Plaintiff's challenged the FAA's statement of purpose because the FAA based its goal of "independent simultaneous arrival capacity in bad weather" in part on data regarding arrival delays.	The court ruled in favor of the FAA and found that the FAA data supported the need for such a system because it revealed the beneficial impacts that the system would have on foul weather delays.
North Carolina Alliance for Transp. Reform v. United States Dep't of Transp., 151 F. Supp.2d 661 (M.D.N.C. 2001)	DOT - FHWA	The plaintiffs argued that the stated need for the proposed project rested on inaccurate information. The FHWA stated that the purpose of the western section of a beltway project was to provide a continuous north-south connecting road that would link the existing radial roadways.	Although the court found that the purpose of circumferential highway project to connect the roadways was entirely reasonable and was properly stated as one of several more general goals for the western section, the court ruled in favor of the plaintiffs because inaccurate data was included to

Purpose and Need			
Case Title and Citation	Federal Litigants	Issue	Holding
			support need. The court held that an EIS based on "inaccurate data might sway members of the public to support a project they would otherwise oppose if they were given accurate information."
Friends of the Monorail v. USA, No C00-852Z (W. D. Wash. March 30, 2001)	DOT - FTA	Plaintiffs challenged the EIS for a proposed light rail for the Sound Transit Link in Washington State on the basis that it did not consider monorail technology as an alternative.	The court found in favor of the FTA and dismissed the suit on the basis that the purpose and need of the proposed light rail was adequately defined so that an analysis of the monorail technology as an alternative was not necessary.
Davis v. Mineta, 302 F.3d 1104 (10 th Cir. 2002)	DOT - FHWA	Plaintiffs argued that the scope of the proposed project was so narrowly defined that it eliminated reasonable alternatives.	The court ruled in favor of the plaintiffs and found that the purposes and needs of the Project were so narrowly construed as to mandate the extra capacity only at the preferred alternative. This narrow definition is contrary to the mandates of NEPA. The record before the court suggested potentially viable alternatives of expanding traffic capacity that were not adequately analyzed in the EA. The decision stated that courts will uphold an agency's discussion of alternatives if the judges believe the statement of purpose and need was sufficiently broad so that it does not foreclose consideration of reasonable alternatives.
Route 9 Opposition Legal Fund v. Mineta, 213 F. Supp.2d 637 (N.D. W. Va. 2002)	DOT - FHWA	The legal fund argued that the EIS was inadequate, as it did not consider a true upgrade to the existing two-lane route, by widening shoulders, realigning curves, and adding turn lanes to improve traffic operations and address roadway deficiencies. The administrative record showed the agencies did consider the upgrade alternatives suggested, and found they would not meet the project purposes and need. They did an extensive alternatives evaluation and considered all relevant factors as required by	The court ruled in favor of the FHWA and found that the agency determination was based upon consideration of the relevant factors and there was no clear error of judgment.

Purpose and Need			
Case Title and Citation	Federal Litigants	Issue	Holding
		NEPA.	
Alliance for Legal Action v. FAA, No. 02-1062 (4 th Cir. 2003)	DOT - FAA	The EIS states that the purpose and need for the airport expansion project is to build a cargo hub at PTIA with parallel, widely spaced, 9,000-foot runways. Opponent claims that this statement defines the project's goals too narrowly, allowing them to be set by what FedEx (and the Airport Authority, which actually submitted the proposal) wanted from the project. This narrow statement of purpose and need led the agency to consider only alternatives that met FedEx's needs. The ALA argues that the FAA should have started with a broader statement that reflected the general goal of building a cargo hub to serve the mid-Atlantic region. A broader statement would have prompted consideration of a wider variety of alternatives.	The court found in favor of the FAA. The court stated that the statement of a project's purpose and need is left to the agency's expertise and discretion, and courts will defer to the agency if the statement is reasonable. The reasonableness of a given statement of purpose and need depends first on the nature of the proposed Federal action. The agency need not consider all of the possible alternative actions in the EIS; it is only required to look at those that are reasonable in light of the project's stated purpose.
Citizens Advocate Team, et al. v. USDOT, et al., No. 02 C 5962, (N. D. II. 2004)	DOT - FHWA	Plaintiffs alleged that the Final EIS for a proposed bridge project failed to provide a detailed assessment of growth-inducing impacts.	The court found in favor of the FHWA and ruled that EIS does not need a detailed analysis of growth-inducing impacts, because the projected impacts at issue are consistent with the overall purpose and need for the project, which focuses on relieving traffic congestion and enhancing development along the corridor of the proposed project.

Appendix E: Sample Purpose and Need Statements

**Example from
Vermont Agency of Transportation Project Development Process, Appendix D:
Purpose and Need Statements**

Purpose

The purpose of Ryegate TH3 9443 is to enhance mobility from the farm to US 302 and to improve safety on Town Highway 50.

Need

The mobility and safety performance of Town Highway 50 is considered deficient based on highway alignment, structural capacity, and location. The following deficiencies define the need for the facility improvement:

1) Highway Alignment

The current intersection with US 302 has limited sight distance which is below the levels recommended by the Vermont State Standards. An analysis of the accident history indicates a relationship exists between the accidents documented and the limited sight distance.

2) Structural Capacity

The bridge on TH 50 is subject to substructure scouring which severely limits the capacity of the bridge.

3) Location

A portion of the TH, including the bridge, is within the flood plain of the Wells River. During high water, the access to the farm is cut off since the road and bridge are submerged. High water causes erosion to the road and damages the bridge, and also provides an unsafe condition for motorists traveling the road during these conditions.

**SR 99: Alaskan Way Viaduct & Seawall Replacement Project,
Draft Environmental Impact Statement, March 2004.
Prepared by Federal Highway Administration, Washington State Department of
Transportation, and City of Seattle.**

PURPOSE AND NEED STATEMENT

**Introduction: Function and Role of the Alaskan
Way Viaduct Corridor and Alaskan Way Seawall**

The Federal Highway Administration (FHWA), the Washington State Department of Transportation (WSDOT), and the City of Seattle (City) are proposing major improvements to the Alaskan Way Viaduct Corridor and to the Alaskan Way Seawall. Both the Alaskan Way Viaduct Corridor and the Alaskan Way Seawall are located in downtown Seattle, King County, Washington. The Alaskan Way Viaduct Corridor extends from approximately Spokane Street on the south to north of the Battery Street Tunnel. The Alaskan Way Seawall extends from South Washington Street to Bay Street along Elliot Bay on Puget Sound.

The Alaskan Way Viaduct Corridor (part of SR 99) and Interstate 5 (I-5) are the two primary north-south routes to and through downtown Seattle. The Alaskan Way Viaduct Corridor currently carries about 110,000 vehicles a day and serves both through trips and trips accessing the downtown business district. The Alaskan Way Viaduct Corridor provides the quickest and most convenient route to and through downtown Seattle for communities located to the northwest and southwest of downtown. The Corridor plays a vital role in freight mobility, providing a major truck route through downtown, and providing access to the Ballard-Interbay and greater Duwamish manufacturing and industrial centers. The Corridor also serves as a transit route for local and express bus service.

The section of the Alaskan Way Viaduct Corridor between Spokane Street and South Holgate is a limited-access facility, operating with signalized intersections and driveways. This portion of the Alaskan Way Viaduct Corridor currently operates adequately because the signalized segments effectively regulate traffic volumes. Congestion that currently develops is typically the result of incidents or back-ups at access ramps. The Alaskan Way Seawall consists of various types of construction, the majority of which was completed in 1934 extending from Madison Street to Bay Street. This portion uses vertical piles and a horizontal timber-relieving platform to hold the vertical face of the Seawall in place. Most of the remainder of the wall south of Madison was constructed in 1916. The Seawall supports Alaskan Way (the surface street) and a variety of utilities. The fills retained by the wall provide lateral support for some of the foundations of the Alaskan Way Viaduct as well as the foundations for some nearby buildings. Alaskan Way includes King County Metro's Waterfront Streetcar, which provides trolley access to the

International District, Pioneer Square, various Seattle waterfront locations along Elliott Bay and Myrtle Edwards Park. Alaskan Way also provides access to Colman Dock, which supports vehicle and passenger ferry service to Bainbridge Island and Bremerton, and passenger ferry service to Vashon Island.

Purpose of the Proposed Action

The purpose of the proposed action is to provide a transportation facility and seawall with improved earthquake resistance that maintains or improves mobility and accessibility for people and goods along the existing Alaskan Way Viaduct Corridor.

Need for the Proposed Action

The Alaskan Way Viaduct and Alaskan Way Seawall are both at the end of their useful life. Improvements to both are required to protect public safety and maintain the transportation corridor. Because these facilities are at risk of sudden and catastrophic failure in an earthquake, FHWA, WSDOT and the City of Seattle seek to implement these improvements as quickly as possible. WSDOT and the City of Seattle have identified the following underlying needs the project should address:

Safety

Seismic Vulnerability

The ability of the Alaskan Way Viaduct and Alaskan Way Seawall to withstand earthquakes needs to be improved. The Alaskan Way Viaduct is vulnerable to earthquakes because of its age, design and location. Built in the 1950's, the Alaskan Way Viaduct is past the halfway point in its 75-year design life and does not meet today's seismic design standards. Additionally, the soils around the foundations of the Alaskan Way Viaduct consist of former tidal flats covered with wet, loose fill material. The Alaskan Way Seawall holds these soils in place along the majority of the Alaskan Way Viaduct corridor, which is also vulnerable to earthquakes.

WSDOT studies in 1995 and 1996 concluded that the soils on which the Alaskan Way Viaduct is constructed are vulnerable to soil liquefaction and may lose their ability to support the structure. Studies concluded that if an earthquake of magnitude 7.5 or higher occurred close to Seattle, the Alaskan Way Viaduct could be rendered unusable or even collapse.

The 1996 WSDOT study also demonstrated that the Alaskan Way Seawall, which holds the waterfront soils in place, could fail if the soils liquefy. If the Alaskan Way Seawall fails, the liquefied material may spread laterally to the west and into Elliot Bay jeopardizing nearby facilities and structures.

The February 28, 2001 Nisqually earthquake (magnitude 6.8, located 35 miles from Seattle and deep below the surface) caused moderate damage to the Alaskan Way Viaduct. The structure was closed for inspection

and repairs intermittently for several days over a period of several months. The extent of damage and loss of the heavily traveled corridor heightened awareness of the need for immediate improvements to the corridor. A Structural Deficiency Report was prepared after the earthquake and it concluded that continued reliance on the existing viaduct is not prudent.

Following the Nisqually earthquake, field investigations and liquefaction analyses were performed for a portion of Alaskan Way (the surface street) where settlements of the roadway had occurred. These investigations concluded that a portion of the loose fills below the relieving platform liquefied and settled in areas where the Seawall structure has been heavily damaged by Marine borer activity. It is possible that fill in other locations along Alaskan Way may have begun to liquefy, even though there is no other evidence of widespread roadway settlement.

Traffic Safety

Traffic safety along the Alaskan Way Viaduct Corridor needs to be improved. Traffic accident data for the years 1998 through 2000 indicate that high levels of traffic accidents occur in some portions of the Alaskan Way Viaduct Corridor. The southbound and northbound lanes of SR 99 in the Battery Street tunnel had 124 and 84 accidents, respectively. These were the highest numbers of accidents among all street segments recorded by the City in those three years. In addition, the following four segments in the Alaskan Way Viaduct section of SR 99 had unusually high numbers of traffic accidents: the northbound segment from the 1st Avenue on-ramp to the Seneca Street off-ramp (77 accidents), the southbound segment from the Columbia Street on-ramp to the 1st Avenue off-ramp (67 accidents), the southbound segment from the South Lander Street to the West Seattle on-ramp (43 accidents), and the northbound segment from the Seneca off-ramp to the Western Avenue off-ramp (35 accidents). WSDOT designates the Battery Street Tunnel and the northbound and southbound lanes near the 1st Avenue ramp as High Accident Locations (HALs).

Roadway Design Deficiencies

The Alaskan Way Viaduct Corridor does not meet current roadway design standards and has several types of deficiencies, which need to be improved.

The lane width provided on the Viaduct does not meet current design requirements. The existing lane striped widths are 10-feet. The standard lane width for this type of facility is 12-feet. Narrow lane width affects roadway capacity and operating speeds as well as safety. In addition, substantial sections of the Viaduct have minimal or no shoulders. The standard shoulder widths for a divided multi-lane facility are 10-feet to the right of traffic and 4-feet to the left of traffic. Additional width is required if there is a traffic barrier, bridge column and retaining walls. Lack of shoulders or non-standard shoulder width can severely affect operations of the roadway as well as the safety of the roadway.

The on- and off-ramps of the Viaduct also do not reflect current design standards. The existing ramp configurations do not provide adequate sight distance; gore area, and ramp taper rate. Reduced sight distance affects the ability of drivers to enter, drive upon, and exit the roadway safely. The current geometry does not provide long enough acceleration and deceleration lanes. Short acceleration and deceleration lane lengths affect the ability of drivers to enter and exit the freeway system safely. Gore area is the refuge area for drivers when they want to make corrections to their decision to exit or not to exit the freeway. By not providing the gore area, drivers lose decision time to make such corrections and hence impact safety. Substandard ramp tapers do not provide drivers with adequate length to exit and enter into freeway traffic.

System Linkage

Another need served by the project is for an integrated regional transportation system. The WSDOT is currently planning to extend SR 509 south from its current terminus near South 188th Street to connect with I-5 and improve access to and from communities south of Seattle-Tacoma International Airport. SR 509 connects to SR 99 at the First Avenue S. Bridge, and serves as a major route from the south to downtown Seattle and nearby port facilities and industrial areas.

Changes proposed, as part of the SR 519 Intermodal Access Project in the vicinity of Safeco Field would improve east-west connections between the waterfront and I-5 and I-90, both of which are principal corridors in the regional transportation system. Traffic from the I-5 and I-90 freeways heading for the downtown waterfront, stadium area, and Port and ferry terminals currently crosses the Burlington Northern Santa Fe (BNSF) mainline railroad track at-grade on South Royal Brougham Way. The SR 519 Intermodal Access Project will provide grade-separated crossings of the BNSF on both South Atlantic Street and South Royal Brougham Way and improve surface street connections from Alaskan Way to the Colman Dock ferry terminal. Phase 1 (Atlantic Street Bridge and Alaskan Way South Surface Street Improvements) is currently under construction, with completion projected for 2003.

Washington State Ferries are a division of the State Department of Transportation, and the ferry system is part of the state highway system. The Colman Ferry Dock connects downtown Seattle with ferry service to Bremerton, Bainbridge Island, and passenger ferry service to Vashon Island. Over 10 million passengers and 3 million vehicles currently use these ferries annually. Service expansion to Kingston and Southworth is included in the State's long-range plans for the ferry system.

As part of implementing the South Lake Union neighborhood plan, the City is currently exploring options for improving mobility in the area, including east-west mobility between SR 99 and I-5. The City is also planning to widen the Spokane Street Viaduct. The Spokane Street Viaduct provides the major link between I-5 and West Seattle (via the West Seattle Bridge). The major transit route from West Seattle to

downtown Seattle is by way of the West Seattle Bridge and the Alaskan Way Viaduct.

Bicycle and Pedestrian Safety and Accessibility

Bicycle and pedestrian safety, mobility, and accessibility need to be maintained or improved as part of the surface improvements to Alaskan Way and connecting streets. The Seattle waterfront is the center for Seattle's well-developed comprehensive Urban Trails System. Regional trails from the north, east and west converge on Alaskan Way. Every day, thousands of tourists, recreational walkers and joggers, shoppers, bicyclists, ferry users and office workers utilize Alaskan Way.

GOALS AND OBJECTIVES

In addition to the project purpose and need, the following goals and objectives will guide project development.

Seattle's Plans for the Downtown Waterfront

Improvements to the Alaskan Way Viaduct and Alaskan Way Seawall need to be integrated with and supportive of existing activities and land use plans for the Seattle waterfront. The Seattle downtown waterfront has been transformed from its origins as a working waterfront, characterized by shipping, warehouse and industrial uses, to an important area for tourism and recreation. The central waterfront now has a vibrant mix of uses which include office, retail, hotel, residential, conference center, aquarium, museum, parks, cruise ship terminal, ferry terminal, and various types of commercial and recreational moorage. Land use plans and policies for downtown Seattle and the waterfront which will guide improvements in the Corridor include: improving pedestrian and bicycle access to and along the waterfront; providing for views of Elliott Bay and the mountains and waters beyond; physically and visually reconnecting the waterfront to the rest of downtown; providing increased opportunities for public access to and enjoyment of the waterfront; and encouraging use of Alaskan Way for local rather than through travel.

Plans for Habitat Improvement

The existing Alaskan Way Seawall provides poor habitat for chinook salmon (listed as threatened under the Endangered Species Act) and other marine species. Reconstruction of the Alaskan Way Seawall offers an opportunity to improve habitat where practicable and feasible. Elliott Bay is an important link for juvenile salmon migrating from the Duwamish River toward the Pacific Ocean. The vertical bulkheads of the Alaskan Way Seawall and other features of the waterfront provide minimal habitat for the numerous young chinook and chum salmon that migrate across the Seattle waterfront to the north shore of Elliott Bay during their critical rearing period. Mitigation plans for project impacts to threatened and endangered species will address potential means of enhancing habitat.

Appendix F: Guidance Documents

FEDERAL

FAA. (2004). FAA Order 1050.1E, Environmental Impacts: Policies and Procedures. June 8, 2004.

This FAA Order provides agency-wide policies and procedures for compliance with the National Environmental Policy Act and other environmental laws and requirements. It includes instructions on purpose and need and on alternatives. FAA's guidance states that the purpose and need section of an environmental document presents the problem being addressed, how the alternatives would resolve the problem, and the benefits of the federal action. It distinguishes between the need for the proposed action and the desires or preferences of the agency or applicant, and essentially provides the parameters for defining a reasonable range or alternatives to be considered. Appendix D of the Order provides more specific guidance on the aviation streamlining process legislatively established in Vision 100, including new provisions governing purpose and need for certain airport capacity and aviation safety and security projects.

Available at:

<http://www.aee.faa.gov/aee-200/1050-1E/1050-1E.htm>

FAA. (2004). Draft FAA Order 5050.4B, National Environmental Policy Act (NEPA) Implementing Instructions for Airport Projects. Issued for comment December 16, 2004.

This draft Order updates FAA Order 5050.4A, October 8, 1985. It is consistent with FAA's agency-side Order 1050.1E, but provides more detailed environmental guidance for airport projects.

Available at:

http://www.faa.gov/arp/environmental/5050_4B/Index.cfm

Connaughton, James L. CEQ Guidance. Letter in response to May 6, 2003 letter from Secretary Mineta: May 12, 2003.

This three-page letter from James L. Connaughton addresses the appropriate exercise of authority by lead and cooperating agencies in determining the purpose and need. The letter notes that the lead agency has the authority for and responsibility to define the "purpose and need" for purposes of NEPA analysis, but that in situations involving two or more agencies that are making a decision on same proposed action, it is prudent to jointly develop a purpose and need statement that can be utilized by both agencies. The letter also touches on the role of joint lead or cooperating agencies on transportation projects, and the need for these agencies to defer to DOT's "articulation of purpose and need. 49 U.S.C. §101(b)(5)".

Available at:

Baseline Assessment Report

F-2

[http://nepa.fhwa.dot.gov/ReNepa/ReNepa.nsf/All+Documents/EFE6B59BE347825685256D8900722F05/\\$FILE/CEQ%20Guidance%20Letter%20from%20Connaughton.pdf](http://nepa.fhwa.dot.gov/ReNepa/ReNepa.nsf/All+Documents/EFE6B59BE347825685256D8900722F05/$FILE/CEQ%20Guidance%20Letter%20from%20Connaughton.pdf)

EPA. Policy and Procedures for the Review of Federal Actions Impacting the Environment, October 3, 1984.

This manual establishes policies and procedures for carrying out the Environmental Protection Agency's (EPA's) responsibilities to review and comment on Federal actions affecting the quality of the environment. It contains a section on the purpose and need statement, which states: “[T]he reviewer may comment on the technical adequacy and accuracy of the EIS's methods for estimating the need for the proposed action in cases where this affects the definition of reasonable and feasible alternatives. Within the context of reviewing purpose and need, the EPA may also comment on the economic justification of the project, and the relationship between the lead agency's economic analysis and any unquantified environmental impacts, values, and amenities. The comments may also address the technical validity and adequacy of the supporting data for the EIS's economic analyses.”

FHWA and FTA. Joint Guidance on Purpose and Need. July 23, 2003.

This memo from FHWA addresses the above May 12 letter from Mr. Connaughton. It clarifies some of the points made in the original letter, such as how much deference should be given to DOT's articulation purpose and need by joint lead or cooperating agencies and when it is appropriate for such agencies to raise questions about DOT's purpose and need statements. The memo also makes clear that for proposed transportation actions where other Federal agencies do not have separate decision-making responsibilities, FTA or FHWA has the sole responsibility for defining the purpose and need statement and cannot be required to alter the statement by other agencies. The memo also addresses protocol for situations where DOT is not the sole agency responsible for decision-making with respect to the proposed action, and provides guidance on appropriate statement length, style, and scope.

Available at:

<http://environment.fhwa.dot.gov/guidebook/Gjoint.htm>

FHWA. “Transportation Decision making: The Importance of Purpose and Need in Environmental Documents.” September 18, 1990

This paper examines the role of the purpose and need section in an EIS. FHWA contends that the purpose and need section may be the most important chapter of an EIS because it explains to the public why the agency is proposing to spend large amounts of taxpayers' money on a proposed action, while at the same time causing significant environmental impacts. The web page reviews the consideration of alternatives, the basic ingredients of purpose and need, and using purpose and need

in decision-making. The page also provides a list of items which may assist in the explanation of the need for the proposed action, such as an explanation of project status, transportation demand, modal interrelationships, and social demands or economic development.

Available at:

<http://environment.fhwa.dot.gov/projdev/tdmneed.htm>

FHWA. Technical Advisory T 6640.8A. “Guidance for Preparing and Processing Environmental and Section 4(F) Documents.” October 30, 1987.

This technical advisory provides guidance to FHWA field offices and to project applicants on the preparation and processing of environmental and Section 4(f) documents. Part of the document discusses the purpose and need statement, which emphasizes that this section of the environmental document should “clearly demonstrate that a ‘need’ exists and should define the ‘need’ in terms understandable to the general public.” It includes a list of items which may assist in the explanation of the need for the proposed action: project status, system linkage, capacity, transportation demand, legislation, social demands or economic development, modal interrelationships, safety, and roadway deficiencies.

Hogarth, William T., NOAA. Memorandum for NOAA Regional Administrators: Guidance for Developing Environmental Impact Statements for Essential Fish Habitat per the AOC v. Daley Court Order.

This memorandum provides detailed guidance for developing EISs for the essential fish habitat (EFH) fishery management plan (FMP) amendments affected by the September 14, 2000 AOC v. Daley court order. The guidance addresses major issues related to developing the EISs, but it is not a substitute for other applicable references such as CEQ regulations for implementing NEPA, CEQ’s Forty Most Asked Questions Concerning the National Environmental Policy Act Regulations, and NOAA Administrative Order 216-6 (“Environmental Review Procedures for Implementing the National Environmental Policy Act”).

STATE

Caltrans. (2003). Caltrans Purpose and Need Team Final Report and Recommendations.

This report was prepared by the Purpose and Need Team at CALTRANS, and examines ways to improve the process of preparing well-defined purpose and need statements for transportation projects. It lays out the findings of this Team; proposes improvement strategies proposed and means to implement them; and introduces several products that the Team developed to help others prepare purpose and need

statements. The recommendations discussed fall into seven categories: education and training; documentation; resources/funding; continuity; roles and responsibilities; information sources and guidance; and process. Implementation plans and schedules accompany the recommendations. Tools developed by the Team include matrices, flowcharts, and acronym lists.

Available at:

http://www.dot.ca.gov/ser/downloads/general/PN_Report.pdf

Florida Department of Transportation. (2003). Project Development and Environment Manual, Part II Chapter 5: Purpose of and Need for Action.

This chapter of the Florida DOT Project Development and Environment manual discusses the role of the purpose and need section of a NEPA document, and what it should contain. The chapter is divided into sections such as Area Wide Needs, System Linkage, Transportation Demand, Federal State or Local Government Authority, and Modal Relationships for example. The chapter outline is based on FHWA Technical Advisory T6640.8A, but there is some Florida-specific information on Levels of Service (LOS) standards.

Available at:

<http://www.dot.state.fl.us/emo/pubs/pdeman/updated/PART%202,%20CHAPTER%205.pdf>

Idaho Transportation Department Division of Transportation Planning. (1998). Idaho Corridor Planning Guidebook, Chapter 5: Review the Corridor Boundary, Develop a Statement of Purpose and Need, and Identify Goals for the Corridor.

This guidebook is designed to assist Idaho Transportation Department (ITD) staff, in close cooperation with local governments, to develop plans for transportation corridors. The long-range planning process described in the guidebook is designed to integrate transportation planning with land-use planning, and to coordinate local and state transportation planning efforts. Chapter 5 of the guidebook focuses on establishing a statement of purpose and need, and identifying the goals for the corridor. Examples of purpose and need statements are presented.

Available at:

<http://www.itd.idaho.gov/planning/reports/corrplan/coorguid.pdf>

North Carolina Department of Transportation (NCDOT) Statewide Planning Branch. (2000). *Purpose and Need Guidelines*

This document introduces North Carolina's plan to provide planning level purpose and need statements for projects that are within study areas that have received transportation planning assistance by the Statewide Planning (SWP) Branch of NCDOT. This effort aims to more efficiently transition from transportation

planning to project planning. Planning level purpose and need statements will only include information that is typically generated during the systems planning process, and will be used to develop project level purpose and need statements that are sufficient to comply with NEPA. The document contains an outline of elements that may be addressed in a purpose and need statement and a description of the type of information that may be included, a summary of procedures for coordination among various NCDOT branches, and excerpts of relevant FHWA guidance.

Available at:

<http://www.ncdot.org/planning/statewide/PN-report-8-29dist.doc>

Oregon Department of Transportation (ODOT). (2002). Purpose and Need Statements: Instructions for ODOT Projects

This guidance document from ODOT provides background on purpose and need sections of NEPA documents, cites legal guidance on purpose and need statements, and offers instructions on writing the purpose and need statement. The guidance clearly states that the project purpose should be expressed in a single sentence, and that the goals and objectives section is the only appropriate place for issues “beyond the state transportation issue”, such as environmental quality and pedestrian-friendly downtown areas.

Texas Department of Transportation. (Accessed 2004). Suggested EA Outline, Purpose and Need.

The suggested EA outline is a two-page document. The purpose and need section identifies five main topics that the purpose and need section of an EA should address. There are very brief descriptions of each section.

Available at:

<http://www.dot.state.tx.us/env/pdf/resources/EAoutline.pdf>

Utah Department of Transportation. (2004). UDOT Guidance on “Purpose and Need” Statements.

This web page by the Utah Department of Transportation addresses the background behind the requirement to have purpose and need statements in environmental documents, the legal guidance on the issue, protocol for preparing purpose and need statements, including information to include. The site also provides sources of information such as UDOT’s Operational Safety Reports and information on specific projects.

Available at:

http://www.dot.state.ut.us/download.php/tid=288/UDOT_Guidance_on_Purpose_and_Need_Statements.pdf

Vermont Agency of Transportation. (Accessed 2004). Project Development Process, Appendix D: Purpose and Need Statements.

This project Development Process is intended for use on those Federally-Aided projects for which the NEPA document is anticipated to be a Categorical Exclusion only. Projects requiring an Environmental Assessment or an Environmental Impact Statement will follow a similar, but different, process. The Vermont Agency of Transportation notes in this three-page appendix that purpose and need statements are the crux of the Project Definition Phase. The agency stresses that a purpose and need statement needs to be written to state the problems of the transportation facility and the goal for that facility rather than describe the author's recommended solution. The agency also recommends that the reader should be presented with sufficient material to understand the needs and goals of the project and then logically reach the same conclusion as reached during the Project Definition Phase. While this appendix refers to FHWA's seven-page memorandum on the purpose and need for environmental documents, the agency acknowledges that its scoping reports are not true environmental documents, but that there are similarities between the two.

Available at:

<http://www.aot.state.vt.us/progdev/sections/pdmanual/11Purpos.htm>

Washington Department of Transportation. (2004). The Environmental Procedures Manual.

The Environmental Procedures Manual (EPM) provides guidance for complying with Federal, state, and local environmental laws and regulations during the planning, designing, constructing, and maintaining of transportation facilities in Washington State. The manual applies to facilities that are owned and operated by the Washington State Department of Transportation (WSDOT): the state highway system, ferry system, state owned airports, state-sponsored rail system, and maintenance facilities. Cities, counties, other local agencies and private transportation entities may also use the EPM for guidance on their transportation facilities, either voluntarily or as required under WSDOT's Local Agency Guidelines. Purpose and need statements are addressed briefly, with the guidance advising that they should clearly demonstrate that a "need" exists and should define the "need" in terms understandable to the general public.

Available at:

<http://www.wsdot.wa.gov/fasc/EngineeringPublications/Manuals/EPM/EPM.htm>

The following documents contain general NEPA guidance, but not specific techniques or methods for preparing purpose and need statements.

NOAA. (1999.) NOAA Administrative Order (NAO) 216-6, "Environmental Review Procedures for Implementing the National Environmental Policy Act". May 20, 1999.

Available at:

http://www.nepa.noaa.gov/NAO216_6_TOC.pdf

**NOAA (1983.) Departmental Administrative Order (DAO) 216-6,
“Implementing the National Environmental Policy Act”. March 10,1983.**

Available at:

<http://www.osec.doc.gov/bmi/daos/216-6.htm>

**Stanton, Robert. (2001). National Park Service Director’s Order #12:
Conservation Planning, Environmental Impact Analysis, and Decision-making.
January 8, 2001.**

Available at:

<http://www.nps.gov/policy/DOrders/DOrder12.html>

DOE. (1998). Environmental Impact Statement Summary Guidance.

Available at:

<http://tis.eh.doe.gov/nepa/tools/guidance/summguid.pdf>

DOE. (1997.) Environmental Impact Statement Checklist.

Available at:

<http://tis.eh.doe.gov/nepa/tools/guidance/eischk2.pdf>

Appendix G: Training Courses

National Environmental Policy Act (NEPA) Courses Related to Purpose and Need

Identified courses that include modules focused on purpose and need are identified below. General NEPA courses that only include mention of purpose and need are not included.

Following this listing, a description of each course is provided, identifying topics covered, availability of course materials, course duration, eligibility, target audience, logistics, and contact information. This information was developed based on available information on each course and is subject to change.

Duke University

[Preparing and Documenting Environmental Impact Analyses](#)

[Implementation of NEPA](#)

[Making the NEPA Process More Efficient: Scoping and Public Participation](#)

Environmental Training & Consulting International

[Essentials for the NEPA Practitioner](#)

U.S. Department of Transportation, Federal Highway Administration, National Highway Institute

[NEPA and Transportation Decision-making](#)

U.S. Department of Transportation, Federal Aviation Administration, FAA Academy

[Introduction to NEPA Requirements and Procedures](#)

U.S. Department of Agriculture Forest Service

[NEPA/NFMA Forest Plan Implementation Training Course](#)

USDA Graduate School

[NEPA: Policy, Procedure and Science/Art](#)

Airport Consultants Council Institute

[NEPA Back to Basics](#)

The Shipley Group

[NEPA Compliance Training](#)

[Transportation, NEPA and Decision-making](#)

Preparing and Documenting Environmental Impact Analyses
Duke Environmental Leadership Program
<http://www.nicholas.duke.edu/del/shortcourses/courses/envimpact.html>

Areas Covered

Purpose and need is discussed for 2.5 of 24.5 hours.

- how to prepare, document, coordinate and review information required by NEPA

Course Materials

- Course materials only available through registration for the course.

Duration

- 3.5 days

Eligibility

- Open to all

Target Audience

- Novice NEPA writers or reviewers
- Entry and junior level Federal agency professionals
- Contractors

Logistics

- Location: Durham, NC
* Custom onsite classes also available for parties of 10 or more *
- Offerings: Annually
- Cost: \$990 (\$1090 after deadline)

Contact Information

- Ray Clark, lead instructor for NEPA certificate program: (202) 544-8200;
rayclark@clarkgroupplc.com
- Deb Hall, contact at DEL office: (919) 613-8700; dwhall@duke.edu

Implementation of NEPA
Duke Environmental Leadership Program

<http://www.nicholas.duke.edu/del/shortcourses/courses/NEPAimplementation.html>

Areas Covered

Purpose and need is covered for 3 of 31.5 hours.

- brief history of land-use regulation in the United States
- detailed reviews of legislative history and intent of NEPA, overview of Council on Environmental Quality (CEQ) regulations
- integrating NEPA into agency decision-making
- role of the public, scoping, public involvement programs
- limitations of actions a Federal agency may take during the NEPA process
- alternative approaches to holding large public meetings
- comparison of agencies implementing regulations
- methods for conducting environmental impact analyses
- alternatives to a proposed action
- determining “significances”
- socio-economic impact assessment
- ecological risk assessment
- environmental justice, tribal issues
- mitigating environmental impacts
- records of decision, case study
- NEPA case law
- current issues in NEPA
- emerging technology
- litigation risks and consequences and how to avoid them

Course Materials

- Not available without registering for the course

Duration

- 4.5 days

Eligibility

- Open to all

Target Audience

- Mid-level and senior project managers who are involved with streamlining the environmental permitting process for Federal facilities and Federal regulatory

activities and preparing and reviewing environmental assessments, environmental impact statements, and other NEPA analyses

Logistics

- Location: Durham, NC
* Custom onsite classes also available for parties of 10 or more *
- Offerings: Annually
- Cost: \$1050 (\$1150 after deadline)

Contact Information

- Ray Clark, lead instructor for NEPA certificate program: (202) 544-8200;
rayclark@clarkgroupllc.com
- Deb Hall, contact at DEL office: (919) 613-8700; dwhall@duke.edu

Making the NEPA Process More Efficient: Scoping and Public Participation

Duke Environmental Leadership Program

[Link to Course Description](#)

Areas Covered

Purpose and need comprises approximately 2 of 17.5 hours of the course.

- scoping and public involvement
- interagency coordination/paralleling requirements
- scoping for temporal and spatial boundaries

Course Materials

- Course not currently scheduled; when scheduled, course materials will only be available through registration for the course.

Duration

- 2.5 days

Eligibility

- Open to all

Target Audience

- Not specifically mentioned

Logistics

- Location: Durham, NC
 - * Custom onsite classes also available for parties of 10 or more *
- Offerings: Annually
- Cost: \$670 (\$750 after deadline)

Contact Information

- Ray Clark, lead instructor for NEPA certificate program: (202) 544-8200;
rayclark@clarkgroupllc.com
- Deb Hall, contact at DEL office: (919) 613-8700; dwhall@duke.edu

Essentials for the NEPA Practitioner
Environmental Training & Consulting International
<http://www.envirotrain.com/nepatoolbox.html>

1 of 14 agenda items in the course related to purpose and need.

Areas Covered

- NEPA overview
- how the NEPA process works
- initial scoping
- identifying significant issues
- developing appropriate alternatives
- creating effective public involvement strategies
- the relationship of NEPA to other environmental requirements (e.g., cultural resources management and Endangered Species Act)

Course Materials

- Not available without registering for the course

Duration

- 2 days

Eligibility

- Open to all

Target Audience

- Line, project, and environmental managers responsible for NEPA compliance
- Staff writers and editors who prepare EAs/EISs
- Resource and technical specialists who contribute to NEPA analyses
- Interdisciplinary team leaders and members
- Environmental contractors and consultants

Logistics

- Onsite training only, call for information

Contact Information

- Leslie Wildeson: (720) 859-0380; info@envirotrain.com

NEPA and Transportation Decision-making

U.S. Department of Transportation, Federal Highway Administration, National Highway Institute

<http://www.nhi.fhwa.dot.gov/coursedesc.asp?coursetnum=117>

Approximately 1 out of 19.5 hours of the course content related to purpose and need.

Areas Covered

- Council on Environmental Quality's and FHWA's regulations and guidance for implementing NEPA and Section 4(f) of the Department of Transportation Act
- initiatives for interagency coordination and streamlining the project development process including those provisions contained in TEA-21
- public involvement
- Title VI/ Environmental Justice
- FHWA's policy for mitigation and enhancement
- the role of transportation in achieving sustainable development

Course Materials

- Course materials are available online at <http://www.environment.fhwa.dot.gov/tutorials/index.htm> as part of a NEPA and transportation project development tutorial

Duration

- 3 days

Eligibility

- Open to all

Target Audience

- FHWA employees
- State DOT employees (including consultants acting on behalf of the State)
- Federal and State environmental resource agency employees
- Local government and MPO employees who participate in the transportation decision-making process

Logistics

- Location: Varies depending upon request. Some example cities include
 - Baton Rouge, LA; Washington, DC; Anchorage, AK; Olympia, WA; Sacramento, CA; Montpelier, VT; King of Prussia, PA
- Offerings: Annually, varies depending upon request
- Cost: \$400

Contact Information

- Lamar Smith, Course Lead: (202) 366-8994

Introduction to NEPA Requirements and Procedures

U.S. Department of Transportation, Federal Aviation Administration, FAA Academy

<http://www.academy.faa.gov/catalog/html/12000.htm>

Areas Covered

- The course provides FAA employees with the general knowledge to analyze and document the environmental impact of projects and to reach conclusions and make recommendations based on the environmental analysis.

Course Materials

- Coursework not available prior to class

Duration

- 2 weeks

Eligibility

- FAA employees

Target Audience

- FAA employees

Logistics

- Location: Oklahoma City
- Offerings: Annual
- Cost: Travel/per diem

Contact Information

- Contact your LOB training coordinator

NEPA/NFMA Forest Plan Implementation Training Course

U.S. Department of Agriculture Forest Service

<http://www.fs.fed.us/emc/nepa/includes/ftcp1.html>

1 of 18 agenda items in the course related to purpose and need.

Areas Covered

- introduction to the National Forest Management Act (NFMA) and NEPA
- Forest Service-specific public involvement concepts
- building a project record for environmental analysis
- the development of a proposed action statement, purpose and need statement, and a clear statement of the scope of the decision framework
- introduction to project records
- definitions and concepts relating to environmental effects
- scoping and the roles of the responsible official and the ID team
- NEPA documentation requirements
- content requirements for an Environmental Assessment (EA), Environmental Impact Statement (EIS), and associated decision documents
- NEPA significance criteria
- alternatives
- environmental effects analysis
- monitoring requirements under NFMA and NEPA
- response to comments
- decisions and notifications

Course Materials

- Course materials are not available without registering for the course; however, a detailed course outline is available online at the link provided above.

Duration

- 4 days

Eligibility

- Open to non-Forest Service personnel at the discretion of each regional office. Region 5 regularly welcomes people from outside the Forest Service.

Target Audience

- USDA Forest Service line officers responsible for decisions
- People who participate on and are consultants to interdisciplinary (ID) teams that conduct environmental analyses
- Employees from other Federal and State agencies

* A general understanding of the NEPA process and natural resource management experience is recommended, but not required. *

Logistics

- Location: The course was developed by the Forest Service's Washington office, but is offered by regional offices.
- Offerings: Frequently January – March of each year at regional offices
- Cost: Variable

Contact Information

- Joe Carbone, Ecosystem Management Coordination Staff: (202) 205-0884;
jcarbone@fs.fed.us

NEPA: Policy, Procedure and Science/Art
U.S. Department of Agriculture Graduate School
<http://www.grad.usda.gov/cgi-bin/course/show>

Areas Covered

- Philosophy and practice of ecological theory and discussion of contemporary challenges in effective implementation of NEPA
- Proper development and filing of Environmental Assessments, Findings of no Significant Impact, and Environmental Impact Statements.

Course Materials

- Contact the Graduate School for course information, School ID # ENVS4435E

Duration

- 10 weeks, night course

Eligibility

- Open to all

Target Audience

- NEPA Practitioners

Logistics

- Location: Washington Metropolitan area
- Offerings: View the Term course schedule at www.grad.usda.gov
- Cost: Contact USDA Grad School for pricing

Contact Information

Contact USDA Grad School for further information

NEPA Back to Basics
Airport Consultants Council Institute
<http://www.ACOnline.org>

Areas Covered

- Fundamentals of NEPA
- NEPA history and evolution
- 20 impact areas including noise, air and water quality
- Review of the FAA Order 1050.1E
- Students will work through an EA and EIS

Course Materials

- Coursework is not available prior to class

Duration

- 3-4 days

Eligibility

- Open to all

Target Audience

- Airport consultants
- Airport environmental managers
- FAA and state agency representatives
- New environmental specialists and those who have not been in the trenches of environmental projects

Logistics

- Location: Washington, DC
- Offerings: Annually, May 2005 and January 2006
- Cost: Contact ACC for cost information

Contact Information

Anthony Mavrogiannis 703-683-5900

NEPA Compliance Training

The Shipley Group

<http://www.shipleygroup.com>

Areas Covered

- Executive Overview of the NEPA Process: Learn the basics of the NEPA Process
- How to Manage the NEPA Process and Write Effective NEPA Documents: Learn the NEPA process start to finish, including how to prepare documents that are legally sufficient
- Reviewing NEPA Documents: For decision makers or other reviewers, learn what to look for and how to judge quality in a NEPA document

Course Materials

- Coursework is not available prior to class

Duration

- 3-4 days, depending on the class

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Eligibility

- Open to all (individual open enrollment and group/agency offsite enrollment are available)

Target Audience

- NEPA Practitioners
- Decision-makers

Logistics

- Location: Various locations, check open enrollment training calendar
- Offerings: Throughout the year, check open enrollment calendar for dates
- GSA Cost: Range from \$795 to \$995 depending on the number of days offered

Contact Information

Sid Allen, Director of Environmental Training 1-888-270-2157 or email:

Shipley@shipleygroup.com

Transportation, NEPA and Decision-Making

The Shipley Group

<http://www.shipleygroup.com>

Areas Covered

- NEPA principles as they apply to the development of transportation projects
- NEPA umbrella concept in transportation decision-making
- Reasoned, collaborative process when developing and evaluation alternatives
- Balancing an array of interests and values in making transportation decisions
- Explain the roles and responsibilities and list the milestones in the transportation planning process
- Environmental streamlining, concepts of leadership, stewardship, and conflict resolution in managing the NEPA process

Course Materials

- Coursework is not available prior to class

Duration

- 3-4 days, depending on the class
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Eligibility

- Open to all (individual open enrollment and group/agency offsite enrollment are available)

Target Audience

- NEPA Practitioners
- Resource Specialists
- DOT professionals and engineers
- Decision-makers

Logistics

- Location: Various locations, check open enrollment training calendar
- Offerings: Throughout the year, check open enrollment calendar for dates
- GSA Cost: Range from \$795 to \$995 depending on the number of days offered

Contact Information

Sid Allen, Director of Environmental Training 1-888-270-2157 or email:

Shipley@shipleygroup.com