



NATIONAL ENVIRONMENTAL POLICY ACT

Section 404 of the Clean Water Act, and the “NEPA/404 Merger” Process

National Environmental Policy Act of 1969

The National Environmental Policy Act of 1969 (NEPA) is a United States environmental law outlining policies to protect and enhance the human environment. It applies to all federal actions which have the potential to affect the human environment. A federal action is one that is proposed by either a federal agency or a non-federal entity if the action is subject to some form of federal control. Since the North Lake Shore Drive Phase I study is funded using Governor Quinn’s *Illinois Jobs Now* program, it is a federal action and subject to NEPA.

NEPA helps ensure that federal agencies consider the environmental impacts of a proposed action prior to implementing the action. For the North Lake Shore Drive Phase I study, the Federal Highway Administration (FHWA) is the lead agency responsible for compliance with NEPA. NEPA insures that environmental information is made available to the public and helps agencies make project decisions based on a clear understanding of the environmental consequences. The NEPA process is at the core of a Federal-aid Highway Phase I Study. The essential elements of the NEPA process include the following:

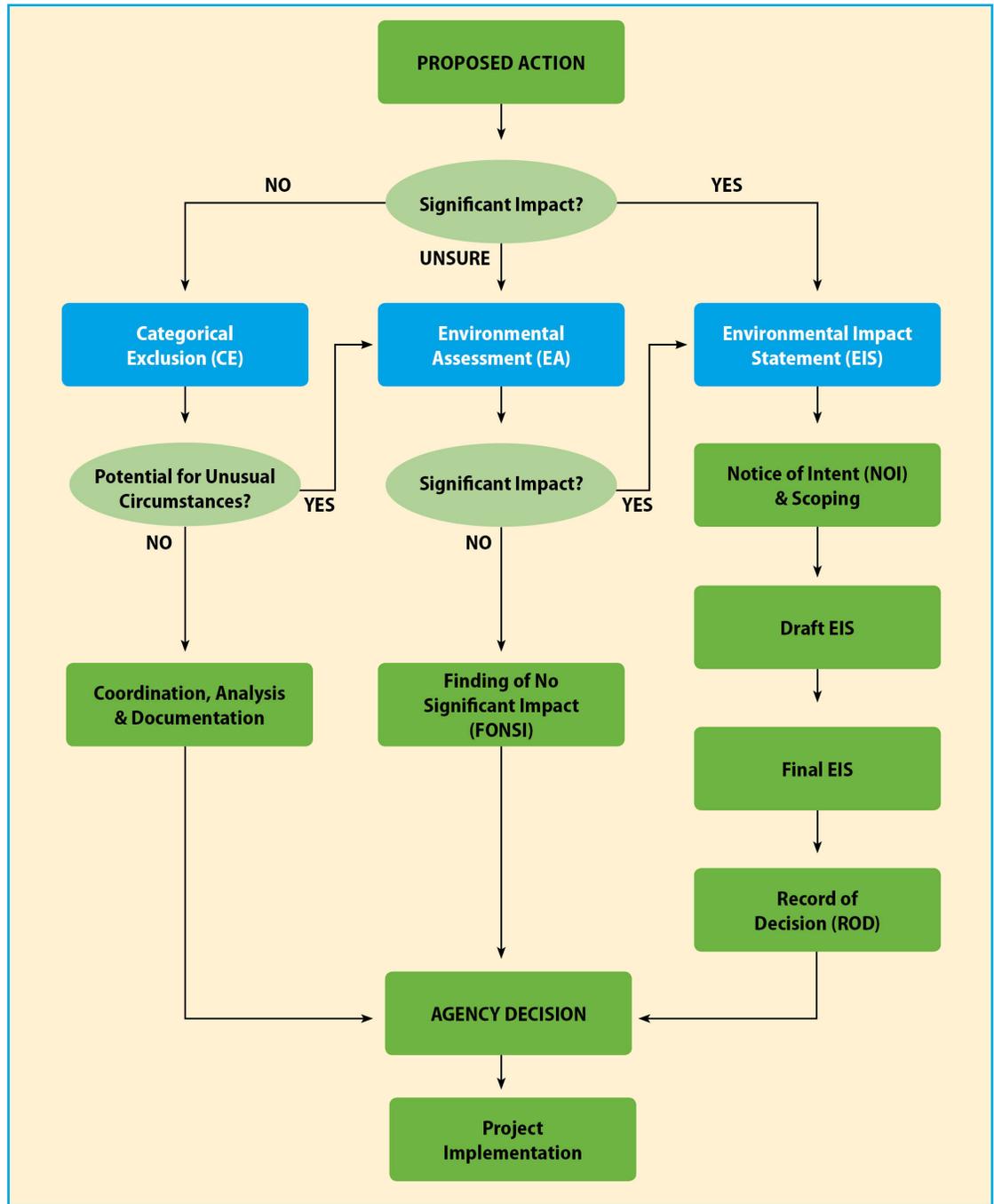
- Define the Purpose and Need for a Proposed Action
- Develop Alternatives to the Proposed Action
- Analyze Environmental Impacts of the Proposed Action and Alternatives including No-Action
- Develop Strategies for Impact Mitigation and Environmental Enhancement
- Interagency Coordination
- Public Involvement
- Documentation

When analyzing impacts, all efforts must be made to *avoid* environmental impacts. If impacts cannot be avoided, then the project must include elements to *minimize* impacts. If impacts cannot be avoided or minimized, the Phase I study will identify methods to *mitigate* for any anticipated impacts.

There are three levels, or “classes of action”, for the documentation of NEPA compliance. They are explained below and illustrated on the next page.

- Categorical Exclusion (CE) – A CE is a category of actions (developed based on past experience with similar actions) which do not have a significant effect on the human environment. Neither an Environmental Assessment or Environmental Impact Statement is required for CE’s.
- Environmental Assessment (EA) – An EA is prepared for projects which are not CE’s and for which the significance of impacts of a proposed action is uncertain. If at any point in the process of preparing the EA it is discovered that significant impacts would result, an Environmental Impact Statement must be prepared. If after completing the EA it is determined that no significant impacts, a Finding of No Significant Impact (FONSI) may be prepared.
- Environmental Impact Statement (EIS) – An EIS is the highest level of environmental documentation and is prepared for federal actions that significantly affect the quality of the human environment.

THE NEPA PROCESS



The term *significant* (when used in the NEPA process in conjunction with the words *impact*, *effect* or *affect*) refers to both the nature of the changes which may be caused by the action and the magnitude and importance of those changes. Agencies which have special expertise or jurisdiction by law with respect to a particular environmental resource are afforded the opportunity to fully assess project impacts to determine their significance.

It is likely that this project will be processed as an Environmental Assessment, however the decision will be coordinated between the Illinois Department of Transportation (IDOT), the Chicago Department of Transportation (CDOT) and FHWA.

Section 404 of the Clean Water Act

Beginning in 1899 the U.S. Army Corps of Engineers (USACE) was given regulatory function over public waterways. Public waterways at that time included rivers, harbors and other bodies of water which were navigable. In 1972 the Federal Water Pollution Control Act expanded the Corps regulatory function to include oversight of the “discharge of dredged or fill material” into these waters. Additionally, a definition of the “Waters of the United States” was also included in this law which expanded the Corps jurisdiction to include tributaries of navigable waters, including certain types of wetlands. In response to Section 404 of this 1972 law, a Federal permit process was established which requires that if a project will impact the Waters of the United States, all practical alternatives which avoid and minimize impacts must be evaluated. The USACE jointly administers this authority with the U.S. Environmental Protection Agency (USEPA), the administering agency for the entire Clean Water Act, and receives oversight support from the U.S. Fish and Wildlife Service (USFWS). For projects involving navigable waterways, the U.S. Coast Guard (USCG) is also involved.

With the potential for this project to affect Lake Michigan, it is likely that an Individual Section 404 Permit will be required before project implementation, and thus early coordination with USACE will be necessary.

The “NEPA/404 Merger” Process

The NEPA and Section 404 processes have similar evaluation and decision making procedures. In the past, the two processes would progress along separate parallel paths. Occasionally, project decisions on one “path” would conflict or overlap with decisions along the other “path”, which would lead to inefficient implementation of transportation actions. In 1996, an agreement between IDOT, FHWA, USACE, USFWS, USEPA and USCG was entered to ensure appropriate consideration of the environmental resource and review agencies occurred as early as possible in the project development process. The intent is also to involve State environmental resource and regulatory agencies as well. The process was developed for Federal-aid highway projects in Illinois which require an EA or an EIS, and require an individual permit under Section 404 of the Clean Water Act.

In addition to regular coordination with USACE and other agencies, IDOT, CDOT, and FHWA will specifically request concurrence from the Federal and State environmental resource and regulatory agencies at certain points in the Phase I process. The concurrence points are as follows:

- Purpose and Need for Proposed Action
- Alternatives Carried Forward
- Selected Alternative

Concurrence reviews and approvals typically take place at regularly scheduled meetings. Currently, three such meetings take place each year, in the months of February, June, and September. If an agency does not concur with a concurrence point, IDOT and CDOT will jointly determine the course of action to respond to the dispute after discussion with the environmental agency and FHWA.