

# 6 Environmental and Cultural Resources Requirements

## 6.1 Introduction

Meeting environmental and cultural resource requirements and getting the necessary approvals and permits for local public agency (LPA) projects can involve multiple steps and varying lengths of time. Not meeting requirements in a timely manner can delay or even halt your project. You must obtain National Environmental Policy Act (NEPA) approval from the [Federal Highway Administration \(FHWA\)](#) before 35% plan completion. Before you can begin right-of-way acquisition for the project, you need concurrence from the State Historic Preservation Office (SHPO) that [Section 106 \(cultural resources\)](#) has been addressed satisfactorily. Some resources with specific requirements in addition to NEPA include historic buildings, archaeological sites, historic bridges, historic sites and parklands, wetlands and waterbody crossings, endangered species, and conversion of farmland. Information on these topics and others can be found in this section.

**Roles & Responsibilities:** The Missouri Department of Transportation’s (MoDOT’s) role in the project review process is to advise the LPA of requirements that must be met, review any NEPA submittals for completeness before forwarding to FHWA, and ensure that all needed permits, approvals, or other supporting documentation are obtained. The LPA is expected to provide complete and accurate information about the project. Complying with the applicable laws and regulations is the LPA’s responsibility. The LPA interacts with MoDOT through the designated district contact. For the occasional project that is classified as an Environmental Assessment (EA) or Environmental Impact Statement (EIS) under NEPA, a MoDOT environmental staff member will be a liaison between the LPA and FHWA. The liaison participates in project team meetings, is responsible for all communication with FHWA concerning the project, and helps ensure satisfactory compliance with NEPA. A flowchart summarizes the environmental/historic preservation project review process in Figure 136.6.1. The timeframes needed to achieve key environmental/cultural resources compliance milestones are shown below and in Figure 136.6.2 (landscape format to print for reference). Figure 136.6.3 contains a helpful checklist to guide the LPA through this process.

### Key Environmental/Cultural Resources Compliance Milestones

Task/Submittal	LPA Responsibility	MoDOT Responsibility	Timeframe
Obtain NEPA classification	Provide adequate project information with Request for Environmental Review	Provide classification	30 days

Complete NEPA documentation if required: 1. Programmatic CE (no documentation required) 2. Letter CE 3. CE2 4. EA 5. EIS	Prepare and submit required documentation	Review documentation, provide comments, and submit documentation (revised by LPA as needed) to FHWA	1. Programmatic CE–4 weeks 2. Letter CE–6 weeks 3. CE2–10 weeks 4. EA–18 months 5. EIS–36 months
Comply with Section 106 (cultural resources)	Obtain SHPO's concurrence	Ensure Section 106 compliance	Generally 10 weeks *Can take 6–12 months if SHPO finds adverse effect
Section 4 (f) 1. Historic bridge programmatic 2. Public land prog. or de minimis 3. Full draft and final evaluation	1. Prepare MOA 2. Provide documentation 3. Provide documentation	1. Review MOA 2. Review & submit to FHWA 3. Review & submit to FHWA	1. 6 months 2. 60 days 3. 12 months
Comply with Clean Water Act Sections 404 and 401	Obtain permits	Ensure compliance	Nationwide: 6–8 weeks Individual: 4–6 months
Comply with Endangered Species Act	Consult with MDC and obtain clearance letter	Review consultation	1–6 months
Floodplains	Contact local floodplain administrator for any needed permits	Ensure compliance	1–6 months
Comply with Clean Water Act Section 602	Obtain NPDES permit	Ensure Section 602 compliance	1–3 months
Comply with env. laws regarding use of borrow & spoil sites	Comply with applicable laws	Ensure compliance with applicable laws	Varies according to law
Hazardous waste	Determine presence, contact DNR if hazardous materials are found	Ensure compliance	1 month
Comply with Farmland Protection Policy Act (FPPA)	Obtain Farmland Rating	Ensure FPPA compliance	6 weeks
Environmental Justice, Title VI, ADA, etc.	Ensure compliance	Ensure compliance	1 month
Noise	Complete noise study if necessary	Ensure compliance	1–6 months
Comply with Clean Air Act	Ensure Clean Air Act compliance, model if necessary	Ensure Clean Air Act compliance	6–12 months if modeling required

## 6.2 National Environmental Policy Act (NEPA) Classification

The LPA must submit the Figure 136.6.4 LPA Request for Environmental Review (RER) to the MoDOT district contact within 60 days of preliminary engineering (PE) obligation for all federal-aid projects. The RER initiates MoDOT environmental and historic preservation staff's review of the project to determine the appropriate NEPA classification. The district contact will notify the LPA of the project's classification as well as other environmental permits and clearances the LPA must obtain.

Since the environmental classification is based on the scope of the project and expected magnitude of impacts, providing all information requested on the form is vital to getting the NEPA classification as early as possible. Whenever the project scope or location changes or more than a year has passed since MoDOT's environmental and historic preservation staff reviewed the RER, the LPA will submit to the MoDOT district contact a new RER that describes and shows any changes. Based on that information, the project will be reexamined. A completed and approved NEPA document has a limited shelf life of three years (even when portions of the project are under construction or have already been constructed, as is often the case for lengthy corridor projects). After obtaining approval of a ROD, FONSI, or CE determination and before requesting any major approvals or grants, the LPA shall consult with MoDOT to establish whether the approved environmental document or CE designation remains valid for the requested FHWA action. These consultations will be documented when determined necessary by FHWA.

The basic NEPA classifications are:

- Categorical Exclusion (CE)—typically sufficient for projects that do not individually or cumulatively have a significant environmental effect. Most projects will be classified as CEs.
- Environmental Assessment (EA)—required for projects in which the environmental impact is not clearly established. Projects such as a two-lane relocation or adding lanes to an existing highway corridor generally require an EA.
- Environmental Impact Statement (EIS)—required for projects that may have significant adverse impacts or that are controversial. Projects such as a new controlled-access freeway, a highway project of four or more lanes on a new location, or new construction or extension of a separate roadway for buses or high occupancy vehicles not located within an existing highway facility typically require an EIS.

## 6.3 Categorical Exclusion (CE)

The majorities of transportation projects in Missouri are classified as categorical exclusions (CEs) and are completed in one of three ways—as a programmatic CE, a letter CE, or a CE2. In the past, around 96% of LPA projects have been classified as programmatic CEs, with the remainder classified as letter CEs, CE2s, or very occasionally an EA or EIS.

An agreement with FHWA allows MoDOT to automatically classify certain, specific types of projects with no more than 3 acres of new right of way as CEs. These programmatic CEs do not require FHWA review. For projects expected to have low environmental impacts but that do not qualify for the programmatic CE, MoDOT may advise the LPA that the project requires a letter CE. The LPA then prepares a letter summarizing the anticipated impacts and requesting concurrence in a CE designation for the project. MoDOT staff review the information provided and submit it to FHWA for approval. MoDOT will notify the LPA when FHWA approves the CE.

With projects that require more detailed information to be classified as CEs, MoDOT will advise the LPA to complete a [CE2 form](#) describing the project, the impacts expected from the project, and any planned mitigation to compensate for the project's impacts. The form requests information such as federal project number, route, county, project termini and length, project description, current and future average daily traffic (ADT), right-of-way needs and displacements, and a location map. Figure 136.6.5, Instructions for preparing a CE2 form, guides the LPA through the process. For FHWA to concur that the project is a CE instead of an EA or EIS, the CE2 document must clearly demonstrate that the project will not have significant impacts and is, therefore, in a category excluded from the requirement to prepare an EIS or EA. MoDOT will notify the LPA of the CE approval, request for more information, or FHWA's decision that an EA or EIS needs to be prepared.

#### 6.4 Beyond NEPA—Complying with Other Federal and State Environmental Laws and Regulations

The resource-specific information that follows is intended to aid the LPA in complying with federal and state environmental laws and regulations. Ultimately, the LPA is solely responsible for compliance with all applicable laws and regulations, regardless of the information, or lack thereof, included here. The LPA must ensure that all commitments specified in environmental documents are identified in plans and job specifications as appropriate. The LPA is also responsible for implementing all commitments and monitoring included in environmental documents.

**6.4.1 Section 106 (Cultural Resource) Compliance** - [Section 106 of the National Historic Preservation Act \(NHPA\) of 1966](#) requires the consideration of the potential impacts of federally funded or permitted projects to significant cultural resources. Cultural resources include archaeological sites, buildings, structures (e.g., bridges), objects or historic districts. The significance of a cultural resource is evaluated by applying a specific set of criteria that is set forth by the [National Register of Historic Places](#). Cultural resources that meet the criteria of eligibility for listing on the National Register are referred to as "historic properties." Failure to comply with Section 106 requirements could jeopardize federal funding and permits for a project. Section 106 encourages, but does not mandate, the preservation of historic properties. The goal of Section 106 is to ensure that preservation values are factored into the planning process for all federally funded or permitted projects. Compliance with Section 106 requires three things:

1. *Identify historic properties.* Determine project's area of potential effects (APE), identify cultural resources within the APE, and evaluate historic significance of these cultural resources;
2. *Assess adverse effects.* Assess if the project will have an adverse effect on historic properties; and
3. *Resolve adverse effects.* Avoidance, minimization, and/or mitigation of any project adverse effects on historic properties.

##### Useful Section 106 Websites

Advisory Council on Historic Preservation  
<http://www.achp.gov/work106.html>

Missouri State Historic Preservation Office  
<http://www.dnr.mo.gov/shpo/sectionrev.htm>

Federal Highway Administration  
<http://www.environment.fhwa.dot.gov/histpres/index.asp>

MoDOT Historic Preservation Section  
<http://www.modot.org/ehp/HistoricPreservation.htm>

Additional information on the Section 106 process is available on the webpages of the [Advisory Council on Historic Preservation](#), and the [Missouri State Historic Preservation Office](#).

Figure 136.6.6 illustrates the steps that the LPAs should follow to comply with Section 106.

**6.4.1.1 Step 1. Determine Need for Cultural Resource Investigations - The LPA should solicit [State Historic Preservation Office's](#) (SHPO) opinion on the need for a cultural resource survey by submitting a Section 106 Project Information Form to SHPO.**

The SHPO must be consulted on a federal-aid project as part of the Section 106 process. The Federal Highway Administration (FHWA) or Missouri Department of Transportation (MoDOT) may also be consulted on an as needed basis, but in almost all cases, the information for the SHPO can be prepared by LPA staff. The following data should be provided to the SHPO:

[Section 106 Project Information Form](#).

Forms
Section 106 Project Information Form* <a href="http://www.dnr.mo.gov/forms/780-1027-f.pdf">http://www.dnr.mo.gov/forms/780-1027-f.pdf</a>
Section 106 Survey Form* <a href="http://www.dnr.mo.gov/forms/780-1718.pdf">http://www.dnr.mo.gov/forms/780-1718.pdf</a>
Guide to the Completion of the Section 106 Survey Memo <a href="http://www.dnr.mo.gov/forms/780-1718_inst.pdf">http://www.dnr.mo.gov/forms/780-1718_inst.pdf</a>
* These forms are available electronically, but cannot be electronically submitted to

- A. If a bridge is present, provide information on the bridge's original builder and the year built along with 3"x5" or larger photographs (600 dpi if digital; photocopies are not acceptable) showing two views (side and end views). SHPO will also accept digital photos on a CD, especially if there are lots of images of both bridges and/or buildings.
- B. Provide clear photographs (see guidance above) of all buildings in the project area (see description in Step 2a.A. below), keyed to a project map. Include a brief history of buildings including construction dates (if known) and building uses.
- C. A relevant portion of United States Geological Survey (USGS) 7.5' Topographic Quadrangle Map (1:24,000 scale) showing the location of the project and borrow sites is required. Maximum project (and/or borrow) limits should be delineated on the map, along with realignment of roadway if applicable. This map should show a buffer of about one mile beyond the limits of rural projects. An additional "close-up" view map of the project area may be necessary for small projects where the details are difficult to distinguish or for urban areas to better show adjacent buildings (aerial images from websites such as [Google Maps](#) and [Bing Maps](#) can be used for this supportive information). USGS 7.5' topographic maps can be downloaded from the University of Missouri's [CARES Map Room](#).

If there are any questions about the information that is going to be submitted, the SHPO should be called for guidance. Sending in inadequate information could result in a SHPO response of “Your submittal did not include adequate information to review your project ...”, which will require a resubmittal with the correct information. The SHPO review process does not officially begin until they have an acceptable submittal. The SHPO 30 day review process starts over each time additional information is submitted.

**SHPO reviews the submitted project information and offers an opinion as to whether further cultural resource investigations are required.**

- A. SHPO reviews information and offers an opinion as to the need for a Cultural Resource Survey. SHPO has by law 30 calendar days to respond. If SHPO responds “no survey needed” or “no historic properties affected,” Section 106 requirements have been satisfied and no further Section 106 work is needed. The date of the SHPO letter would be used as the Section 106 compliance date.
- B. If SHPO recommends that a survey is necessary, a survey should be conducted using a cultural resource consultant or staff member (must meet the [Secretary of Interior Standards](#)) to identify historical and/or archaeological resources that may be affected by the proposed project.
- C. If LPA does not agree with SHPO that a cultural resource survey is needed, FHWA shall be contacted to make a final determination on the need for a survey.

Responsibility for borrow pits, staging areas, and other land disturbance activities outside right of way are addressed in 136.6.4.9.

**6.4.1.2 Step 2. Cultural Resource Investigations - If the SHPO requests a Section 106 survey the LPA will need to hire a qualified [cultural resource consultant](#) or staff member to conduct the survey and to submit a report of their findings to the SHPO.**

***Step 2a. The Cultural Resource Survey***

- A. Cultural resource surveys typically are limited to the area of potential effects (APE) (i.e., For archaeology, this is the maximum footprint of the project consisting of proposed and existing right of way, and permanent and temporary easements) and any off-site areas (e.g., borrow, staging, wasting, etc.). For architectural resources, the APE may include the limits of the project plus a buffer around the project area so indirect effects of the project are considered (usually 50 ft in urban settings and 100 ft in rural settings).
- B. Reporting the results of the cultural resource survey should follow the SHPO “[Guidelines for Contract Cultural Resource Survey Reports.](#)” The standard method to submit the results is the [SHPO Section 106 Memo](#). Directions in completing this memo are provided on [SHPO’s website](#).
- C. The Section 106 submittal will be reviewed and commented on by SHPO. SHPO has by law 30 calendar days to respond.

1. If no cultural resources were identified, the SHPO usually will respond “no historic resources affected.” The Section 106 process is complete and no further action is necessary.
2. If cultural resources were identified, their eligibility for the National Register of Historic Places (National Register) must be determined.
3. In some cases, additional field investigations and /or historical research may be required for the cultural resource professional to determine resource eligibility.

The SHPO comments only apply to the project as submitted. Any changes to the project may require a supplemental submittal to SHPO regarding these changes (e.g., project limits, significant modifications to the nature of the project, etc.). Any subsequent communication with SHPO should include the Project Number assigned by SHPO to the original submittal.

If human remains are encountered during any fieldwork, the LPA and consultants must comply with state burial laws ([RSMO 194](#) – unmarked remains or [RSMO 214](#) – cemeteries). This requires initially contacting local law enforcement. If the human remains are not part of a crime scene, jurisdiction of the remains and disturbance of them falls on either local courts (RSMO 214) or the SHPO (RSMO 194). Consultation with appropriate American Indian tribes should be required if the human remains are believed to be of Native Americans – either prehistoric or historic. The LPA must contact FHWA prior to any consultation with Indian tribes. FHWA, as the Federal agency, is legally responsible for the tribal consultation process. The LPA may only consult directly with an Indian Tribe if authorized by FHWA.

#### ***Step 2b. Determination of Eligibility***

**If cultural resources are present, the LPA, in consultation with SHPO and FHWA, determines whether a cultural resource meets the eligibility requirements of the National Register. A cultural resource professional may need to conduct additional investigations to evaluate the eligibility of some resources.**

Readily available information can often be used to determine the National Register eligibility of identified cultural resources. This information should consist of the results of the cultural resource survey, any subsequent investigations, or other available information such as pictures and available history of structures. If the adverse effects to the potentially National Register eligible cultural resource cannot be avoided by the project the National Register eligibility determination is included in the Section 106 submittal.

- A. The SHPO is requested to concur or disagree with the National Register eligibility of a cultural resource. The cultural resource professional should provide an assessment of resource eligibility.
- B. If SHPO, LPA, and FHWA agree that a cultural resource is not eligible for the National Register, the Section 106 process is complete. No further action is necessary.
- C. If SHPO, LPA, and FHWA agree that a cultural resource is eligible for the National Register, a determination of effect (Step 2c) is made next.

1. If SHPO, LPA, and FHWA disagree on the eligibility of a resource, the LPA should request the FHWA to contact the Keeper of the National Register of Historic Places (Keeper) for a definitive opinion. If the FHWA decides that the Keeper needs to be consulted they will provide the LPA with a list of the required documentation. This process can be lengthy (up to six months), so it should be avoided if possible.
2. If the Keeper finds that the resource is not eligible, the LPA no longer needs to consider the project's effects to that specific resource.

### ***Step 2c. Determination of Effect***

**If historically significant cultural resources are present, the LPA, FHWA, and SHPO will determine the effect of the project on each National Register eligible property.**

The effect of a project on a National Register eligible property should be determined through consultation among the LPA, SHPO, and FHWA, using the criteria of adverse effects found at 36CFR800.4(1) and the examples of adverse effects found at 36CFR800.4(2). There will be a determination of either "no historic properties affected," "no adverse effect" or "adverse effect." The LPA will provide its opinion regarding effect along with its evaluation of eligibility to the SHPO for their concurrence. If the SHPO concurs with the LPA, this finding will be transmitted to the FHWA. If there is a disagreement among the LPA and SHPO, FHWA and MoDOT may be brought into the discussions to help facilitate an agreement.

- A. No Adverse Effect – If the finding is that the project effect is not adverse upon the historic property(ies), the Section 106 process is complete.
- B. Adverse Effect – If the project effect is adverse to the historic property(ies) (i.e., adversely affecting the characteristics that make it eligible for listing on the National Register), the LPA will consult with the SHPO on avoidance or mitigation of the adverse effect. It may be possible to redesign portions of the project to avoid adverse impacts to the historic property. The LPA will explore avoidance options, continued use, or rehabilitation of the historic property (not necessary for most archaeological sites). In addition, the public (interested parties, holders of permits, owners of affected lands, and private individuals) may be allowed to review and comment on the project, and participate in the decision-making process.

If the SHPO concurs with the results of the Section 106 Survey submittal being "no historic properties affected" or "no adverse effect to a historic property," Section 106 compliance is completed. The date of the SHPO letter would be used as the Section 106 compliance date. If the result of the survey is "adverse effect to a historic property" the LPA precedes with Steps 3 and 4.

If an adverse effect cannot be avoided for certain kinds of historic properties, FHWA may determine that a Section 4(f) evaluation must be completed. Cultural resources requiring Section 4(f) evaluation are typically architectural or bridge resources, or archaeological sites that warrant preservation in place (usually

mortuary sites). [Section 4\(f\) of the Department of Transportation Act of 1966](#) states that a transportation project requiring the use of publicly owned land of a public park, recreation area, wildlife and waterfowl refuge, or a historic site (i.e., a “historic property” as defined by Section 106) may be approved only if:

1. There is no prudent and feasible alternative to using that land; and
2. The project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use

Section 4(f) is unique to Department of Transportation projects and is a process that can take up to 12 months. The LPA should make sure it works closely with FHWA if there is a possibility of a need for a Section 4(f) Evaluation. Information on the Section 4(f) Evaluation process is provided elsewhere in this LPA guidance manual.

**6.4.1.3 Step 3. Preparation of the Memorandum of Agreement - If historic properties will be adversely affected by the project, the LPA will coordinate with SHPO and FHWA in preparation of a Memorandum of Agreement (MOA).**

If adverse effects to a historic property cannot be avoided, a MOA will be prepared through consultation with LPA, FHWA, the SHPO, and other appropriate interested parties. The MOA will document the stipulations to be carried out to mitigate the adverse effect upon the historic property(ies). It is a legally binding agreement document that is signed by the signatory parties (usually the FHWA, SHPO and the LPA). Figure 136.6.7 provides an example of a MoDOT bridge MOA and the information to accompany. In addition, the Advisory Council on Historic Preservation (Council) provides a “[model MOA](#)” for archaeological data recovery on its website.

- A. The MOA process is started by the LPA’s preparation and submittal of a draft MOA and the required information to accompany this document to FHWA.
- B. The information to accompany the draft MOA must include the following information:
  1. A description of the undertaking and its area of potential effects (including photographs, maps, etc., as necessary);
  2. A description of the steps taken to identify historic properties;
  3. A description of the affected historic properties, including information on the characteristics that qualify them for the National Register;
  4. A description of the undertaking's effects on historic properties, and a discussion of the efforts made to avoid or minimize adverse effects to historic properties. This may include an alternatives analysis that explores alternative outcomes for avoiding the adverse effect to historic bridges or buildings;

5. An explanation of why the criteria of adverse effect was found applicable or inapplicable, including any conditions or future actions to avoid, minimize or mitigate adverse effects;
  6. Summaries of any views provided by consulting parties, Indian Tribes (if appropriate) and the public, and documentation of the efforts to solicit these comments; and
  7. The plan for archival documentation or recovery of archaeological data to mitigate the adverse effect upon the historic property.
- C. FHWA will provide the SHPO a copy of the draft MOA and the information to accompany to provide them the opportunity to comment on this document.
  - D. If the adverse effects are to a Native American archaeological site, FHWA will provide a copy of the draft MOA and the information to accompany to Indian tribes with historical interest in the project area or attach religious and cultural significance to the site to provide them the opportunity to participate in the consultation process.
  - E. The FHWA will forward the draft MOA and the information to accompany to the Council to provide them the opportunity to participate in the consultation process. If the project is not controversial, the Council will not wish to participate in the consultation. The Council usually participates in consultation if a request is received from the SHPO, affected Indian tribe, or other consulting party.
  - F. Once the Council notifies FHWA that it will not participate in the MOA consultation and comments on the draft MOA from the consulting parties have been considered, the LPA will be notified and redraft the MOA as a final MOA. The FHWA will forward the final MOA to the signatory parties for their signatures.
  - G. The MOA is considered to be executed upon FHWA signature, who is the last party to sign the document (general signatory order is LPA, any other invited signatories, SHPO, and then FHWA).

**6.4.1.4 Step 4. Mitigation of Adverse Effect - The LPA will implement and fulfill the stipulations of the MOA. Ultimately, the SHPO must concur that the stipulations of the MOA have been satisfied.**

Following the execution of the MOA, the LPA will implement stipulations of the MOA to mitigate the adverse effects upon the historic property(ies). The following mitigation measures have been used on various projects:

- A. *Bridges and Architectural Resources*: The LPA and FHWA consult with the SHPO to determine the level and kind of documentation required for the historic property: Historic American Engineering Record (HAER) documentation, Historic American Building Survey (HABS) standards, or less formal state-level documentation. For most of these historic properties the state-level documentation is selected as the preferred method for recordation. By this point, public involvement has already

been initiated to provide the public the opportunity to review and comment on project alternatives that involve a historic bridge. Generally bridges are advertised for availability and offered to interested parties for reuse in place or at an alternate location, or demolished if no one expresses interest. The transfer of ownership or demolition of the bridge occurs after the consultation on the level of documentation.

The specific HABS/HAER guidelines can be found at the [National Park Service's Heritage Documentation Programs website](#), but the basic documentation usually includes:

1. Copies of original plans or drawings. If copies of the original plans are not available, measured drawings may be produced at a precise scale from actual dimensions recorded in the field. Drawings may be produced either by hand or with computer-aided drafting.
2. Large-format photographs are produced as contact prints from 4x5 and 5x7 black-and-white negatives and color transparencies. The formats allow maximum enlargement with minimal loss of detail and clarity, and the black-and-white processing allows for archival stability.
3. Written histories place the site or structure within the appropriate context, addressing both the historical and the architectural or engineering aspects of its significance.

If the SHPO recommends that the historic property be documented to the state level of documentation, the following information should be provided:

1. 8X10 inch high-resolution black-and-white digital images ( $\geq 600$  dpi) printed on archival paper sufficient to fully document overall views and details of the historic property. Photographs should be taken and processed according to [standards for photographs](#) accompanying National Register documentation. Digital, archival standard, compact discs with all views will be provided.
2. A historic narrative and technical descriptions for the historic property.
3. Plans or drawings for the historic property; specifically, floor plans for the historic building if it is architecturally significant and/or a copy of the original engineering construction plans for the historic bridge.
4. The final documentation shall be provided to the SHPO along with archival digital discs containing the TIFF images and report PDF. Additional copies shall be provided to appropriate local historical groups, and retained by the LPA. Bound copies and/or CDs of the final documentation also will be available to others upon request.

B. *Archaeological Sites*: If the adverse impacts to a National Register eligible archaeological site cannot be avoided (e.g., changes in

roadway alignment, fencing, and burial under roadway fill) the usual mitigation measure is data recovery (i.e. site excavation). Excavation activities are typically limited to within the project limits. If a site is excavated, a qualified archaeologist must conduct the field investigations, analyze the remains, and prepare a Phase III data recovery report. Artifacts from excavations are the property of the LPA and must be curated at an archaeological curation facility. If human remains are encountered during the excavation, SHPO must be contacted and the state burial law ([RSMO 194](#)) will need to be followed. Notification of the human remains should also be provided to FHWA and may need to be provided to consulting Indian Tribes.

In addition to the documentation materials for the SHPO and FHWA, and the National Park Service's Heritage Documentation Program for HAER and HABS, additional copies may be needed for distribution to local repositories and interested parties.

If Steps 3 and 4 are required, then the date that FHWA signed the MOA is used as the Section 106 compliance date.

**6.4.2 Section 4(f) of the U.S. Department of Transportation Act of 1966 and Section 6(f) of the Land and Water Conservation Fund Act (LWCFA) Properties** - Section 4(f) of the U.S. Department of Transportation Act of 1966 requires that special consideration be given to publicly owned lands, or those held under a long-term lease, that are intended for use as public parks, recreation areas, or wildlife and waterfowl refuges as well as to publicly and privately owned historic sites listed or eligible for listing on the National Register of Historic Places. Codified at 49 U.S.C. 303, Section 4(f) applies to projects that receive funding from or require approval by a Department of Transportation (DOT) agency such as [FHWA](#).

It is the LPA's responsibility to establish whether the project will require the use of or impact any Section 4(f) resources. The LPA will evaluate possible use of Section 4(f) resources early in the development of a project, when various alternatives for the proposed project are being considered. Ultimately, FHWA makes all decisions regarding Section 4(f) compliance for highway projects: whether Section 4(f) applies to a property, whether a use will occur, whether a *de minimis* impact determination (discussed below) is made, assessment of each alternative's impacts to Section 4(f) properties, and (after consulting with the appropriate officials who have jurisdiction) whether the law allows selection of a particular alternative.

Before FHWA approves a project that uses Section 4(f) property, either the use must be determined to be *de minimis* or a Section 4(f) Evaluation must be completed. If the Section 4(f) Evaluation identifies a feasible and prudent alternative that completely avoids Section 4(f) properties, that alternative must be selected. If there is no feasible and prudent alternative that avoids all Section 4(f) properties, FHWA has some discretion in selecting the alternative that causes the least overall harm. FHWA may approve the use of land (permanent or temporary) from a Section 4(f) resource **only if**:

1. There is no feasible and prudent avoidance alternative to the use of land from the property and
2. The action includes all possible planning to minimize harm to the property resulting from such use.

**6.4.2.1 Section 4(f) for Historic Properties** - To determine the applicability of Section 4(f) to historic sites, the LPA will consult with the FHWA (through the MoDOT district contact), SHPO, and appropriate local officials to identify all properties listed on or eligible for the NRHP. The Section 4(f) requirements apply only to NRHP-listed or eligible properties that will be adversely affected, including archaeological sites chiefly significant for preservation in place, not data recovery.

**6.4.2.2 Section 4(f) for Public Lands** - If the federal, state, or local officials having jurisdiction over a park, recreation area, or refuge determine that the entire site is not significant, consideration under Section 4(f) is not required. The Section 4(f) land is presumed significant without such a determination and FHWA will decide whether Section 4(f) applies. The LPA must complete the Local Public Agency Section 4(f) compliance worksheet (for parks/refuges only) found in Figure 136.6.8.

For federal or other public land holdings (e.g., state forests) that are managed for multiple uses under statutes permitting such management, Section 4(f) applies only to those portions of such lands that function for or are designated in the plans of the administering agency as being for significant park, recreation, or wildlife and waterfowl refuge purposes. The officials having jurisdiction over the lands determine which lands so function or are so designated, and the significance of those lands. FHWA reviews this determination to assure it is reasonable. The determination of significance applies to the entire area used for such park, recreation, or wildlife and waterfowl refuge purposes.

**6.4.2.3 De Minimis Determination** - A *de minimis* finding means that a transportation use of a Section 4(f) property will cause minimal impact to the resource after considering impact avoidance, minimization, and mitigation or enhancement measures. If FHWA determines that the use of Section 4(f) land will have no adverse effect on the protected resource and obtains written agreement to such determination from the responsible official(s) with jurisdiction over the resource, an analysis of avoidance alternatives is not required and Section 4(f) is complete. Although a *de minimis* impact determination does not require evaluating whether avoidance alternatives are feasible and prudent, FHWA does consider any impact avoidance, minimization, and mitigation or enhancement measures that are included in the project to address the impacts and adverse effects on the Section 4(f) resource. The purpose of taking such measures into account is to encourage incorporating Section 4(f) protective measures as part of the project. *De minimis* impact findings are expressly conditioned upon implementation of any measures that were used to reduce the impact to a *de minimis* level. The LPA is responsible for ensuring such measures are implemented.

The *de minimis* impact criteria for historic sites are different from those for parks, recreation areas, and wildlife and waterfowl refuges. *De minimis* impacts on historic sites are defined as either a “no adverse effect”

determination or “no historic properties affected” in compliance with Section 106 of the NHPA. *De minimis* impacts relative to publicly owned parks, recreation areas, and wildlife and waterfowl refuges are those that do not adversely affect the activities, features, or attributes of the resource.

In making a *de minimis* impact finding, FHWA must consider the facts supporting a *de minimis* impact determination, the record of coordination that precedes the *de minimis* finding, and the concurrence of the official(s) with jurisdiction. FHWA has the ultimate responsibility of ensuring that *de minimis* impact findings and required concurrences are reasonable. If FHWA makes a *de minimis* determination, the MoDOT district contact will notify the LPA, who will need to assemble the documentation required to support the finding. [Documentation requirements](#) are available.

**6.4.2.4 Programmatic Section 4(f)** - FHWA has approved five nationwide programmatic Section 4(f) evaluations. One covers federal-aid highway projects that use minor amounts of land from publicly owned public parks, recreation areas, or wildlife and waterfowl refuges. A second covers highway projects that use minor amounts of land from historic resources either listed on or eligible for the National Register of Historic Places (NRHP). The third programmatic Section 4(f) covers the use of historic bridges. The fourth is for independent bikeway or walkway construction that requires the use of recreation areas or parkland. The fifth is the net benefit programmatic Section 4(f) evaluation for projects that will use land from a Section 4(f) park, recreation area, wildlife or waterfowl refuge, or historic property and will result, in the view of FHWA and the official(s) with jurisdiction over the Section 4(f) property, in a net benefit to the 4(f) property.

The programmatic Section 4(f) documentation must demonstrate that the project meets applicability criteria for a programmatic evaluation, that avoidance alternatives have been evaluated, that no feasible and prudent alternatives exist, and that appropriate mitigation measures have been included. It must also include correspondence demonstrating that the official(s) with jurisdiction over the Section 4(f) resource agrees with the assessment of impacts and with the proposed mitigation measures. The documentation should be self-contained and self-explanatory since it will be available to the public upon request. With the exception of the programmatic Section 4(f) for historic bridges, a programmatic 4(f) evaluation cannot be used on projects requiring preparation of an EIS.

Using the nationwide programmatic evaluations can streamline the Section 4(f) process for qualifying projects by eliminating some of the project-by-project internal review and interagency coordination. The [applicability criteria for the programmatic Section 4\(f\) evaluations](#) are available. For projects meeting the criteria, the programmatic Section 4(f) evaluation satisfies the requirements of Section 4(f) and no individual Section 4(f) evaluations need be prepared. The FHWA division office is responsible for reviewing each individual project to determine whether it meets the criteria and procedures of the programmatic Section 4(f).

**6.4.2.5 Section 4(f) Evaluation Process** - When adequate support exists for a Section 4(f) determination and the use of the property does not qualify for a *de minimis* determination or one of the nationwide programmatic Section 4(f) evaluations, the LPA will complete a Section 4(f) Evaluation. The evaluation must specifically explain why the alternatives to avoid the Section 4(f) property are not feasible and prudent and describe all measures that will be taken to minimize harm to the Section 4(f) property. Supporting information should demonstrate that there are unique problems or unusual factors involved in the use of alternatives that avoid the properties or that the cost, social, economic, environmental impacts, or community disruption resulting from such alternatives reach extraordinary magnitudes.

FHWA will review the final Section 4(f) evaluation for legal sufficiency before issuing an approval. LPAs will not proceed with any project requiring the use of Section 4(f) property and determined to be classified as a CE until notified by FHWA of Section 4(f) approval. For projects classified as EA or EIS, Section 4(f) approval is documented on a separate signature page concurrently with FHWA's approval of the Finding of No Significant Impact (FONSI) or the final EIS. For EIS projects, the LPA should briefly summarize the Section 4(f) impacts and mitigation measures in the Record of Decision (ROD).

Circulation of a separate Section 4(f) evaluation is required when:

1. A proposed modification to the alignment or design after approval of the CE, EA, FONSI, draft EIS, final EIS, or ROD would require the use of Section 4(f) property;
2. FHWA determines that Section 4(f) applies to a property after approving the CE, EA, FONSI, draft EIS, final EIS, or ROD; or
3. A proposed modification to the alignment, design, or measures to minimize harm after the original Section 4(f) approval would result in a substantial increase in the amount of Section 4(f) land use, a substantial increase in the adverse impacts to Section 4(f) land, or a substantial reduction in mitigation measures.

If FHWA determines that Section 4(f) is applicable after approval of the CE, EA, FONSI, final EIS, or ROD, the decision to prepare and circulate a Section 4(f) evaluation will not necessarily require the preparation of a new or supplementary environmental document. Where a separate circulated Section 4(f) evaluation is prepared, such evaluation does not necessarily:

1. Prevent the issuance of new approvals,
2. Require the withdrawal of previous approvals, or
3. Require the suspension of project activities for any activity not affected by the Section 4(f) evaluation.

Detailed information on preparing a Section 4(f) Evaluation is provided in Figure 136.6.9.

**6.4.2.6 Section 6(f) of the Land and Water Conservation Fund (LWCF) Act and Similar Grant Programs** - The Land and Water Conservation Fund (LWCF) Act provides funds for the acquisition and development of public outdoor recreation

facilities. These could include community, county, and state parks, trails, fairgrounds, conservation areas, boat ramps, shooting ranges, etc. Section 6(f) of the LWCF Act places restrictions on public recreation facilities funded with LWCF monies— LWCF-assisted facilities must be maintained for outdoor recreation in perpetuity. Therefore, use of such property for a transportation project will require mitigation that includes replacement land of at least equal value and recreational utility. Section 6(f) documents are lengthy, frequently taking one to two years to process, and also require a signed Section 4(f) document to be completed.

Section 4(f) *de minimis* impact findings do not satisfy the requirements of Section 6(f) of the LWCF Act or other U.S. Department of Interior (DOI) grants-in-aid programs. Projects that propose the use of land from a property or site purchased or improved with funds under the LWCF Act, the Federal Aid in Sport Fish Restoration Act (Dingell-Johnson Act), the Federal Aid in Wildlife Restoration Act (Pittman-Robertson Act), or other similar law, or lands otherwise encumbered with a federal interest will require the LPA to coordinate with the appropriate federal agency regarding the agency's position on the land conversion or transfer. Other federal requirements that may apply to the Section 4(f) land should be determined through consultation with the officials with jurisdiction or appropriate DOI or other federal official. These federal agencies may have regulatory or other requirements for converting land to a different use. These requirements are independent of a *de minimis* impact finding and must be satisfied.

The Urban Park and Recreation Recovery (UPARR) program has provided funds toward the renovation and rehabilitation of numerous urban parks and recreation facilities. Although the UPARR funds may have been used in only a portion of a site or facility or were only a small percentage of the funds needed to renovate or rehabilitate a property, no property improved or developed with UPARR assistance can be converted to other than public recreation uses without the advance approval of the National Park Service. To be approved, a formal request for the conversion must be made by the grant recipient (urban city or county). The request must document that all alternatives to the conversion have been evaluated and rejected on a sound basis, required replacement land being offered as a substitute is of reasonably equivalent location and recreational usefulness, and the property for substitution meets the eligibility requirements for UPARR assistance.

Conversions of land funded by any of the aforementioned grant programs are tightly restricted by terms of the grant agreement and generally require lengthy coordination to meet the requirements for conversion.

**6.4.3 Section 404 Permits for Wetlands and Streams** - Projects that involve stream crossing(s) and/or impacts to wetlands under the jurisdiction of the U.S. Army Corps of Engineers (COE) require a Section 404 Permit or a written waiver. A Section 404 permit may also be required for fill in any water body (waters of the U.S.)—lakes, ponds, streams, rivers, and wetlands. The COE will make a final determination as to the extent of its jurisdiction and the appropriate permit(s) for all regulated activities.

Stream and/or wetland impacts exceeding 0.5 acre or channelization beyond the minimum necessary to construct or protect the linear transportation project may require

an individual permit. If the COE issues an individual Section 404 permit for project activities, the LPA must obtain an individual Section 401 Water Quality Certification from the Department of Natural Resources (DNR). For a nationwide permit (NWP), the LPA is obligated to follow the conditions specific to the appropriate NWP within DNR's blanket 401 certifications. Most NWPs will not require an individual request for DNR's Section 401 Water Quality Certification, because the agency has granted blanket certification for the majority of commonly used NWPs. The LPA must include the appropriate 401 certification conditions for their respective NWP(s) in the construction contract (see 3. below for link to conditions).

The LPA should send duplicate permit applications concurrently to the COE and DNR for individual Section 404 permits. Once the COE is ready to issue the individual permit, it will request 401 certification issuance from DNR. The LPA must include in the construction contract both the 404 and 401 permits and the conditions covered therein. A [404 permit application form](http://www.nwk.usace.army.mil/regulatory/ENG4345_2010.pdf) ([http://www.nwk.usace.army.mil/regulatory/ENG4345\\_2010.pdf](http://www.nwk.usace.army.mil/regulatory/ENG4345_2010.pdf)) is available.

On linear transportation projects where permanent fills impacting waters of the U.S. (not including wetlands) do not exceed 0.1 acre, there is no legal obligation to submit an application to the COE. If a project meets this "no pre-construction notification" condition, the LPA must provide a written statement to MoDOT verifying that permanent project impacts will not exceed 0.1 acre. If either temporary or permanent impacts to wetlands will result from project construction, then a permit submittal will be required.

For impacts that exceed the nationwide permit pre-construction notification thresholds, the LPA must obtain a permit from the COE and provide it to MoDOT. In either the no pre-construction notification or the permit application submittal scenario, if NWP(s) apply, then the LPA is required to abide by all of the following conditions and include them in all contract proposals to validate the NWP(s):

1. The 28 Nationwide Permit General Conditions. The [2007 Nationwide Permit Conditions](http://www.usace.army.mil/CECW/Documents/cecwo/reg/nwp/nwp2007_general_conditions_def.pdf) ([http://www.usace.army.mil/CECW/Documents/cecwo/reg/nwp/nwp2007\\_general\\_conditions\\_def.pdf](http://www.usace.army.mil/CECW/Documents/cecwo/reg/nwp/nwp2007_general_conditions_def.pdf)), define the general conditions on pages 24–34.
2. The Regional Special Conditions for NWPs. The Nationwide Permit (NWP) [Regional Conditions](http://www.nwk.usace.army.mil/regulatory.htm) (<http://www.nwk.usace.army.mil/regulatory.htm>) are available under the topic "Nationwide Permits" "2007, State of Missouri."
3. The State of Missouri Section 401 Water Quality Certification General & Specific Conditions. The [State of Missouri 401 Water Quality Certification](http://www.nwk.usace.army.mil/regulatory/regulatory.htm) (<http://www.nwk.usace.army.mil/regulatory/regulatory.htm>) conditions for Nationwide Permits are located under "Nationwide Permits" "2007, State of Missouri."

**6.4.4 Channel Modification** - Channel changes alter the conditions of the natural waterway and may increase velocity of the flowing water, sometimes enough to damage the highway embankment near the stream or cause excessive scour around footings of structures. Because channel modifications may result in such outcomes, alterations should be avoided to the fullest extent practical. Where channel alterations are unavoidable, the environmental, hydraulic, legal, and geomorphic aspects involved must be evaluated. The effect on peak flow downstream and the affected flow area should be

determined. Relative to Section 404 permitting, any channelization should be kept to an absolute minimum and should only be undertaken to facilitate or protect a construction project. The LPA must include justification for any channel changes in the Section 404 permit application.

1. The new channel should duplicate the existing stream and floodplain characteristics as nearly as possible, including stream width, depth, slope, flow regime, sinuosity, bank cover, side slopes, and flow and velocity distribution.
2. Major channel modification may be constructed if the average channel velocity would not be increased beyond the scour velocity of the predominant soil type at the project site.
3. The COE will require individual permit authorization for projects with major channel modification and the LPA will be required to do stream mitigation. This can drastically add to the cost of a project; it may require a monetary contribution to an approved stream mitigation bank/in lieu fee program or the acquisition/restoration and/or, in very limited circumstances, protection of a previously impacted stream resource.

**6.4.5 Threatened and Endangered Species** - The Endangered Species Act, the Migratory Bird Treaty Act, and other state and federal laws protect plants and animals and their habitats. LPAs must submit the following to Missouri Department of Conservation (MDC):

- Brief description of project (e.g., bridge replacement)
- Explain what is involved (e.g., tree clearing, bridge piers in river, etc.)
- Number of acres impacted (e.g., clear 20 acres of trees)
- Include a map(s) showing location of project
- Include pictures if available

Policy and Coordination Division  
Missouri Department of Conservation  
2901 W. Truman Blvd.  
P.O. Box 180  
Jefferson City, MO 65102  
(573) 751-4115

The MDC will respond with a letter indicating whether any threatened or endangered species occur in the area. Report MDC's findings to the MoDOT district contact and attach MDC correspondence along with documentation of U.S. Fish and Wildlife correspondence. If state-listed species occur near the site, further coordination with the MDC will be needed to minimize impacts to these species. If federally listed species are known to occur near the site, the LPA will need to contact MoDOT and MoDOT will coordinate with the U.S. Fish and Wildlife Service (FWS) to avoid project impacts to the species and obtain clearance.

Report MDC's findings and attach MDC correspondence along with documentation of FWS clearance.

**6.4.6 Base Floodplain and Regulatory Floodway** - Floodplains provide a number of important functions in the natural environment—creating wildlife habitat, providing temporary storage of floodwater, preventing heavy erosion caused by fast-moving water, recharging and protecting groundwater, providing a vegetative buffer to filter contaminants, and accommodating the natural movement of streams. Executive Order 11988—Floodplain Management, Federal Highway Administration (FHWA) policy and procedures in 23 CFR 650, and other federal floodplain management guidelines direct agencies to evaluate floodplain impacts for proposed actions.

Floodplains can be described by the frequency of flooding that occurs. With Executive Order 11988, the base, or one percent annual chance, flood was formally adopted as a standard for use by all federal agencies. The base flood is the flood that has a one percent chance of being equaled or exceeded each year. Thus, the base flood can occur more than once in a relatively short period of time. The base flood is commonly labeled the “one percent flood” and often inappropriately referred to as the “100-year” flood. Larger floods may, and often have, occurred but the one percent flood is the generally accepted regulatory standard.

The National Flood Insurance Program (NFIP) uses the base flood as the standard for floodplain management and to determine the need for flood insurance. When available, NFIP flood hazard boundary maps and flood insurance studies for the project area are used to determine the limits of the base (1%) floodplain and the extent of encroachment (an action within the limits of the base floodplain). The base floodplain is the area of one percent flood hazard within a county or community—that is, the area in which the flood has a one percent chance of being equaled or exceeded in any given year.

The regulatory floodway is the area of a stream or river channel plus any adjacent floodplain areas that must be kept open to convey floodwaters from the base flood without increasing the height of the flood more than a certain amount. Federal Emergency Management Agency (FEMA) restrictions do not allow projects to cause any rise in the regulatory floodway and no more than a one-foot cumulative rise may result from all projects in the base (1%) floodplain. Figure 136.6.10 illustrates the various elements of a typical floodplain.

The LPA provides information on the LPA Request for Environmental Review (RER) form regarding community participation in the NFIP and whether the project is located in a Special Flood Hazard Area (SFHA). The SFHA is the land area covered by the floodwaters of the base flood on NFIP maps and where the NFIP's floodplain management regulations must be enforced. A current list of communities for which FEMA Flood Insurance Studies have been performed is available in the [National Flood Insurance Program Community Status Book](#). [Missouri-only data](#) is also available. If the project is located in a community or county that has not been mapped, the LPA notes this. If the community has been mapped, the LPA identifies whether the project is located in the 100-year floodplain and/or regulatory floodway.

The MoDOT district contact will inform the LPA of the need to obtain a floodplain development permit (Fig. 136.6.11 Floodplain Development Permit Application) from the local floodplain administrator or whether, for projects proposed within regulatory floodways, the LPA must obtain a “no-rise” certificate before a Floodplain Development Permit is issued. To find contact information for your local floodplain administrator, use the menu or map feature under Local Floodplain Administrator on the State Emergency Management Agency website at <http://www.sema.dps.mo.gov/programs/floodplain/>. Fig. 136.6.12 contains the Engineering "No-Rise" Certification form and Fig. 136.6.13

describes Procedures for “No-Rise” Certification for Proposed Development in the Regulatory Floodway.

LPAs that participate in the NFIP must ensure that floodplain developments meet the NFIP regulations identified in [Title 44, Code of Federal Regulations](#), Parts 59 through 78. (Parts 59 and 60 contain the most applicable information for a typical project.) The LPA, with assistance from the local floodplain administrator, is responsible for ensuring that FEMA NFIP requirements are met. The LPA is also responsible for obtaining all required certifications before construction begins. Because the NFIP requirements may control the hydraulic design of the project, the LPA is advised to investigate this in the early stages of the project.

For the convenience of LPAs and engineers, [FEMA Flood Insurance Studies and flood maps](#) (<http://www.fema.gov/>) pertaining to a project site can be viewed by selecting “Flood Insurance, Flood Maps, and/or All Flood Information.” Hardcopies of the FEMA Flood Insurance Studies and Flood Maps can also be ordered through the same site.

**6.4.7 State Emergency Management Agency (SEMA)/Federal Emergency Management Agency (FEMA) Buyout Lands** - The Flood Disaster Protection Act of 1988 (The Stafford Act), under Section 404, identified the use of disaster relief funds for the Hazard Mitigation Grant Program (HMGP), including the acquisition and relocation of flood-damaged property. The Volkmer Bill further expanded the use of HMGP funds under Section 404 to “buy out” flood-damaged property that had been affected by the Great Flood of 1993.

These FEMA buyout properties have numerous restrictions. No structures or improvements may be erected on these properties unless the improvements are open on all sides. The site can be used only for open space purposes and must remain in public ownership. These conditions and restrictions (among others), along with the right to enforce same, are deemed to be covenants running with the land in perpetuity and are binding on subsequent successors, grantees, or assigns. Any project decision involving a FEMA buyout property should consider that it may take two to three years to obtain an exemption from FEMA to use this parcel, and if allowed, the exemption would likely be a permanent easement rather than a transfer of property.

**6.4.8 Stormwater and Erosion Control** - Provisions of the federal Clean Water Act (CWA) and related state rules and regulations require stormwater permits for construction activities that disturb areas of one acre or more. Prior to initiation of any federal-aid project, the LPA needs to determine the acreage that will be disturbed. If less than one acre is disturbed, the LPA is exempt from the requirements of the CWA National Pollutant Discharge Elimination System (NPDES) program permits and DNR permit applications. However, there may be other state or local ordinances that must be addressed and the LPA should inquire whether there are local rules and regulations that govern clean water guidelines.

MoDOT has a general permit (from DNR) that applies only to land disturbance activities associated with road construction projects on MoDOT right of way. The permit stipulates that MoDOT will follow certain erosion control guidelines and install temporary and permanent erosion control measures. A few cities (Kansas City, Columbia, and others) and counties have obtained their own land disturbance permits from DNR for generic land disturbance purposes. In these areas, the LPA (city or county government) has its

own restrictions and erosion control guidelines to meet the intent of its program. If one acre or more will be disturbed, the LPA should determine whether its city or county is operating under a DNR-approved program. If so, the local government jurisdiction will impose appropriate erosion controls.

When a project will disturb one acre or more and the city or county does not have a DNR-approved stormwater program, the LPA must apply for a DNR permit. If the project is entirely within MoDOT right of way, the LPA may use MoDOT's general permit. In either case, the LPA must develop a site-specific stormwater pollution prevention plan for the project. The LPA will need to contact the DNR NPDES Storm Water Program office (573-751-1300 or 800-361-4827) for further directions. The LPA is responsible for providing a temporary erosion control plan to be included with the final plan submittal if any amount of acreage is to be disturbed. The plans will detail the types of temporary erosion and sediment control best management practices (BMPs) to be used and where the items will be installed. Further information on design criteria can be found in the Engineering Policy Guide (EPG 806 Pollution, Erosion and Sediment Control).

**6.4.9 Borrow Sites and Other Land Disturbance Activities Outside Right of Way -**

Borrow/spoil sites, staging areas, haul roads, and/or burn pits may be located outside the project footprint and therefore were not previously addressed by the NEPA document and other environmental approvals for the project. The LPA is responsible for ensuring that the contractor obtains all necessary environmental clearances for borrow sites and other land disturbance areas—including off-site locations used to deposit excess material or for haul roads. To eliminate possible delays, the LPA should specify in the engineering services contract that a proposed borrow site be investigated. The LPA will provide clearance documentation to the MoDOT district contact. Fig. 136.6.14 describes Procedures for Environmental Clearance of Borrow Sites and Other Land Disturbance Activities Outside Right of Way. This information is also available through the MoDOT district contact.

The requirements of Section 106 of the National Historic Preservation Act<EPG 136.6.4.1> apply to all areas of land disturbance. The LPA must complete the [State Historic Preservation Office's Section 106 Project Information Form](#) and submit it to DNR. The LPA will provide written certification to the MoDOT district contact that the proposed site of land disturbance has been cleared of environmental concerns under all applicable federal and state laws and regulations. These include but are not limited to the Clean Water Act; Section 4(f) of the Department of Transportation Act; the Endangered Species Act; the National Historic Preservation Act; the Farmland Protection Act; Resource Conservation and Recovery Act; Comprehensive Environmental Response, Compensation, and Liability Act; and RSMo Chapter 194, Section 194.400, Unmarked Human Burial Sites. Certification must include all clearance letters and other evidence of coordination with the appropriate regulatory agencies.

**6.4.10 Hazardous Waste -** A number of laws and regulations deal with hazardous waste and both underground and aboveground storage tanks. Properties containing hazardous and non-hazardous solid wastes are frequently encountered in new right-of-way acquisitions. Some properties with extensive contamination and legal liabilities may warrant avoidance. For most sites, however, early identification and planning will allow selection of feasible alternatives with incidental costs. In addressing hazardous and solid wastes, the goals are to avoid unacceptable cleanup cost and legal liability and comply

with federal and state laws and regulations regarding cleanup. The most common type of hazardous waste site encountered is a petroleum underground storage tank (UST) site. LPAs shall evaluate proposed corridors for hazardous and solid waste sites by conducting a thorough database search and a field check (if necessary). Possible sources include:

- Federal Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS): <http://cfpub.epa.gov/supercpad/cursites/srchsites.cfm>
- DNR Confirmed Abandoned or Uncontrolled Hazardous Waste Disposal Sites in Missouri: <http://www.dnr.mo.gov/env/hwp/registry-log.pdf>
- DNR Missouri Hazardous Waste Generators List: <http://www.dnr.mo.gov/env/hwp/downloads/index.htm>
- DNR Missouri Hazardous Waste Treatment, Storage, and Disposal Facilities List: <http://www.dnr.mo.gov/env/hwp/downloads/index.htm>, select Missouri Commercial Hazardous Waste Facilities, List--PUB968
- DNR Solid Waste Facilities List: <http://www.dnr.mo.gov/env/swmp/facilities/sanlist.htm>
- DNR Registered Underground Petroleum Storage Tank List: <http://www.dnr.mo.gov/env/hwp/downloads/hwpet.htm>
- DNR Leaking Underground Storage Tank List: <http://www.dnr.mo.gov/env/hwp/downloads/hwpet.htm>
- Petroleum Storage Tank Insurance Fund: <http://www.pstif.org/>, select Tank Sites tab
- National Response Center Hotline: <http://www.nrc.uscg.mil/nrchp.html>, select Services, then query/download and select Standard Reports to run query
- EPA Envirofacts: <http://www.epa.gov/enviro/>, under Other Sites of Interest select Enviromapper
- Other lists as appropriate

Coordination with the Environmental Protection Agency (EPA) and DNR will help to determine liability, regulatory requirements, and potential cleanup costs. The potential to encounter unknown wastes from sites not identified through database and/or site reviews by the LPA should always be a consideration. Any unknown sites that are found during project construction shall be handled in accordance with federal and state laws and regulations. Include resource agencies' response letters in the NEPA document.

**6.4.11 Farmland Protection Policy Act** - The Farmland Protection Policy Act (FPPA) mandates that agencies identify and take into account the adverse effects of federal projects on farmland. The act requires all federally funded projects to be assessed for the potential conversion of farmland to non-farming purposes. LPAs shall assess the

impact of their projects in cooperation with the local Natural Resources Conservation Service (NRCS) office.

If the project requires no additional right of way, farmland assessment is not necessary. When additional right of way is needed, if it is located within city limits and the affected land is entirely developed for uses other than agriculture (e.g., within city limits), the LPA may document this in their files and no further action is required. If it is outside of established city limits, the LPA must complete a Form AD-1006 Farmland Conversion Impact Rating<EPG 127.11 Form AD-1006> (or for corridor type projects Form SCS-CPA-106<127.11 Form SCS-CPA-106>) and forward it along with the preliminary layouts to the NRCS for agency review.

Forms can also be obtained from the NRCS and may be reproduced. The LPA completes Parts I and III, showing the acreage of new right-of-way and borrow areas, and submits three copies to NRCS. The submittal should request NRCS to fill out Parts II, IV, and V. NRCS assistance in filling out Part VI can also be requested, if desired. The LPA shall also ask NRCS to advise whether any land considered to be farmland is subject to any state or local government policy or programs to protect farmland.

The LPA must complete the form after NRCS returns it. If the total rating exceeds 160 points, the FPPA mandates further consideration of protection. Using the bottom portion of Form AD-1006 labeled "Reason for Selection," the LPA will document why this site was selected over the other alternative sites and submit one copy of the form along with the preliminary layout. This completes the processing. Under present directives, the LPA will have satisfied the requirements by considering the impact of converting any farmland to non-agricultural use and submitting the completed form. If the project is classified as other than a categorical exclusion, the completed form must be included in the EIS or EA.

**6.4.12 Community Impact Assessment (Social/Economic/Environmental Justice) - Title VI of the Civil Rights Act of 1964 and Executive Order (EO) 12898 on Environmental Justice**

apply to all programs and activities of federal-aid recipients, subrecipients, and contractors whether the programs and activities are federally funded or not. Environmental justice should be considered in all project development decisions regardless of the NEPA classification.

Compliance with Title VI and EO 12898 during the NEPA process includes fully identifying social, economic and environmental effects; considering alternatives; coordinating with agencies; involving the public; and utilizing a systematic interdisciplinary approach. Potential impacts to the human environment should drive the transportation decision-making process as much as potential impacts to the natural environment and comparable consideration is to be given to both impacts to the natural and human environment. The final decisions on any proposed project on any federal-aid system are to be made in the best overall public interest, taking into consideration the need for fast, safe and efficient transportation, public services, and the costs of eliminating or minimizing possible adverse economic, social, and environmental effects. Compliance with EO 13166 on Limited English Proficiency should also be considered.

Community impact assessment is key to avoiding the potential for discrimination or disproportionately high and adverse impacts. The LPA will provide a brief description of impacts, if any, to minorities, low-income populations, and the community in general. Most projects will be small and will have minimal to no impacts. If there are any

commercial or residential displacements, the following text must be included in the NEPA documentation:

The acquisition and relocation of affected residential and commercial properties will be conducted in accordance with the relocation procedures established in the Uniform Relocation Assistance and Real Property Acquisition Policies Act (referred to as the Uniform Act) of 1970, as amended. The Uniform Act and Missouri state laws require that just compensation be paid to the owner(s) of private property taken for public use. The Uniform Act is carried out without discrimination and in compliance with Title VI (the Civil Rights Act of 1964), the President's Executive Order on Environmental Justice, and the Americans with Disabilities Act.

The LPA must provide relocation services to all impacted households without discrimination under guidance of the Uniform Act. Additional information concerning [environmental justice](#) and [community impact assessment](#) is available.

**6.4.13 Noise Standards and Noise Abatement** -Federal legislation in 1970 authorized the use of federal-aid highway funds for measures to abate and control highway traffic noise. MoDOT has a federally approved traffic noise policy<EPG 127.13> to define and conform to the requirements of [Article 772, Code of Federal Regulations \(23 CFR 772\)](#) and the noise-related requirements of NEPA. The guidelines in the MoDOT Noise Policy are used to determine the need, feasibility, and reasonableness of noise abatement measures and provide the basis for statewide uniformity in traffic noise analysis. If the LPA does not have a noise policy, it is suggested that they use MoDOT's FHWA-approved noise policy.

The LPA is normally required to conduct a noise analysis during the project development stage to identify noise sensitive receptors. Projects consisting of minor widening and resurfacing, signalization including intersection and ramp terminal widening, or bridge replacement proximal to the existing structure do not need noise analysis since they are unlikely to result in a significant increase in highway traffic noise.

On projects involving partial or full control of access, environmental documents must address noise abatement at those receptors for which abatement is impractical or unfeasible. These must be approved prior to submitting final plans. The procedure for conducting a noise analysis follows:

1. Identify existing activities or land uses the project may affect. The analysis may be terminated if it is analytically determined that activities or developed land uses are not sufficiently close to the proposed project to be adversely affected by the noise.
2. Predict the traffic-generated noise levels for each alternative being studied. The A-weighted decibel (dBA) is the sound pressure level reference used. The sound level shall be expressed as Leq, which is the average equivalent energy sound level. The approved basis for computing noise levels is the current model version of FHWA's Traffic Noise Model (TNM) or any other model determined by the FHWA to be consistent with the methodology of the FHWA TNM. One method of displaying the predicted noise levels is to show the computed general highway noise levels at selected locations on aerial photographs or preliminary maps, such as those used in preliminary design layouts.

3. Determine the existing noise levels by field measurement.
4. Compare the predicted noise levels for each alternative under study with existing noise levels and the abatement criteria noise levels. It is also desirable to predict noise levels for a “no-build” alternative.
5. Determine whether receptors meet the noise abatement criteria and evaluate alternative noise abatement measures for reducing or eliminating the noise impact for activities or developed lands.
6. Identify those lengths of roadway for each side of the highway and individual land uses where noise abatement measures appear impractical or not prudent.
7. Prepare a listing of abatement measures and locations based on the findings of the noise analysis items 1 thru 6 above. These shall be identified in the environmental document. Noise impacts for which no apparent solution is available are also to be listed. Plans and specifications are to include those noise abatement measures that are reasonable and feasible.

Numerous abatement measures can be considered. Obvious measures are relocating the highway to a less sensitive area or shifting the alignment. Other actions that can reduce the noise levels include purchasing additional right-of-way to increase the distance from the noise source to the receptor, reducing operating speed, reducing the grade of the road, and using vegetation screens. More costly abatement measures include erecting sound barriers and the placement of earth berms.

Noise abatement measures are not required for lands that are undeveloped at the time of public knowledge of the proposed highway project.

FHWA concurrence in the environmental document will constitute its determination that noise abatement measures have been adequately considered.

**6.4.14 Air Quality Requirements** - The Clean Air Act defines requirements for transportation project air quality analysis. In Missouri, requirements are met through conformity demonstrations with established emission budgets contained in the State Implementation Plan (SIP). This process involves projects meeting the definition of "regionally significant" as described in 23 CFR 450.104. At a minimum, this includes all principal arterial highways and all fixed guideway transit facilities that offer a significant alternative to regional highway travel and would normally be included in the modeling of a metropolitan area's transportation network. Generally, LPA projects will not meet the definition of "regionally significant" and the appropriate response for TIP Number on the Request for Environmental Review (RER) form is "N.A." In the event a local project is determined to be regionally significant, conformity will be demonstrated through an established process for inclusion in a metropolitan Transportation Improvement Program (TIP).

## **6.5 Environmental Assessment (EA)**

An EA is prepared when there is uncertainty about the significance of the impacts from a project. FHWA generally expects an EA for two-lane relocation projects and often for add-a-lane projects on new right of way; other types of projects may also require an EA. To avoid delays in project development, the LPA, or its consultant, should initiate preparation of the EA sufficiently early to

ensure that NEPA compliance can be achieved before 35% design completion. An EA describes a project's purpose and need, identifies the alternates that are being considered, and discusses the expected impacts. It should discuss all topics required by FHWA regulations and guidance but should discuss in detail only those where there is potential for a significant impact. The EA should be concise and should not contain long descriptions or include detailed information that may have been gathered or analyses that may have been conducted for the proposed action. [FHWA Technical Advisory T6640.8A "Guidance for Preparing and Processing Environmental and Section 4\(f\) Documents"](#) provides additional direction on the information contained in an EA and the format. The LPA must contact the MoDOT district contact if a significant impact is identified at any time during the preparation of an EA. FHWA will determine whether an EIS needs to be prepared.

The LPA should begin consultation (through either early coordination or a scoping process) with interested regulatory agencies and others at the earliest appropriate time, to advise them of the scope of the project. This consultation will help determine those aspects of the proposed action with potential for social, economic, or environmental impact and will identify other environmental review and consultation requirements that are performed concurrently with the EA. Agencies with jurisdiction by law, such as the COE or the FWS, must be invited to become cooperating agencies. The LPA will provide the MoDOT district contact with draft letters requesting the COE and other agencies to be cooperating agencies and FHWA will send the letters. The LPA will also work with the FHWA to initiate consultation with federally recognized American Indian tribes determined to have an interest in the project area. Such consultation is conducted by FHWA on a government-to-government basis (FHWA determines which tribes and sends the letters); the consultation informs the tribes of the project, asks whether they have any specific concerns, and inquires whether they want to continue to consult on the project. The LPA or its consultant will prepare a draft letter for FHWA's use but will not contact the tribes. The EA must summarize the results of both agency consultation and public involvement. The LPA, or its consultant, will prepare a preliminary EA (pEA) that encompasses the following:

- Finalize the location study with all alternates considered, including those discarded, depicted graphically.
- Indicate the preferred alternate.
- Evaluate all proposed reasonable alternates equally; the EA must include more than a single build alternative as well as the no build alternate. Reasonable alternates addressed in the EA are those that may be constructed in the event that the preferred alternate is not selected.
- Identify all previously reported archaeological and historic sites located within the study corridor and all alternates being considered. FHWA will determine whether the location and current condition of previously reported resources require verification. Complete a Phase I archaeological survey for the preferred alternate. Identify all areas for which landowner access was denied or the survey was not conducted at the preliminary EA stage. Determine which sites identified in the project area require Phase II archaeological testing or evaluation. If the Missouri Department of Natural Resources (DNR) determines any sites require further testing, Phase II archaeological testing must also be completed unless coordination with FHWA and the district determine such testing may be postponed to a later time.
- Identify all buildings and bridges 50 years old or older within all alternates being considered and provide an initial assessment of the resources' potential eligibility to the National Register of Historic Places (NRHP). Submit all buildings, bridges, and culverts impacted by the preferred alignment, including those less than 50 years of

age, to DNR's State Historic Preservation Office (DNR-SHPO) for concurrence in a determination of eligibility to the NRHP.

- If the proposed project will adversely impact any NRHP-eligible sites or historical structures, the pEA must include either a draft Memorandum of Agreement (MOA) or draft Programmatic Agreement (PA) identifying uncompleted or mitigation activities to be completed prior to project construction.
- Indicate impacts to parklands, wildlife refuges, or other publicly owned recreational use areas that may qualify for [Section 4\(f\) protection](#), along with a statement as to the status of agency coordination on those impacts. The EA must include a Draft Section 4(f) Evaluation for impacts to these public lands, if applicable, or if the preferred alternate will cause adverse effects to certain kinds of cultural resources that require preservation in place, such as cultural resources that are NRHP-eligible for reasons other than the data associated with them (e.g., the location/setting is important, associated with significant historic events or people; distinctive characteristics of a type, period, or method of construction; involves human burial). Although prehistoric archaeological sites containing human remains will require Section 4(f) consideration, typically prehistoric sites not containing human remains will not require Section 4(f) consideration. A single Draft Section 4(f) Evaluation is prepared for all Section 4(f) resources, including both public lands and historic sites, potentially impacted by the project. This evaluation includes a consideration of all measures to minimize harm to the Section 4(f) resources.
- Identify any Section 6(f) resources the project will affect. Any Section 6(f)(3) Conversion Documentation required cannot be completed until the NEPA process is concluded because the Section 6(f) document must include copies of the approved FONSI signature page and/or signed Section 4(f) evaluation. However, elements of the Section 6(f) document may be assembled during preparation of the NEPA document.
- Conduct a preliminary wetland and stream evaluation to identify potential jurisdictional wetland areas and streams. Estimate the areas of wetlands in the project area for all alternatives using conventional mapping sources and windshield survey and document expected impacts.
- Determine the presence or absence of threatened or endangered plant and/or animal species and/or habitats within the project limits.
- Determine farmland impacts using either [Farmland Conversion Impact Rating, Form AD-1006](#) for site projects or [Form SCS-CPA-106](#) for corridor projects.
- If applicable, perform a noise analysis that identifies noise sensitive receptors based on the Noise Abatement Criteria. Determine whether receptors meet the criteria for the installation of a noise wall. If the LPA does not have a noise policy, it is suggested that they use MoDOT's FHWA-approved noise policy. The location of any necessary noise walls is proposed (this may change subject to subsequent detailed design and public involvement with the affected residents).
- Determine the number of displacements, the effect on pedestrian and bicycle traffic, the secondary and cumulative impacts and other social and economic impacts of the project.
- Conduct a records search to determine the presence of possible hazardous waste sites.
- Demonstrate that the proposed project is in compliance with the Clean Air Act.

The pEA is provided to MoDOT for distribution to FHWA and any formal cooperating agencies (identified as such on the pEA cover sheet) for their review and comment. The document is not to be distributed to anyone outside of these entities. When the LPA or its consultant has addressed the review comments on the pEA, the EA is ready for FHWA's final review and approval, after which it is made available to the public as an FHWA document.

The EA must be made available for public inspection at the LPA's office and at the appropriate FHWA field offices as described in the next two paragraphs of this section. Although it is not a federal requirement that the document be circulated for comment, the LPA is encouraged to provide the EA to those federal, state, and local agencies likely to be affected by the action (those with regulatory or other responsibilities relating to the action). As a minimum, the LPA must send notice of availability of the EA, briefly describing the project and its impacts, to the affected units of federal, state, and local government and to Missouri Federal Assistance Clearinghouse, the state intergovernmental review contact established under Executive Order 12372.

MoDOT's normal practice is to hold a location public hearing for all EAs. Although FHWA regulations do not require public hearings for EAs, the FHWA encourages them on most EAs. For specific EAs depending on the situation, the FHWA division office may require a public hearing after signing the EA and before signing the FONSI. Detailed information on public hearings is located in [EPG 136.7 Right of Way and Public Hearings](#). When a public hearing is held as a part of the application for federal funds, the EA must be available at the public hearing and at the LPA's office and at the appropriate FHWA field offices for a minimum of 15 days in advance of the public hearing. The notice of the public hearing in local newspapers must announce the availability of the EA and where it may be obtained to review. The notice will include a statement advising that comments should be submitted in writing to the LPA within 30 days of the availability of the EA unless FHWA determines that a different period is warranted.

When a public hearing is not held, the LPA must place a notice similar to a public hearing notice and at a similar stage of project development in the local newspapers, advising the public of the EA's availability at the LPA's office and at the appropriate FHWA field offices and where to obtain information concerning the project. The notice must invite comments from all interested parties. It will include a statement advising that comments should be submitted in writing to the LPA within 30 days of the publication of the notice unless FHWA determines that a different period is warranted.

**6.5.1 Findings of No Significant Impact (FONSI)** - Once the 30-day public comment period has ended and all comments from the public and other agencies have been collected, the LPA or its consultant prepares a Finding of No Significant Impact (FONSI). The FONSI should summarize any public and/or agency coordination that occurred after the EA was signed. The FONSI must satisfactorily address all substantive comments on the EA provided during the 30-day comment period, including those from other agencies, the general public, and as a result of the public hearing. To ensure this, the LPA will provide the MoDOT district contact with a copy of the public hearing transcript and/or any other comments received for transmission to the FHWA along with the FONSI. The FONSI must describe any changes to the EA-designated preferred alternate and document any additional impact analyses performed for the final, selected alternate.

The FONSI must also document compliance with all applicable environmental laws and Executive Orders or provide reasonable assurance that their requirements can be met and briefly present why the action does not have a significant impact. If the proposed project will adversely impact any NRHP-eligible sites or historical structures, either an MOA or a PA executed by the DNR-SHPO, FHWA, Advisory Council on Historic

Preservation (ACHP), and the LPA must accompany the letter. The MOA or PA will identify uncompleted or mitigation activities to be completed prior to project construction. If the project will impact prehistoric sites known or likely to contain human remains, the MOA or PA will also be provided to appropriate American Indian tribes with cultural interest in the region for review, comment, and signature if they desire. Accompanying documentation must also include the Final Section 4(f) Evaluation, when required, for any impacted historic structures and for parklands, wildlife refuges, or other public lands affected.

When the FONSI is completed and the listed items are included, the documentation (with a signature page) is provided to MoDOT for distribution to FHWA (and to cooperating agencies for their review and comment if the selected alternate differs from the EA-designated preferred alternate).

If the FONSI is for a new controlled access freeway, a highway project of four or more lanes on a new location, or other action described in 23 CFR §771.115a, the letter to FHWA and accompanying documentation described above must also be made available for public review, including affected units of government, for a minimum of 30 days before FHWA issues a FONSI for the project. A notice similar to that for a public hearing must announce the availability of the documentation. If at any point in the EA process, FHWA determines that the action is likely to have a significant impact, the LPA will be required to prepare an EIS.

FHWA will review the FONSI, accompanying documentation, and any public hearing comments and other comments received regarding the EA. If FHWA determines after reviewing the documentation that there are no significant impacts associated with the project, the FONSI will be signed and a copy of the signed FONSI will be returned to the LPA.

After FHWA issues a FONSI, the LPA is encouraged to provide the FONSI to those federal, state, and local agencies likely to be affected by the action (those with regulatory or other responsibilities relating to the action). As a minimum, the LPA must send a notice of availability of the FONSI to the affected units of federal, state, and local government and the FONSI shall be available from the LPA and FHWA upon request by the public. Notice of availability is also sent to Missouri Federal Assistance Clearinghouse, the state intergovernmental review contact established under Executive Order 12372.

**6.5.2 Timeframes** - The project schedule should allow about two years for obtaining a FONSI.

## **6.6 Environmental Impact Statement (EIS)**

**6.6.1 Draft Environmental Impact Statement** - An EIS is prepared for projects that have clearly identified and significant social, economic, or environmental impacts. FHWA indicates that an EIS is required for four-lane relocations as well as for major bridges or projects that are controversial. To avoid delays in project development, the LPA, or its consultant, should initiate preparation of the EIS sufficiently early to ensure that NEPA compliance can be achieved before 35% design completion.

An EIS describes a project's purpose and need, identifies the alternates being considered, and discusses expected impacts in detail. To the extent possible, it also indicates compliance with other regulations. The EIS includes procedures to minimize

harm and details mitigation measures and all other environmental commitments. [FHWA Technical Advisory T6640.8A “Guidance for Preparing and Processing Environmental and Section 4\(f\) Documents”](#) provides additional direction on the information contained in an EIS and the format.

When FHWA determines that an EIS is required, the LPA will prepare and FHWA will issue a Notice of Intent for publication in the *Federal Register*. LPAs are encouraged to announce the intent to prepare an EIS by appropriate means at the local level.

After publication of the Notice of Intent, the LPA will begin a scoping process to aid in identifying the range of alternatives and impacts and the significant issues to be addressed in the EIS. Scoping is normally achieved through public and agency involvement procedures. If a scoping meeting is to be held, it will be announced in the FHWA’s Notice of Intent and by appropriate means at the local level. Agencies with jurisdiction by law must be requested to become cooperating agencies. Section 6002 (Efficient Environmental Reviews for Project Decision Making) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003 (SAFETEA-LU) updates the environmental review process by adding a new category of “participating agencies” for federal, state, and local agencies and tribal nations that have an interest in the project. The LPA will provide the MoDOT district contact with draft letters requesting the COE and other agencies to be cooperating and/or participating agencies as appropriate and FHWA will send the letters.

The LPA will also work with the FHWA to initiate consultation with federally recognized American Indian tribes determined to have an interest in the project area. Such consultation is conducted by FHWA on a government-to-government basis (FHWA determines which tribes and sends the letters); the consultation informs the tribes of the project, asks whether they have any specific concerns, and inquires whether they want to continue to consult on the project. The LPA or its consultant will prepare a draft letter for FHWA’s use but will not contact the tribes.

Section 6002 stipulates that both participating agencies and the public will be given the opportunity to comment on the purpose and need and range of alternatives for a project. Previously only cooperating agencies were offered such an opportunity. Section 6002 also mandates establishing a coordination plan for agency and public participation and comment. Further information on the SAFETEA-LU environmental review process can be found in FHWA’s [SAFETEA-LU ENVIRONMENTAL REVIEW PROCESS FINAL GUIDANCE, Publication L 109-59, November 15, 2006](#).

The LPA or its consultant will prepare a preliminary Draft EIS (pDEIS) that evaluates all reasonable alternatives to the action and discusses the reasons why other alternatives that may have been considered were eliminated from detailed study. The pDEIS also summarizes the studies, reviews, consultation, and coordination required by environmental laws or Executive Orders to the extent appropriate at this stage in the environmental process. A pDEIS requires completing the following work:

- Finalize the location study; all alternates considered, including those discarded, must be depicted graphically in the document.
- Indicate a preferred alternate if one stands out.
- Evaluate all proposed reasonable alternates equally. Reasonable alternates addressed in the EIS are those that may be constructed in the event that the preferred alternate is not selected. (Provisions of SAFETEA-LU allow FHWA to decide whether the preferred alternative may be developed to a

higher level of design detail to facilitate either the development of mitigation measures or compliance with other environmental laws. See FHWA's 2006 SAFETEA-LU FINAL GUIDANCE, as cited previously, for details.)

- Identify all previously reported archaeological and historic sites located within the study corridor and all alternates being considered. FHWA will determine whether the location and current condition of previously reported resources require verification.
- Identify all buildings and bridges 50 years old or older within all alternates being considered and provide an initial assessment of the resources' potential eligibility to the National Register of Historic Places (NRHP).
- Indicate impacts to parklands, wildlife refuges, or other publicly owned recreational use areas that may qualify for Section 4(f) protection, along with a statement as to the status of agency coordination on those impacts. The DEIS must include a Draft Section 4(f) Evaluation for impacts to these public lands, if applicable, or if the preferred alternate will cause adverse effects to certain kinds of cultural resources that require preservation in place, such as cultural resources that are NRHP-eligible for reasons other than the data associated with them (e.g., the location/setting is important, associated with significant historic events or people; distinctive characteristics of a type, period, or method of construction; involves human burial). Although prehistoric archaeological sites containing human remains will require Section 4(f) consideration, typically prehistoric sites not containing human remains will not require Section 4(f) consideration. A single Draft Section 4(f) Evaluation is prepared for all Section 4(f) resources, including both public lands and historic sites, potentially impacted by the project. This evaluation includes a consideration of all measures to minimize harm to the Section 4(f) resources.
- Note the presence of any potential Section 6(f) resources. If Section 6(f)(3) Conversion Documentation is required, it cannot be completed until the NEPA process is concluded because the Section 6(f) document must include copies of the approved ROD signature page and/or signed Section 4(f) evaluation. However, elements of the Section 6(f) document may be assembled during preparation of the NEPA document.
- Conduct a preliminary wetland and stream evaluation to identify potential jurisdictional wetland areas and streams and possible impacts to them.
- Determine the presence or absence of threatened or endangered plant and/or animal species and/or habitats within the project limits.
- Determine farmland impacts using either Form AD-1006 for site projects or Form SCS-CPA-106 for corridor projects.
- If applicable, perform a noise analysis that identifies noise sensitive receptors based on the Noise Abatement Criteria. Determine whether receptors meet the criteria for the installation of a noise wall. If the LPA does not have a noise policy, it is suggested that they use MoDOT's FHWA-approved noise policy.

- Determine the number of displacements, the effect on pedestrian and bicycle traffic, the secondary and cumulative impacts, and other social and economic impacts of the project.
- Conduct a records search to determine the presence of possible hazardous waste sites.
- Demonstrate that the proposed project is in compliance with the Clean Air Act.

The pDEIS is provided to MoDOT for distribution to FHWA and formal cooperating agencies (identified as such on the pDEIS cover sheet) and may be offered to participating agencies for their review and comment. The document is not to be distributed to anyone outside of these entities. When the LPA or its consultant has addressed the review comments on the pDEIS, the DEIS is ready for FHWA's final review. The FHWA, when satisfied that the DEIS complies with NEPA requirements, will approve the DEIS for circulation by signing and dating the cover sheet.

The LPA is responsible for printing the DEIS in sufficient quantity to accommodate circulation to those entities listed in the document as well as requests for copies that can reasonably be expected from agencies, organizations, and individuals. Normally, copies will be furnished free of charge. However, with FHWA concurrence, the party requesting the DEIS may be charged a fee that is not more than the actual cost of reproducing the copy or may be directed to the nearest location where the statement may be reviewed.

Once FHWA signs the DEIS, public and agency comments must be requested. The LPA, on behalf of FHWA, circulates the approved DEIS to federal and state agencies, local entities, elected officials, and others as appropriate for their review and comment. Upon circulation of the approved DEIS to the Environmental Protection Agency (EPA), the EPA publishes a Notice of Availability (NOA) in the Federal Register. Copies of the approved DEIS are also provided for public viewing and copying in the LPA's office and other public repositories such as libraries and city or county offices. The DEIS must be made available to the public and transmitted to agencies for comment no later than the time the document is filed with the Environmental Protection Agency. The DEIS shall be transmitted to:

1. Public officials, interest groups and members of the public known to have an interest in the proposed action or the DEIS;
2. Federal, state and local government agencies expected to have jurisdiction or responsibility over, or interest or expertise in, the action. Copies are provided directly to appropriate state and local agencies and to Missouri Federal Assistance Clearinghouse, the state intergovernmental review contact established under Executive Order 12372; and
3. States and federal land management entities that may be significantly affected by the proposed action or any of the alternatives. These copies shall be accompanied by a request that such state or entity advise the FHWA in writing of any disagreement with the evaluation of impacts in the statement. FHWA will furnish the comments received to the LPA along with a written assessment of any disagreements for incorporation into the final EIS.

The *Federal Register* NOA initiates a period of no less than 45 days for the return of comments on the DEIS. The notice and the DEIS transmittal letter must identify to whom comments may be sent.

A location public hearing is generally held for all projects requiring an EIS. Detailed information on public hearings is located in [EPG 136.7 Right of Way and Public Hearings](#). The DEIS shall be available at the public hearing and for a minimum of 15 days in advance of the hearing. The availability of the DEIS shall be mentioned and public comments requested in any public hearing notice and at any public hearing presentation. If a public hearing on an action proposed for FHWA funding is not held, a notice shall be placed in newspaper similar to a public hearing notice advising where the DEIS is available for review, how copies may be obtained, and where the comments will be sent.

**6.6.2 Final Environmental Impact Statement** - After circulation of a DEIS, when the 45-day comment period has ended and all comments from the public and other agencies have been collected, a preliminary Final EIS (pFEIS) is prepared. The FEIS identifies the preferred alternative and evaluates all reasonable alternatives considered. It should also discuss substantive comments received on the DEIS and responses thereto, summarize public involvement, and describe the mitigation measures that are to be incorporated into the proposed action. Mitigation measures presented as commitments in the FEIS must be implemented with the project. The following items of work are completed as part of the pFEIS:

- All substantive comments gathered on the DEIS during the 45-day comment period, including those from other agencies, the general public, and as a result of the public hearing, must be satisfactorily addressed. To ensure this, the LPA will provide the MoDOT district contact with a copy of the public hearing transcript and/or any other comments received for transmission to the FHWA along with the pFEIS.
- A preferred alternate must be declared.
- A Phase I archaeological survey must be completed for the preferred alternate(s) and all areas for which landowner access was denied or the survey was not conducted should be identified. A determination should be made of which sites identified in the project area require Phase II archaeological testing or evaluation. If the Missouri Department of Natural Resources (DNR) determines any sites require further testing, Phase II archaeological testing must also be completed unless coordination with FHWA and the district determine such testing may be postponed to a later time.
- All buildings, bridges, and culverts impacted by the preferred alignment that were not previously reviewed by the DNR's State Historic Preservation Office (DNR-SHPO), including those less than 50 years of age, must be submitted to DNR for concurrence in a determination of eligibility to the NRHP.
- If the proposed project will adversely impact any NRHP-eligible sites or historical structures, the pFEIS must include either a Memorandum of Agreement (MOA) or a Programmatic Agreement (PA) executed by the DNR-SHPO, FHWA, the LPA, and the Advisory Council on Historic

Preservation (ACHP) (all PAs; MOAs if it chooses to participate). The MOA or PA will identify uncompleted or mitigation activities to be completed prior to project construction. If the project will impact prehistoric sites known or likely to contain human remains, the MOA or PA will also be provided to appropriate American Indian tribes with cultural interest in the region for review, comment, and signature if they desire.

- A Final Section 4(f) Evaluation, when required, must be included in the pFEIS for any impacted historic structures and for parklands, wildlife refuges, or other public lands affected.
- Identify any Section 6(f) resources the project will affect. Elements of the Section 6(f)(3) Conversion Documentation may be assembled during preparation of the NEPA document, even though the Section 6(f) document cannot be completed until the NEPA decision document has been issued.
- A preliminary jurisdictional wetland and stream delineation is conducted in the project area for the preferred alternative and expected impacts are documented.
- Identify whether any consultation with the U.S. Fish and Wildlife Service is required to address threatened or endangered plant and/or animal species within the project limits and any conservation measures resulting from the consultation.
- The location of any necessary noise walls is proposed (this may change subject to subsequent detailed design and public involvement with the affected residents).

The FEIS will also document compliance, to the extent possible, with all applicable environmental laws and Executive Orders or provide reasonable assurance that their requirements can be met. Every reasonable effort shall be made to resolve interagency disagreements on actions before processing the FEIS. If significant issues remain unresolved, the FEIS must identify those issues and the consultations and other efforts made to resolve them. When the listed items are completed and included in a preliminary FEIS, the pFEIS is provided to MoDOT for distribution to FHWA and formal cooperating agencies (identified as such on the pFEIS cover sheet) and may be offered to participating agencies for their review and comment. The document is not to be distributed to anyone outside of these entities. When the LPA or its consultant has addressed the review comments on the pFEIS, the FEIS is ready for FHWA's final review and approval. The FEIS will be reviewed for legal sufficiency prior to FHWA approval.

FHWA will indicate approval of the FEIS for an action by signing and dating the cover page. Approval of the FEIS does not commit the FHWA to approve any future request to fund the preferred alternative.

The LPA should print a sufficient quantity of the FEIS to accommodate circulation to the appropriate entities as well as requests for copies that can reasonably be expected from agencies, organizations, and individuals. Normally, copies will be furnished free of charge. However, with FHWA concurrence, the party requesting the FEIS may be charged a fee that is not more than the actual cost of reproducing the copy or may be directed to the nearest location where the statement may be reviewed.

When sufficient copies of the approved FEIS are transmitted to FHWA, FHWA circulates the document to the EPA along with an NOA to be published in the *Federal Register*. Publication of the NOA initiates a 30-day comment period on the FEIS. The LPA circulates the approved FEIS for review and comment to any persons, organizations, or agencies that made substantive comments on the DEIS or requested a copy, no later than the time the document is filed with EPA. In the case of lengthy documents, the agency may provide alternative circulation processes. The LPA shall also publish a notice of availability in local newspapers and make the FEIS available through the mechanism established pursuant to DOT Order 4600.13 which implements Executive Order 12372. When the FEIS is filed with EPA, it must be available for public review at the LPA's offices and at appropriate FHWA offices. A copy will also be made available for public review at institutions such as local government offices, libraries, and schools, as appropriate.

### **6.7 Record of Decision (ROD)**

Substantive comments received on the FEIS are addressed in a Record of Decision (ROD) prepared by the LPA. The ROD also discusses the alternates that were considered for the project, identifies the selected alternate, and discusses why this alternate was selected. The ROD discusses commitments made in the document, including the measures that have been adopted to minimize harm, such as mitigation plans, and details any monitoring and enforcement program, if applicable. After comments are satisfactorily addressed, the ROD is presented to FHWA for approval. Once the ROD is signed by FHWA, the LPA can approve the location of the project and begin detailed design.

The timeframe for completing the EIS process varies. The timeline for completing consultant-prepared EISs is a negotiated item within the scope of work. A good rule of thumb is to allow at least 3 years to get to an approved ROD.

### **6.8 Supplemental Environmental Impact Statements**

A DEIS, FEIS or supplemental EIS may be supplemented at any time. An EIS shall be supplemented whenever FHWA determines that:

1. Changes to the proposed action would result in significant environmental impacts that were not evaluated in the EIS; or
2. New information or circumstances relevant to environmental concerns and bearing on the proposed action or its impacts would result in significant environmental impacts not evaluated in the EIS.

Where FHWA is uncertain of the significance of the new impacts, the LPA will develop appropriate environmental studies or, if FHWA deems appropriate, an EA to assess the impacts of the changes, new information, or new circumstances. If based upon the studies, FHWA determines that a supplemental EIS is not necessary, FHWA shall so indicate in the project file.

A supplement is to be developed using the same process and format (i.e., draft EIS and final EIS as an original EIS except that scoping is not required).

In some cases a supplemental EIS may be required to address issues of limited scope, such as the extent of proposed mitigation or the evaluation of location of design variations for a limited portion of the overall project. Where this is the case, the preparation of a supplemental EIS shall not necessarily:

1. Prevent the granting of new approvals;

2. Require the withdrawal of previous approvals; or
3. Require the suspension of project activities; for any activity not directly affected by the supplement. If the changes in question are of such magnitude to require a reassessment of the entire action, or more than a limited portion of the overall action, FHWA shall suspend any activities that would have an adverse environmental impact or limit the choice of reasonable alternatives, until the supplemental EIS is completed.

More [detailed discussion of supplemental NEPA documents](#) can be found on FHWA's web site.

## 6.9 Re-evaluations

If an acceptable FEIS is not submitted to the Federal Highway Administration (FHWA) within 3 years from the date of the DEIS circulation, the LPA shall prepare a written reevaluation of the DEIS in cooperation with FHWA. This reevaluation is used to determine whether a supplement to the DEIS or a new DEIS is needed.

A written reevaluation of the FEIS may be required before further approvals are granted if major steps to advance the action (e.g., authority to undertake final design, authority to acquire a significant portion of the right-of-way, or approval of the plans, specifications, and estimates) have not occurred within three years after the approval of the FEIS, final EIS supplement, or the last major FHWA approval or grant.

Factors such as noteworthy changes in the scope and/or location of the project, whether the project is active or inactive, and changes in environmental laws or regulations can also require a NEPA document reevaluation. Once completed and approved, a NEPA document has a limited shelf life of three years, even when portions of the project are under construction or have already been constructed, as is often the case for lengthy corridor projects. After approval of the ROD, FONSI or CE designation and prior to requesting any major approvals or grants, the LPA shall consult with MoDOT to establish whether the approved environmental document or CE designation remains valid for the requested FHWA action. These consultations will be documented when determined necessary by FHWA.

Whenever the project scope or location changes, the LPA will submit to the MoDOT district contact a Request for Environmental Review (RER) form that describes and shows the changes. Based on that information, the project will be reexamined to determine whether the proposed changes require a reevaluation. When a reevaluation is needed, the LPA prepares the reevaluation documentation. In most cases, the reevaluation is submitted to the FHWA for review and approval. Documentation for reevaluations is based on the original NEPA document type. If the original NEPA document was an EA or EIS, the LPA prepares a letter documenting the reevaluation and submits it to MoDOT for FHWA's review and approval. Some projects with original NEPA classifications as CEs may also require reevaluations in the form of a letter. FHWA does not routinely require reevaluations in the form of supplemental EAs or EISs. More [detailed discussion of NEPA reevaluations](#) can be found on FHWA's web site.