

AASHTO PRACTITIONER'S HANDBOOK

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DEFINING THE PURPOSE AND NEED AND DETERMINING THE RANGE OF ALTERNATIVES FOR TRANSPORTATION PROJECTS

This Handbook provides recommendations for defining the purpose and need and determining the range of alternatives in environmental impact statements and environmental assessments for transportation projects, in accordance with the National Environmental Policy Act (NEPA).

Issues covered in this Handbook include:

- Understanding the legislative and planning context
- Determining the needs
- Defining the project purpose
- Screening alternatives
- Involving agencies and the public

The Practitioner's Handbooks are produced by the Center for Environmental Excellence by AASHTO. The Handbooks provide practical advice on a range of environmental issues that arise during the planning, development, and operation of transportation projects.

The Handbooks are primarily intended for use by project managers and others who are responsible for coordinating compliance with a wide range of regulatory requirements. With their needs in mind, each Handbook includes:

- key issues to consider;
- a background briefing;
- practical tips for achieving compliance.

In addition, key regulations, guidance materials, and sample documents for each Handbook are posted on the Center's web site at <http://environment.transportation.org>



Center for Environmental Excellence by AASHTO



American Association of State Highway and Transportation Officials

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Overview



One of the most important tasks in any National Environmental Policy Act (NEPA) study is the definition of the project's purpose and need. The purpose and need is important because it plays a key role in determining the range of alternatives that will be considered. The purpose and need also can be important in selecting the preferred alternative, especially in cases where the project is subject to other laws that require consideration of project purpose, such as Section 404 of the Clean Water Act and Section 4(f) of the U.S. Department of Transportation Act.

This Handbook is intended to provide practitioners with practical suggestions for defining purpose and need and for determining the range of alternatives. The handbook covers both legal principles and practical considerations, and specifically focuses on the issues involved in developing the purpose and need and range of alternatives for highway projects.

Key Issues to Consider

Understanding the Legislative and Planning Context

- Is there any legislation (Federal, state, or local) that should be considered in defining the project purpose?
- Are there any provisions in adopted statewide or metropolitan transportation plans that are relevant to defining the project purpose?
- Has a purpose and need been defined for this project in a corridor or sub-area study, pursuant to the statewide and metropolitan planning regulations (23 C.F.R. Part 450)?
- If planning decisions are being used to support the purpose and need, how much time has passed since those decisions were made? Is there a need to re-consider or update those planning decisions?

Determining the Needs

- What data is *available* to evaluate the transportation needs in the project area?
- What data is *needed* in order to assess the transportation needs in the project area?
- Are there any data gaps—that is, any data that is needed but is not readily available?
- If there are data gaps, how will those gaps be addressed?
- If the study has been underway for several years, what steps will be taken to make sure that the data underlying the purpose and need is still valid?
- How will the supporting information for the purpose and need be documented? For example, will technical reports be prepared?

Defining the Project Purpose

- Is there a single purpose of the project, or does the project serve multiple purposes?
- If there are multiple purposes, are some more important than others? What are the true “drivers” of the project?
- How is the need for *this* project distinct from the need for other similar projects that are being proposed in the same region? What are the differentiae?
- Are the project purposes achievable?

- Will criteria or methods be used to differentiate among alternatives that do and do not meet the project purposes?
- Have the project purposes changed over time? If so, how will this change be explained?
- Will “goals and objectives” be defined in addition to “purpose and need”? What is the difference between the two terms, and how will it be explained to the public?
- Is the project purpose stated clearly, succinctly, and consistently throughout the NEPA document?

Screening Alternatives

- What criteria will be used to determine whether an alternative meets purpose and need?
- Aside from purpose and need, what other factors—such as environmental impacts and cost—will be considered in the screening process?
- If alternatives screening will be based partly on factors such as environmental impacts and cost, what specific criteria will be used? Is enough information available at the screening stage to make meaningful judgments about impacts and cost?
- How will the alternatives screening process be documented?
- After the screening process has been completed, what steps will be taken to ensure that screening-level decisions remain valid? Are there any circumstances that warrant re-consideration and updating of screening decisions?

Involving Agencies and the Public

- If an environmental impact statement (EIS) is being prepared, what opportunity for involvement will be provided for agencies and the public in developing the purpose and need and determining the range of alternatives? Will these opportunities occur in sequential steps or simultaneously?
- Is the project subject to a NEPA/404 merger agreement? If so, what additional process steps apply to the development of the purpose and need under that agreement?
- If the project involves an environmental assessment (EA), will there be any agency coordination or public involvement regarding purpose and need and the range of alternatives?
- How will your agency coordination and public involvement efforts be documented?
- Are there any controversies regarding the purpose and need and/or the range of alternatives? If so, how have those concerns been addressed?

Background Briefing

This section provides a brief introduction to key concepts related to the purpose and need chapter and the screening of alternatives in the NEPA process. This section summarizes key principles and requirements from the Council on Environmental Quality (CEQ) NEPA regulations, 40 C.F.R. Part 1500; the Federal Highway Administration (FHWA) NEPA regulations, 23 C.F.R. Part 771; CEQ and FHWA guidance documents; and court decisions.

In addition, this section briefly discusses Section 6002 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which is now contained in 23 U.S.C. § 139. This section also considers FHWA’s statewide and metropolitan planning regulations (23 C.F.R. Part 450), as well as Appendix A to the planning regulations. Appendix A contains detailed guidance on linking the planning and NEPA processes.

Purpose and Need

Why a Purpose and Need is Required. The CEQ regulations require every environmental impact statement (EIS) to “briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the

proposed action.”¹ In addition, the CEQ regulations require an environmental assessment (EA) to include “a brief discussion of the need for the proposal.”²

Importance of Purpose and Need in NEPA. The purpose and need is a key factor in determining the range of alternatives considered in an EIS. Specifically, the purpose and need limits the range of alternatives because an agency can dismiss, without detailed study, any alternative that fails to meet the project’s purpose and need. A well-defined, succinct purpose and need is a fundamental building block of any EIS.

Importance of Purpose and Need for Other Laws. The purpose and need also plays an important role in determining the requirements of other laws. In particular, the project purpose is important for two key federal laws that apply to many transportation projects: Section 4(f) of the Department of Transportation Act and Section 404 of the Clean Water Act.

- **Section 4(f).** Under Section 4(f) of the Department of Transportation Act, the U.S. Department of Transportation (U.S. DOT) is required to determine whether there is any “prudent and feasible” alternative that avoids the use of significant publicly owned parks, recreation areas, and wildlife or waterfowl refuges, as well as any significant historic sites. In general, an alternative that does not meet the purpose of a project is not prudent and therefore can be eliminated from consideration under Section 4(f). The agency responsible for determining “prudence” under Section 4(f) is the U.S. Department of Transportation—specifically FHWA, for highway projects that require FHWA approval.
- **Section 404.** Under Section 404 of the Clean Water Act, the U.S. Army Corps of Engineers is required to determine whether there is any “practicable” alternative that avoids the use of aquatic resources within its jurisdiction. In general, an alternative that does not meet the purpose of a project is not practicable and therefore can be eliminated from consideration under Section 404.³ The determination of “practicability” under Section 404 is distinct from the determination of “reasonableness” under NEPA. The agency responsible for determining “practicability” under Section 404 is the Corps.

Direction Provided in SAFETEA-LU for Defining the Purpose and Need. In Section 6002 of SAFETEA-LU, which is now 23 U.S.C. § 139, Congress required a purpose and need statement to include “a clear statement of the objectives that the proposed action is intended to achieve” and listed the following objectives that can be included:

- “Achieving a transportation objective identified in an applicable statewide or metropolitan transportation plan”;
- “Supporting land use, economic development, or growth objectives established in applicable Federal, state, local, or tribal plans”; and
- “Serving national defense, national security, or other national objectives, as established in Federal laws, plans, or policies.”

According to FHWA’s guidance on Section 6002, this section in SAFETEA-LU does not substantively change the concept of purpose and need that was established by CEQ. It simply provides examples of some purposes that *can be* included in a purpose and need statement. The decision about which goals to include still should be made on a case-by-case basis.

Linking Planning and NEPA—Guidance in “Appendix A” to the Planning Regulations. In 2005, FHWA and FTA issued joint guidance on linking the transportation planning and NEPA processes. In 2007, this guidance was incorporated, with some changes, into Appendix A of the new statewide and metropolitan transportation planning regulations (23 C.F.R. Part 450). Appendix A refers to the transportation planning process as the “primary source” of the purpose and need, and lists four specific ways in which the planning process can be used to develop a purpose and need:

- (a) Goals and objectives from the transportation planning process may be part of the project’s purpose and need statement;

¹ 40 C.F.R. § 1506.13.

² 40 C.F.R. § 1508.9. The regulation states in full that an environmental assessment “[s]hall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.” Section 102(2)(E) requires Federal agencies to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” This general requirement has been interpreted by CEQ to require an analysis of alternatives in EAs.

³ See 40 C.F.R. § 230.3(q) (“The term practicable means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.”).

- (b) A general travel corridor or general mode(s) (e.g., highway, transit, or a highway/transit combination) resulting from planning analyses may be part of the project's purpose and need statement;
- (c) If the financial plan for a metropolitan transportation plan indicates that funding for a specific project will require special funding sources (e.g., tolls or public-private financing), such information may be included in the purpose and need statement; or
- (d) The results of analyses from management systems (e.g., congestion, pavement, bridge, and/or safety) may shape the purpose and need statement.

The use of these planning-level goals and choices must be appropriately explained during NEPA scoping and in the NEPA document.⁴

Role of Lead Agencies in Defining Purpose and Need. In general, the responsibility for defining a project's purpose and need rests with the lead Federal agency preparing the NEPA document. For transportation projects, the lead Federal agency is a transportation agency—for example, FHWA for a highway project. Under the environmental review process defined in Section 6002 of SAFETEA-LU (23 U.S.C. § 139), a state or local agency that is serving as a joint lead agency shares the Federal lead agency's authority to define the purpose and need.⁵ Together, the lead Federal agency and any joint lead agencies are responsible for defining the project's purpose and need. The lead agencies share this decision-making authority; if they cannot agree, the process does not move forward until the disagreement is resolved.

Role of Other Federal Agencies in Defining Purpose and Need. Other Federal agencies may have an independent responsibility to comply with NEPA for a transportation project. This responsibility arises when the project requires a permit or other approval from that agency. For example, if a project requires a Section 404 permit from the Corps, the Corps has an obligation to comply with NEPA before issuing the permit. Similarly, if a project requires a bridge permit from the Coast Guard, the Coast Guard must comply with NEPA before issuing that permit. Because these other Federal agencies have an independent responsibility to comply with NEPA, they are not required to adopt the purpose and need as defined by the transportation agencies. However, the CEQ has stated that non-transportation agencies should give "substantial deference" to transportation agencies' definition of a project's purpose and need.⁶

Agency and Public Involvement in Purpose and Need. The CEQ regulations themselves do not specifically require agency coordination or public involvement in the development of a purpose and need statement. However, this requirement does exist under Section 6002 (23 U.S.C. § 139) for any EIS prepared for a highway or transit project. Even in situations where Section 6002 does not apply, it is often prudent to provide an opportunity for involvement by agencies and the public—and it may be required under state laws or procedures.

Documenting the Purpose and Need. The CEQ has provided general direction regarding the format and length of a purpose and need statement.

- **Format.** The CEQ regulations define a "standard format" that calls for a separate chapter on purpose and need. According to the regulations, the standard format should be used for all EISs unless the agency finds a "compelling reason" to do otherwise.⁷ In recent years, FHWA has allowed the use of alternative formats in an effort to improve readability. As part of those efforts, FHWA has allowed EISs to be issued that do not have a separate chapter on purpose and need, as long as the necessary information is included and can be easily located in the document.
- **Length.** The CEQ regulations require only that an EIS "briefly specify" the purpose and need in an EIS. In addition, CEQ has encouraged brevity in discussions of purpose and need.⁸ However, while the purpose and need

⁴ *Federal Register*, Vol. 72, No. 30, Feb. 14, 2007, (23 C.F.R. Part 450, "Appendix A, Linking the Transportation Planning and NEPA Processes"), p. 7282.

⁵ FHWA & FTA, "Final Guidance: SAFETEA-LU Environmental Review Process" (Nov. 15, 2006), Response to Question 32 ("The lead agencies are responsible for the development of the project's purpose and need statement. . . . If the lead agencies do not agree, they must work out their differences because progress on stating the project's purpose and need, and other activities that depend on the statement of purpose and need will be stalled until the lead agencies agree.").

⁶ Letter from J. Connaughton, Chairman, Council on Environmental Quality, to N. Mineta, Secretary, U.S. Department of Transportation (May 12, 2003).

⁷ 40 C.F.R. § 1502.10(d).

⁸ See 40 C.F.R. § 1502.13 (requires EIS to "briefly specify" the underlying purpose and need); letter from J. Connaughton, Chairman, Council on Environmental Quality, to N. Mineta, Secretary, U.S. Department of Transportation (May 12, 2003) (notes discussion of purpose and need is "typically one or two paragraphs long").

usually can be summarized in a page or less, there are often good reasons for a purpose and need *chapter* to be considerably longer. For example, the information needed to demonstrate the existence of a need, or to justify reliance on decisions made in a previous study, often requires more than a single page. It is reasonable to use 15 pages as a general guide to the length of a purpose and need chapter in an EIS; for more complex projects, a longer chapter may be appropriate.

Court Decisions. NEPA litigation frequently involves challenges to an agency's determination of purpose and need. The courts' decisions in these cases provide general principles, but few specifics. The general thrust of the case law is that an agency has substantial discretion in determining a project's purpose and need, but should avoid defining the purpose so narrowly as to circumvent the NEPA requirement for alternatives analysis. The excerpts in Appendix A provide some samples of court decisions on these issues.

Range of Alternatives

Duty to Evaluate “All Reasonable Alternatives.” The CEQ regulations require an EIS to “rigorously explore and objectively evaluate all reasonable alternatives” and to “[d]evote substantial treatment to each alternative considered in detail . . . so that reviewers may evaluate their comparative merits.” The regulations also provide that “for alternatives which were eliminated from detailed study, [the EIS should] briefly discuss the reasons for their having been eliminated.”⁹ The requirement to consider “all reasonable alternatives” does not apply to an EA. It is necessary to consider alternatives in an EA, but the requirement for an EA is somewhat less stringent than the requirement for an EIS.

“All Reasonable” vs. “Reasonable Range.” The reference in the CEQ regulations to “all reasonable alternatives” implies—if taken at face value—that every reasonable alternative must be rigorously evaluated, no matter how many reasonable alternatives exist. However, in many cases, the number of potentially reasonable alternatives is very large or even infinite. The CEQ has addressed this issue in guidance, stating that a “reasonable range” of alternatives can be studied when the number of potentially reasonable alternatives is very large:

For some proposals, there may exist a very large or even an infinite number of possible reasonable alternatives. For example, a proposal to designate wilderness areas within a national forest could be said to involve an infinite number of alternatives from 0 to 100 percent of the forest. When there are potentially a very large number of alternatives, only a reasonable number of examples, covering the full spectrum of alternatives, must be analyzed and compared in the EIS. An appropriate series of alternatives might include dedicating 0, 10, 30, 50, 70, 90, or 100 percent of the forest to wilderness. What constitutes a reasonable range of alternatives depends on the nature of the proposal and the facts in each case.¹⁰

Therefore, despite the reference to “all reasonable alternatives” in the CEQ regulations, it is permissible to study a “reasonable range” of alternatives in an EIS. When relying upon this interpretation, it is important to ensure that the range of alternatives covers the “full spectrum” of potential reasonable alternatives.

What is a Reasonable Alternative. The CEQ regulations do not define a “reasonable” alternative. The CEQ's guidance states that “[i]n determining the scope of alternatives to be considered, the emphasis is on what is ‘reasonable’ rather than on whether the proponent or applicant likes or is itself capable of carrying out a particular alternative. Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant.”¹¹

Focus of Screening: Determining Reasonableness. The term “alternatives screening” is commonly used to refer to the process for reviewing a range of preliminary alternatives or concepts and deciding which ones to carry forward for detailed study. The primary function of an alternatives screening process is to determine reasonableness; that is, screening provides a means of separating the *unreasonable* alternatives (which can be eliminated without detailed study) from the *reasonable* alternatives (which must be carried forward for detailed study). If there are many reasonable alternatives, the screening process also can be used as the basis for defining a *reasonable range* that represents the full spectrum of reasonable alternatives.

⁹ 40 C.F.R. 1502.14.

¹⁰ CEQ, “Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations” (Mar. 16, 1981), Question 1b.

¹¹ CEQ, “Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations” (Mar. 16, 1981), Question 2a.

Factors to Consider in Screening Alternatives. Alternatives can be eliminated in the screening process based on any factor that is relevant to reasonableness. An alternative that does not meet the purpose and need is, by definition, unreasonable—and for that reason, it can be eliminated in the screening process. An alternative that *does* meet the purpose and need can still be rejected as unreasonable based on other factors, including environmental impacts, engineering, and cost. For example, if there are two alternatives that both meet the purpose and need to a similar degree, but one of them is much higher-impact and more costly, those factors can be cited as a basis for rejecting the higher-impact alternative as unreasonable.

Alternatives that Partially Meet Purpose and Need. Lead agencies frequently are asked to consider alternatives that “partially meet” the purpose and need. The agency’s obligation to consider such alternatives depends on how the purpose and need has been defined. If the project has two distinct purposes, each of which is considered primary (i.e., vital to the project), an alternative that clearly fails to meet one of those purposes is not reasonable and should be eliminated. The fact that an alternative meets one of the primary purposes does not make it a reasonable alternative. On the other hand, if an alternative satisfies the primary purpose or purposes of the project, but fails to satisfy some secondary purpose that is not essential to the project, then the alternative could be considered reasonable. This underscores the benefits of providing a clear statement of the essential elements of the purpose and need.

Range of Alternatives in an EA. The CEQ regulations state that an environmental assessment (EA) shall include a “brief discussion” of alternatives.¹² In general, courts have held that the alternatives analysis required for an EA is less rigorous than the alternatives analysis required for an EIS. Consideration of two detailed-study alternatives—the proposed action and a no-action alternative—is often sufficient in an EA, whereas an EIS typically requires a wider range of alternatives to be considered.

Court Decisions. A key principle in NEPA case law is that agencies and courts should apply a “rule of reason” when determining the appropriate range of alternatives considered in a NEPA document and the degree to which each alternative is considered.¹³ The rule of reason means, in essence, that both agencies and courts should apply common sense when determining the adequacy of an alternatives analysis. The explanation for eliminating an alternative must be reasonable and must be supported by factual information in the record. In some cases, this explanation can be brief; in others, a more extensive explanation is needed.

Practical Tips

This section provides suggestions for developing the purpose and need statement, and then applying the purpose and need statement, along with other factors, in the development and screening of alternatives. It is not intended to prescribe a specific format or approach. Rather, it draws on regulations, guidance, court decisions, and experience in the NEPA process to provide ideas and insights for practitioners to consider.

1 | Understanding the Legislative and Planning Context

The purpose and need of a NEPA document should not be developed on a blank slate. Rather, the purpose and need should be informed by policy direction provided in any applicable legislation and transportation plans.

Policy Established in Legislation. Courts have specifically recognized that Federal agencies can and should consider legislative direction when determining a project’s purpose.¹⁴ This legislative direction can take many forms. Some examples

¹² The CEQ regulations state that an environmental assessment “[s]hall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.” 40 C.F.R. § 1508.9(b). Section 102(2)(E) of NEPA does not specifically address EAs; in fact, NEPA does not mention EAs. Section 102(2)(E) requires Federal agencies to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” This general requirement has been interpreted by CEQ to require an analysis of alternatives in EAs.

¹³ See Appendix A to this Handbook for summaries of selected NEPA case law.

¹⁴ See Appendix A to this Handbook for summaries of selected NEPA case law.

include legislation that establishes or calls for establishing a regional system of highways, a specific highway corridor, or design criteria that must be met by highways within a given system, corridor, or functional class. Another example is legislation that calls for incorporation of transit or pedestrian facilities as part of highway projects. On a cautionary note, it is important to remember that the existence of project-specific legislation does not necessarily determine the project purpose; the lead agencies still must exercise judgment in the NEPA process when deciding whether, and to what extent, to incorporate legislative direction into the project purpose.

Policy Established in Transportation Plans. The transportation planning process can be used to establish transportation policies that inform the development of a project's purpose and need. As with legislation, the transportation planning process can provide policy direction for the NEPA process in many ways, such as designating networks or systems; defining performance goals; or defining the respective roles of highways and transit modes in meeting transportation needs. For example, if a state department of transportation (DOT) or metropolitan planning organization (MPO) has established targets for congestion reduction in a particular area, those targets could provide the basis for defining the need for transportation improvements on a specific roadway or in a specific corridor.

Corridor and Sub-Area Studies. In addition to establishing broad, systems-level policies and plans, the transportation planning process also can involve a more detailed study of a specific corridor or area. These studies—which are known as “corridor or sub-area studies” in FHWA’s recently revised planning regulations—can be used as the basis for defining the purpose and need and determining the range of alternatives for individual projects.¹⁵

2 | Determining the Needs

The “needs” section of the purpose and need chapter provides the factual foundation for the statement of project purpose. This section should describe the problems that the proposed action is intended to address and, to the extent possible, explains the underlying causes of those problems—for example, growth trends that have resulted in traffic congestion. The following suggestions address some of the topics that should be considered in deciding what data to include and how it should be presented. This discussion is not intended to be prescriptive or exhaustive.

Finding the Right Data. In developing the data for the purpose and need chapter, the key question for practitioners should not be “What type of data is available?” Rather, the key question is: “What type of data is *needed* to better understand the transportation conditions?” In many cases, obtaining the right data is a time-consuming task. For example, existing traffic models may need to be re-calibrated to reflect conditions in the study corridor; there may be gaps or inconsistencies in existing records; or data may not be available at a scale appropriate for the size of the study area. Overcoming these challenges is an important part of developing a sound purpose and need statement. The data in the purpose and need statement should be current, accurate, and *relevant* to the issues being considered.

Defining the “No Action” Condition. A defensible and consistent definition of the No Action scenario is essential to a sound assessment of the need for a project. The heart of this task is defining the conditions that will exist in the forecast year if the proposed action is not implemented. This involves making assumptions about (1) future land use and (2) the future transportation network. These assumptions should be carefully documented and explained in the project file, since they provide the underpinning for the definition of the need for the project. It is also helpful to describe the major elements of the No Action scenario in the EIS itself. This can be done by listing the key transportation improvements that are assumed to be in place in the forecast year under the No Action condition.

Forecast Year. There is no specific NEPA requirement regarding the time horizon that should be used in defining a project's purpose and need, but the typical period for highway projects is approximately 25 years from the initiation of the NEPA study.¹⁶ The forecast year should be specified in the purpose and need chapter, and should be used consistently throughout the EIS. In some cases, where a NEPA study takes considerably longer than expected, it may be appropriate to revise the forecast year (by moving it farther out). If this is done, the change should be explained in the document and should be implemented consistently.

¹⁵ See 23 C.F.R. §§ 450.212 and 450.318, and Appendix A to 23 C.F.R. Part 450.

¹⁶ This time horizon is consistent with a requirement that all projects on the Interstate System should be designed to meet traffic demands for a 20-year period following approval of plans, specifications, and estimates. See 23 U.S.C. § 109(b) (“The geometric and construction standards to be adopted for the Interstate System shall be those approved by the Secretary in cooperation with the State transportation departments. Such standards, as applied to each actual construction project, shall be adequate to enable such project to accommodate the types and volumes of traffic anticipated for such project for the twenty-year period commencing on the date of approval by the Secretary, under section 106 of this title, of the plans, specifications, and estimates for actual construction of such project.”).

Population and Employment Data. Transportation needs are often highly related to population and employment trends. While demographic trends themselves do not demonstrate that a specific transportation need exists, it can be helpful to include demographic trend data in the purpose and need chapter (or in the appendixes of the project file) as supporting information. For example, if a transportation project is intended to address growing congestion on a major thoroughfare in a rapidly growing area, it is helpful to include data showing population and employment growth trends over time along with projections for the future.

Land Use and Development Data. Land use trends also may inform the purpose and need for a transportation project. Land use data (e.g., tables or figures showing areas where high growth is occurring) help to illustrate the connection between broad regional changes and the specific needs that are being addressed by an individual project. For example, data on population and employment is often maintained at the county level. To help show the need for an improvement in a specific corridor, it is helpful to show specific areas within the county where that growth is concentrated.

Congestion Data. Many transportation projects are intended to relieve congestion on existing facilities. A range of measures can be used to demonstrate that a congestion need exists, such as levels of service (LOS), volume-to-capacity (V/C) ratios, and vehicle hours of delay. The key to demonstrating a congestion need is to use performance measures that are appropriate to conditions in the project area; the same set of measures will not apply to every project.

Safety Data. Like congestion, safety also is frequently identified as a need for transportation projects. In contrast to congestion, the tools available to establish a safety need are more limited. Typically, a safety need is demonstrated by comparing crash rates on a given facility to the statewide average for similar facilities. This measure provides a snapshot of existing conditions, not a forecast of future conditions. In addition, it may not fully reflect the nature or severity of incidents on a given roadway. If crash rates do not exceed the statewide average, yet there is a perceived safety need, it is important to consider other potential ways to quantify or describe the need for safety improvements.

Keeping the Data Current. Since the purpose and need statement is typically one of the first issues addressed in a NEPA study, the data used to establish the need can become stale as the NEPA process moves forward. The risk of staleness is especially great when a study encounters delays and ends up taking years longer than originally scheduled. Therefore, when a NEPA study is substantially delayed, it is important to consider updating the purpose and need data. It also is prudent to review the purpose and need any time there are substantial changes that could affect the need for a project, even if there has been no delay in the study.

Documenting Traffic Forecasts and Other Data. The methods used to develop traffic forecasts—including specific information about the traffic model version, the inputs to the model, and any adjustments made to the model—should be documented in the project file and summarized in the EIS. One effective approach is to prepare a traffic analysis technical report, which compiles the supporting documentation for the traffic forecasts in a single document. Documentation also should be prepared or compiled to support other data included in the purpose and need chapter, such as demographic forecasts.

3 | Defining the Project Purpose

The purpose and need statement should, above all, contain a clear statement of the project's purpose. This may seem self-evident, but, in fact, some purpose and need statements describe the proposed project, present data regarding various needs, and discuss the benefits of building the project without specifically stating its *purpose*. The lack of a clear purpose statement can impede the process of screening alternatives and also can complicate efforts to comply with Section 4(f) and Section 404. This section of the Handbook provides suggestions for drafting a purpose statement that is clear and concise, as well as legally defensible.

The Statement of Purpose. The purpose and need chapter should include—preferably early in the chapter—a clear and succinct statement of the project purpose. In many cases, the purpose can be stated in a single sentence. If a project has several distinct purposes, each purpose should be individually listed. The purpose statement should not be a laundry list of all the potential benefits of building a project, nor should it list every possible purpose that could conceivably apply to the project. The goal in drafting the purpose statement should be to define as sharply as possible the fundamental reasons why the project is being proposed.

Primary vs. Secondary Purposes. In many cases, a project serves multiple purposes. When that is the case, it may be helpful to distinguish between primary and secondary purposes.¹⁷

- A primary purpose is a “driver” of the project. In other words, it is a goal that reflects the fundamental reason why the project is being pursued. An alternative that does not achieve a primary purpose would be eliminated as unreasonable.
- Secondary purposes are additional purposes that are desirable, but are not the core purpose of the project. The secondary purposes would not, by themselves, provide a basis for eliminating alternatives in the screening stage, but could be considered as a factor in screening and could also be considered in selecting a preferred alternative. For example, if a project’s primary purpose is to reduce congestion, it may have secondary purposes such as improving safety and providing improved bicycle/pedestrian access.

Defining the Mode in the Purpose Statement. For many years, there has been a perception that a project purpose in a NEPA document cannot specify a particular transportation mode or facility type. Recent FHWA guidance clarifies that, if the groundwork is laid in the planning process, a project purpose can be defined in terms of a specific mode and a general project location.¹⁸ The guidance also notes that the use of these planning-level goals and choices must be appropriately explained during NEPA scoping and in the NEPA document.

Safety as a Purpose. Many transportation projects produce safety *benefits*, in the sense that completing the project will tend to reduce accident rates and/or the overall number of accidents. Yet, the potential for a safety benefit does not necessarily mean that safety is one of the *purposes* of the project. In general, safety should be included as a primary project purpose only where there is an identified safety *need*. Typically, a safety need exists where there is data demonstrating the existence of a safety problem—for example, an accident rate that exceeds the statewide average for similar roadways. Other types of data also can be used to demonstrate the existence of a safety problem.

Economic Development as a Purpose. Many transportation projects are proposed, at least in part, with the expectation that they will help promote economic growth. As with safety, the potential for an economic development *benefit* does not necessarily mean that economic development should be defined as a project *purpose*. In many cases, a more appropriate course of action is to express the project purpose in terms of the desired transportation outcome. For example, the purpose could be defined as *providing the transportation infrastructure needed* to support an economic development plan. By maintaining the focus on the transportation system, this approach avoids defining a purpose so broad that it would require consideration of a vast range of non-transportation alternatives for promoting economic development.

Environmental Protection as a Purpose. In general, the purpose and need should focus on the underlying reasons for proposing the transportation project, and, typically, those reasons are based on meeting a transportation need. Considerations that relate to the manner in which the project is carried out—such as minimizing environmental impacts—generally should be distinct from the purpose and need. This approach is supported by a report prepared for the Executive Order 13274 Task Force on purpose and need. The report states that “for the bulk of transportation projects, most staff across Federal agencies agreed that although environmental protection and community enhancement are important goals, these issues should not be a part of the purpose and need statement itself.”¹⁹

Defining “Goals and Objectives” as Distinct from “Purpose and Need.” As a way of communicating the full range of factors that will be considered in decision-making, it is possible to define a set of “goals and objectives,” which include the purpose and need, but also extend beyond it to provide a broader vision for the project. On a cautionary note, it is important to remember that the term “goals and objectives” has no established definition in NEPA regulations, guidance, or case law, and

¹⁷ This approach is supported by FHWA’s guidance on purpose and need, which states that “. . . it is important to determine the elements of the purpose and need which are critical to the project, as opposed to those which may be desirable or simply support it, the critical elements are those which if not met, at least to some minimal level, would lead to a ‘no-build’ decision. Determining critical needs could include policy decisions as well as technical considerations.” See FHWA, “Purpose and Need” in Environmental Documents” (Sept. 18, 1990).

¹⁸ *Federal Register*, Vol. 72, No. 30, Feb. 14, 2007, (23 C.F.R. Part 450, “Appendix A, Linking the Transportation Planning and NEPA Processes”), p. 7282. “A general travel corridor or general mode or modes (e.g., highway, transit, or a highway/transit combination) resulting from planning analyses may be part of the project’s purpose and need statement.”

¹⁹ E.O. 13274 Purpose and Need Work Group, “Baseline Report” (March 15, 2005). This report is available on the Center for Environmental Excellence by AASHTO web site at <http://environment.transportation.org>. E.O. 13274 is an Executive Order on “Environmental Stewardship and Transportation Infrastructure Project Reviews.”

this term may be used differently in different contexts.²⁰ Therefore, when this term is used, it is important to explain what “goals and objectives” are and how they relate to the purpose and need. If the goals and objectives play a role in the alternatives screening process, that role also should be explained and documented.²¹

Refining the Project Purpose During the NEPA Process. FHWA’s guidance on Section 6002 of SAFETEA-LU (23 U.S.C. § 139) allows public involvement and agency coordination to occur simultaneously—rather than sequentially—on a project’s purpose and need and range of alternatives.²² This means that purpose and need does not have to be “locked in” before the lead agencies can begin developing or screening alternatives; it is possible for purpose and need to evolve while alternatives are being screened, or even later in the NEPA process. However, it is important to recognize that substantial changes in purpose and need could require re-analysis of screening-level decisions on alternatives and re-initiation of the public and participating agency involvement. For that reason, it generally is desirable to resolve any significant outstanding issues regarding the purpose and need well before publication of the draft environment impact statement (DEIS), and ideally by the time a decision is made on the alternatives carried forward for detailed study.

Determining Ability to Meet Purpose and Need. When establishing that a need exists and defining a project purpose, it is important to consider this question: “How will we determine whether an alternative actually meets this purpose and need?” For some projects, there will be a clear-cut answer to that question—for example, an alternative meets the project purpose if it relieves congestion at a specific intersection in a certain forecast year. For other projects, especially larger and more complex ones that serve several purposes, the answers to this question will be less clear-cut. Even for those projects, it is helpful to begin identifying—during the development of the purpose and need—the criteria that will be used when evaluating the ability of alternatives to meet the purpose and need. These evaluation criteria, if identified, can be provided to agencies and the public for comment along with the proposed purpose and need.

4 | Screening Alternatives

The alternatives screening process involves reviewing a broad range of alternatives and selecting a more limited number that will be carried forward for detailed study in the EIS. The decisions made at this stage are among the most important in the NEPA process, and often are among the most difficult and most intensely disputed among agencies and stakeholders. The following suggestions are intended to provide a flexible framework for screening alternatives, while recognizing that these decisions will always require case-by-case judgments about the appropriate methodology and type of documentation.

Developing Screening Criteria. The alternatives chapter should introduce and explain the criteria used in the screening of alternatives. The alternatives screening criteria should address purpose and need, since an alternative that does not meet purpose and need is not reasonable and, therefore, should be eliminated in screening. However, an alternative that meets purpose and need still could be rejected as unreasonable on other grounds—for example, because it is not technically feasible or it will cause more adverse impacts without any additional benefit or advantage. The screening criteria should be comprehensive enough to include all of the factors that are relevant to evaluating the reasonableness of alternatives, not just factors related to purpose and need.

Types of Screening Criteria. Alternatives screening criteria can take many forms. Some criteria involve specific thresholds that allow for a clear-cut finding about each alternative. For example, if a project is intended to reduce congestion, alternatives could be screened based on their ability to achieve a specific level of service (e.g., Level of Service C) on certain roadways. In other cases, the screening criteria are more general (e.g., reducing congestion on a given corridor or facility). Both types of screening criteria can be acceptable).

Multi-Step Screening. One possible approach to screening—especially where the range of potential alternatives is very large—is to establish a multi-step process that involves a series of screens. This approach is sometimes described as a

²⁰ For example, Section 6002 of SAFETEA-LU (23 U.S.C. § 139) states that the “statement of purpose and need shall include a clear statement of the objectives that the proposed action is intended to achieve.” In this context, the term “objective” is used as a synonym for “purpose.”

²¹ For additional information on the use of “goals and objectives” in a purpose and need statement, refer to the E.O. 13274 Purpose and Need Work Group, “Baseline Report” (March 15, 2005). This report is available on the Center for Environmental Excellence by AASHTO web site at <http://environment.transportation.org>.

²² FHWA & FTA, “Final Guidance: SAFETEA-LU Environmental Review Process” (Nov. 15, 2006), Response to Question 37 (“The required involvement opportunities for purpose and need and range of alternatives may be concurrent or sequential. If the opportunities are concurrent, and if the purpose and need statement is substantially altered as a result of the public and participating agency involvement, then the lead agencies must consider whether an opportunity for involvement in the range of alternatives that derive from the new purpose and need is warranted.”).

“funnel” with a series of screens, which are applied sequentially as a way of gradually narrowing the range of alternatives under consideration. In general, the level of detail increases as the number of alternatives under consideration decreases. This approach allows for a very large group of alternatives to be narrowed down incrementally, with an increasing level of detail applied as the number of alternatives is reduced. If this approach is used, the steps in the screening process should be clearly explained in the NEPA document.

Documenting the Screening of Alternatives. The alternatives chapter of the EIS should summarize decisions made in the alternatives screening process and the reasons for those decisions. In addition, it is important to make sure that the screening analysis is fully documented elsewhere in the record. This documentation is often compiled in an alternatives screening report, which can be included in the EIS as an appendix or simply included as a technical report in the project files. Some important issues to cover in documenting the alternatives screening process include:

- Alternatives considered in screening;
- Screening criteria/methodology;
- Screening results; and
- Agency and public input into the screening process.

Addressing Late-Identified Alternatives. The potential for late-identified alternatives should be minimized by early coordination with the agencies, including the coordination required under 23 U.S.C. § 139. Even so, there may be cases where—due to new circumstances or new information—it becomes necessary to consider new alternatives late in the process, after screening decisions have been made. If this occurs, the potential new alternatives should be evaluated to determine if they warrant detailed study. In rare cases, a detailed evaluation of a late-identified alternative will be needed, resulting in a delay of the study. More often, it is only necessary to document the consideration of the alternative and the reasons for concluding that it did not warrant detailed analysis.

Re-evaluating Screening Decisions Later in the NEPA Process. Screening-level decisions can sometimes be called into question by developments that occur later in the NEPA process. Rather than treating screening as a completely “closed” issue, lead agencies should be alert for new circumstances or new information that call screening-level decisions into question. When this occurs, additional screening-level analysis should be performed and documented. For example, if an alternative is eliminated based on traffic forecasts showing that it is unable to meet purpose and need, that determination may need to be reviewed if a new traffic model is adopted by the MPO and there is reason to believe that the new model will produce different results. The key questions to consider are: “What were the critical assumptions or findings that led to the elimination of this alternative? Do those assumptions and findings remain valid?”

“Weighting and Rating” Alternatives in the Screening Process. One possible approach to screening alternatives is to develop a scoring system whereby each alternative is given a numerical rating in several different areas, weights are assigned to each, and then the weighted ratings are compiled to develop a single score for each alternative. This method can yield useful insights into the relative strengths and weaknesses of the alternatives. However, a lower score does not necessarily mean an alternative is unreasonable. In addition, the outputs of any scoring system are highly sensitive to the weights and ratings used in that system. These limitations should be considered in deciding whether to use a scoring system and how much weight to give to the results when such a system is used.

5 | Involving Agencies and the Public

The scoping process, which is required for every EIS, has always provided a forum for agencies and the public to provide input on the purpose and need and range of alternatives. In addition, many transportation agencies have adopted policies and procedures that involve coordination with agencies (and sometimes public involvement) on both purpose and need and the range of alternatives for EISs as well as EAs. In addition, many state DOTs have policies on Context Sensitive Solutions (CSS), which may call for early coordination with agencies and the public in defining the purpose and need and determining the range of alternatives.

Decision-Making Authority of Lead Agencies. Under Section 6002 of SAFETEA-LU, the lead agencies are responsible for defining the purpose and need and determining the range of alternatives in an EIS for a highway or transit project. In making this decision, the lead agencies must consider the input received from participating agencies and the public, but the decision

ultimately is made by the lead agencies. For a highway project, the lead agencies typically are FHWA and the state DOT; for a transit project, the lead agencies typically are the FTA and the transit operator. The lead agencies share this decision-making authority; if they cannot agree, the process does not move forward until the disagreement is resolved.

“Opportunity for Involvement” for Agencies and the Public. Section 6002 of SAFETEA-LU requires lead agencies to provide an “opportunity for involvement” for agencies and the public in defining purpose and need and determining the range of alternatives. The law leaves lead agencies with substantial flexibility in determining how to provide this opportunity, but does state that it must occur “as early as practicable” in the NEPA process—which implies, at minimum, that this opportunity must occur before the DEIS is published; it cannot simply be combined with the comment period on the DEIS. In guidance, FHWA and FTA have determined that the opportunity for involvement on purpose and need can occur simultaneously with the opportunity for involvement on the range of alternatives; they do not have to occur sequentially.

Relationship to Section 404 Requirements. Decisions made by FHWA and FTA in the NEPA process are not binding on the U.S. Army Corps of Engineers, which has its own independent responsibility to comply with NEPA and ensure that Section 404 requirements are met. The requirements of Section 404 are distinct from NEPA, and are more stringent in the sense that Section 404 requires selection of the practicable alternative that causes the least impact to aquatic resources. Therefore, it is prudent to engage the Corps early in the definition of the purpose and need and development of the range of alternatives; to formalize the Corps’ role, it is prudent for the Corps to be designated as a cooperating agency. Ideally, close coordination with the Corps will produce a common understanding of the project purpose and the range of alternatives, so that the Section 404 permitting process will not need to re-open issues considered by FHWA and/or FTA in the NEPA process. But because the Corps has an independent permitting role, the Corps has the ability to require consideration, or even selection, in the permitting process of an alternative that was dismissed without detailed study by the transportation agencies in the NEPA process.

Seeking “Concurrence” on Purpose and Need. FHWA guidance discourages the use of procedures that involve seeking “concurrence” from other agencies in the purpose and need. However, this guidance also recognizes that agencies with independent decision-making authority, such as the Corps when a Section 404 permit is needed, “have an independent responsibility to prepare a NEPA document” and also have a responsibility under Section 404 to define the project purpose. The FHWA guidance “strongly encourages” preparation of a single NEPA document that can satisfy both FHWA’s and the Corps’ NEPA responsibilities. As a practical matter, this means FHWA seeks to develop a purpose and need that is satisfactory to the Corps, but FHWA also maintains the flexibility to continue moving through the NEPA process even if the Corps has expressed reservations about the purpose and need.²³

Substantial Deference. The CEQ has issued guidance, in the form of a letter to U.S. DOT, stating that non-transportation agencies should give “substantial deference” to transportation agencies’ definition of a project’s purpose and need. In joint guidance, FHWA and FTA observed that “substantial deference” means that other Federal agencies “should only raise questions regarding our purpose and need statements when those questions relate to substantive or procedural problems (including omission of factors) important to that agency’s independent legal responsibilities.”²⁴

²³ See FHWA/FTA Guidance on “Purpose and Need” (July 23, 2003) (“Agreements that call for other agencies with no independent decision-making authority to ‘concur’ in FHWA and FTA purpose and need statements should be renegotiated or reinterpreted to mean that agencies are free to make supportive or adverse comments on the statement.”). The FHWA/FTA guidance on Section 6002 also addresses this issue. FHWA & FTA, “Final Guidance: SAFETEA-LU Environmental Review Process” (Nov. 15, 2006), Response to Question 6.

²⁴ Memorandum from M. Peters, FHWA Administrator, and J. Dorn, FTA Administrator, to FHWA Division Administrators and FTA Regional Administrators, “Guidance on ‘Purpose and Need’” (July 23, 2003).

REFERENCES

Statutes, regulations, and guidance documents cited in this Handbook, along with additional materials and sample documents, are available on the Center for Environmental Excellence by AASHTO web site: <http://environment.transportation.org>.

The Center for Environmental Excellence's Technical Experts are available to provide strategic environmental and focused environmental management technical advice. For more information the Center Technical Assistance Program (CTAP), please visit: http://environment.transportation.org/center/tech_experts/

Appendix A

Excerpts from Court Decisions Regarding Purpose and Need and Range of Alternatives under NEPA

General Principles

- “We uphold an agency’s definition of objectives so long as the objectives that the agency chooses are reasonable, and we uphold its discussion of alternatives so long as the alternatives are reasonable and the agency discusses them in reasonable detail.” *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1990).
- “We realize, as we stated before, that the word “reasonable” is not self-defining. Deference, however, does not mean dormancy, and the rule of reason does not give agencies license to fulfill their own prophecies, whatever the parochial impulses that drive them. Environmental impact statements take time and cost money. Yet an agency may not define the objectives of its action in terms so unreasonably narrow that only one alternative from among the environmentally benign ones in the agency’s power would accomplish the goals of the agency’s action, and the EIS would become a foreordained formality. Nor may an agency frame its goals in terms so unreasonably broad that an infinite number of alternatives would accomplish those goals and the project would collapse under the weight of the possibilities.” *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1990).
- “Once an agency has considered the relevant factors, it must define goals for its action that fall somewhere within the range of reasonable choices. We review that choice, like all agency decisions to which we owe deference, on the grounds that the agency itself has advanced.” *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1990).
- “The stated goal of a project necessarily dictates the range of ‘reasonable’ alternatives and an agency cannot define its objectives in unreasonably narrow terms.” *City of Carmel-by-the-Sea v. U.S. DOT*, 123 F.3d 1142, 1155 (9th Cir. 1997).
- “NEPA’s injunction that agencies consider the environmental impacts of ‘all reasonable alternatives’ does not substantively constrain an agency’s choice of objectives; to the contrary, it is those very objectives [i.e., the agency’s] that provide the point of reference for a determination whether an alternative is ‘reasonable’ in the first place.” *City of Alexandria v. Slater*, 198 F.3d 862, 867–86 (D.C. Cir. 1999).
- “The scope of reasonable alternatives that an agency must consider is shaped by the purpose and need statement articulated by that agency. The [agency] must consider all reasonable alternatives within the purpose and need it has defined.” *Ilio’Ulaokalani Coalition v. Rumsfeld*, 464 F.3d 1083, 1097 (9th Cir. 2006).
- “[W]e remain mindful that an agency decision concerning which alternatives to consider is necessarily bound by a rule of reason and practicality. . . . An agency need not analyze the environmental consequences of alternatives it has in good faith rejected as too remote, speculative, . . . impractical or ineffective.” *Airport Neighbors Alliance, Inc. v. United States*, 90 F.3d 426, 432 (10th Cir. 1996).
- “Courts have afforded agencies considerable discretion to define the purpose and need of a project. Preparing an EIS necessarily calls for judgment, and that judgment is the agency’s. However, this discretion is not unlimited. Courts evaluate a Statement of Purpose and Need under a reasonableness standard.” *Westlands Water Dist. v. U.S. Department of the Interior (DOI)*, 376 F.3d 853, 866 (9th Cir. 2004) (internal citations omitted)
- “Because the stated goal of a project dictates the range of reasonable alternatives, a court must first determine whether the purpose and need statement for the agency action was reasonable. . . . A purpose and need statement will be considered unreasonable if the agency defined its objectives in unreasonably narrow terms. As noted by the D.C. Circuit, ‘an agency may not define the objectives of its action in terms so unreasonably narrow that only one alternative . . . would accomplish the goals of the agency’s actions, and the EIS [or EA] would become a foredoomed [sic] formality.’” *Env’tl. Prot. Info. Ctr. v. Blackwell*, 389 F. Supp. 2d 1174, 1199 (N.D. Cal. 2004).
- “Plaintiffs claim that the Federal Defendants violated NEPA by setting forth a statement of purpose and need that effectively eliminated any alternative that did not include timber harvest as part of the Project. . . . [T]he statement of purpose in this case, while it presupposes an element of logging, does not restrict the Project to logging at a minimum number of board feet or engaging in a particular transaction. Rather, the statement of purpose leaves considerable room for the development of alternatives with varying degrees of timber harvest. In fact, a review of the harvest alternatives reveals that the amount of logging under the alternatives ranged from 1521 acres . . . to 3384 acres. . . . Given the nature of the statements held reasonable under *Muckleshoot* and *Friends* [two previous court decisions], this court holds that the statement of purpose and need in this case was also reasonable.” *Kettle Range Conservation Group v. U.S. Forest Service*, 148 F. Supp. 2d 1107, 1117 (9th Cir. 2001).

Legislation

- “Frequently, a pertinent guide for identifying an appropriate definition of an agency’s objective will be the legislative grant of power underlying the proposed action. . . . Statutory objectives provide a sensible compromise between unduly narrow objectives an agency might choose to identify to limit consideration of alternatives and hopelessly broad societal objectives that would unduly expand the range of relevant alternatives. We implicitly endorsed the pertinence of statutory objectives in ruling that an agency need not consider ‘alternatives which could only be implemented after significant changes in government policy or legislation.’” *New York v. U.S. DOT*, 715 F.2d 732, 743 (2d Cir. 1983).
- “Where an action is taken pursuant to a specific statute, the statutory objectives of the project serve as a guide by which to determine the reasonableness of objectives outlined in an EIS.” *Westlands Water Dist. v. U.S. DOI*, 376 F.3d 853, 866 (9th Cir. 2004) (internal citations omitted)
- “. . . an agency should always consider the views of Congress, expressed, to the extent that the agency can determine them, in the agency’s statutory authorization to act, as well as in other congressional directives. . . .” *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1990).
- “We are satisfied that the agencies have met NEPA’s ‘hard look’ requirement and that they have adequately supported their determination that the IRA [improved roadway alternative] would not advance Congress’s goal of providing West Virginia with the ‘basic facilities’ essential for its economic growth. See Appalachian Regional Development Act of 1965, 40 U.S.C. app. § 2(a). In section II of the [EIS], entitled ‘Alternatives Considered,’ the WV DOT reviewed the merits and deficiencies of five alternatives, including the No Build Alternative, the four-lane Build Alternative, and the IRA in light of Congress’s objective of developing a regional highway system and the design standards established for the system by the Appalachian Regional Commission. In its review of the IRA, the WV DOT discussed in detail the reasons why that alternative could not adequately address issues such as roadway deficiencies, safety considerations, and regional system linkage. We therefore defer to the agencies’ decision to proceed with the four-lane Build Alternative.” *Corridor H Alternatives v. Slater*, 166 F.3d 368, 374 (D.C. Cir. 1999).
- “In some cases an alternative may be reasonable, and therefore required by NEPA to be discussed in the EIS, even though it requires legislative action to put it into effect. But in deciding whether an alternative is reasonable, we may certainly take into account the strength and vitality of legislation that forbids it. ‘We do not suppose Congress intended an agency to devote itself to extended discussion of the environmental impact of alternatives so remote from reality as to depend on, say, the repeal of the antitrust laws.’” *Kilroy v. Ruckelshaus*, 738 F.2d 1448, 1454 (9th Cir. 1984).

Project Sponsor Objectives

- “When an agency is asked to sanction a specific plan, the agency should take into account the needs and goals of the parties involved in the application.” *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1990).
- “The statement of a project’s purpose and need is left to the agency’s expertise and discretion, and we defer to the agency if the statement is reasonable. The reasonableness of a given statement of purpose and need depends first on the nature of the proposed Federal action. Here, the [agency] prepared the EIS to consider the environmental impacts of its approval of a proposal sponsored from outside the agency. In this situation, the project sponsor’s goals play a large role in determining how the purpose and need is stated. At the same time, the goals that Congress has set for the agency must also figure into the formulation of the statement.” *Alliance for Legal Action v. Federal Aviation Administration*, 2003 U.S. App. LEXIS 13845, ** 12 (4th Cir. 2003) (internal citations omitted).
- “An agency cannot restrict its analysis to those alternative means by which a particular applicant can reach his goals. This is precisely what the [agency] did in this case. The [agency] has the duty under NEPA to exercise a degree of skepticism in dealing with self-serving statements from a prime beneficiary of the project. And that is exactly what the [agency] has not shown in its wholesale acceptance of [the applicant’s] definition of purpose.” *Simmons v. U.S. Army Corps of Engineers*, 120 F.3d 664, 668 (7th Cir. 1997).

Environmental Goals in a Purpose and Need Statement

- “The proper question to ask at the outset of a NEPA inquiry is not whether the Administration focused on environmental goals but rather . . . whether its stated objectives were reasonable. It seems rather obvious to us that it is not unreasonable in articulating its objectives for an agency to ‘focus primarily on transportation and safety issues’ when replacing a massively congested and structurally unsound bridge.” *City of Alexandria v. Slater*, 198 F.3d 862, 867-86 (D.C. Cir. 1999).

Performance Thresholds

- “Level of Service C is not an unreasonable goal; nothing about this selection is either arbitrary or capricious. . . . A route achieving Level of Service C would significantly alleviate traffic congestion, reduce accidents and achieve other transportation goals. Thus even if not mandated, a project attaining Level of Service C is a legitimate goal if balanced against competing factors.” *City of Carmel-by-the-Sea v. U.S. DOT*, 123 F.3d 1142, 1156–57 (9th Cir. 1997).

Examples of Overly Narrow Purpose

- “The record here suggests potentially viable alternatives of expanding east-west traffic capacity across the Jordan River at 9800 South, 10600 South, and 12300 South. Thus, if the purposes and needs of the Project were so narrowly construed as to mandate the extra capacity only at 11400 South, we would conclude that such a narrow definition would be contrary to the mandates of NEPA.” *Davis v. Mineta*, 302 F.3d 1104, 1119–20 (10th Cir. 2002).

Relationship between NEPA and Section 404 Range of Alternatives

- “Under CWA [Clean Water Act], the test is not whether a proposed project is ‘better’ than an alternative with less wetlands impact because it would cost less and have less impact on existing and future development. The test is whether the alternative with less wetlands impact is ‘impracticable,’ and the burden is on the [applicant], with independent verification by the COE, to provide detailed, clear and convincing information *proving* impracticability.” *Utahns for Better Transportation v. U.S. DOT*, 305 F.3d 1152, 1186 (10th Cir. 2002).
- “The CWA test is not, however, whether features of a proposal would make a more desirable project. Rather the Applicant and the COE are obligated to determine the feasibility of the least environmentally damaging alternatives that serve the basic project purpose. If such an alternative exists—like a highway configuration that is much narrower because it dispenses with the amenities—then the CWA compels that the alternative be considered and selected unless proven impracticable.” *Utahns for Better Transportation v. U.S. DOT*, 305 F.3d 1152, 1188–89 (10th Cir. 2002).

Number of Alternatives

- “The statutory and regulatory requirements that an agency must consider ‘appropriate’ and ‘reasonable’ alternatives does not dictate the minimum number of alternatives that an agency must consider. . . . To the extent that [the plaintiff] is complaining that having only two final alternatives—no action and a preferred alternative—violates the regulatory scheme, a plain reading of the regulations dooms that argument. So long as ‘all reasonable alternatives’ have been considered and an appropriate explanation is provided as to why an alternative was eliminated, the regulatory requirement is satisfied. In short, the regulation does not impose a numerical floor on alternatives to be considered.” *Native Ecosystems Council v. U.S. Forest Service*, 428 F.3d 1233, 1246 (9th Cir. 2005).

Range of Alternatives in an EA

- “In undertaking this analysis, we join our sister circuits in holding that an agency’s obligation to consider alternatives under an EA is a lesser one than under an EIS. In rejecting any alternatives, the agency must only include ‘brief discussions of the need for the proposal, of alternatives required by [42 U.S.C. § 4332(2)(E)], of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.’ 40 C.F.R. § 1508.9(b)”. *Native Ecosystems Council v. U.S. Forest Service*, 428 F.3d 1233, 1246 (9th Cir. 2005).
- “Though we have required an agency to give some consideration to alternatives even though preparation of an EIS is not required, . . . it remains something of an anomaly to insist that an agency assess alternatives for an action that it has determined will not have a ‘significant’ effect on the environment. . . . But even accepting the teaching of *Hanly* [a prior court decision], as we must, we are of the view that an agency’s finding of no significant impact, if otherwise valid, permits the agency to consider a narrower range of alternatives than it might be obliged to assess before undertaking action that would significantly affect the environment.” *New York v. U.S. DOT*, 715 F.2d 732, 743 (2d Cir. 1983).

ADDITIONAL RESOURCES

PRACTITIONER'S GUIDES AVAILABLE FROM THE CENTER FOR ENVIRONMENTAL EXCELLENCE BY AASHTO:

- 01 Maintaining a Project File and Preparing an Administrative Record for a NEPA Study
- 02 Responding to Comments on an Environmental Impact Statement
- 03 Managing the NEPA Process for Toll Lanes and Toll Roads
- 04 Tracking Compliance with Environmental Commitments/Use of Environmental Monitors
- 05 Utilizing Community Advisory Committees for NEPA Studies
- 06 Consulting Under Section 106 of the National Historic Preservation Act
- 07 Defining the Purpose and Need and Determining the Range of Alternatives for Transportation Projects

For additional Practitioner's Handbooks, please visit the Center for Environmental Excellence by AASHTO web site at: <http://environment.transportation.org>

Comments on the Practitioner's Guides may be submitted to:
Center for Environmental Excellence by AASHTO
444 North Capitol Street, N.W., Suite 249
Washington, DC 20001
Telephone: 202-624-5800
E-mail: environment@aahto.org
Web site: <http://environment.transportation.org>

