THE UNIVERSITY OF TEXAS AT AUSTIN
CENTER FOR TRANSPORTATION RESEARCH

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NEPA ASSIGNMENT TRAINING POWERPOINTS AND QUIZZES

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TxDOT Project 0-6866: NEPA Reporting Synthesis of State Practices

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Introduction to the Training Materials

The objective of these training materials is to provide National Environmental Policy Act (NEPA) Assignment information to all professionals involved in the NEPA process. This training is not intended to be a replication of existing NEPA training that TxDOT conducts, nor is it a training on performing NEPA documentation. Rather, the information is intended to provide an overview of the responsibilities and duties under NEPA assignment, followed by a quiz.

TxDOT staff helped identify six groups to receive the training:

1. Consultants

2. Engineers

3. Environmental Specialists

4. Local Government Staff

5. Elected Officials

6. Management

Six PowerPoints were developed specifically for these groups. The PowerPoints contain sections that outline an introductory review of NEPA and an explanation of how NEPA Assignment has changed the general responsibilities held by these six groups. An overview of what to expect and develop for different project classifications lays the foundation for project delivery of Categorical Exclusions (CEs), Environmental Assessments (EAs), and Environmental Impact Statement (EISs). Major aspects of implementing the NEPA process across all project classifications are outlined, such as project initiation and quality assurance and control. Finally, real-world examples are used to illustrate how important each person's role is to the larger NEPA process under assignment, and to provide examples of where and how mistakes can take place.

Also provided here are five quizzes (for all but the elected official group), which similarly use examples from practice to assess the user's understanding of the material.

NEPA Assignment

Consultants

Training

Purpose: The purpose of this training is to provide an overview of recent changes to TxDOT's responsibilities under the National Environmental Policy Act of 1969 (NEPA). This training module has been tailored to emphasize how these changes impact the role of consultants and their daily responsibilities on the job.

Outline:
1. Understanding NEPA
2. NEPA Assignment
3. Project Class of Action
4. Implementing the NEPA Process

1. Understanding NEPA

NEPA is the National Environmental Policy Act of 1969.

"In enacting NEPA, Congress recognized that nearly all Federal activities affect the environment in some way and mandated that before Federal agencies make decisions, they must consider the effects of their actions on the quality of the human environment. Under NEPA, CEQ works to balance environmental, economic, and social objectives in pursuit of NEPA's goal of 'productive harmony' between humans and the human environment."

U.S. Council on Environmental Quality

NEPA is a U.S. environmental law that requires practitioners to consider the effects of their actions on the quality of the human environment.

1. Understanding NEPA

When is NEPA compliance required?

- NEPA compliance is required when an action uses **<u>any amount</u>** of federal funding.

- State-funded projects or those in the state's right-of-way follow a similar State of Texas environmental process. Be aware that the environmental process is a critical path for any transportation project, regardless of whether federal funding is being used.

- A project cannot proceed to letting or right-of-way acquisition prior to NEPA clearance.

What are the requirements of NEPA?

- NEPA is a procedural law that regulates how and whether impacts on the human and natural environment are assessed.

- Challenges to NEPA decisions are brought under the Administrative Procedures Act.

- Assuming the project meets a legitimate public purpose, NEPA does not require that the final action preserve the natural environment at all costs; depending on the resource, mitigation of impacts may be permissible.

- Permitting or mitigation measures required by other regulations are also part of the NEPA process.

1. Understanding NEPA

What are the products of the NEPA process?

Due diligence under NEPA requires that you document the **impacts of the project** and **maintain an administrative record.**

1. **Document** - Depending on the *project class of action*, this decisional document can vary in size and analytical depth, identifying all potential environmental impacts of the project. The three *classes of action* will be discussed shortly. It is your responsibility to know which type of study is appropriate for any given project.

2. **Administrative Record** - an electronic filing system that holds formal and informal documents showing that the correct process was followed in support of an environmental decision. The administrative record is reviewed for annual audits and is relied upon in the event of litigation (Note: historically, the AR was literally a physical project file).

1. Understanding NEPA

Other regulations and executive orders can be a part of the NEPA process if a resource covered by another regulation is affected.

Regulation	Resource
Section 4(f) of the Department of Transportation Act	Publicly owned Parks and Recreation Facilities; Historic Resources
Section 106 of the National Historic Preservation Act	Historic and Archeological Resources
Section 7 of the Endangered Species Act	Threatened and Endangered Species
Section 404 of the Clean Water Act	Waters and Wetlands
Executive Order 12898; E.O. 13166	Environmental Justice; Limited English Proficiency
Several Other Regulations affecting a variety of resources	See TxDOT Environmental Specialist Toolkit for complete list

- Some parallel regulations exist at the state level for most of these resources and they would apply for state-funded projects.
- You should be familiar with these regulations and be prepared to work with TxDOT and the respective authorities to meet their environmental procedures.
- To learn more about these regulations, see TxDOT's **Environmental Compliance Toolkit.**

1. Understanding NEPA

Key responsibilities of a consultant

Consultants play a key role in the NEPA process by providing subject area expertise and ground-level analysis of existing conditions and environments, and relaying information to TxDOT employees in an effort to help them make the best decisions.

- Creating clear documentation from data collection to environmental document approval will help the project remain legally defensible.
- As a consultant, you are responsible for always pulling the most recent version of toolkits and handbooks from the TxDOT ENV website. Using outdated forms and procedures may lead to redoing work within your existing budget constraints and could introduce delays into the schedule.
- Maintain communication with the environmental specialist and anyone else who has been designated as your liaison. Project changes left uncommunicated can have substantial consequences to the project.
- Coordinate timelines with the team; be sure to include subcontractors in the discussion.

2. NEPA Assignment

Moving Ahead for Progress in the 21st Century (MAP-21) is a federal transportation law (2012) that allows the FHWA to "assign" or delegate the review and approval NEPA documents to state Departments of Transportation (DOTs). Under NEPA assignment, DOTs assume the FHWA's authority for making environmental decisions.

Texas was the second state following California to assume this responsibility in December 2014. TxDOT sought NEPA assignment because it is hoped that it will shorten project review periods, allow TxDOT to develop a more robust review process, and cut project costs where possible.

Another important note about the NEPA assignment is that **TxDOT has waived sovereign immunity**, meaning TxDOT can be sued over an environmental decision. Unlike the past, the State of Texas must provide its own legal defense in federal court including the costs of any judgments against it. **NEPA assignment means that any decision made by a consultant can be examined in court and TxDOT (not the FHWA) will be responsible for defending it.**

3. Project Class of Action

What is meant by a "NEPA project Class of Action"?

Depending upon the project's scope, location, amount of federal funding, and environmental impacts, a project can be classified as either a Categorical Exclusion (CE), an Environmental Assessment (EA), or an Environment Impact Statement (EIS) for environmental review.

Within the last two classifications (EA & EIS), additional processes can arise, depending upon the project.

Most TxDOT projects are classified as CEs. However, undertaking an EA or an EIS will increase the commitment of time and energy expended.

TxDOT must be prepared for all types of environmental regulatory compliance. Under NEPA assignment, TxDOT may or may not have the authority to approve all decisions that fall under the NEPA umbrella.

Because a design change or other changes to the project can impact the timeline of the environmental process or even the type of documentation is required, it is essential that TxDOT staff, resource agency staff, consultants, and local government staff and elected officials **communicate regularly and effectively**.

3. Project Class of Action

What is a Categorical Exclusion?

Categorical Exclusions (CEs) apply to non-controversial actions that are known to have negligible impacts. Actions that can be categorically excluded are listed in federal code.

There are two categories:

- **c-list:** The C-list CEs fall into explicitly defined categories. With proper technical documentation, a C-list CE project can be cleared by the Department Delegate at the District level.

- **d-list:** These projects may be designated as CEs after technical documentation establishes that the project does not create the environmental impacts that would elevate it to an EA level (requires peer review at the district level).

Technical Memoranda are prepared for a CE.

3. Project Class of Action

Classification as a CE

CEs must not have unusual circumstances leading to:

- Significant environmental impacts
- Substantial controversy on environmental grounds
- Significant impact on properties protected under Section 4(f) or under Section 106 of the National Historic Preservation Act
- Inconsistencies with any federal, state, or local law, requirement, or administrative determination relating to the environmental aspects of the action

The project file must demonstrate the following:

- The project fits within the selected CE category
- The project does not have unusual circumstances
- The project has independent utility
- The project has logical termini (for linear facilities)
- The determination does not restrict consideration of alternatives for other reasonably foreseeable projects

3. Project Class of Action

Determining the correct type of Categorical Exclusion

There are 30 "c-list" CE types, plus the "open-ended D-list CE". The d-list CEs do not have sufficient impacts to elevate the project to an EA. A d-list CE requires a District-Engineer-level peer review.

It is critical for a project to be properly classified, if a CE is being used for environmental compliance. Refer to TxDOT's manual entitled *Guidance: Choosing a Categorical Exclusion* to help you better understand where your project falls.

TxDOT's *CE Determination Form* will also need to be completed. The TxDOT website has documentation that will help staff identify the best fit for a CE.

3. Project Class of Action

What are the main components of a Categorical Exclusion?

CEs require the least complex documentation process. Milestones for preparing a CE include:

- Project scoping
- Complete studies, reports, documentation
- Project sponsor submittal of CE documentation
- The Department Delegate will make the environmental decision and will sign determination form.

Who is the Department Delegate?

- c-list CE: anyone with signing authority, including **Environmental Specialists**
- d-list CE: District Engineer or District Administrator

3. Project Class of Action

What is an Environmental Assessment?

An **Environmental Assessment (EA)** is prepared when an action may or may not have a significant impact on resources. An EA is used when an EIS is not required, but the action is not eligible to be processed as a CE.

EAs can have two outcomes. If a project's impacts on resources are limited, TxDOT will issue a "Finding of No Significant Impact" or a FONSI. The project may then proceed to letting. However, if a significant impact is found that cannot be resolved, an EIS must be prepared for the project.

The Technical Memoranda documenting studies on resource impacts will be similar for CEs and EAs.

3. Project Class of Action

What are the main components of an Environmental Assessment?

The Technical Reports that document the studies on resource impacts are similar for both CEs and EAs. However, due to their increased complexity, EAs have more project milestones:

- Complete scope development
- Hold kickoff meeting
- Research, prepare, and submit draft Technical Reports
- Undertake agency coordination, resolve issues
- Review and publish draft EA
- Offer opportunity for public involvement
- Prepare final EA and FONSI
- Approve FONSI or proceed as an EIS

3. Project Class of Action

What is an Environmental Impact Statement?

An **Environmental Impact Statement (EIS)** is prepared for major actions that would have a significant impact on the human or natural environment. These may be large projects, highly controversial, largely on new location, or located in a sensitive resource area (such as an endangered species habitat).

Main components of an EIS

EISs require the most extensive documentation and public input. Milestones of the EIS process are:

- Letter of initiation
- Publish Notice of Intent (NOI)
- Invitation of other agencies, scoping, and kickoff meeting
- Two public meetings (typically)
- DEIS preparation assessing multiple alternatives, review, and publication
- Public hearing
- Final EIS preparation (including preferred alternative and No Build)
- Publish Notice of Availability (NOA) and Record of Decision (ROD)

4. Implementing the NEPA Process

Meetings and Communication

NEPA assignment is a team effort, so clear and frequent communication is essential. Those involved will vary according to project classification.

- Start each project off with 1) a site visit to gain a basic understanding of existing environmental conditions and the study area; 2) hold a Kickoff Meeting with the project team, especially for EAs and EISs. Here you and your team can set expectations for future communications and milestones. As a consultant, it's important to voice any environmental concerns now.
- If anything is decided after this point without your knowledge, it could greatly effect your assessment. Stay in the know.

Any **communication and decision made** will need to be recorded in the administrative record, including decisions made over email.

4. Implementing the NEPA Process

Tools and Toolkits

Due to the changes that have come with NEPA assignment, more documentation is now expected in some steps of the NEPA process, and have decreased in other steps. To assist you, TxDOT has developed new tools and guidance for your use in preparing and reviewing environmental documents.

**You must always go to the TxDOT ENV website and download the most recent version of the following:

TOOLKITS
- ✓ Archeological Resources
- ✓ Historic Resources
- ✓ Ecological Resources
- ✓ Coastal Barrier Resources
- ✓ Farmland Protection
- ✓ Endangered Species Act
- ✓ TPWD Chapter 26
- ✓ LWCF Section 6(f)
- ✓ USDOT Section 4(f)
- ✓ Water Resources
- ✓ Community Impacts, EJ, and Title VI

HANDBOOKS
- ✓ Environmental Project Development Overview
- ✓ CE
- ✓ EA
- ✓ EIS
- ✓ Public Involvement
- ✓ Indirect & Cumulative Impacts
- ✓ Bicycle and Pedestrian Considerations
- ✓ Air Quality
- ✓ Traffic Noise
- ✓ Hazardous Materials

4. Implementing the NEPA Process

QA/QC Process

As a consultant, your work (specifically the Technical Memoranda) will be reviewed and approved through TxDOT's QA/QC process. It's important to know what this process is, and where your role will be influenced by the process.

TxDOT integrates quality assurance (QA) and quality control (QC) considerations into its environmental decisions to achieve compliance with applicable laws, regulations, and standards. **QA is devoted to preventing problems, and QC is devoted to identifying and correcting problems**.

The QA/QC processes are in place to prevent possible errors or omissions that could be presented in court.

4. Implementing the NEPA Process

QA/QC Process

Each QA/QC measure will evaluate the project-level documentation to date, looking for thoroughness, accuracy, errors, and omissions. Project-level documentation can be evidence of communications and meetings, TxDOT checklists, and more. Once each document is reviewed, it officially becomes a part of the project file and administrative record.

The Technical Memoranda will be reviewed by TxDOT before the team can start preparing the draft environmental document. The consultant's contribution throughout the NEPA process, including emails, meetings, and reports, will also be analyzed.

Closing

- The NEPA process looks at how people and the natural, cultural, and human environment can exist compatibly.

- NEPA is required when any federal money is spent on a project, and state-funded projects have a similar process.

- Assignment of responsibility for environmental decision-making from the FHWA to TxDOT can result in faster project delivery, but TxDOT will need more detailed information along the way to ensure defensible decisions.

- Your role as a consultant in championing projects and communicating priorities has not changed under NEPA assignment.

- However, your responsibility to accurately and thoroughly ensure all decisions are clearly documented in the administrative record has increased.

Closing

Consultants relay information to TxDOT employees in an effort to help them make the best decisions.

- Create clear documentation from data collection to environmental document approval to help the project remain legally defensible.
- At the beginning of every project, coordinate timelines with the team; be sure to include subcontractors in the discussion.
- Maintain communication with the Environmental Specialist and anyone else who has been designated as your liaison.
- Collaboration among environmental, engineering, consulting, and local government team members leads to "hard look" documentation that is consistent with TxDOT's format requirements and a strong, legally defensible administrative record.

NEPA Assignment

Elected and Appointed Public Officials

Purpose

There has been a significant change to how TxDOT completes the environmental phase of project delivery following NEPA assignment.

In order to streamline project delivery, this guidance was prepared to:

- Introduce elected and appointed public officials to the NEPA process as it relates to transportation projects

- Update public officials on TxDOT's role under NEPA assignment

- Provide an overview of the NEPA process and the milestones necessary to achieve efficient project delivery

1. What is NEPA?

NEPA is the National Environmental Policy Act of 1969.

"In enacting NEPA, Congress recognized that nearly all Federal activities affect the environment in some way and mandated that before Federal agencies make decisions, they must consider the effects of their actions on the quality of the human environment. Under NEPA, CEQ works to balance environmental, economic, and social objectives in pursuit of NEPA's goal of 'productive harmony' between humans and the human environment."

U.S. Council on Environmental Quality

1. What is NEPA?

When is NEPA required?

- NEPA is required when an action uses **<u>any amount</u>** of federal funding.
- State-funded projects or those in the state's right-of-way follow a similar State of Texas environmental process. Be aware that the environmental process is a critical path for any transportation project, regardless of whether federal funding is being used.

What are the requirements of NEPA?

- NEPA is a procedural law that regulates how and whether impacts on the human and natural environment are assessed.
- NEPA does not require that the final action preserve the natural environment at all costs.
- Permitting or mitigation measures required by other regulations are also part of the NEPA process.

1. What is NEPA?

What are the products of the NEPA process?

An environmental decision that includes documentation of environmental resources that may be affected by the action; descriptions of the anticipated impacts of various proposed alternatives, including a no-build alternative; and identification of a preferred alternative, along with any mitigation actions.

Documentation can vary greatly in size and depth of analysis depending on the class of action. Three classes of action, from least to most complex, are:

- Categorical Exclusion (CE)
- Environmental Assessment (EA)
- Environmental Impact Statement (EIS)

These classes will be discussed in more detail in Section 5.

1. What is NEPA?

Other regulations and executive orders may be included in the NEPA process if a resource covered by another regulation is affected. If a protected resource is affected, the NEPA process might require a longer timeline to allow consultation with subject matter experts.

Examples of potentially impacted resources:

- Endangered species
- Historic and archeological resources
- Parks and recreation
- Air quality
- Water quality
- Low income or minority populations

2. What Is My Role Under NEPA?

An Elected or Appointed Official's Role Under NEPA

Elected and appointed public officials can help the NEPA process go smoothly by engaging the public and providing them with realistic expectations, accurate information, and encouraging them to attend public meetings and hearings.

Elected and appointed officials should refrain from making promises to constituents without discussing these proposals with the project sponsor and TxDOT beforehand.

The failure to do so could result in:

- Project redesign
- Restarting the environmental compliance process
- Creating new impacts on resources that will require additional documentation and agency coordination
- Bidding and construction delays
- Higher project costs
- Opportunities for litigation

2. What Is My Role Under NEPA?

It is also very important that elected and appointed public officials not publicly express a preference for a particular project alternative during the NEPA process, until the preferred alternative is selected.

Once it is selected, officials should not confuse the public by openly expressing a preference for an alternative other than the preferred alternative. Elected and appointed officials should either publicly support the preferred alternative or refrain from commenting.

Failure to do so undermines the objective process of selecting the preferred alternative and erodes the effectiveness of and public confidence in the NEPA process.

3. What is NEPA Assignment?

MAP-21 is the most recent surface transportation funding bill enacted by Congress. A key goal of the MAP-21 legislation (and NEPA assignment) is to reduce project delivery delays.

To achieve this goal, the USDOT seeks to shift environmental review to state DOTs. A Memorandum of Understanding (MOU) between TxDOT and the USDOT outlines how TxDOT will implement NEPA assignment. Texas is now the second state to be assigned federal NEPA responsibilities and liabilities.

In this role, TxDOT is now the lead agency for document preparation and review.

3. What is NEPA Assignment?

As the lead agency, TxDOT has taken on a number of the FHWA's important roles in the NEPA process.

Responsibility	Prior to NEPA Assignment	Under NEPA Assignment
Determining class of action (CE, EA, or EIS)	FHWA	TxDOT
Preparing supporting technical studies	TxDOT	TxDOT
Preparing the NEPA documentation	TxDOT	TxDOT
Responsible for federal resource agency consultations	FHWA	TxDOT
Approves and files the NEPA document	FHWA	TxDOT
Defends NEPA document in federal court, if there is litigation	FHWA/DOJ	TxDOT/ Texas AG

3. What is NEPA Assignment?

Under NEPA assignment, certain TxDOT staff can now approve environmental documents. This authority may reduce the amount of time required for document review and approval. However, to receive this authority, the State of Texas had to agree to waive its sovereign immunity.

The State of Texas is now legally responsible for any legal fees and judgments related to TxDOT's NEPA activities. As a result, expect that local project sponsors will work closely with TxDOT, so that TxDOT staff are fully aware of what they are signing.

4. Project Development

When Does TxDOT Build a Project?

Before TxDOT can support the construction of a project, it must be listed in both state and regional planning documents. This means that if the boundaries of a project change or if the project was not listed in the planning documents, the regional Metropolitan Transportation Plan (MTP) and the regional Transportation Improvement Plan (TIP), as well as the Statewide Transportation Plan (STP) and the State Transportation Improvement Plan (STIP) will need to be updated.

No federal or state funds can be released until the project is in the TIP and STIP. Allocating state funds prematurely to a project, before it is included in the regional and state plans, could jeopardize federal funding for all projects in the region. The local transportation planning process is guided by federal laws, which must be followed.

Long-range transportation plans are typically updated on five-year cycles (more frequently if your region is in non-attainment). Use these windows of opportunity to add, change, or remove projects through the planning process.

4. Project Development

Who does the work?

TxDOT or a local government entity can act as the **project sponsor**. Being a project sponsor means taking responsibility for implementing the NEPA process, including technical studies.

If a local government is serving as a project sponsor, it is important for them to assess whether they have the available staff and expertise to supervise consultants or conduct studies internally.

For more information on how local governments and TxDOT work together throughout the NEPA process, please see the Local Government Toolkit on the TxDOT Environmental Division's website.

5. NEPA Implementation

What does the NEPA process look like?

The correct environmental process to follow depends on the project's characteristics, its funding source, and the affected resources. For federally funded projects, there are three possible classifications of an action:

- Categorical Exclusion (CE)
- Environmental Assessment (EA)
- Environmental Impact Statement (EIS)

5. NEPA Implementation

Categorical exclusions (CEs) apply to projects that **do not individually or cumulatively have a significant environmental impact.**

Most roadway projects will be classified as CEs. Examples of projects that may be classified as a CE are:

- Activities that do not involve or lead to construction
- Construction of bicycle and pedestrian lanes, paths, and facilities
- Projects in the state safety plan
- Alterations to increase accessibility for disabled or elderly persons

A CE **cannot** be used under certain circumstances, such as the following:

- Displacement of people
- Impacts on natural, cultural, recreational, or historic resources
- Public opposition or controversy on environmental grounds

5. NEPA Implementation

Categorical exclusions require the least complex documentation process. Milestones for CEs include:

- Perform project scoping
- Complete the studies, reports, and documentation
- Project sponsor (TxDOT or local government) submits the CE documentation
- The TxDOT Environmental Affairs Division delegate makes the environmental decision and signs the determination form
- Kickoff meetings and public participation may or may not be necessary, depending on the complexity of the CE. **If you believe public participation is needed, be sure to communicate this need as early as possible.**

The TxDOT delegate will be either an Environmental Specialist or the District Engineer/Administrator, depending upon which type of CE was prepared.

5. NEPA Implementation

For projects with substantial impacts or potential for controversy, an environmental assessment (EA) or an environmental impact statement (EIS) is prepared. **The purpose of an EA is to determine if an EIS is necessary.**

Analysis of alternatives is a key component of an EA or an EIS, so you will see multiple solutions proposed and evaluated as part of the process.

EAs can have two outcomes:

- If minimal impacts to resources are expected, TxDOT will issue a "finding of no significant impact" or FONSI. The project may then proceed to letting.
- If a significant impact is found, an EIS will be prepared for the project.

5. NEPA Implementation

EAs have more project milestones than CEs due to the public process and evaluation of alternatives:

- Scope development and kickoff meeting
- Research, prepare, and submit draft EA
- Review and publish draft
- Offer opportunity for public comment
- Respond to comments and prepare final EA and FONSI
- Approve FONSI or proceed as an EIS

The TxDOT Environmental Affairs Division Director has signature authority for the final environmental documents.

5. NEPA Implementation

An EIS requires more detailed documentation and a significant public participation process. It is initially completed as a Draft EIS (DEIS) and, upon approval, as a Final EIS (FEIS). Milestones of the EIS process are:

- Letter of initiation
- Published Notice of Intent (NOI)
- Invitation of other agencies, scoping, and kickoff meeting
- Two public meetings
- DEIS preparation, review, and publication
- Public hearing
- FEIS preparation
- Published Notice of Availability (NOA) and Record of Decision (ROD)

TxDOT's Environmental Affairs Director has the sole approval authority for an EIS. There may be co-signatories, if other agencies are cooperating agencies.

6. Wrap-Up

- The NEPA process examines how humans and the human environment can exist in "productive harmony."

- NEPA is required when any amount of federal money is spent on a project, and state-funded projects have a similar process.

- TxDOT's NEPA assignment can result in faster project delivery, but it also brings risk because the State of Texas has waived its sovereign immunity.

- The implementation of NEPA requires following the spirit and letter of federal laws.

- Environmental documentation for a project may be as a categorical exclusion, an environmental assessment, or an environmental impact statement, depending upon the impacts.

- There are a number of other federal laws, regulations, and Executive Orders that may need to be followed during NEPA implementation.

6. Wrap-Up

As an elected or appointed public official, you have the trust of your constituents and a public platform to work with.

- Help your constituency form realistic expectations for project timelines
  - Do not make promises that are out of your control and not without coordinating with TxDOT and the local project sponsor
- Guide people to accurate information throughout the NEPA process
- Alert the public of opportunities to participate in the NEPA process through public meetings, hearings, and opportunities to comment on environmental documents
- Do not publicly express a preference for a particular alternative during the NEPA process, until the preferred alternative is selected
- Once the preferred alternative is selected, do not confuse the public by promoting an alternative that was not selected as the preferred alternative

NEPA Assignment

Engineers

Training

Purpose: The purpose of this training is to provide an overview of recent changes to TxDOT's responsibilities under NEPA. This training module has been tailored to emphasize how these changes impact the role of TxDOT's engineers and their daily responsibilities on the job.

Outline:
1. Understanding NEPA
2. NEPA Assignment
3. Project Classes of Action
4. Implementing the NEPA Process
5. Common NEPA Challenges

Quiz: Your understanding of this training module will be assessed with a short quiz.

1. Understanding NEPA

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U.S. Council on Environmental Quality

NEPA is a U.S. environmental law that requires practitioners to consider the effects of their actions on the quality of the human environment.

1. Understanding NEPA

When is NEPA compliance required?

- NEPA compliance is required when an action uses **any amount** of federal funding.
- State-funded projects or those in the state's right-of-way follow a similar State of Texas environmental process. Be aware that the environmental process is a critical path for any transportation project, regardless of whether federal funding is being used.
- A project cannot proceed to letting or right-of-way acquisition prior to NEPA clearance.

What are the requirements of NEPA?

- NEPA is a procedural law that regulates how and whether impacts on the human and natural environment are assessed.
- Challenges to NEPA decisions are brought under the Administrative Procedures Act.
- Assuming the project meets a legitimate public purpose, NEPA does not require that the final action preserve the natural environment at all costs; depending on the resource, mitigation of impacts may be permissible.
- Permitting or mitigation measures required by other regulations are also part of the NEPA process.

1. Understanding NEPA

What are the products of the NEPA process?

1. An **administrative record** demonstrating that the NEPA process was followed to the letter and intent of the law and the decision-making process would withstand the "hard look" (i.e. rigorous and robust) test.

2. An **environmental decision** that includes documentation of environmental resources that may be affected by the action; descriptions of the anticipated impacts of various proposed alternatives, including a no-build alternative; and identification of a preferred alternative, along with any mitigation actions.

Documentation can vary in size and depth of analysis depending on the class of action. Three classes of action, from least to most complex, are:

-   Categorical Exclusion (CE)
-   Environmental Assessment (EA)
-   Environmental Impact Statement (EIS)

These classes will be discussed in more detail in Section 3.

1. Understanding NEPA

Other federal regulations and Executive Orders can be a part of the NEPA process if a resource covered by another regulation is affected.

Parallel regulations exist at the state level for most of these resources and they would apply for state-funded projects. For example, cultural resources are regulated nationally through the National Historic Preservation Act and are governed at the state level through the Antiquities Code of Texas.

Regulation	Resource
Section 4(f) of the Department of Transportation Act	Publicly-owned Parks and Recreation Facilities; Historic Resources
Section 106 of the National Historic Preservation Act	Historic and Archeological Resources
Section 7 of the Endangered Species Act	Threatened and Endangered Species
Section 404 of the Clean Water Act	Waters and Wetlands
Executive Order 12898; E.O. 13166	Environmental Justice; Limited English Proficiency
Several other regulations affecting a variety of resources	See TxDOT Environmental Toolkit for complete list

1. Understanding NEPA

The Engineer's Role Under NEPA?

TxDOT and consulting engineers play a key role in the NEPA process when developing the design and location of infrastructure. The selected location can determine what type of environmental documentation is required, especially when for acquisition of right-of-way.

Location Matters: Safety Rest Area
A safety rest area along an interstate highway was proposed, and TxDOT staff began looking at locations along the corridor. The ideal site would have access to utilities on a vacant parcel. Two possible locations were found, and preliminary designs for the structure and highway access began. During the NEPA process, field work revealed that part of one site was situated in a wetland and adjacent to an archeological site. Proceeding with this site would require permits from the U.S. Army Corps of Engineers and an archeological survey with Texas Historical Commission review. These impacts could add months to the project time. Fortunately, similar constraints were not encountered at the alternate site. The project development team documented the alternatives analysis and proceeded with the least environmentally harmful option to gain project clearance on time.

2. What is NEPA Assignment?

Moving Ahead for Progress in the 21st century (MAP-21) is the most recent surface transportation funding bill enacted by Congress. A key goal of the MAP-21 legislation (and NEPA assignment) is to reduce project delivery delays.

To achieve this goal, the USDOT seeks to shift environmental review responsibility to state DOTs. A Memorandum of Understanding (MOU) between TxDOT and the FHWA outlines how TxDOT will implement NEPA assignment. Texas is now the second U.S. state to be assigned federal NEPA responsibilities and liabilities.

2. What is NEPA Assignment?

To receive assignment, TxDOT has waived sovereign immunity (formerly afforded by the FHWA), meaning TxDOT can be sued in federal court and it will also need to **defend legal challenges** to project development decisions in court, as opposed to relying upon the FHWA as it has in the past.

This means that design decisions made by a project engineer **can be examined in court** as part of the administrative record for the environmental decision and if there is a judgment against TxDOT as a result of these actions, the State of Texas will have to pay the legal costs, as well as any costs for mitigation and damages.

2. What is NEPA Assignment?

Where do Project Engineers fit into NEPA Assignment?

The basic roles and responsibilities of TxDOT and consulting engineers did not changed after TxDOT's assignment of federal NEPA responsibilities.

However, as previously stated, TxDOT is now responsible for defending the administrative record (or provide proof that the NEPA process was correctly followed) and has an **increased burden to thoroughly document project decisions,** so they will be upheld. If the administrative record is not complete, is vague, or appears to reflect arbitrary and capricious decisions, a court can determine that the environmental decision is invalid.

You may be asked to demonstrate justification for decisions made during the project development process, which includes the NEPA process.

It is critical that TxDOT and consultant engineers keep environmental staff informed of any design changes so they can be assessed for environmental impacts and so the administrative record is kept up-to-date.

3. Project Class of Action

The required environmental process depends on the project's funding source and the affected resources. For federally funded projects, there are three possible classifications of action:

- Categorical Exclusions (CEs)
- Environmental Assessments (EAs)
- Environmental Impact Statement (EISs)

The project design may determine its effects on different resources. For example, the selected design may adversely affect wetlands, wildlife, or vulnerable populations.

Because a design change or other changes to the project can impact the timeline of the environmental process or even the type of documentation that is required, it is essential that TxDOT staff, resource agency staff, consultants, local government staff, and elected officials **communicate regularly and effectively**.

3. Project Class of Action

Categorical Exclusions apply to projects that do not individually or cumulatively have a significant environmental effect. Most TxDOT projects will be classified as CEs, and the environmental documentation process should be straightforward. However, even within CEs there can be challenges.

Restrictions on using CEs – **to be processed as a CE, the project cannot result in significant:**
- Relocation of people
- Impact on natural, cultural, recreational, historic, or other resources
- Impact on air, noise, or water quality
- Individual or cumulative impacts

Unusual circumstances that preclude use of a CE:
- Controversy on environmental grounds, or opposition from the public
- Properties protected by other regulations, such as endangered species
- Inconsistencies with local, state, or federal requirements or procedures

TxDOT's Environmental Toolkits contain detailed information on the thresholds that prevent project processing as a CE. Note that environmental work is iterative so if an impact is identified, the documentation type can be elevated to an EA or even an EIS.

3. Project Class of Action

There are 30 CEs listed in federal code, called "c-list" CEs. For example:

- c(1): Activities which do not involve or lead to construction
- c(3): Construction of bicycle and pedestrian lanes, paths, and facilities
- c(15): Alterations to increase accessibility for disabled or elderly persons
- c(18): Track and rail bed maintenance within existing right-of-way

When a CE is applied to a project, know that each classification has certain **constraints** associated with it. Some examples of limitations are below:

- c(22) must take place entirely within existing right-of-way
- C(26, 27, 28) cannot be use if one of several "section (e)" constraints (environmental or cultural impacts) exist

Because of these constraints, it is critical to communicate any design changes to the environmental specialist coordinating the project **as soon as possible, since it may result in a reclassification of the project to another type of CE.**

Actions that are not listed, but may meet the requirements of a CE, can be documented as a "d-list" CE. These CEs will require a more rigorous justification to receive approval and to be processed as a CE project.

3. Project Class of Action

Categorical Exclusions should require the least complex documentation process. See TxDOT's Environmental Toolkits for detailed guidance. Milestones for CEs include:

- Project scoping
- Complete studies, reports, documentation
  - Note that all environmental resource categories have to be considered—if a Technical Report is not required, this should be documented within the project file.
- Submit CE documentation
- The TxDOT-ENV delegate makes the environmental decision and signs determination form
- *Kickoff meetings may or may not be necessary, depending on the complexity of the CE. During the meeting, design benchmarks for future meetings should be determined.*

Who can sign CEs?

- c-list: Anyone with signing authority at the District level; can be an Environmental Specialist
- d-list: District Engineer or Administrator

3. Project Class of Action

For projects with substantial impacts or potential for controversy, an environmental assessment (EA) or an environmental impact statement (EIS) is prepared. **The purpose of an EA is to determine whether an EIS is necessary.** Many projects have too many impacts to be processed as a CE, but by demonstrating an adequate "hard look" within the EA, the document can be cleared without an EIS.

An analysis of alternatives is a key component of an EA or an EIS, so you will be asked to propose multiple design solutions as part of the process.

EAs can have two outcomes:

- If minimal impacts to resources are expected, and the documentation demonstrates that impacts have been avoided, minimized, or mitigated, TxDOT may issue a "finding of no significant impact" or FONSI. The project may then proceed to letting.
- If a significant impact is found, an EIS may need to be prepared for the project. An EIS requires that multiple feasible options are analyzed to an equivalent level of detail in the Draft EIS. The preferred alternative is typically documented in the Final EIS.

3. Project Class of Action

EAs have more project milestones than CEs due to the public involvement process and evaluation of alternatives, including:

– Complete scope development and kickoff meeting

– Research, prepare, and submit draft Technical Reports on alternatives

– Undertake agency coordination and resolve issues

– Review and publish draft EA addressing preferred alternative versus No Build

– Offer opportunity for public involvement

– Respond to public and agency comments and prepare final EA and FONSI

– TxDOT approves FONSI or proceeds with preparing an EIS

The TxDOT Environmental Affairs Division Director has signature authority for the final environmental documents.

3. Project Class of Action

An EIS requires more detailed documentation and a significant public participation process. It is initially completed as a Draft EIS (DEIS) and, upon approval, as a Final EIS (FEIS). Milestones of the EIS process are:

- Letter of initiation
- Published Notice of Intent (NOI)
- Invitation to identify Participating and Cooperating agencies
- Invitation to other agencies to participate in scoping and kickoff meeting
- Two public meetings (typically)
- DEIS preparation, review, and publication
- Public hearing
- Response to comments, revision and resubmittal process
- FEIS preparation on Preferred Alternative versus No Build
- Published Notice of Availability (NOA) and Record of Decision (ROD)

The TxDOT Environmental Affairs Division Director has the approval authority for an EIS. There may be co-signatories, if other agencies are cooperating agencies.

3. Project Class of Action

In summary, the potential impacts of the project will determine the depth and complexity of the environmental documentation process. Below is a greatly simplified representation of the NEPA process.
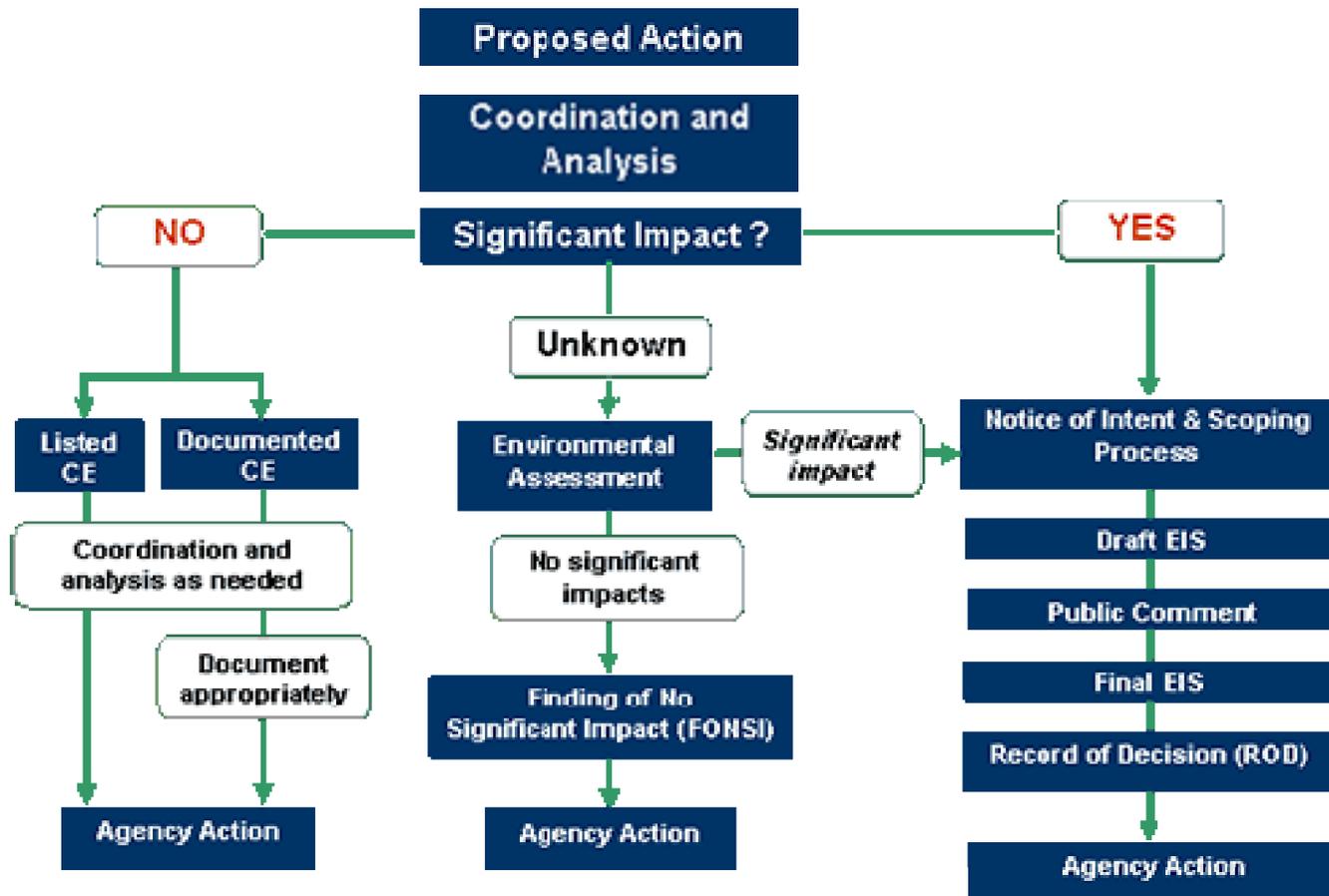
4. Implementing the NEPA Process

Meetings and Communication

The NEPA process is a **team effort**, so there will be the need for clear and frequent communication between the project engineer and the environmental coordinator, in addition to other parties such as TxDOT management, local government staff, local elected officials, etc. The individuals or groups of individuals involved will vary according to project classification.

A strong start to each project includes two things:

1) Know the project area, i.e., make a site visit.
2) Hold a kickoff meeting for EAs and EISs. Work with design and environmental leadership to determine if a kickoff meeting is needed for a CE. Here you and your team can set expectations for future communications and project milestones.

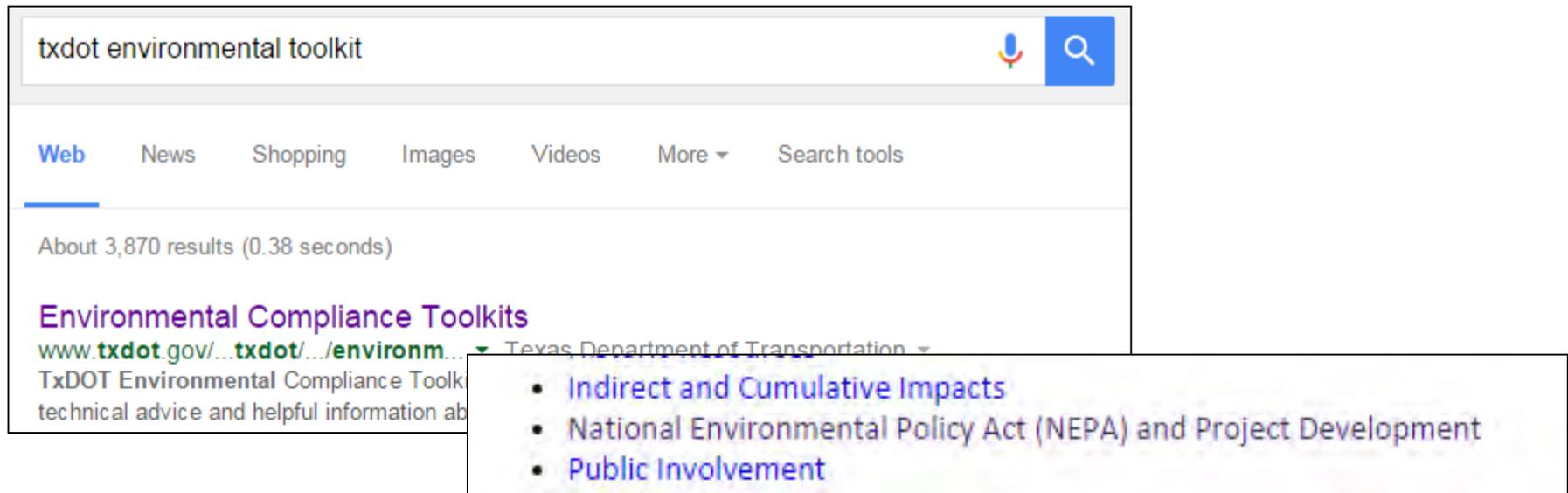The team will also need to establish a strong Purpose and Need. This anchors any environmental document.

Any communication regarding decision making needs to be recorded in the administrative record. Decisions over e-mail are also considered a part of the administrative record. A project e-mail address is a good tool for documenting e-mail communication in the administrative record.

4. Implementing the NEPA Process

Tools and toolkits

Due to the changes with NEPA assignment, more uniform documentation is expected in some steps of the NEPA process (and less in other steps). Therefore, TxDOT has **developed new tools and guidance** for your use in preparing and reviewing environmental documents.

When using tools from the Environmental Compliance Toolkit, you must **always go to the TxDOT ENV website** and download the most recent version. Documentation forms may be updated periodically and these changes may not be announced.

4. Implementing the NEPA Process

QA/QC Process

TxDOT integrates quality assurance (QA) and quality control (QC) considerations into its environmental decisions to achieve compliance with applicable laws, regulations, and standards. **QA is devoted to preventing problems, and QC is devoted to identifying and correcting problems**.

The QA/QC processes are in place to prevent possible errors or omissions that could be presented in court.

Each QA/QC measure evaluates the project-level documentation to date, looking for thoroughness, accuracy, errors, and omissions. Project-level documentation can be evidence of communications and meetings, TxDOT checklists, and more. Once each document is reviewed, it officially becomes a part of the administrative record.

Work completed by consultants is expected to undergo additional QA/QC processes prior to being submitted to TxDOT.

5. Common NEPA Challenges

This section includes scenarios that illustrate common NEPA challenges faced by TxDOT engineers. Each presents a situation and asks you to think about how you would respond.

1. Narrow Purpose and Need
2. Changes in project design that are not covered in the environmental documentation
3. Inadequate documentation of project decisions

5. Common NEPA Challenges

1. **Narrow Purpose and Need**

A shale boom in your district has caused sudden population growth in a medium-size city. As a result, the city's main north-south arterial has become highly congested, and local governments want to see this road widened. TxDOT agrees that this is a major concern in your district and allocated funding for the project. You are now faced with the cornerstone of the NEPA process: Defining Purpose and Need.

How would you describe this project's purpose and need? What could happen if the Purpose and Need were defined too narrowly? Too broadly?

Traffic in Yorktown, in the Eagle Ford Shale region

5. Common NEPA Challenges

1. **Narrow Purpose and Need**

One way to define this project's purpose and need (P&N) is to say an increase in mobility between the north and south parts of the city has created the need to relieve congestion in a busy corridor.

Defining P&N as "road widening from two lanes to four lanes" is too narrow for the NEPA process. Courts have found that this type of P&N is so narrow that only one alternative could be selected, and subsequent alternatives analysis would be invalid. What about transit options? Innovative transportation solutions or changeable message signs? Restriping? If this happens in your district, you are putting yourself at risk of being involved in a NEPA lawsuit.

On the other hand, the P&N also cannot be too broad. If the P&N for this project were "to increase mobility in the city," then any number of solutions could be found, and alternatives analysis would not be meaningful. Similarly, project opponents may seek to argue that the P&N is too broad in court.

A cleaner P&N would be "alleviate congestion and improve safety between two logical termini by assessing feasible options including road widening, ITS, and transit options while minimizing environmental impacts."

5. Common NEPA Challenges

2. Change in project design

When you conduct an engineering site visit for a new creek crossing, you realize that the creek is often dry. You decide to change the bridge bent arrangement from one on each side of the creek to only one in the center of the bed. You believe that your new design will lower the cost of construction materials without impacting any water resources.

Do you think the change in design will have an impact on the time to complete the NEPA process? When should the you notify environmental staff of the change?

Shoal Creek in Austin, Texas (KUT)

5. Common NEPA Challenges

2. Change in project design

This change could introduce an impact to waters and potential wetlands and consequently require permitting. The creek and banks could include archeological resources or important wildlife habitat. Affecting additional resources (or exacerbating existing impacts) may prolong the NEPA process, i.e., impacts to <0.5 acres of jurisdictional waters may be processed under a Nationwide Permit #14 while more than one acre would require a time-consuming Individual Permit. Always notify the environmental coordinator and project team immediately when a design change occurs. Even if a meeting is scheduled in the near future, environmental specialists, consultants, and local government staff are proceeding with their work on a daily basis, so any work on an out-of-date design burdens the scope and schedule.

Shoal Creek in Austin, Texas (KUT)

5. Common NEPA Challenges

3. Inadequate documentation of project decisions

During a meeting with the environmental team, you all agree that a proposed change in your design will reduce the impact on low-income residents near the project and allow the environmental process to go more quickly. You proceed with your recently approved design.

Does this change need to be documented in the file of record? If so, do you need to include the reason for the changes? What might happen if you omitted this change from the record?

Community impacts should be communicated via Meetings of Affected Property Owners (MAPOs) or other outreach mechanisms. Without such documentation, the administrative record could appear to be incomplete, or community members with an unclear understanding of project impacts may raise controversy that causes delays.

5. Common NEPA Challenges

3. Inadequate documentation of project decisions

All project decisions and changes must be documented in ECOS. In the case of an audit or lawsuit, the reviewer will be looking for evidence of logical and thoughtful decision making throughout the NEPA process. This requirement means that the rationale for the change must be included with documentation of the change.

Unsupported or undocumented decisions could result in an audit finding during scheduled audits by the FHWA, or worse, a missing piece during a lawsuit.

It is important to note that you will not have the opportunity to defend your decision by providing new information in the event of a lawsuit. In recent lawsuits, courts have only looked at the existing administrative record delivered by the responsible agency.

Closing

TxDOT engineers make decisions that can affect which resources are impacted and how much environmental analysis is required.

- At the beginning of every project, set milestones to meet with the environmental team
- Always communicate design changes as soon as possible; don't wait until the next checkpoint—environmental staff can provide technical information to help designers determine prudent options that avoid impacts (and associated cost and time pressures).
- Be aware that as technical reports are being developed, environmental experts might identify a resource that was not known at the time of design and requires changes to the design
- Collaboration among engineering and environmental team members leads to "hard look" documentation that is consistent with TxDOT's format requirements and a strong, legally defensible administrative record.

Closing

- The NEPA process looks at how people and the natural, cultural, and human environment can exist compatibly

- NEPA is required when any federal money is spent on a project, and state-funded projects have a similar process

- Assignment of responsibility for environmental decision-making from FHWA to TxDOT can result in faster project delivery, but TxDOT will need more detailed information along the way to ensure defensible decisions

- Your basic engineering role in developing projects that serve a legitimate public purpose and steering them through regulatory clearance to letting has not changed under NEPA assignment

- However, your responsibility to accurately and thoroughly ensure all decisions are clearly documented in the administrative record has increased.

- One day, you may have to take the stand, so be prepared!

NEPA Assignment

Environmental Specialists

Purpose of this Training Module

Purpose: The purpose of this training is to provide an overview of recent changes to TxDOT's responsibilities under the National Environmental Policy Act of 1969 (NEPA). This training module has been tailored to the Environmental Specialist's roles and responsibilities, so that you will better understand your daily responsibilities on the job.

Outline:
1. Understanding NEPA
2. NEPA Assignment
3. Project Class of Action
4. Understanding Other Environmental Regulatory Processes
5. Implementing NEPA
6. The Administrative Record
7. Common NEPA Challenges

Quiz: Your understanding of this training module will be assessed with a short quiz.

1. Understanding NEPA

NEPA is the National Environmental Policy Act of 1969.

"In enacting NEPA, Congress recognized that nearly all Federal activities affect the environment in some way and mandated that before Federal agencies make decisions, they must consider the effects of their actions on the quality of the human environment. Under NEPA, CEQ works to balance environmental, economic, and social objectives in pursuit of NEPA's goal of 'productive harmony' between humans and the human environment."

U.S. Council on Environmental Quality

NEPA is a U.S. environmental law that requires practitioners to consider the effects of their actions on the quality of the human environment.

1. Understanding NEPA

When is NEPA compliance required?

- NEPA compliance is required when an action uses **any amount** of federal funding.

- State-funded projects or those in the state's right-of-way follow a similar State of Texas environmental process. Be aware that the environmental process is a critical path for any transportation project, regardless of whether federal funding is being used.

- A project cannot proceed to letting or right-of-way acquisition prior to NEPA clearance.

What are the requirements of NEPA?

- NEPA is a procedural law that regulates how and whether impacts on the human and natural environment are assessed.

- Challenges to NEPA decisions are brought under the Administrative Procedures Act.

- Assuming the project meets a legitimate public purpose, NEPA does not require that the final action preserve the natural environment at all costs; depending on the resource, mitigation of impacts may be permissible.

- Permitting or mitigation measures required by other regulations are also part of the NEPA process.

1. Understanding NEPA

What are the products of the NEPA process?

Due diligence under NEPA requires that you document the **impacts of the project** and **maintain an administrative record.**

1. **Document** - Depending on the *project class of action*, this decisional document can vary in size and analytical depth, identifying all potential environmental impacts of the project. The three *class of actions* will be discussed shortly. It is your responsibility to know which type of study is appropriate for any given project.

2. **Administrative Record** - an electronic filing system that holds formal and informal documents showing that the correct process was followed in support of an environmental decision. The administrative record is reviewed for annual audits and is relied upon in the event of litigation (Note: historically, the AR was literally a physical project file).

1. Understanding NEPA

Key Responsibilities of an Environmental Specialist

Some key responsibilities of Environmental Specialists include:

- Require and facilitate frequent communication among team members.
- Participate in defining class of action, scoping, technical reports, draft and final environmental documents, and public involvement.
- Be aware of the potential impacts of changes:
  - Project design, amount and sources of funding, and regulations could result in major or minor changes in NEPA documentation requirements

The design and environmental processes are iterative, so changes are likely during the life of the project–as Environmental Specialist, initiate the conversation with the project engineers to ensure that you are working with the latest design and current funding information. *Do not assume that others will inform you of each and every change that might occur.*

2. NEPA Assignment

Moving Ahead for Progress in the 21st Century (MAP-21) is a federal transportation law (2012) that allows the FHWA to "assign" or delegate the review and approval NEPA documents to state Departments of Transportation (DOTs). Under NEPA assignment, DOTs assume the FHWA's authority and make independent environmental determinations.

Texas was the second state following California to assume this responsibility in December 2014. TxDOT sought NEPA assignment because it is hoped that it will shorten project review periods, allow TxDOT to develop a more robust review process, and cut project costs where possible.

Under NEPA assignment, the FHWA retains three responsibilities:

1. Air quality conformity determinations
2. Government-to-government consultation with Native American Tribes
3. USDOT responsibilities for statewide and metropolitan planning

Transit-related NEPA studies that involve TxDOT will continue to fall under the overview of the Federal Transit Agency (FTA) and are not eligible for NEPA assignment.

2. NEPA Assignment

New Responsibilities under Assignment

The responsibilities assumed under NEPA assignment are not limited to the NEPA review and approval process and compliance with other federal laws triggered by the project, but also include all of the liabilities that come with them. Because of this assumption of liabilities, **Environmental Specialists can no longer ask the FHWA questions about environmental issues related to a project. However, it is acceptable to ask engineering-related questions.**

Another important note about the NEPA assignment is that **TxDOT has waived sovereign immunity**, meaning the State of Texas can be sued over an environmental decision. Unlike in the past, the State of Texas must provide its own legal defense in federal court including the costs of any judgments against it. **NEPA assignment means that any decision made by an Environmental Specialist can be examined in court and TxDOT (not the FHWA) will be responsible for defending it.**

2. NEPA Assignment

Differences under NEPA Assignment
This chart shows the responsibilities that were previously held by the FHWA and are now assigned to TxDOT.

Responsibility	Prior to NEPA Assignment	Under NEPA Assignment
Determining class of action (CE, EA, or EIS)	FHWA	TxDOT
Preparing supporting technical studies	TxDOT	TxDOT
Preparing NEPA Environmental Review document	TxDOT	TxDOT
Responsible for state and federal resource agency consultations	FHWA	TxDOT
Approves and files NEPA document	FHWA	TxDOT
Defends NEPA document in federal court, in case of lawsuit	FHWA/DOJ	Texas DOT/AG

2. NEPA Assignment

NEPA Audits

Under NEPA assignment, TxDOT has agreed to undergo periodic audits by the FHWA. The FHWA audits look for improper decisions or flawed execution of the NEPA process. During the audits, TxDOT will be assessed as either deficient, non-compliant, or compliant, according to various criteria. A deficient (worst) or non-compliant rating means that TxDOT is not complying with the NEPA assignment Memorandum of Understanding (MOU) between the FHWA and TxDOT.

TxDOT has undergone its initial audits since assignment and other state DOTs have also undergone audits. To date, the California Department of Transportation (Caltrans) has undergone the greatest number of audits and provides other states with insight into common pitfalls and issues that FHWA looks for.

The next two slides summarize the findings from previous FHWA audits of Caltrans, which identify ongoing and common errors.

2. NEPA Assignment

Ongoing and Common Errors Evident during the Implementation of NEPA Assignment

Topic	Noted Issues by FHWA Present in Caltrans Audits
Purpose and Responsibilities	• General confusion over appropriate signature authorities at local, district, and agency level. Most commonly seen with new staff and consultants.
Assignments and Assumptions of Responsibilities to Comply with Federal Laws other than NEPA	• Incorrect determination CEs due to lack of clear definitions and experience with new categories • Incorrect use of project reevaluations and project recertification procedures resulting in time-delays and conflict.
State Commitment of Resources and Training	• NEPA assignment training program could not keep up with demand for on-line training. • Staff competency levels varied between districts. Agency HQ unable to accurately assess and track individual improvements over time.

Source: FHWA Audits of Caltrans (FHWA 2008-2012)

2. NEPA Assignment

Ongoing and Common Errors Evident during the Implementation of NEPA Assignment

Topic	Noted Issues by FHWA Present in Caltrans Audits
Procedural and Substantive Requirements	• Project errors and lack of knowledge with Section 7 (ESA), Section 4(f), and Section 106 procedures and requirements
MOU Monitoring and Oversight	• Confusion over expected roles for coordination, consultation, and collaboration (includes 5.1.4) • Incorrect QA/QC procedures and missing forms. Most commonly evident with Local Assistance projects. • Production of Quarterly Reports contained inaccuracies, missing information, and missing files
Record Retention and Project Files	• Required project files missing from the administrative record, or had wrong signatures and dates. Most notably, staff were not saving electronic e-mails or correspondence related to the administrative record • Noted lack of training plan for local assistance/governments and NEPA practitioners.

Source: FHWA Audits of Caltrans (FHWA 2008-2012)

2. NEPA Assignment

Signature Authority under Assignment

Document Classification	TxDOT Employee with Signature Authority
c-list Categorical Exclusion	• Environmental Specialist • District Engineer or District Administrator • Director Environmental Affairs Division
d-list Categorical Exclusion	• District Engineer or District Administrator • Director Environmental Affairs Division
Environmental Assessment	• Director Environmental Affairs Division
Environmental Impact Statement	• Director Environmental Affairs Division

If there is uncertainty about who has signature authority over a document, contact the Environmental Affairs Division for guidance! Improper signatures will delay the project and show up on FHWA audits of TxDOT.

3. Project Class of Action

What is meant by a "NEPA project Class of Action"?

Depending upon the project's scope, location, amount of federal funding, and environmental impacts, a project can be classified as either a Categorical Exclusion (CE), an Environmental Assessment (EA), or an Environment Impact Statement (EIS) for environmental review.

Within the last two classifications (EA & EIS), additional processes can arise, depending upon the project.

Most TxDOT projects are classified as CEs. However, when an EA or an EIS is undertaken, it will increase the commitment of time and energy expended.

TxDOT must be prepared for all types of environmental regulatory compliance. Under NEPA assignment, TxDOT may or may not have the authority to approve all decisions that fall under the NEPA umbrella.

3. Project Class of Action

What is a Categorical Exclusion?

Categorical exclusions (CEs) apply to non-controversial actions that are known to have negligible impacts. Actions that can be categorically excluded are listed in federal code.

When classifying a project as a CE, know that each classification has certain **constraints** associated with it. Be sure to reference TxDOT's *Guidance for Choosing a Categorical Exclusion* in the Environmental Compliance Toolkit.

There are two categories:

- **c-list:** The c-list CEs fall into explicitly defined categories. With proper technical documentation, a C-list CE project can be cleared by the Environmental Specialist at the District level.

- **d-list:** These projects may be designated as CEs after technical documentation that the project does not result in environmental impacts that elevate it to an EA level (requires peer review at the district level).

3. Project Class of Action

Classification as a CE

CEs must not have unusual circumstances leading to:

- Significant environmental impacts
- Substantial controversy on environmental grounds
- Significant impact on properties protected under Section 4(f) or under Section 106 of the National Historic Preservation Act
- Inconsistencies with any federal, state, or local law, requirement or administrative determination relating to the environmental aspects of the action

The project file must demonstrate the following:

- The project fits within the selected CE category
- The project does not have unusual circumstances
- The project has independent utility
- The project has logical termini (for linear facilities)
- The determination does not restrict consideration of alternatives for other reasonably foreseeable projects

3. Project Class of Action

Determining the correct type of Categorical Exclusion

There are 30 "c-list" CE types, plus the "open-ended d-list CE". The d-list CEs do not have sufficient impacts to elevate the project to an EA. A d-list CE requires a District-Engineer-level peer review.

It is critical for a project to be properly classified, if a CE is being used for environmental compliance. Refer to TxDOT's manual entitled *Guidance: Choosing a Categorical Exclusion* to help you better understand where your project falls.

TxDOT's *CE Determination Form* will also need to be completed. The TxDOT website has documentation that will help staff identify the best fit for a CE.

3. Project Class of Action

What are the main components of a Categorical Exclusion?

CEs require the least complex documentation process. Milestones for preparing a CE include:

- Project scoping
- Complete studies, reports, documentation
- Project sponsor submits CE documentation
- The Department Delegate will make the environmental decision and will sign determination form

Who is the Department Delegate?

- c-list CE: anyone with signing authority, including **Environmental Specialists**
- d-list CE: District Engineer or District Administrator

3. Project Class of Action

What is an Environmental Assessment?

An **Environmental Assessment (EA)** is prepared when an action may or may not have a significant impact on resources. An EA is used when an EIS is not required, but the action is not eligible to be processed as a CE.

EAs can have two outcomes. If a project's impacts on resources is limited, TxDOT will issue a "Finding of No Significant Impact" or a FONSI. The project may then proceed to letting. However, if a significant impact is found that cannot be resolved, an EIS must be prepared for the project.

Under NEPA assignment, EAs will now be approved by the Director of Environmental Affairs Division (ENV).

3. Project Class of Action

What are the main components of an Environmental Assessment?

The Technical Reports that document the studies on resource impacts are similar for both CEs and EAs. However, due to their increased complexity, EAs have more project milestones:

- Complete scope development
- Hold kickoff meeting
- Research, prepare, and submit draft Technical Reports
- Undertake agency coordination, resolve issues
- Review and publish draft EA
- Offer opportunity for public involvement
- Prepare final EA and FONSI
- Approve FONSI or proceed as an EIS

TxDOT's Environmental Affairs Division Director has the signature authority for FONSIs.

3. Project Class of Action

What is an Environmental Impact Statement?

An **Environmental Impact Statement (EIS)** is prepared for major actions that would have a significant impact on the human or natural environment. These may be large projects, highly controversial, largely on new location, or located in a sensitive resource area (such as an endangered species habitat).

The U.S. Code of Federal Regulations provides examples of projects typically requiring an EIS:

- Controlled access freeway
- Highway with four or more lanes in a new location
- New construction or extension of a separate roadway for buses or high occupancy vehicles

3. Project Class of Action

Main components of an Environmental Impact Statement

EISs require the most extensive documentation and public input. They are completed in a draft EIS (DEIS) phase and a final EIS (FEIS) phase. Milestones of the EIS process are:

- Letter of initiation
- Publish Notice of Intent (NOI)
- Invitation of other agencies, scoping, and kickoff meeting
- Two public meetings (typically)
- DEIS preparation assessing multiple alternatives, review, and publication
- Public hearing
- FEIS preparation (including preferred alternative and No Build)
- Publish Notice of Availability (NOA) and Record of Decision (ROD)

TxDOT's Environmental Affairs Division Director has the sole authority to issue a ROD for an EIS.

4. Other Environmental Regulatory Processes

NEPA is an **umbrella regulation** under which other environmental regulatory processes may be required:

Regulation	Resource
Section 4(f) of the Department of Transportation Act	Publicly-owned Parks and Recreation Facilities; Historic Resources
Section 106 of the National Historic Preservation Act	Historic and Archeological Resources
Section 7 of the Endangered Species Act	Threatened and Endangered Species
Section 404 of the Clean Water Act	Waters and Wetlands
Executive Order 12898; E.O. 13166	Environmental Justice; Limited English Proficiency
Several Other Regulations affecting a variety of resources	See TxDOT Environmental Specialist Toolkit for complete list

As an Environmental Specialist, you are expected to have a strong working knowledge of each of these federal resource laws. The TxDOT website has extensive reference material within its Environmental Compliance Toolkits to help you.

5. Implementing the NEPA Process

Communication Is Essential!

It is absolutely essential that all members of the project team (i.e., project sponsor, project engineers, consultants, TxDOT ENV staff, etc.) communicate regularly and openly throughout the entire length of the project.

A lack of communication among team members is often the source of substantial delay. As an Environmental Specialist, you are a critical member of the team. Communicate regularly with other team members and seek out those individuals who are not communicating with you.

It is especially critical to communicate with project's engineering team and the project sponsor to ensure that there have not been design and funding changes that (for example) would affect the environmental process chosen for the project (e.g., a need to shift documentation from a CE to an EA).

5. Implementing the NEPA Process

Project Initiation and Scope Development

TxDOT's Scope Development Tool (within the ENV toolkit) will be used at the start of the project to identify issues. The tool's output is part of the administrative record. The Scope Development Tool documents the following:

- Project Description: sponsor, type of project, anticipated federal permits, ROW and easements, relocations, tolling, major resource impacts, etc.

- Anticipated Environmental Classification: How will the project be classified— (c)-list CE, (d)-list CE, EA, or EIS—and is this classification justified? Remember that proper project classification is key to avoiding project delays and having to redo work.

- Major Resource Issues: air quality, cultural, community impact, water resources, biological resources, hazardous materials, noise, parklands, indirect and cumulative impacts, public involvement, etc.

Use TxDOT's *Instructions for Using the Scope Development Tool* to assist you with completing the form. The key is to understand the need and purpose of the project and how the proposed design will address them. Note that this tool can be updated as the project proceeds.

5. Implementing the NEPA Process

Kickoff Meetings

Under TxDOT's new documentation processes, kickoff meetings are required for EAs and EISs and the project documentation needs to be uploaded to ECOS.

Project status meetings are recommended so that engineering design staff and environmental staff have a continuous conversation. Make sure the project documentation stays up to date.

Kickoff meetings may also need to include representatives from resource agencies. If the project has known issues, include the relevant resource agencies in the discussion as early as possible.

5. Implementing the NEPA Process

Scope Amendments

If the project has been changed, it is necessary to fill out a project Scope Amendment. The Scope Amendment form is where the changes to the project are described. Some important questions to ask, when a project is amended, include:

- Has the source of funding changed? Is the project now funded using state or federal funds or both? Does this affect the environmental process you use (i.e., Texas versus NEPA) or the project classification?

- Has the amount of federal funding changed? In the case of some CEs, the amount of federal funding can determine which classification of CE is appropriate.

- Does the project change create new impacts or additional impacts that change the project's classification as a CE or EA? Should you be coordinating with additional resource agencies?

5. Implementing the NEPA Process

Conducting Research and Analysis

TxDOT has developed a number of technical toolkits that itemize all steps that have to be taken for each environmental consideration.

- Follow these steps closely.

- In audits, the FHWA will be looking for consistent documentation in terms of methods and formats that show well-supported decisions.

- Technical reports need to be prepared by qualified professionals, often with expertise in a particular discipline. Drafts of these reports also need to be reviewed by qualified professionals (including outside consultants and TxDOT staff).

- You must adequately document your results.

5. Implementing the NEPA Process

QA/QC Process

As an Environmental Specialist, your work will be reviewed and approved through TxDOT's QA/QC process. It's important to know what this process is, and where your role will be influenced by the process.

TxDOT integrates quality assurance (QA) and quality control (QC) considerations into its environmental decisions to achieve compliance with applicable laws, regulations, and standards. **QA is devoted to preventing problems, and QC is devoted to identifying and correcting problems**.

The QA/QC processes are in place to prevent possible errors that could become the basis for litigation.

Be sure the participants in the technical review have appropriate technical understanding and experience to provide QA/QC approval (editorial as well as substantive).

5. Implementing the NEPA Process

QA/QC Process

Each QA/QC measure will evaluate the project-level documentation to date, looking for thoroughness, accuracy, errors, and omissions. Project-level documentation can be evidence of communications and meetings, TxDOT checklists, and more. Once each document is reviewed, it officially becomes a part of the project file and administrative record.

Another key requirement is the approval and signature for milestones during project development. Never proceed to a new step without the proper signature.

For example: For an EA or EIS, the supporting Technical Reports for the project will be reviewed by the core team prior to preparing the Draft Environmental Document. Your draft Environmental Document (EA or EIS), public involvement documentation, and final Environmental Document will also be reviewed.

Make sure you have identified the **correct person** to sign off on your work.

5. Implementing the NEPA Process

Coordinating with Resource Agencies

Under NEPA assignment, you can no longer call the FHWA to ask environmental questions at the project level.

- TxDOT will be penalized during its audits, if you do so.
- In addition to understanding the NEPA process, you must also understand other environmental regulatory processes and their agency coordination requirements.
- The newest Technical Report templates now include coordination triggers.
- Identify additional coordination requirements as early as possible (e.g., if the project triggers TPWD or THC coordination, it will take time, which should be accounted for in the project schedule).

5. Implementing the NEPA Process

Public Involvement

The environmental toolkits indicate what types of public involvement are typically necessary:

- An EIS requires public meetings and a public hearing.

- An EA requires a public meeting and the opportunity for a hearing—or an actual hearing, depending on project details.

- A CE leaves public involvement to the discretion of the team; public involvement is always encouraged to be sure the project team understands issues and concerns of the impacted population.

- The public meeting summary and analysis is part of the public record and can be challenged. For example, were public comments actually addressed? Was there ample notification to appropriate neighborhoods and in languages other than English where necessary?

What's different under NEPA assignment?

- TxDOT now determines whether a "significant level of public controversy" should elevate a project from an EA to an EIS

6. The Administrative Record

Tools and Toolkits

Due to the changes that have come with NEPA assignment, more documentation is now expected in some steps of the NEPA process, and have decreased in other steps. To assist you, TxDOT has developed new tools and guidance for your use in preparing and reviewing environmental documents.

**You must always go to the TxDOT ENV website and download the most recent version of the following:

TOOLKITS
- ✓ Archeological Resources
- ✓ Historic Resources
- ✓ Ecological Resources
- ✓ Coastal Barrier Resources
- ✓ Farmland Protection
- ✓ Endangered Species Act
- ✓ TPWD Chapter 26
- ✓ LWCF Section 6(f)
- ✓ USDOT Section 4(f)
- ✓ Water Resources
- ✓ Community Impacts, EJ, and Title VI

HANDBOOKS
- ✓ Environmental Project Development Overview
- ✓ CE
- ✓ EA
- ✓ EIS
- ✓ Public Involvement
- ✓ Indirect & Cumulative Impacts
- ✓ Bicycle and Pedestrian Considerations
- ✓ Air Quality
- ✓ Traffic Noise
- ✓ Hazardous Materials

6. The Administrative Record

Resource Agencies and Consultants

Under assignment, Environmental Specialists are in charge of identifying which Federal Agencies TxDOT must consult and coordinate with. It is important to identify the need to contact agencies **early** in the scoping phase to provide realistic timelines for receiving permits, and to carefully document these decisions and interactions as part of the administrative record.

A table on the following slide lists some consultation changes before and after assignment, but is not inclusive of all outside agencies. Always refer to toolkits and handbooks on the TxDOT Environmental Toolkit page for up-to-date information.

6. The Administrative Record

Resource Agencies and Consultants

Examples of changes to interagency consultation before and after NEPA assignment:

Federal Agency	Process before full NEPA Assignment	Process after full NEPA assignment
Army Corps of Engineers	Districts coordinate permits, etc. (with ENV assistance as needed)	No Change
Fish and Wildlife Services	Informal coordination- Districts coordinate with ENV, and ENV submits consultation (since May 2014) Formal Consultation- Districts coordinate with ENV, and ENV coordinates with FHWA for submission	Informal coordination- No change Formal Consultation-Districts coordinate with ENV, and ENV submist consultation
Coast Guard	Districts coordinate permits, etc. (with ENV assistance as needed)	No change
National Marine Fisheries Services	Informal coordination- Districts coordinate with ENV, and ENV submits consultation Formal Consultation- Districts coordinate with ENV, and ENV coordinates with FHWA for submission	Informal coordination- No change Formal Consultation-Districts coordinate with ENV, and ENV submist consultation
Tribal	Districts coordinate with ENV. ENV coordinates with Tribal.	No Change
Texas Historical Commission	Districts coordinate with ENV. ENV coordinates with THC.	No Change

6. The Administrative Record

Meetings and Communication

NEPA assignment is a team effort, so clear and frequent communication is essential. Those involved will vary on project classification.

Start each project off with 1) a site visit to gain a basic understanding of existing environmental conditions and the study area; 2) hold a kickoff meeting with the project team, especially for EAs and EISs; 3) work with your leadership to determine if a formal kickoff meeting is needed for a CE. Here you and your team can set expectations for future communications and milestones.

The team will also need to establish a strong Purpose and Need for the project. The Purpose and Need will anchor the environmental document process. Especially for EAs and EISs, an opportunity for stakeholder involvement in defining the Purpose and Need should be provided (and is required for an EIS).

Any **communication and decision made** will need to be recorded in the administrative record, including decisions made over email.

7. Common NEPA Challenges

This section includes scenarios that illustrate common NEPA challenges faced by TxDOT Environmental Specialists. Each presents a situation and asks you to think about how you would respond.

1. Change in funding source
2. Change in project design
3. Miscommunications

7. Common NEPA Challenges

Change in funding source

A roadway improvement project in your district is classified as a (c)(23) CE, because it was to receive less than $5 million in total federal funds. After completing the appropriate documentation as a CE and receiving approval, your district was about to issue a construction bid on the project. However, at the last minute, additional federal funds became available for "shovel-ready" projects. A request for additional funding was submitted and the project was selected to receive additional federal funds. With the additional money, the project will now receiving more than $5 million in total federal funds. How should you proceed?

7. Common NEPA Challenges

Change in funding source

If a change in funding (or a change to other constraints) causes the project to no longer meet the requirements of a certain CE, the project just be reclassified and cleared under a new CE classification or as an EA.

If construction on the project has already started, construction will have to stop until the project completes the re-classification process.

For any major project change, always consult the guidelines for choosing the correct CE on the TxDOT Environmental Toolkit website.

7. Common NEPA Challenges

Change in project design

Your project is at 30% design from the engineers and your core team is moving forward with the environmental document process as an EA. The drainage report becomes available, leading to a determination that some of the project is now within a newly delineated floodplain. To address drainage issues, a new detention pond is designed that would impact wetlands. In addition, an important archeological site is identified where the pond is proposed and the public is now opposed to the project, bringing the project classification up to an EIS.

Can resource documentation completed earlier in the project still be used or will the environmental experts need to begin again? Are the public participation inputs collected so far still valid?

7. Common NEPA Challenges

Change in project design

All documentation completed up to this point now has to be updated and revised to include consideration of these issues, but it may not be necessary to start fresh.

The public involvement aspect of project development must now be restarted, so that the public has an opportunity to express their opinions on the newly discovered impacts.

Always consult with the handbooks and toolkits prepared by TxDOT to confirm the requirements of each classification.

7. Common NEPA Challenges

Miscommunication: Identifying Resources

At the request of your supervisor, you have completed a Scope Development Tool form assuming there are no historic structures that would be affected. Later, while preparing the Technical Report, a consultant identifies a historic resource that was not identified during your scoping preparation. Due to design constraints on the opposite side of the road (there is a public school that is also historic), the design team opts to prepare an intensive investigation into the importance of the historic structure that cannot be avoided.

A Section 106 coordination process is required due to adverse effect, and a costly and time-consuming Section 4(f) documentation process is required. **Better coordination** with the historian may have helped prevent that situation if discussed at the kickoff meeting.

7. Common NEPA Challenges

Miscommunication: Design Changes

A bridge replacement project is underway as a c-list CE. When the water resources specialist performs the jurisdictional determination and wetland delineation, the specialist initially determines that impacts to waters off the U.S. could be processed under a Nationwide Permit with Pre-Construction Notification to the U.S. Army Corps of Engineers (USACE). However, a design change (that had not been provided to you) requires that the bridge be supported with additional bents, which necessitates placing more than a half acre of fill in U.S. waters—now requiring an Individual Permit with USACE. The project is now disqualified from being processed as a c-list CE. What is the next step?

7. Common NEPA Challenges

Miscommunication: Design Changes

Determine the appropriate timeline for the Individual Permit. If no other substantial environmental impacts are required, coordinate with the TxDOT Environmental Affairs Division to find out if the project can be processed as a d-list CE with peer review and District-level approval. If not, it is possible that an EA may be required.

At the beginning of each project, it is critical to establish communication expectations with the entire team, including consultants, engineers, local government staff, and others. There should be a clear expectation that changes will be communicated immediately.

Closing

- Assignment of responsibility for environmental decision-making from the FHWA to TxDOT can result in faster project delivery, but TxDOT will need more detailed information along the way to ensure defensible decisions.

- Under NEPA assignment, you are responsible for identifying and consulting with resource agencies for numerous protected resources. This can have a significant impact on project timelines.

- As the grease that keeps the NEPA process moving, you play a key role in facilitating communication and gathering information about the project and any changes.

Closing

- Remember that if any environmental document (CE, EA, or EIS) is challenged, all decisions along the way could be challenged, including your role in the project!

- During a lawsuit, a judge will typically rely solely on the administrative record developed throughout the project. The AR must be accurate and detailed.

- Always refer to the TxDOT Environmental Compliance Toolkits to ensure that your projects are completely correctly and efficiently.

NEPA Assignment

Local Governments

Purpose of this Training Module

Purpose: The purpose of this training is to provide an overview of recent changes to TxDOT's responsibilities under the National Environmental Policy Act of 1969 (NEPA). This training module has been tailored to emphasize how these changes impact the role of local governments and their daily responsibilities on the job.

Outline:
1. Understanding NEPA
2. NEPA Assignment
3. Project Class of Action
4. Implementing the NEPA Process

Quiz: Your understanding of this training module will be assessed with a short quiz.

1. Understanding NEPA

NEPA is the National Environmental Policy Act of 1969.

"In enacting NEPA, Congress recognized that nearly all Federal activities affect the environment in some way and mandated that before Federal agencies make decisions, they must consider the effects of their actions on the quality of the human environment. Under NEPA, CEQ works to balance environmental, economic, and social objectives in pursuit of NEPA's goal of 'productive harmony' between humans and the human environment."

U.S. Council on Environmental Quality

NEPA is a U.S. environmental law that requires practitioners to consider the effects of their actions on the quality of the human environment.

1. Understanding NEPA

When is NEPA compliance required?

- NEPA compliance is required when an action uses **any amount** of federal funding.
- State-funded projects or those in the state's right-of-way follow a similar State of Texas environmental process. Be aware that the environmental process is a critical path for any transportation project, regardless of whether federal funding is being used.
- A project cannot proceed to letting or right-of-way acquisition prior to NEPA clearance.

What are the requirements of NEPA?

- NEPA is a procedural law that regulates how and whether impacts on the human and natural environment are assessed.
- Challenges to NEPA decisions are brought under the Administrative Procedures Act.
- Assuming the project meets a legitimate public purpose, NEPA does not require that the final action preserve the natural environment at all costs; depending on the resource, mitigation of impacts may be permissible.
- Permitting or mitigation measures required by other regulations are also part of the NEPA process.

1. Understanding NEPA

What are the products of the NEPA process?

Due diligence under NEPA requires that you document the **impacts of the project** and **maintain an administrative record.**

1. **Document** - Depending on the *project class of action*, this decisional document can vary in size and analytical depth, identifying all potential environmental impacts of the project. The three *class of actions* will be discussed shortly. It is your responsibility to know which type of study is appropriate for any given project.

2. **Administrative Record** - an electronic filing system that holds formal and informal documents showing that the correct process was followed in support of an environmental decision. The administrative record is reviewed for annual audits and is relied upon in the event of litigation. (Note: historically, the AR was literally a physical project file).

1. Understanding NEPA

Other regulations and Executive Orders can be a part of the NEPA process, if a resource covered by another regulation is affected.

Regulation	Resource
Section 4(f) of the Department of Transportation Act	Publicly owned Parks and Recreation Facilities; Historic Resources
Section 106 of the National Historic Preservation Act	Historic and Archeological Resources
Section 7 of the Endangered Species Act	Threatened and Endangered Species
Section 404 of the Clean Water Act	Waters and Wetlands
Executive Order 12898; E.O. 13166	Environmental Justice; Limited English Proficiency
Several Other Regulations affecting a variety of resources	See TxDOT Environmental Specialist Toolkit for complete list

- Some parallel regulations exist at the state level for most of these resources and they would apply for state-funded projects.
- You should be familiar with these regulations and be prepared to work with TxDOT and the respective authorities to meet their environmental procedures.
- To learn more about these regulations, see TxDOT's **Environmental Compliance Toolkit.**

1. Understanding NEPA

Key Responsibilities

Local governments play a key role in the NEPA process by

- Pursuing projects that are consistent with their formal planning processes, such as the Transportation Improvement Plan (TIP) or the Metropolitan Transportation Plan (MTP)

- Ensuring a collaborative effort with the TxDOT District and the TxDOT Environmental Affairs (ENV) Division

- Communicating any changes to the project—you may be the liaison between consultants and TxDOT

- Acting as the public face of your agency and supporting TxDOT partners

- Informing local elected officials of key aspects of project

- Ensuring your involvement in any public outreach. Public outreach is an opportunity to collect information from the public that can be helpful to the project, as well as address any misunderstandings about the project.

- TxDOT has a Local Government Projects toolkit: http://www.txdot.gov/government/processes-procedures/lgp-toolkit.html

2. NEPA Assignment

Moving Ahead for Progress in the 21st Century (MAP-21) is a federal transportation law (2012) that allows the FHWA to "assign" or delegate the review and approval NEPA documents to state Departments of Transportation (DOTs). Under NEPA assignment, DOTs assume the FHWA's authority and make independent environmental determinations.

Texas was the second state following California to assume this responsibility in December 2014. TxDOT sought NEPA assignment because it is hoped that it will shorten project review periods, allow TxDOT to develop a more robust review process, and cut project costs where possible.

Another important note about the NEPA assignment is that **TxDOT has waived sovereign immunity**, meaning the State of Texas can be sued over an environmental decision. Unlike the past, the State of Texas must provide its own legal defense in federal court including the costs of any judgments against it. **NEPA assignment means that any decision made by a local government can be examined in court and TxDOT (not the FHWA) will be responsible for defending it.**

2. NEPA Assignment

New Responsibilities under Assignment
The basic roles and responsibilities of local government have not changed before and after TxDOT's assignment of federal NEPA responsibilities.

Since TxDOT now has the final authority over environmental decisions, you should expect a more thorough collaboration with TxDOT's District personnel and work to support their need for robust documentation.

You may also be asked to demonstrate justification for your role in decisions made during the project development process, the "NEPA phase." Close coordination among local government staff, TxDOT, and any supporting consultants is necessary throughout project development.

3. Project Class of Action

What is meant by a "NEPA project Class of Action"?

Depending upon the project's scope, location, amount of federal funding, and environmental impacts, a project can be classified as either a Categorical Exclusion (CE), an Environmental Assessment (EA), or an Environment Impact Statement (EIS) for environmental review.

Within the last two classifications (EA & EIS), additional processes can arise, depending upon the project.

Most TxDOT projects are classified as CEs. However, when an EA or an EIS is undertaken, it will increase the commitment of time and energy expended.

TxDOT and the local governments must be prepared for all types of environmental regulatory compliance. Under NEPA assignment, TxDOT may or may not have the authority to approve all decisions that fall under the NEPA umbrella.

3. Project Class of Action

What is a Categorical Exclusion?

Categorical exclusions (CEs) apply to non-controversial actions that are known to have negligible impacts. Actions that can be categorically excluded are listed in federal code.

When classifying a project as a CE, know that each classification has certain **constraints** associated with it. Be sure to reference TxDOT's *Guidance for Choosing a Categorical Exclusion* in the Environmental Compliance Toolkit.

There are two categories:

- c-list: The c-list CEs fall into explicitly defined categories. With proper technical documentation, a C-list CE project can be cleared by the Environmental Specialist at the District level.

- d-list: These projects may be designated as CEs after technical documentation that the project does not result in environmental impacts that elevate it to an EA level (requires peer review at the district level).

3. Project Class of Action

Classification as a CE

CEs must not have unusual circumstances leading to:

- Significant environmental impacts
- Substantial controversy on environmental grounds
- Significant impact on properties protected under Section 4(f) or under Section 106 of the National Historic Preservation Act
- Inconsistencies with any federal, state, or local law, requirement or administrative determination relating to the environmental aspects of the action

The project file must demonstrate the following:

- The project fits within the selected CE category
- The project does not have unusual circumstances
- The project has independent utility
- The project has logical termini (for linear facilities)
- The determination does not restrict consideration of alternatives for other reasonably foreseeable projects

3. Project Class of Action

Determining the correct type of Categorical Exclusion

There are 30 "c-list" CE types, plus the "open-ended d-list CE". A d-list CE does not have sufficient impacts to elevate the project to an EA. A d-list CE requires a District-Engineer-level peer review.

It is critical for a project to be properly classified, if a Categorical Exclusion is being used for environmental compliance. Refer to TxDOT's manual entitled *Guidance: Choosing a Categorical Exclusion* to help you better understand where your project falls.

TxDOT's *CE Determination Form* will also need to be completed. The TxDOT website has documentation that will help staff identify the best fit for a categorical exclusion.

3. Project Class of Action

What are the main components of a Categorical Exclusion?

CEs require the least complex documentation process. Milestones for preparing a CE include:

- Project scoping

- Complete studies, reports, documentation

- Project sponsor submits CE documentation

- The Department Delegate will make the environmental decision and will sign determination form

Who is the TxDOT Department Delegate?

- c-list CE: anyone with signing authority, including **Environmental Specialists**

- d-list CE: District Engineer or District Administrator

3. Project Class of Action

What is an Environmental Assessment?

An **Environmental Assessment (EA)** is prepared when an action may or may not have a significant impact on resources. An EA is used when an EIS is not required, but the action is not eligible to be processed as a CE.

EAs can have two outcomes. If a project's impacts on resources is limited, TxDOT will issue a "Finding of No Significant Impact" or a FONSI. The project may then proceed to letting. However, if a significant impact is found that cannot be resolved, an EIS must be prepared for the project.

Under NEPA assignment, EAs will now be approved by the Director of Environmental Affairs Division (ENV).

3. Project Class of Action

What are the main components of an Environmental Assessment?

The Technical Reports that document the studies on resource impacts are similar for both CEs and EAs. However, due to their increased complexity, EAs have more project milestones:

- Complete scope development
- Hold kickoff meeting
- Research, prepare, and submit draft Technical Reports
- Undertake agency coordination, resolve issues
- Review and publish draft EA
- Offer opportunity for public involvement
- Prepare final EA and FONSI
- Approve FONSI or proceed as an EIS

TxDOT's Environmental Affairs Division Director has the signature authority for FONSIs.

3. Project Class of Action

What is an Environmental Impact Statement?

An **Environmental Impact Statement (EIS)** is prepared for major actions that would have a significant impact on the human or natural environment. These may either be large projects, highly controversial, largely on new location, or located in a sensitive resource area (such as an endangered species habitat).

The U.S. Code of Federal Regulations provides examples of projects typically requiring an EIS:

- Controlled access freeway
- Highway with four or more lanes in a new location
- New construction or extension of a separate roadway for buses or high occupancy vehicles

3. Project Class of Action

Main components of an Environmental Impact Statement

EISs require the most extensive documentation and public input. They are completed in a draft EIS (DEIS) phase and a final EIS (FEIS) phase. Milestones of the EIS process are:

- Letter of initiation
- Publish Notice of Intent (NOI)
- Invitation of other agencies, scoping, and kickoff meeting
- Two public meetings (typically)
- DEIS preparation assessing multiple alternatives, review, and publication
- Public hearing
- FEIS preparation (including preferred alternative and No Build)
- Publish Notice of Availability (NOA) and Record of Decision (ROD)

TxDOT's Environmental Affairs Division Director has the sole authority to issue a ROD for an EIS.

4. Implementing the NEPA Process

Project Sponsor

Local governments can opt to be the project sponsor or not. This will be decided when entering into the Advanced Funding Agreement with TxDOT (which is the first step to initiating the project and receive project funding). Being the project sponsor means your office will complete all environmental processes, and then work with the District to receive approval. Some local governments do not have the staffing power to take on the project sponsor role, so the District is prepared to fill the project sponsor role if you are unable. Often, experienced consultants work to support local governments through the environmental documentation process.

Formal Planning Process

State and federal regulations require that a project be included in the regional TIP and the MTP to receive funding. You should begin coordination with your local MPO immediately after becoming the local sponsor of a project to determine if your project meets the above requirements.

4. Implementing the NEPA Process

Tools and toolkits

Due to the changes that have come with NEPA assignment, more documentation is now expected in some steps of the NEPA process, and have decreased in other steps. To assist you, TxDOT has developed new tools and guidance for your use in preparing and reviewing environmental documents.

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Environmental Compliance Toolkits
www.**txdot**.gov/...**txdot**/.../**environm**... ▾ Texas Department of Transportation ▾
TxDOT **Environmental** Compliance Toolkits provide subject-specific guidance, technical advice and helpful information ab

- Indirect and Cumulative Impacts
- National Environmental Policy Act (NEPA) and Project Development
- Public Involvement

4. Implementing the NEPA Process

Meetings and Communication

NEPA assignment is a team effort, so there clear and frequent communication is essential. Those involved will vary on project classification.

Start each project off with 1) early communication with TxDOT's Environmental Coordinator in your District; and 2) a kickoff meeting to set expectations for future communication and landmarks.

Local governments should help identify a project's known environmental issues during the early stages of coordination.

Any **communication and decision made** will need to be recorded in the administrative record, including decisions made over email.

Local governments can choose whether their consultants attend TxDOT meetings. It is advisable to get everyone the same page, and experienced consultants can provide constructive support if involved from the beginning.

4. Implementing the NEPA Process

Project Initiation and Scope Development

Scope Development is a collaborative effort between the local government and the TxDOT District personnel. Be sure to utilize TxDOT's Scope Development Toolkit as an early deliverable.

The Scope Development Tool documents the following:

- Project Description: sponsor, type of project, anticipated federal permits, ROW and easements, relocations, tolling, major resource impacts, etc.
- Anticipated Environmental Classification: How will the project be classified—(c)-list CE, (d)-list CE, EA, or EIS—and is this classification justified? Remember that proper project classification is key to avoiding project delays and having to redo work.
- Major Resource Issues: air quality, cultural, community impact, water resources, biological resources, hazardous materials, noise, parklands, indirect and cumulative impacts, public involvement, etc.

Use TxDOT's *Instructions for Using the Scope Development Tool* to assist you with completing the form. The key is to understand the need and purpose of the project and how the proposed design will address them. Note that this tool can be updated as the project proceeds.

4. Implementing the NEPA Process

QA/QC Process
Your work will be reviewed and approved through TxDOT's QA/QC process. It's important to know what this process is, and where your role will be influenced by the process.

TxDOT integrates quality assurance (QA) and quality control (QC) considerations into its environmental decisions to achieve compliance with applicable laws, regulations, and standards. **QA is devoted to preventing problems, and QC is devoted to identifying and correcting problems**.

The QA/QC processes are in place to prevent possible errors that could be brought up during litigation.

4. Implementing the NEPA Process

QA/QC Process

Each QA/QC measure will evaluate the project-level documentation to date, looking for thoroughness, accuracy, errors, and omissions. Project-level documentation can be evidence of communications and meetings, TxDOT checklists, and more. Once each document is reviewed, it officially becomes a part of the project file and administrative record.

Another key requirement is the approval and signature of each procedure. These are required before the environmental document can progress onto the next step, review, or documentation.

An EA or EIS project's Technical Report will be reviewed by the core team before the you can start preparing the Draft Environmental Document. The draft Environmental Document, public hearing documents, and final environmental document will also be reviewed.

4. Implementing the NEPA Process

Other things to remember:

- If the design changes, initiate a re-evaluation because it may affect project classification (see Re-Evaluation Toolkit).

- As a project sponsor, you can perform environmental studies and technical reports on your own, or with a consultant, but submit everything to the District for approval.

- Perform your own QC and QA over any documents.

Closing

Remember the specific role changes if a local government agency is the project sponsor:

– Follow the TxDOT handbooks for local government project sponsors.

– Project sponsors accept responsibility for preparing the environmental review document and performing any related tasks.

– Prepare a legally sufficient project file. If you're not the project sponsor, you must provide all documentation to the district.

Closing

- The NEPA process examines how people and the natural, cultural, and human environment can exist in productive harmony.
- NEPA is required when any federal money is spent, and state-funded projects have a similar process.
- Assignment of environmental decision-making responsibility from the FHWA to TxDOT can result in faster project delivery, but TxDOT will need more detailed information along the way to ensure defensible decisions
- Your basic role in developing projects that meet public need and purpose and steering locally-important projects through clearance to letting has not changed under NEPA assignment; however, your responsibility to accurately and thoroughly ensure all decisions are clearly documented in the administrative record has increased.
- You and your team's decisions can be challenged in court, so be ready!

NEPA Assignment

TxDOT Management

Training

Purpose: The purpose of this training is to provide an overview of recent changes to TxDOT's responsibilities under NEPA. This training module has been tailored to emphasize how these changes impact the role of TxDOT's management and their daily responsibilities on the job.

Outline:
1. Understanding NEPA
2. NEPA Assignment
3. Project Class of Action
4. Implementing NEPA
5. Common NEPA Challenges

1. Understanding NEPA

NEPA is the National Environmental Policy Act of 1969.

"In enacting NEPA, Congress recognized that nearly all Federal activities affect the environment in some way and mandated that before Federal agencies make decisions, they must consider the effects of their actions on the quality of the human environment. Under NEPA, CEQ works to balance environmental, economic, and social objectives in pursuit of NEPA's goal of 'productive harmony' between humans and the human environment."

U.S. Council on Environmental Quality

1. Understanding NEPA

When is NEPA compliance required?

- NEPA compliance is required when an action uses **any amount** of federal funding.
- State-funded projects or those in the state's right-of-way follow a similar State of Texas environmental process. Be aware that the environmental process is a critical path for any transportation project, regardless of whether federal funding is being used.
- A project cannot proceed to letting or right-of-way acquisition prior to NEPA clearance.

What are the requirements of NEPA?

- NEPA is a procedural law that regulates how and whether impacts on the human and natural environment are assessed.
- Challenges to NEPA decisions are brought under the Administrative Procedures Act.
- Assuming the project meets a legitimate public purpose, NEPA does not require that the final action preserve the natural environment at all costs; depending on the resource, mitigation of impacts may be permissible.
- Permitting or mitigation measures required by other regulations are also part of the NEPA process.
- See NEPA Case Law Technical Memo for more information.

1. Understanding NEPA

What are the products of the NEPA process?

1. An **administrative record** demonstrating that the NEPA process was followed to the letter and intent of the law and the decision-making process would withstand the "hard look" test.

2. An **environmental decision** that includes documentation of environmental resources that may be affected by the action; descriptions of the anticipated impacts of various proposed alternatives, including a no-build alternative; and identification of a preferred alternative, along with any mitigation actions.

Documentation can vary in size and depth of analysis depending on the class of action. Three classes of action, from least to most complex, are:

- Categorical Exclusion (CE)
- Environmental Assessment (EA)
- Environmental Impact Statement (EIS)

These classes will be discussed in more detail in Section 3.

1. Understanding NEPA

Other regulations and executive orders can be a part of the NEPA process if a resource covered by another regulation is affected.

Parallel regulations exist at the state level for most of these resources and they would apply for state-funded projects. For example, historic and archeological resources are regulated nationally through the National Historic Preservation Act and are managed at the state level through the Antiquities Code of Texas.

Regulation	Resource
Section 4(f) of the Department of Transportation Act	Publicly Owned Parks and Recreation Facilities; Historic Resources
Section 106 of the National Historic Preservation Act	Historic and Archeological Resources
Section 7 of the Endangered Species Act	Threatened and Endangered Species
Section 404 of the Clean Water Act	Waters and Wetlands
Executive Order 12898; E.O. 13166	Environmental Justice; Limited English Proficiency
Several other regulations affecting a variety of resources	See TxDOT Environmental Toolkit for complete list

1. Understanding NEPA

Management's Role Under NEPA

TxDOT management has a key role during the NEPA process by

- ensuring that staff correctly follow NEPA and other processes,
- approving environmental documents, and
- acting as the public face of TxDOT.

2. NEPA Assignment

Moving Ahead for Progress in the 21st Century (MAP-21) is a federal transportation law (2012) that allows the FHWA to "assign" or delegate the review and approval NEPA documents to state Departments of Transportation (DOTs). Under NEPA assignment, DOTs assume the FHWA's authority and make independent environmental determinations.

In December 2014 Texas became the second state (following California) to assume this responsibility. TxDOT sought NEPA assignment because it is hoped that it will shorten project review periods, allow TxDOT to develop a more robust review process, and cut project costs where possible.

2. NEPA Assignment

In this role, TxDOT is now the **lead agency** for document preparation and **review**. Under this arrangement, TxDOT:

- Cannot ask the FHWA for project-level help on NEPA issues

- Must manage interagency coordination without federal intervention

- Has waived sovereign immunity; TxDOT can now be sued for environmental decisions made in the NEPA process. TxDOT is now solely responsible for any decisions against the agency and the State of Texas must pay its own legal expenses and the costs of any judgments or mitigation.

Under NEPA assignment, the FHWA retains three responsibilities:

1. Air quality conformity determinations

2. Government-to-government consultation with Native American Tribes

3. USDOT responsibilities for statewide and metropolitan planning

Transit-related NEPA studies that involve TxDOT will continue to fall under the overview of the Federal Transit Agency (FTA) and are not eligible for NEPA assignment

2. NEPA Assignment

Responsibility	Prior to NEPA Assignment	Under NEPA Assignment
Determining class of action (CE, EA, or EIS)	FHWA	TxDOT
Preparing supporting technical studies	TxDOT	TxDOT
Preparing NEPA Environmental Review document	TxDOT	TxDOT
Responsible for state and federal resource agency consultations	FHWA	TxDOT
Approves and files NEPA document	FHWA	TxDOT
Defends NEPA document in federal court, in case of lawsuit	FHWA/DOJ	TxDOT/ Texas AG

2. NEPA Assignment

The Memorandum of Understanding (MOU) between TxDOT and the FHWA defines the terms of the assignment of responsibilities for NEPA. There are fourteen sections, each listed below.

Part 1: Purpose	Part 2: [Blank, Reserved for Future Use]
Part 3: Assignment of Responsibilities	Part 4: Acceptance of Jurisdiction
Part 5: Applicability of Federal Law	Part 6: Litigation
Part 7: Involvement with Other Agencies	Part 8: Involvement with FHWA
Part 9: Withdrawal of Responsibilities	Part 10: Performance Measures
Part 11: Audits	Part 12: Training
Part 13: Term, Termination, and Renewal	Part 14: Amendments

2. NEPA Assignment

The MOU specifies that:

- TxDOT has assumed federal responsibility for NEPA and compliance with other federal environmental regulations.

- TxDOT's sovereign immunity has been waived for NEPA decisions—TxDOT can be sued and will have to defend itself.

- TxDOT acts as the lead federal agency. The FHWA will not intervene in interagency conflicts or provide project-level environmental assistance.

- The FHWA will conduct audits based on performance measures listed in the MOU. These are also supported by TxDOT self-audits.

- Federal funding can be retracted, if a project is not being executed per the correct environmental processes.

2. NEPA Assignment

Under NEPA assignment, some management roles will have signature authority for environmental documents.

You should always be aware of what you are signing and be certain that you have the correct signature authority for the document. Your signature indicates that the environmental document was prepared correctly.

In the event of a lawsuit, a federal court will be assessing whether you exercised this authority appropriately.

2. NEPA Assignment

Document Classification	TxDOT Employee with Signature Authority
c-list Categorical Exclusion	• Environmental Specialist • District Engineer or District Administrator • Director Environmental Affairs Division
d-list Categorical Exclusion	• District Engineer or District Administrator • Director Environmental Affairs Division
Environmental Assessment	• Director Environmental Affairs Division
Environmental Impact Statement	• Director Environmental Affairs Division and Cooperating Agencies

If there is uncertainty about who has signature authority, contact the Environmental Affairs Division for guidance. Improper signatures will delay projects and be documented on FHWA audits of TxDOT.

3. Project Class of Action

The required environmental process to follow depends on the project's funding source and the affected resources. For federally funded projects, there are three possible classifications of an action:

- Categorical Exclusion (CE)
- Environmental Assessment (EA)
- Environmental Impact Statement (EIS)

The project design may determine its effects on different resources. For example, the selected design may introduce or remove a threat to wetlands, wildlife, or vulnerable populations.

Because a design change or other changes to the project can impact the timeline of the environmental process or even the type of documentation that is required, it is critical that TxDOT staff, resource agency staff, consultants, and **local government staff and elected officials communicate regularly and effectively. Management needs to support and promote this coordination.**

3. Project Class of Action

Categorical Exclusions (CE) apply to projects that do not individually or cumulatively have a significant effect on the environment. Most projects will be classified as CEs, and the environment documentation process will be straightforward. However, even within CEs there can be challenges.

To be processed as a CE, the project cannot result in significant:
- Relocation of people
- Impact on natural, cultural, recreational, historic, or other resources
- Impact on air, noise, or water quality
- Individual or cumulative impacts

Unusual circumstances that preclude a CE include:
- Controversy on environmental grounds, or opposition from the public
- Properties protected by other regulations, such as endangered species
- Inconsistencies with local, state, or federal requirements or procedures

3. Project Class of Action

There are 30 CEs listed in federal code, called "c-list" CEs. For example:

- c(1): Activities which do not involve or lead to construction
- c(3): Construction of bicycle and pedestrian lanes, paths, and facilities
- c(18) Track and railbed maintenance within existing right-of-way

When a CE is applied to a project, know that each classification has certain **constraints** associated with it. Some examples of limitations are below:

- c(22) must take place entirely within existing right-of-way
- C(26, 27, 28) cannot be use if one of several "section (e)" constraints (environmental or cultural impacts) exist

Because of these constraints, it is critical to communicate any design changes to the environmental specialist coordinating the project **as soon as possible, since it may result in a reclassification of the project to another type of CE.**

Actions that are not listed, but may meet the requirements of a CE, can be documented as a "d-list" CE. These CEs will require a more rigorous justification to receive approval and to be processed as a CE project.

3. Project Class of Action

CEs should require the least complex documentation process. See TxDOT Environmental Toolkits for detailed guidance. Milestones for CEs include:

- Project scoping
- Complete studies, reports, documentation
  - ❏ Note that all environmental resource categories have to be considered—if a Technical Report is not required, this should be documented within the project file; a "negative declaration" is proof that a particular resource would not be adversely affected.
- Submit CE documentation
- The TxDOT-ENV delegate makes the environmental decision and signs determination form
- *Kickoff meetings may or may not be necessary, depending on the complexity of the CE. During the meeting, design benchmarks for future meetings should be determined.*

Who can sign CEs?

- c-list: Anyone with signing authority at the District level; can be an Environmental Specialist
- d-list: District Engineer or Administrator

3. Project Class of Action

For projects with substantial impacts or potential for controversy, an environmental assessment (EA) or an environmental impact statement (EIS) is prepared. **The purpose of an EA is to determine if an EIS is necessary.** Many projects have too many impacts to be processed as a CE, but by demonstrating an adequate "hard look" within the EA, the document can be cleared without an EIS.

An analysis of alternatives is a key component of an EA or an EIS, so multiple designs will be proposed as a part of the process.

EAs can have two outcomes:

- If minimal impacts to resources are expected, and the documentation demonstrates that impacts have been avoided, minimized, or mitigated, TxDOT may issue a "finding of no significant impact" or FONSI. The project may then proceed to letting.
- If a significant impact is found, an EIS may need to be prepared for the project. An EIS requires that multiple feasible options are analyzed to an equivalent level of detail in the Draft EIS. The preferred alternative is typically documented in the Final EIS.

3. Project Class of Action

EAs have more project milestones than CEs due to the public involvement process and evaluation of alternatives, including:

- Complete scope development and hold kickoff meeting
- Research, prepare, and submit draft Technical Reports on Alternatives
- Undertake agency coordination and resolve issues
- Review and publish draft EA addressing preferred alternative versus No Build
- Offer opportunity for public involvement
- Respond to public and agency comments and prepare final EA and FONSI
- TxDOT approves FONSI or proceeds with preparing an EIS

The TxDOT Environmental Affairs Division Director has signature authority for the final environmental documents.

3. Project Class of Action

EISs are typically prepared for major actions that would have a significant impact on the human or natural environment. These may either be large projects, highly controversial, largely on new location, or located in a sensitive resource area (such as an endangered species habitat).

Several potential alternative designs, including the "no build" option, are documented to an equivalent level of detail to help identify a project that best meets the purpose and need while minimizing impacts on the human and natural environment.

U.S. Code of Federal Regulations provides examples of projects requiring an EIS:
- Controlled-access freeway
- Highway with four or more lanes in new location
- New fixed guideway systems, such as rail or bus rapid transit
- New construction or extension of a separate roadway for buses or high occupancy vehicles

Remember that if any environmental document (CE, EA, or EIS) is challenged, all decisions along the way could be challenged!

3. Project Class of Action

An EIS requires more detailed documentation and a significant public participation process. It is initially completed as a Draft EIS (DEIS) and, upon approval, as a Final EIS (FEIS). Milestones of the EIS process are:

- Letter of initiation
- Published Notice of Intent (NOI)
- Invitation to identify Participating and Cooperating agencies
- Invitation to other agencies to participate in scoping and kickoff meeting
- Two public meetings (typically)
- DEIS preparation, review, and publication
- Public hearing
- Response to comments, revision and resubmittal process
- FEIS preparation on Preferred Alternative versus No Build
- Published Notice of Availability (NOA) and Record of Decision (ROD)

The TxDOT Environmental Affairs Division Director has the approval authority for an EIS. There may be co-signatories, if other agencies are cooperating agencies.

4. Implementing NEPA

Project Initiation and Scope Development

TxDOT's Scope Development Tool (within the ENV toolkit) will be used at the start of the project to identify issues. The tool's output is part of the administrative record. The Scope Development Tool documents the following:

- Project Description: sponsor, type of project, anticipated federal permits, ROW and easements, relocations, tolling, major resource impacts, etc.

- Anticipated Environmental Classification: How will the project be classified—(c)-list CE, (d)-list CE, EA, or EIS—and is this classification justified? Remember that proper project classification is key to avoiding project delays and having to redo work.

- Major Resource Issues: air quality, cultural, community impact, water resources, biological resources, hazardous materials, noise, parklands, indirect and cumulative impacts, public involvement, etc.

Use TxDOT's *Instructions for Using the Scope Development Tool* to assist you with completing the form. The key is to understand the need and purpose of the project and how the proposed design will address them. Note that this tool can be updated as the project proceeds.

4. Implementing NEPA

Coordinating with Resource Agencies

Under NEPA assignment, you can no longer call the FHWA to ask environmental questions at the project level.

- TxDOT will be penalized during its audits if you do so
- In addition to understanding the NEPA process, you must also understand other environmental regulatory processes and their agency coordination requirements
- The newest Technical Report templates now include coordination triggers
- Identify additional coordination requirements as early as possible (e.g., if the project triggers TPWD or THC coordination, it will take time, which should be accounted for in the project schedule)

4. Implementing NEPA

Working with Other Entities
For all project classifications, TxDOT may be working with outside entities. Local government sponsors, environmental and engineering consultants, and state and federal resource agencies are all involved in the NEPA process.

At the management level, you play a critical role in facilitating this communication and establishing relationships across entities.

4. Implementing NEPA

Coordinating with Resource Agencies

This table compares interagency coordination before and after NEPA assignment for some resource agencies, but it is not inclusive of every entity TxDOT works with.

Federal Agency	Process before full NEPA Assignment	Process after full NEPA assignment
Army Corps of Engineers	Districts coordinate permits, etc. (with ENV assistance as needed)	No Change
Fish and Wildlife Services	Informal coordination- Districts coordinate with ENV, and ENV submits consultation (since May 2014) Formal Consultation- Districts coordinate with ENV, and ENV coordinates with FHWA for submission	Informal coordination- No change Formal Consultation-Districts coordinate with ENV, and ENV submist consultation
Coast Guard	Districts coordinate permits, etc. (with ENV assistance as needed)	No change
National Marine Fisheries Services	Informal coordination- Districts coordinate with ENV, and ENV submits consultation Formal Consultation- Districts coordinate with ENV, and ENV coordinates with FHWA for submission	Informal coordination- No change Formal Consultation-Districts coordinate with ENV, and ENV submist consultation
Tribal	Districts coordinate with ENV. ENV coordinates with Tribal.	No Change
Texas Historical Commission	Districts coordinate with ENV. ENV coordinates with THC.	No Change

4. Implementing NEPA

Quality Assurance and Quality Control

Every form or approval step is a benchmark in the quality assurance (QA) and quality control (QC) process which may be audited by the FHWA per the MOU.

For a guide to TxDOT's QA/QC program, see the TxDOT Environmental Affairs Division website.

Your signature is a major step in the QA/QC process – Your review and approval indicates that the document was created according to the correct and legally defensible procedure.

4. Implementing NEPA

TxDOT management acts as the final gatekeeper of NEPA documents under NEPA assignment.

- Always know what you are signing and whether you have signature authority for the specific type of document requiring signature
- Facilitate and require frequent communication among all involved parties
- Be aware of the potential impacts of changing a project and related impacts on the NEPA process
    - Design, funding source, funding amount, regulations, etc.
- Identify program-level improvements for TxDOT
    - Aim to improve performance measures adopted in the MOU
    - Leverage the self-audit process and QA/QC for continued improvement

5. Common NEPA Challenges

This section includes scenarios that illustrate common NEPA challenges faced by TxDOT management. Each presents a situation and asks you to think about how you would respond.

1. Project-level disruptions
2. Program-level disruptions
3. Not following NEPA to the letter

5. Common NEPA Challenges

Project-level disruptions

When you check in on the status of a project, the design engineer tells you that everything is going smoothly. She shows you her latest draft of a bridge at a creek crossing. Once she realized that the creek was often dry, she decided to change the bridge bent arrangement from one on each side of the creek to only one in the center of the bed. She is happy to report that this will lower the cost of construction materials without impacting any water resources.

Do you think the change in design will have an impact on the time to complete the NEPA process? When should the engineer notify environmental staff of the change?

Shoal Creek in Austin, Texas (KUT)

5. Common NEPA Challenges

Project-level disruptions

This change could introduce an impact to waters and potential wetlands and consequently require permitting. The creek and banks could include archeological resources or important wildlife habitat. Affecting additional resources (or exacerbating existing impacts) may prolong the NEPA process, i.e., impacts to <0.1 acres of jurisdictional waters may be processed under a Nationwide Permit #14 while more than one acre would require a time-consuming Individual Permit. Always notify the environmental coordinator and project team immediately when a design change occurs. Even if a meeting is scheduled in the near future, environmental specialists, consultants, and local government staff are proceeding with their work on a daily basis, so any work on an out-of-date design burdens the scope and schedule.

Shoal Creek in Austin, Texas (KUT)

5. Common NEPA Challenges

Program-level disruptions

An environmental specialist in your district is retiring after many years as the only staff person with an expertise in biological evaluations. You have hired a new specialist who is very knowledgeable about ecological issues, but s/he has never worked in the infrastructure or NEPA realm before.

How will you ensure that s/he knows how to follow process and documentation requirements? What resources does TxDOT provide for continuous improvement?

5. Common NEPA Challenges

Program-level disruptions

Under NEPA assignment, TxDOT is legally responsible for all decisions and documentation made related to the NEPA process. It is essential that staff at every level and tenure can find resources applicable to their responsibilities, and that new staff are provided with quality assistance.

TxDOT provides many tools for training and reference, and all staff should be directed to consult the Environmental Compliance Toolkits for proper project development and evaluation.

If possible, an experienced staff member could be appointed to guide this individual through the NEPA documentation processes. NEPA chats and cross-district coordination can also support new staff as they come to understand the stringent requirements of the NEPA process.

5. Common NEPA Challenges

Not following NEPA to the letter

You are preparing to go on a well-deserved month-long vacation. However, you are concerned that an important project will not be ready for your signature before you leave tomorrow. Last week, you reviewed the project's technical memoranda and requested changes to the cultural resources section. You have worked with the cultural resources specialist for many years, and she always produces high quality work. Knowing you are leaving, she and the environmental coordinator have requested your conditional approval of the NEPA document (pending the changes you requested).

Is it okay to give conditional approval when you have provided clear instructions on the needed changes? What else could you do to make sure the project stays on track while you are gone?

5. Common NEPA Challenges

Not following NEPA to the letter

Your signature assures approval that the environmental process was done correctly, and the buck stops with you under assignment. Therefore, it is never advisable to grant conditional approval in the NEPA process. Doing so would open TxDOT up to audit findings by the FHWA or discovery during a lawsuit.

If you will be unable to approve and sign the document remotely, identify a person with proper signature authority for the document and communicate the situation to him or her. This person should have the same or higher signature authority than you, such as the ENV Director.

Closing

- The NEPA process looks at how people and the natural, cultural, and human environment can exist compatibly

- NEPA is required when any federal money is spent on a project, and state-funded projects have a similar process

- Assignment of responsibility for environmental decision-making from the FHWA to TxDOT can result in faster project delivery, but TxDOT will need more detailed information along the way to ensure defensible decisions

- Your role in championing projects and communicating priorities has not changed under NEPA assignment

- However, your responsibility to accurately and thoroughly ensure all decisions are clearly documented in the administrative record has increased

Closing

TxDOT management sets the tone for NEPA compliance under assignment.

- Management should emphasize the shared responsibility for all internal and external stakeholders to ensure legally defensible environmental decision-making so TxDOT can continue to be a 'best in class' agency.

- At the beginning of every project, set milestones for project staff to meet.

- Encourage and facilitate continuous communication throughout the project; don't allow staff to wait until the next project checkpoint to discuss changes.

- Collaboration among environmental, engineering, consulting, and local government team members leads to "hard look" documentation that is consistent with TxDOT's format requirements and a strong, legally defensible administrative record.

Consultants Quiz

1. **True or False:**
   Under NEPA Assignment, TxDOT has increased expectations for the analysis and documentation performed for all project types.
   a) True—federal agencies have noted that TxDOT's documentation needed substantial improvement.
   b) True—TxDOT must have legally sufficient files to defend against a legal challenge.
   c) False—NEPA Assignment is supposed to shorten the review process.
   d) False—TxDOT wants to streamline the process.
   Answer: B

2. **Which of the following are included in the administrative record?**
   a) The draft decisional document
   b) An e-mail between yourself and the Environmental Coordinator regarding the project
   c) Any internal TxDOT Checklists
   d) Public meeting comments about your technical studies
   e) A and C
   f) All of the above
   Answer: F

3. **TxDOT's engineers have just informed the Environmental Coordinators that they will be making a design change to a project that you are working on, but the changes should not affect any key aspects of the environmental analysis. What is the Environmental Coordinator's responsibility in this situation?**
   a) Take no additional action. They should respect that the engineers know what they're talking about and direct you to continue your preparation of the draft EA.
   b) Inform you (the consultant) about the design change.
   c) Inform you and any local government representatives.
   d) Inform you, any local government representatives, and (if public involvement has taken place) any elected official in their jurisdiction.
   Answer: D

4. **Which of the following consultant roles have changed due to NEPA Assignment?**
   a) Staying informed and in communication with your clients
   b) Preparing the technical reports
   c) Choosing whether or not to have subcontractors
   d) None of the above
   Answer: D

5. **You find a previously unidentified constraint after you've already started your environmental analysis as a CE. To determine whether you should change the project class of action from a CE to an EIS, which of the following factors should you consider?**
   a) If the constraint is an archeological site, remember that it will be difficult to avoid, given the typical extent of such sites.
   b) If the constraint is a previously unknown endangered species and the impact could result in a Jeopardy determination.
   c) Even if you would typically transition from a CE to an EA before reaching an EIS, if this constraint is accompanied by significant public controversy, it merits an EIS.
   d) If you've already started the project as a CE, you must finish the CE process before moving up to either an EA or EIS.
   e) A, B, and C
   f) All of the above

Answer: E

6. **True or False:**
   TxDOT's toolkits and handbooks on the ENV website should be downloaded and saved in a library on my computer's desktop or our company server.
   a) True—doing so will make you more efficient and the information on the website rarely changes.
   b) True—doing so would allow me to keep working if TxDOT's website goes down.
   c) False—the most recent documentation in the toolkits and handbooks should always be obtained from the ENV website.
   d) False—it is against TxDOT's rules for consultants to store copies of ENV materials without permission.

Answer: C

7. **True or False**:
   Your technical memorandum was reviewed for quality control by TxDOT, and they had a couple of suggestions for you to consider. After you made improvements, TxDOT approved the document and submitted it into the administrative record. Your original draft technical memorandum could be examined in court, if a suit is filed.
   a) True—any work I complete can be examined in court.
   b) True—TxDOT found issues in the draft document.
   c) True—only documents in the administrative record are examined in court.
   d) False—working drafts do not have to be included in the administrative record, which are the only documents examined in court.

Answer: D

8. **True or False.**
   Consultants are urged to attend the project kick-off meeting or the scoping meeting to establish project timelines.
   a) True—consultants are responsible for meeting schedule deadlines established to support engineering goals for project letting.
   b) True—consultants often create the project timelines for the project team.
   c) False—TxDOT establishes the timelines for the team beforehand and the timelines cannot be changed.
   d) False—timelines are better discussed after the scoping is complete.

Answer: A

9. **The Environmental Coordinator informs you that the project design has changed. When considering the changes, your role is to consider all of the following, <u>except</u>:**
   a) Additional impacts on natural, cultural, recreational, historic, or other resources
   b) The changes to team member vacation schedules.
   c) Additional impacts on air quality, noise levels, or water quality
   d) Whether the size of the study area has increased or decreased
   e) Whether the change affects the project class of action

Answer: B

10. **Your federally funded project crosses through a golden-cheeked warbler habitat. Which of the following regulatory permitting processes applies?**
    a) Section 4(f)
    b) Section 404
    c) Section 106
    d) Section 7

Answer: D

ADDITIONAL OR ALTERNATIVE QUESTION

11. **For the past four years, you have been working on a controversial project for TxDOT. Upon TxDOT's issuance of a FONSI, an environmental group sues TxDOT to stop the project. You hear the news from a colleague in your office but have not yet been contacted by TxDOT. You should:**
    a) Start throwing away as many files related to the project as you can find.
    b) Delete all draft and working files related to the project from your company server.
    c) Begin looking for files that should have gone into the administrative record.
    d) Do not discard or delete any files or paperwork. Wait for TxDOT's notification and instructions.

Answer: D

Engineers Quiz

1. **True or False:**
   The NEPA process is only required when federal money is being used.
   a) False—NEPA applies when any public funding is used.
   b) True—environmental documentation is not necessary for state-funded projects.
   c) True—however, Texas statutes require an environmental process similar to NEPA if state funds are used.
   d) False—the NEPA process is required for every TxDOT project and it is not related to the source of project funding.

   Answer: C

2. **Which of these is a product of the NEPA process?**
   a) A record of personal notes on the project
   b) An administrative record showing that decisions were made according to the NEPA process
   c) An environmental decision, such as a CE determination, FONSI, or ROD
   d) A & C
   e) B & C
   f) A, B & C

   Answer: E

3. **True or False:**
   As an engineer, I do not need to be concerned about the source of a project's funding.
   a) True—funding sources are managed and handled by the Finance Division within TxDOT. The Finance Division will coordinate with the Environmental Affairs Division on funding and NEPA-related issues.
   b) True—it is the Environmental Coordinators' responsibility to track project funding. Although I may provide information to the Environmental Coordinator about a project's funding, I can do so at my discretion.
   c) False—the amount or source of funding can change a project's environmental classification under NEPA, as well as its timeline to completion.
   d) False—I am responsible for procuring funding for my projects. It is the Environmental Coordinator's job to keep a record of what I am doing.

   Answer: C

4. **Is the following statement true or false: "It would be helpful to download the toolkits and handbooks on the ENV website and have my own library on my computer's desktop."**
   a) False—the most up-to-date information in the toolkits and handbooks should always be freshly downloaded from TxDOT ENV's website.
   b) True—doing so makes me more efficient and changes to the information on the website are always announced.
   c) True—doing so would allow me to keep working, if TxDOT's website ever goes down.
   d) False—it is against TxDOT rules to download this information and keep it on my desktop.

   Answer: A

5. **You are working on a project that is being processed as a CE. For which of these changes should you alert the Environmental Coordinator?**
   a) A change in the location of bridge bents across a creek
   b) The addition of an edge clip to a project previously sited in the existing right-of-way
   c) Identification of the need for a new drainage easement
   d) B & C only
   e) All of the above
   f) None of the above

Answer: E

6. **Which is NOT part of conducting an EA?**
   a) Analysis of alternatives
   b) Determining whether an EIS is required
   c) Determining whether a CE is required
   d) Determining a FONSI
   e) None of the above

Answer: C

7. **A new roadway facility is planned through a land parcel that is undeveloped. Upon conducting a windshield review of the site, you realize that kids are playing baseball on a parcel of land that will become future right-of-way. Based upon the ground conditions, this activity appears to be a common occurrence. What should you do?**
   a) Ignore it. Only a park with an official sign or that shows up on a map is protected by Section 4(f).
   b) Consult with the project's Environmental Coordinator before continuing with plan development
   c) Continue with the project design, since the residents and local officials strongly support the project and are unlikely to protest the parcel's acquisition for right-of-way
   d) Realize that you might be facing a Section 4(f) issue, if the alignment impacts this site. Begin design work on the next best alternative. You will inform the Environmental Coordinator of the switch at a project meeting scheduled in a couple of months.

Answer: B

8. **True or False:**
   In the event of litigation, you will have an opportunity to support and defend your decision-making process.
   a) True—there will be a hearing in front of a jury and you will have an opportunity to explain to them the logic behind your decisions.
   b) False—engineers are not responsible for decision-making under NEPA, but you should offer to support the Environmental Coordinators who created the problem.
   c) True—you will be required to submit a new brief outlining your decision-making process once the litigation has begun. This brief will give you the opportunity to better explain and clarify what you did and the reasons why you did it.
   d) False—a judge will rely solely on the existing administrative record.

Answer: D

9. **What should the team do at the beginning of every EA or EIS?**
    a) Identify the alignment of the technically preferred alternative.
    b) Hold a kick-off meeting.
    c) Establish communication protocols between TxDOT staff (environmental coordinators, engineers, District Engineers or Administrators, and ENV), consultants, and local government (staff and election officials).
    d) Collect preliminary information and visit the proposed site.
    e) All of the above
    f) Only B, C, and D

Answer: F

10. **Which of these is NOT true about establishing Purpose and Need (P&N) for a project?**
    a) The P&N is the basis upon which alternatives are proposed for analysis.
    b) A very narrow P&N will speed up project delivery.
    c) A very broad P&N will protect you in almost any contingency.
    d) All of the above are true.
    e) None of the above is true.

Answer: B

11. **Whose responsibility is it to build a sound administrative record that will withstand legal challenge under NEPA Assignment?**
    a) The environmental specialist
    b) The engineering team
    c) The public involvement specialist
    d) Outside consultants
    e) All of the above

Answer: E

Environmental Specialists Quiz

1. **True or False:**
    An upcoming project is in the regional Transportation Improvement Plan (TIP), but receives only $10,000 of federal funding, despite having a $2 million price tag. This project will need to undergo the NEPA process.
    a) True—any project in the TIP must undergo the NEPA process.
    b) True—any project with federal funding must undergo the NEPA process.
    c) False—all projects in the Metropolitan Transportation Plan need to undergo the NEPA process.
    d) False—only projects that receive more than $10,000 need to undergo the NEPA process.
    Answer: B

2. **Which of the following are included in the administrative record?**
    a) The draft decisional document
    b) An e-mail between yourself and a consultant regarding the project
    c) The QA/QC Administrative Review Checklist
    d) Public meeting comments about your technical studies
    e) A and C
    f) All of the above
    g) None of the above
    Answer: F

3. **True or False:**
    If the resource agencies (like USACE) feel TxDOT is not working well with the NEPA Assignment, the FHWA can pull the responsibilities away from TxDOT.
    Answer: True

4. **Which of the following Environmental Specialists roles have changed due to NEPA Assignment?**
    a) Determining class of action
    b) Performing project scoping
    c) Consulting with resource agencies
    d) Approving CEs
    e) A and C
    f) None of the above
    Answer: E

5. **True or False:**
    If you are uncertain whether or not your project scope needs to involve U.S. Fish and Wildlife to obtain a Section 7 permit, you can call the FHWA for guidance.
    Answer: False

6. **True or False:**
    TxDOT's toolkits and handbooks on the ENV website should be downloaded and saved in a library on my computer's desktop or a TxDOT server.

a) True—doing so will make you more efficient and the information on the website rarely changes without notice.
b) True—doing so would allow me to keep working, if TxDOT's website goes down.
c) False—the most recent versions of documentation formats in the toolkits and handbooks are available on the ENV website and any new changes may not be announced.
d) False—it is against TxDOT's rules to download the information onto my desktop.

Answer: C

7. **True or False**:
   Your draft environmental document was reviewed for quality control by the core team, and they had a couple of suggestions for you to consider. After you made improvements, the core team signed off on the Environmental Document Review Checklist and submitted it into the administrative record. The original draft environmental document will be examined in court, if a suit is filed.
   a) True—any completed work can be examined in court.
   b) True—the core team found issues in the draft document.
   c) False—working drafts do not have to be included in the administrative record, and only documents included in the administrative record are examined in court.
   d) False—only the FONSI or the ROD will be examined.

Answer: C

8. **Which rank has signing authority for each type of environmental document?**

Who has signing authority for this document?	Answers
c-list Categorical Exclusion	Environmental Specialist
d-list Categorical Exclusion	District Engineer or District Administrator
Environmental Assessment	Director Environmental Affairs Division
Environmental Impact Statement	Director of Environmental Affairs Division and any Cooperating Agencies

9. **Your project has changed, so you need to fill out the Project Scope Amendment Form. When considering the changes, you should consider all of the following, <u>except</u>:**
   a) Whether the source of funding has changed, which can change the need to undergo the NEPA process.
   b) Whether the amount of state funding has decreased, which can change the type of CE required.
   c) Whether the amount of federal funding has changed, which can change the CE classifications.
   d) Whether there are now more or fewer impacts, which can change the project class of action.

Answer: B

10. **Your federally funded project crosses through a golden-cheeked warbler habitat. Which of the following regulatory permitting processes applies?**
    a) Section 4(f)
    b) Section 404
    c) Section 106
    d) Section 7

Answer: D

Local Government Quiz

1. **True or False:**
   An upcoming project is in the regional Transportation Improvement Plan (TIP), but receives only $10,000 of federal funding, despite having a $2 million price tag. This project will need to undergo the NEPA process.
   a) True—any project in the TIP must undergo the NEPA process.
   b) True—any project with federal funding must undergo the NEPA process.
   c) False—all projects in the Metropolitan Transportation Plan need to undergo the NEPA process.
   d) False—only projects that receive more than $10,000 need to undergo the NEPA process.
   Answer: B

2. **Which of the following are included in the administrative record?**
   a) The draft decisional document
   b) An e-mail between yourself and a consultant regarding the project
   c) Any QA/QC Checklists
   d) Public meeting comments about your technical studies
   e) A and C
   f) All of the above
   g) None of the above
   Answer: F

3. **Your agency has agreed to be the project sponsor for a proposed roadway improvement. The engineers tell you that they must make a design change, but this change should not affect any key aspects of the environmental analysis. Other than determining if the change will alter the NEPA process, what is your responsibility in this situation?**
   a) Take no additional action. Respect that the engineers understand the process and continue with the preparation of your draft EA.
   b) Inform the District Environmental Coordinator about the design change.
   c) Inform the District Environmental Coordinator and any consultants you've contracted.
   d) Inform the District Environmental Coordinator, any consultants you've contracted, and (if public involvement has taken place) any elected official in your jurisdiction.
   Answer: D

4. **Which of the following local government roles have changed due to NEPA Assignment?**
   a) Determining class of action
   b) Project scoping
   c) The process of becoming a project sponsor
   d) Approving CEs
   e) A and C
   f) None of the above
   g) All of the above
   Answer: F

5. **True or False:**

   TxDOT's toolkits and handbooks on the ENV website should be downloaded and saved in a library on my computer's desktop or our company server.
   a) True—doing so will make you more efficient and the information on the website rarely changes without notice.
   b) True—doing so would allow me to keep working if TxDOT's website goes down.
   c) False—the most recent versions of documentation formats in the toolkits and handbooks are available on the ENV website and any new changes may not be announced.
   d) False—it is against TxDOT rules to download the information onto my desktop.

   Answer: C

6. **True or False**:

   Your agency has become the project sponsor for an EA. Your draft environmental document was reviewed for quality control by the District, and they had a couple of suggestions for you to consider. After you made improvements, the District approved the document and submitted it into the administrative record. The original draft environmental document could be examined in court, if a suit is filed.
   a) True—any completed work can be examined in court.
   b) True—the core team found issues in the draft document.
   c) False— working drafts do not have to be included in the administrative record, and only documents included in the administrative record are examined in court.
   d) False—TxDOT issued the FONSI, so the litigation is their problem.

   Answer: C

7. **Which rank has signing authority for each type of environmental document?**

Who has signing authority for this document?	Answers
c-list Categorical Exclusion	TxDOT Environmental Affairs Division Director
d-list Categorical Exclusion	District Engineer or District Administrator
Environmental Assessment	District Environmental Specialist
Environmental Impact Statement	Director of Environmental Affairs and any Cooperating Agencies

8. **Your federally funded project crosses through a golden-cheeked warbler habitat. Which of the following regulatory permitting processes applies?**
   a) Section 4(f) of the Department of Transportation Act
   b) Section 404 of the Clean Water Act
   c) Section 106 of the National Historic Preservation Act
   d) Section 7 of the Endangered Species Act

   Answer: D

9. **For the past four years, you have been working on a controversial project with TxDOT. Upon TxDOT's issuance of a FONSI, an environmental group sues TxDOT to stop the project. You hear the news from a colleague in your office but have not yet been contacted by TxDOT. You should:**
    a) Start throwing away as many files related to the project as you can find.
    b) Delete all draft and working files related to the project from your agency server.
    c) Begin looking for files that should have gone into the administrative record.
    d) Do not discard or delete any files or paperwork. Wait for TxDOT's notification and instructions.

Answer: D

Management Quiz

1. **True or False:**
   The NEPA process is only required when federal money is being used.
   a) False—NEPA applies when any public funding is used.
   b) True—environmental documentation is not necessary for state-funded projects.
   c) True—however, Texas statutes require an environmental process similar to NEPA if state funds are used.
   d) False—the NEPA process is required for every TxDOT project and it is not related to the source of project funding.

   Answer: C

2. **Which of these is a product of the NEPA process?**
   a) A record of personal notes on the project
   b) An administrative record showing that decisions were made according to the NEPA process
   c) An environmental decision, such as a CE determination, FONSI, or ROD
   d) A & C
   e) B & C
   f) A, B & C

   Answer: E

3. **Which of these is NOT true under NEPA assignment?**
   a) TxDOT cannot ask for help from the FHWA regarding project-level decisions and documentation.
   b) TxDOT is now responsible for government-to-government consultations, including those with Native American tribes.
   c) TxDOT must manage interagency coordination without federal intervention or assistance.
   d) TxDOT can now be sued for NEPA decisions made under Assignment and FHWA will not act on TxDOT's behalf.

   Answer: B

4. **Your staff is working on a project that is being processed as a CE. For which of these changes should you require the team to confirm or reassess the project's classification?**
   a) A change in the location of bridge bents across a creek
   b) The addition of an edge clip to a project previously sited in the existing right-of-way
   c) Identification of the need for a new drainage easement
   d) B & C only
   e) All of the above
   f) None of the above

   Answer: E

5. **Which rank has signing authority for c-list categorical exclusions?**
   a) Environmental Specialist
   b) District Engineer or District Administrator
   c) Direct of Environmental Affairs Division
   d) B and C
   e) All of the above
   f) None of the above

Answer: E

6. **Which is the <u>lowest</u> rank with signing authority for d-list categorical exclusions?**
   a) Environmental Specialist
   b) District Engineer or District Administrator
   c) Director of Environmental Affairs Division
   d) None of the above

Answer: B

7. **Which rank(s) has/have signing authority for environmental assessments?**
   a) Environmental Specialist
   b) District Engineer or District Administrator
   c) Director of Environmental Affairs Division
   d) All of the above
   e) B and C
   f) None of the above

Answer: C

8. **Which rank(s) has/have signing authority for environmental impact statements?**
   a) Environmental Specialist
   b) District Engineer or District Administrator
   c) Director of Environmental Affairs Division and any cooperating agencies
   d) All of the above
   e) B and C
   f) None of the above

Answer: C

9. **True or False: In the event of litigation, you will have an opportunity to support and defend your decision-making process.**
   a) True—there will be a hearing in front of a jury and you will have an opportunity to explain to them the logic behind your decisions.
   b) False—engineers and TxDOT management are not responsible for decision-making under NEPA, but you should offer to support the Environmental Coordinators who created the problem.
   c) True—you will be required to submit a new brief outlining your decision-making process once the litigation has begun. This brief will give you the opportunity to better explain and clarify what you did and the reasons why you did it.
   d) False—a judge will rely solely on the existing administrative record.

Answer: D

10. What should the team do at the beginning of every EA or EIS?
   a) Hold a kick-off meeting.
   b) Establish communication protocols between TxDOT staff (environmental coordinators, engineers, District Engineers or Administrators, and ENV), consultants, and local governments (staff and election officials).
   c) Collect preliminary information and visit the proposed site.
   d) All of the above
   e) Only A & C

Answer: D

11. Which of these is NOT true about establishing Purpose and Need (P&N) for a project?
   a) The P&N is the basis upon which alternatives are proposed for analysis.
   b) A very narrow P&N will speed up project delivery.
   c) A very broad P&N will protect you in almost any contingency.
   d) All of the above are true.
   e) None of the above is true.

Answer: B

12. Whose responsibility is it to build a sound administrative record that will withstand legal challenge under NEPA Assignment?
   a) The environmental specialist
   b) The engineering team
   c) The public involvement specialist
   d) Outside consultants
   e) All of the above

Answer: E