



# **Tennessee Environmental Streamlining Agreement**

*for the Environmental and Regulatory  
Coordination of Transportation Projects*

## **Overall Agreement**

**January 2014**

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## 1.0 Overview

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### 1.1 Introduction

Interagency coordination regarding environmental resource issues takes place in a very complex administrative arena defined by many Federal, State and Local laws, ordinances and regulations. This has resulted in overlapping jurisdictions and some duplication of effort causing increased costs and time delays for transportation projects.

Beginning in 2004, a series of workshops were conducted by the Tennessee Department of Transportation (TDOT) and the Federal Highway Administration, Tennessee Division (FHWA) to discuss improved interagency coordination and better integration of the resource/regulatory agencies and Metropolitan Planning Organizations (MPOs) throughout the transportation project development process. These workshops, attended by representatives of the involved agencies and MPOs, provided a forum to discuss opportunities for better coordination.

Federal and State legislation and regulations provide the basic statutory authority for all signatory agencies to enter into this Agreement and are incorporated herein by reference. A list of applicable laws and regulations are discussed in Chapter 1 of the [Tennessee Environmental Procedures Manual](#) and are listed in [Appendix C](#) of that document.

In a May 1, 1992 memorandum, entitled "Implementation of the Intermodal Surface Transportation Act", the U.S. Department of Transportation, the United States Department of Army – Civil Works and the United States Environmental Protection Agency adopted as agency policy:

- A. Improved interagency coordination, and
- B. Integration of the National Environmental Policy Act (NEPA) and the Clean Water Act Section 404 procedures.

In June 1998, the Transportation Equity Act for the 21st Century (TEA-21), Section 1309, promoted a coordinated environmental review process that ensures, whenever practicable, that *"all environmental reviews, analyses, opinions, and any permits, licenses, or approvals that must be issued or made by any Federal agency for the project concerned shall be conducted concurrently and completed within a cooperatively determined time period."*

On August 10, 2005, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) was signed into law. Section 6002 of SAFETEA-LU, codified as 23 USC 139, established a new environmental review process for highways, transit and multimodal projects. As part of this law, a new category of "participating agencies" was added to allow more State, Local and Tribal agencies a formal role and rights in the environmental process. In addition, the law requires the lead agencies to provide an opportunity for public and interagency involvement in defining the purpose and need of a project and required the establishment of a plan for coordinating public and agency participation. Finally, the law required the lead agencies to provide an opportunity for public and agency involvement in the development of a range of alternatives to be considered for a project and for agency involvement in developing the methodologies, or study approach, for establishing the baseline conditions required for the comparison and analysis of alternatives as early as practicable in the process.

The Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21) was signed into law on July 6, 2012. The new transportation act provides funding for the surface transportation program for fiscal years 2013 and 2014 (these two Federal fiscal years cover the period from October 1, 2012 through September 30, 2014). A major focus of the act is to accelerate project delivery, and to that end the act contains a number of provisions addressing the environmental review process.

The environmental provisions in MAP-21 that are applicable to the TESA process are:

- A. Section 1302 – Advance Acquisition of Real Property Interests  
This section substantially broadens the flexibility for states to acquire real property prior to completing the NEPA process for the planned project. States must certify to a number of conditions in order to use Federal funds to carry out early acquisition, including the condition that the early acquisition will not limit the choice of reasonable alternatives for the project.
- B. Section 1305 – Efficient Environmental Reviews  
Among the provisions is the requirement of concurrence of participating agencies for the project schedule if a schedule is included in the coordination plan.
- C. Section 1306 – Issue Resolution  
This section strengthens the previously established issue resolution and elevation process in the event of disputes.
- D. Section 1309 – Complex Environmental Impact Statements (EISs)  
For EISs that have been underway for more than two years since the Notice of Intent (NOI) and have not received a decision, FHWA must provide additional technical assistance if requested by the project sponsor or State Governor, and establish a schedule for completing permits and approvals, within four years of the NOI. The schedule will require the concurrence of the Council on Environmental Quality (CEQ) and participating agencies.
- E. Section 1319(a) – The Errata Sheet Approach  
This section reflects the current CEQ and FHWA guidance regulations allowing the use of errata sheets in-lieu of a traditional Final Environmental Impact Statement (FEIS) when comments received on a DEIS are minor, and the lead agency's responses to those comments are limited to factual corrections or explanations of why the comments do not warrant further response.
- F. Section 1319(b) – Single Final EIS and ROD Document  
This section directs, to the maximum extent practicable, that a single document be developed that consists of a FEIS and Record of Decision (ROD), unless certain conditions exist. The errata sheets and the FEIS/ROD provisions may be used together.

In late 2012 and early 2013, given the changes resulting from MAP-21 and the number of projects that have gone through the process or are currently undergoing review, TDOT initiated an update of the Agreement. Representatives of the involved agencies were interviewed and meetings were held to discuss updates/changes to the Agreement. The result of these meetings and discussions is this updated version of the *Tennessee Environmental Streamlining Agreement for the Environmental and Regulatory Coordination of Transportation Projects*, herein after referred to as TESA or the Agreement.

## 2.0 Purpose

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### 2.1 Purpose of the Agreement

The purpose of this Agreement is to establish a coordinated planning and project development process for transportation projects in Tennessee in order to ensure significant agency, MPO, and Rural Planning Organization (RPO) participation and involvement early and throughout the project development process. Although the agencies that participate in the process to develop and implement transportation projects operate under different and varied regulations, the common responsibility of all agencies is service and accountability to the public.

The approach and procedures outlined in this Agreement will be used to:

- A. Improve cooperation, consultation, and efficiency of governmental agencies involved in the environmental and regulatory processes of transportation projects,
- B. Allow documentation developed by FHWA and TDOT, in compliance with NEPA, to serve as a substantial part of the documentation required by other permitting and funding agencies in accordance with applicable laws and regulations,
- C. Streamline the NEPA process as it relates to other environmental legislation, such as, but not limited to, the Endangered Species Act, the Fish and Wildlife Coordination Act, the National Historic Preservation Act and the Department of Transportation Act,
- D. To the greatest degree practicable and consistent with applicable statutes and regulations, coordinate the process for compliance with NEPA requirements and compliance with Section 404 of the Clean Water Act, Section 401/State water quality certification, the Aquatic Resource Alteration Permit (ARAP), and the Endangered Species Act requirements,
- E. Link the information generated from the transportation planning process to the NEPA process,
- F. Implement the environmental stewardship and environmental review process improvements established for highways, transit and multimodal projects in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU),
- G. Implement the environmental process outlined in the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21) in order to accelerate project delivery and promote innovation in the timely delivery of transportation projects.
- H. Serve as the documented process for accomplishing the project development coordination functions and public involvement functions called for under Section 106 of the National Historic Preservation Act, and
- I. To the greatest degree practicable and consistent with applicable statutes, regulations and guidance, coordinate the process for compliance with requirements of the Clean Air Act, including transportation conformity and interagency consultation as specified in Tennessee's Conformity State Implementation Plan and 40 CFR Part 93. This agreement in no way replaces the approved interagency consultation procedures related to the development and adoption/approval of transportation plans, programs, and individual projects for the purposes of transportation conformity.

Ultimately, this streamlined environmental process is intended to achieve the timely and efficient identification, evaluation and resolution of environmental and regulatory issues. This Agreement establishes "one decision-making process" to identify and address agency issues at four (4) key points, termed concurrence points, during the planning and NEPA process for transportation projects.

Through early identification of agency issues, when the greatest flexibility exists to address these concerns, this process is intended to ensure that basic issues concerning project purpose and need, study area and the definition of the range of alternatives can be resolved prior to the review of a draft environmental document. The utilization of this process will allow the draft document to be focused on addressing outstanding public and agency concerns regarding avoidance, minimization and mitigation.

These procedures are intended to be flexible and adaptable and may be revised from time to time to achieve further improvements in the overall planning and project development process. In addition, FHWA and TDOT, with the involvement of other signatories, may choose to adopt supplemental procedures, in the context of a particular project, without modifying this agreement. Lastly, these procedures are intended only as guidance and in no way create any new binding legal requirements, nor any enforceable legal rights or obligations on the part of FHWA, TDOT, or any other party.

### **2.2 Anticipated Benefits of the Process**

The process embodied in this agreement is intended to:

- A. Provide opportunities for increased environmental protection and improve and enhance the natural, physical and social environment throughout the State,
- B. Facilitate more realistic and predictable transportation projects, schedules and budgets,
- C. Allow better use of agency resources by reducing duplication of efforts,
- D. Provide for early involvement of resource and regulatory agencies and the public in the TDOT project scoping and development processes,
- E. Provide for joint-agency evaluation and early identification of resource agency interests/issues,
- F. Provide program continuity and a consistent statewide approach for developing projects,
- G. Maximize the probability of the project receiving the appropriate permits and approvals from the resource agencies,
- H. Maximize the quality of the environmental document and process,
- I. Integrate the information and products developed in the highway and transit planning process into the NEPA process, and
- J. Streamline the environmental permitting process while providing early consultation with resource and regulatory agencies for the purpose of problem solving and conflict prevention.

## 3.0 Applicability

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### 3.1 Transportation Projects

The process outlined in this Agreement applies to all transportation construction projects administered by TDOT, regardless of project funding source, requiring an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) under NEPA, or all major transportation construction projects requiring a Tennessee Environmental Evaluation Report (TEER). In addition, in keeping with the goals of MAP-21 to expedite project delivery, TDOT, in consultation with FHWA (for Federally funded projects) and other signatories, may determine that certain projects requiring a Categorical Exclusion (CE) or Minor TEER may benefit from inclusion in the TESA process.

TDOT and FHWA, in consultation with other signatory agencies, retain the ability to decide whether a project that meets the criteria listed above does not warrant involvement in the streamlining process due to minimal adverse impacts. In addition, TDOT and FHWA, in consultation with other signatory agencies, retain the ability to decide whether a project that does not meet the criteria listed above warrants involvement in the streamlining process due to a potential for adverse impacts. TDOT and FHWA will coordinate with the other signatory agencies regarding the inclusion or exclusion of projects from the TESA process.

### 3.2 Parties to the Agreement

Signatory agencies to this Agreement are the:

- Tennessee Department of Transportation (TDOT)
- Federal Highway Administration, Tennessee Division (FHWA)
- US Army Corps of Engineers, Nashville District (USACE – Nashville District)
- US Army Corps of Engineers, Memphis District (USACE – Memphis District)
- US Fish and Wildlife Service (USFWS)
- Tennessee Valley Authority (TVA)
- Tennessee Department of Environment and Conservation (TDEC)
- Tennessee Wildlife Resources Agency (TWRA)

Conditional signatory agencies to this Agreement are the:

- Tennessee Historical Commission/State Historic Preservation Office (Tennessee SHPO)
- US Department of Homeland Security (DHS), US Coast Guard (CG)

The conditional agreement procedures with the Tennessee SHPO and the CG are outlined in [Appendix B](#).

Metropolitan Planning Organizations (MPOs) are not signatory to the TESA Overall Agreement but are invited to participate in projects affecting their jurisdiction.

- Bristol Metropolitan Planning Organization
- Chattanooga-Hamilton County Regional Planning Agency
- Clarksville Urbanized Area Metropolitan Planning Organization
- Cleveland Urban Area Metropolitan Planning Organization
- Jackson Area Metropolitan Planning Organization
- Johnson City Metropolitan Transportation Planning Organization
- Kingsport Metropolitan Transportation Planning Organization
- Knoxville Regional Transportation Planning Organization
- Lakeway Area Metropolitan Transportation Planning Organization
- Memphis Urban Area Metropolitan Planning Organization
- Nashville Area Metropolitan Planning Organization

Rural Planning Organizations (RPOs) are not signatory to the TESA Overall Agreement but are invited to participate in projects affecting their jurisdiction.

- East Tennessee North
- East Tennessee South
- First Tennessee
- Middle Tennessee Regional
- West Tennessee
- Northwest Tennessee
- South Central Tennessee East
- South Central Tennessee West
- Southeast Tennessee
- Southwest Tennessee
- Center Hill
- Dale Hollow

### **3.3 Lead Agencies**

Both FHWA and TDOT will act as co-lead agencies for all Federal-aid transportation projects, funded under Title 23 United States Code, developed under this agreement. Other interested Federal, State, or Local agencies may be considered for Joint Lead Agency status upon request.

The lead agencies are responsible for NEPA compliance for transportation projects. Unless otherwise agreed in writing, FHWA will be the Federal lead agency, and TDOT will be the co-lead State agency, responsible for supervising preparation of the environmental documents required for all Federal-aid projects, or projects requiring a FHWA approval. Unless otherwise agreed in writing, TDOT will be the lead agency responsible for supervising preparation of the environmental documents required for all State-aid projects.

### **3.4 Signatory Agencies**

A signatory agency is any agency that is signatory to this Agreement. Signatory agencies are not required to participate in every project, only in those projects that affect their area of jurisdiction, expertise or interest.

### **3.5 Cooperating Agencies**

A cooperating agency is any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment.

### **3.6 Participating Agencies**

A participating agency is any Federal, State, Tribal, Regional, and Local government agency that agrees to participate in the environmental process as outlined in this Agreement. Upon receiving a notice of project initiation from TDOT, agencies must decide whether to become participating agencies in the environmental review process for an individual project. Participating agencies may include signatory agencies, cooperating agencies and agencies not party to this Agreement. Accepting the designation as a participating agency does not indicate project support and does not provide an agency with increased oversight or approval authority beyond its statutory limits.

### **3.7 Parameters of Participation**

Regulatory/Resource agency participation in this process, and their concurrence with any of the four (4) concurrence points, does not imply endorsement of all aspects of a transportation plan or project. Nothing in this Agreement or its appendices is intended to diminish, modify, or otherwise affect the statutory or regulatory authorities of the agencies involved. Nothing in this Agreement or its appendices shall be construed to limit any government agency with jurisdiction from considering and responding to public comments received in any required environmental review or regulatory process related to individual projects.

Nothing herein is intended to conflict with current TDOT or regulatory agencies' directives or authorization. If any terms of this Agreement are inconsistent with existing or future directives or authority of any agency entering into this Agreement, those portions of this Agreement that are determined to be inconsistent shall be invalid; the remaining terms and conditions shall remain enforce. At the first opportunity for review of the agreement, all necessary changes will be accomplished by either an amendment to this agreement or by entering into a new agreement, whichever is deemed expedient to the interest of all parties. Any activity by the respective agencies in implementing this Agreement is subject to the availability of funds, resources and agency directives.

### **3.8 TESA Companion Guide**

A TESA Companion Guide has been developed to establish Standard Operating Procedures (SOPs) for concurrence points, field and meeting protocols, and communication for the purpose of streamlining the TESA process and achieving regulatory and environmental compliance. TDOT, in consultation with the signatory agencies, may update and revise the guide to reflect changes in the TESA process or new protocols.

## 4.0 Concurrence Process

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### 4.1 Concurrence

The streamlined environmental review process will be based on joint interagency decision-making in regular meetings, with the ultimate goal of gaining concurrence from participating agencies that the information presented is adequate and that the project can be advanced to the next stage of project development. Each agency agrees to work collaboratively in an open and transparent atmosphere that promotes streamlining of the NEPA process while ensuring environmental and regulatory protection. All participating agencies will be allowed the opportunity to explain their jurisdiction and interests and seek to understand the interests of others. The decision on whether or not to concur at a certain point should be based on a full understanding of the issues and relative tradeoffs associated with the final decision. Ultimately, though, each individual participating agency must make a decision of whether or not to concur at each concurrence point.

Any agency, including signatory agencies, cooperating agencies and agencies not party to this Agreement, may ask to be a participating agency for a specific project. It is the responsibility of the individual agencies to participate in interagency meetings and to provide input at the concurrence points. It is agreed that the statements and concurrences made by the appointed agency personnel represent the agency's stance, as opposed to statements and concurrence of an individual.

The concurrence points are designed to demonstrate the streamlining process in a cross-agency technical review that provides for transparent collaboration of complex issues of transportation projects, while providing obtainable solutions that ensure environmental protections. The concurrence process does not waive, diminish, modify or otherwise affect a participating agency's statutory or regulatory requirements and does not preclude any subsequent permit determinations or conditions.

### 4.2 Concurrence Points

A concurrence point is a point within the environmental review process where the lead agency requests formal concurrence and the participating agencies provide concurrence or nonconcurrence at that stage before proceeding to the next step. The intent of the concurrence points in the process is to achieve general agreement between agencies before a decision is made on the following concurrence point and to preclude the routine revisiting of decisions that have been agreed to earlier in the process.

This Agreement establishes four (4) concurrence points in the environmental review process:

1. Purpose and Need and Study Area
2. Project Alternatives to be Evaluated in the Environmental Document
3. Preliminary Draft Environmental Document and Preliminary Mitigation
4. Draft Final Mitigation

### 4.3 Interagency Consultation

To support and encourage interagency cooperation and consultation, TDOT will hold quarterly (or, as needed) meetings for all participating agencies to cooperatively discuss ongoing transportation projects and programmatic topics. The projects to be discussed will be in various stages of the environmental review process. The meetings will also afford the participating agencies an opportunity to mutually decide whether a project will go through the full Environmental Review Process (Section 5.0). The quarterly TESA meetings will normally be face-to-face meetings, held at a TDOT facility. Face-to-face meetings provide for a more open and personal discussion and offer additional opportunities before and after the meeting for representatives to discuss other project and program issues. On occasion, when topics do not merit a face-to-face meeting and at the discretion of TDOT and the signatory agencies, TESA meetings may be conducted by teleconference.

When TDOT determines that sufficient technical information is available, an agency review package will be sent to each participating agency with a request for concurrence. Agencies will be responsible for reviewing the package provided and notifying TDOT within 15 calendar days if it does not contain all necessary information pertaining to the corresponding concurrence point. Upon notification, TDOT will provide an updated package to all participating agencies within 10 calendar days. All participating agencies will provide a response within 45 calendar days of the original receipt of a request for concurrence. Participating agencies will provide their comments in writing, stating concurrence or nonconcurrence for each concurrence point. TDOT will issue a reminder to all participating agencies at least 14 calendar days prior to the 45 day deadline.

At the end of the 45 day period, TDOT will either receive a concurrence, a non-concurrence, a request for a review time extension, or a request for cessation of formal concurrence from each participating agency. Unless an extension is requested, TDOT will assume concurrence from all participating agencies that do not respond within the 45 day period. After the conclusion of the process, TDOT will provide a concurrence/non-concurrence form which summarizes all agency comments and clearly outlines the position of each agency to all participating agencies.

The timeframes outlined in this section are the standard timeframes agreed to by all signatory parties to this Agreement. Based on the mutual agreement of the signatory parties, the timeframes may be lengthened or shortened, based on the size and complexity of an individual transportation project. Should the timeframes differ from the standard timeframes outlined in the Agreement, the mutually agreed upon timeframes will be outlined in the Project Coordination Plan (See Section 5.4).

#### **4.4 Advisory Comments**

In addition to concurring or nonconcurring based on its statutory or regulatory authority, a participating agency has the option to provide written advisory comments. Concurrence with advisory comments is permitted and generally understood to reflect issues that will be addressed prior to reaching the next concurrence point. Comments accompanying a concurrence are advisory only, and will not trigger the issue resolution process.

Written comments will be provided to all participating agencies prior to moving to the next concurrence point. TDOT will have 45 calendar days to respond to all participating agency comments. If TDOT cannot provide a complete response to comments within the allotted timeframe, an explanation and timeframe for response will be provided to the participating agencies. All responses will be tracked by TDOT and a summary will be provided to all participating agencies.

#### **4.5 Request for Review Time Extension**

Participating agencies may request a one-time maximum 15 calendar day review time extension at each concurrence point. If an extension is granted, each participating agency will be notified and will have the original timeframe plus 15 additional calendar days in order to respond. The procedures outlined in the Agreement are intended to be flexible and adaptable. As part of the coordination plan for more complex projects, TDOT and FHWA, in consultation with the signatory agencies, may propose project-specific concurrence submittal and review times that differ from the timeframes outlined in the Agreement. At the end of the extended review period, TDOT will assume concurrence by all participating agencies that have not responded.

If TDOT assumes the concurrence of any participating agency, it means TDOT may proceed to the next step as set forth in this Agreement, but it does not waive the application of any statutes or regulations that otherwise would apply. These timelines apply only to the concurrence points identified in this Agreement. The environmental review process will continue unless a nonconcurrence is received, which triggers consultation between the non-concurring agency and TDOT. In the event that concurrence is not obtained, the Issue Resolution Process (Section 6.0) may be triggered. All agency responses will be tracked by TDOT and a summary

will be provided to all participating agencies within 21 calendar days of the close of the concurrence period. All participating agencies will provide TDOT with any corrections to the summary responses in a reasonable amount of time.

### **4.6 Nonconcurrence**

Nonconcurrence is a written determination by a participating agency that has determined through a technical review that the information provided to date is insufficient for their needs, or nonconcurrence may express an agency's desire that the project not be advanced to the next stage of project development without modification. A nonconcurrence submitted by a participating agency shall be accompanied by a detailed explanation of the reasons for nonconcurrence and recommendations as to how TDOT/FHWA may address them. The dissenting party and TDOT will conduct an interagency consultation prior to invoking the Issue Resolution Process (Section 6.0). In the event that an agreement cannot be reached, the Issue Resolution Process will commence and the project will not proceed to the next concurrence point until each issue has been resolved.

A nonconcurrence will become a concurrence if and when the lead agency and nonconcurring participating agency jointly achieve successful issue resolution and the participating agency affirms in writing its concurrence.

### **4.7 Revisiting Concurrence Points**

Agencies agree not to revisit previous concurrence points unless there is substantial new information regarding, or substantial changes have been made in the corridor plan, the project, the environment, or laws and regulations. Examples of such changes may include, but are not limited to:

- A. A change in the assumptions on which the project purpose and need was based,
- B. A change in regulatory authority that extends regulatory jurisdiction to include an area or resource that was not previously regulated,
- C. Discovery of a sensitive impact, resource or related information that was not previously identified or did not previously exist, and/or
- D. Identification of additional alternative(s) which are located substantially outside the current study corridors.

TDOT, along with other lead agencies, may make a determination that a concurrence point should be revisited, and will notify all participating agencies of this decision. If an agency believes that a concurrence point should be revisited, that agency will submit a request, including any necessary supporting documentation, to TDOT. TDOT will review this request and coordinate with the other lead agencies, the requesting agency and any other appropriate agencies to determine if there is substantial new information as described in Section 4.7. If a participating agency disagrees with the determination, the agency may initiate the Issue Resolution Process (Section 6.0).

### **4.8 Cessation of Formal Concurrence**

As the environmental review process advances for individual projects, each participating agency should reevaluate its level of involvement and participation in the formal concurrence process based on the information available and the level of environmental impacts presented. It is possible that after technical studies are performed or at some other point in the process, a participating agency may decide to stop participating in the formal concurrence process. If the decision is made to leave the formal environmental review process, the participating agency will notify TDOT in writing of its decision to no longer participate in future concurrence points. For Federal-aid projects or projects requiring a FHWA action developed as an EIS, written notification must conform to the standards established in Section 5.5. If a participating agency initiates cessation, the agency will provide TDOT, in writing, the reason for cessation.

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TDOT will continue to send interagency review information to update these agencies on the project status. Agencies agree not to revisit their decision to leave the process unless there is substantial new information or substantial changes have occurred to the corridor plan, the project, the environment, or laws and regulations. All participating agencies are encouraged to fully participate in the environmental review process and to opt out of the process only in rare instances. Cessation will not impact or otherwise affect a participating agency's legal or regulatory authority.

## 5.0 Environmental Review Process

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### 5.1 Introduction

The following is a brief overview of the environmental review process that will be used to execute this Agreement. The process outlined includes the overall project development process for the preparation of an environmental document (under NEPA for Federal-aid projects or under the TEER process for State-aid projects). This process also attempts to address many of the issues related to the completion of other environmental permits, reviews, or studies required for the transportation project under any Federal law other than NEPA.

### 5.2 Transportation Planning Report (TPR)

Based on input from and coordination with the appropriate MPO and/or RPO, TDOT will develop a Transportation Planning Report (TPR) which will outline the project's history, study area, community characteristics, existing transportation conditions (including alternative modes), preliminary purpose and need and options, or preliminary alternatives, under consideration, or any other pertinent information. The completed TPR will be made available for public review and comment.

### 5.3 Project Initiation

Upon completion of the TPR and a decision to move forward with the transportation project, TDOT will inform FHWA of its intention to initiate the environmental review process and TDOT and FHWA will work collaboratively to determine the appropriate level of environmental documentation – generally, TDOT recommends and FHWA either provides their concurrence or requests revisions or additional information. TDOT will submit to FHWA relevant document(s) summarizing the type of work, termini, length, general location of the proposed project and a summary of the other Federal approvals anticipated to be necessary for the proposed project. TDOT will also submit to FHWA an anticipated schedule for completion of the environmental process and the appropriate study approach for establishing the baseline conditions required in the comparison and analysis of the alternatives. FHWA shall review this information and concur or request additional information or clarification.

### 5.4 Project Coordination Plan

Once a project has been initiated, the lead agencies will cooperatively develop a project-specific coordination plan. The lead agencies will consult with the participating agencies regarding key elements or timelines that may require a commitment of resources by the participating agencies. The purpose of the coordination plan is to facilitate and document the structured interaction with the public and other agencies and to inform the public and other agencies of how the coordination will be accomplished for a particular transportation project. The coordination plan will outline the project specific lead agency responsibilities and the process for providing the public and other agencies opportunities for input, in accordance with applicable laws, regulations, and policies.

If a project schedule is included in the project coordination plan, participating agencies must concur or non-concur on the schedule. The coordination plan will be included in the Initial Coordination package (See Section 5.5). The participating agencies will be notified in writing if the coordination plan is updated or revised during project development, with a reasonable amount of time to provide agency specific comments. If necessary, Concurrence Point 1 (See Section 5.7) will include an updated coordination plan based on comments received from the participating agencies in response to the Initial Coordination package.

The procedures outlined in the Agreement are intended to be flexible and adaptable. As part of the coordination plan for more complex projects, TDOT and FHWA may propose project-specific concurrence submittal and review times that are lesser/greater than the timeframes outlined in the Agreement. In these instances, the coordination plan will clearly outline and make the participating agencies aware of any deviation

from the timeframes outlined in the Agreement. As part of the concurrence process, agencies will have the opportunity to review and concur with the proposed deviation from the timeframes outlined in the Agreement.

### 5.5 Invitation to Participating Agencies/Initial Coordination

All Federal, State, Tribal, Regional, and Local government agencies (including signatory agencies, cooperating agencies and agencies not party to this Agreement) that may have an interest in a project will be invited to serve as participating agencies. The lead agencies will collectively decide which agencies to invite to serve as participating agencies for a specific project. TDOT will include the project coordination plan with the invitation to all agencies.

Early project coordination or scoping is intended to:

- A. Identify the affected public and agency interests;
- B. Define the issues and alternatives to examine in detail in the environmental document;
- C. Save time in the overall process by helping to ensure that the environmental document adequately addresses relevant issues.

For TDOT projects, the invitation will be in the form of a letter and will include a basic project description transmitted on official TDOT letterhead. As part of the formal invitation, the project coordination plan, project data summary, and map of the project location will be included as enclosures. For projects requiring the preparation of an EIS, TDOT may also inform the agencies that if certain conditions are met, errata sheets attached to the DEIS in-lieu of a traditional FEIS, or the preparation of a single document that combines the FEIS and Record of Decision (ROD) may be used.

The invitation will clearly request the involvement of the agency as a cooperating or participating agency and will state the reasons why the project is expected to interest the invited agency. The invitation will request a response to either accept or decline the role of a cooperating or participating agency and solicit comments on the coordination plan. Per 23USC§139(d)(3), a Federal agency invited to participate shall be designated as a participating agency unless the agency declines the invitation by the specified deadline. If a Federal agency chooses to decline, their response letter should state that the agency:

- A. Has no jurisdiction or authority with respect to the project,
- B. Has no expertise or information relevant to the project, and
- C. Does not intend to submit comments on the project.

If the Federal agency's response does not state the agency's position in these terms, then the agency should be treated as participating agency. Under the statutory provisions regarding Federal agency participation, it is likely that any invited Federal agency will serve as a participating agency. Therefore, in the interest of good resource management, invitations to Federal agencies should be sent with appropriate forethought about whether the agency has an actual interest in the project.

A State, Tribal, or Local agency must respond affirmatively to the invitation to be designated as a participating agency. If the State, Tribal, or Local agency fails to respond by the stated deadline or declines the invitation, regardless of the reasons for declining, the agency will be considered a non-participating agency.

The signatory agencies and other potential participating agencies shall decide whether to become participating agencies on the project within 30 days of receipt of the invitation, which is consistent with comment deadlines set forth in SAFETEA-LU. A reminder will be sent to those agencies that have not responded at least seven (7)

calendar days prior to the 30 day deadline. An affirmative response from an agency should also identify and designate a primary representative and an alternate that will participate on the agency's behalf in the environmental review process.

### **5.6 Preparation of Purpose and Need and Study Area Package**

TDOT will prepare and forward a purpose and need and study area package to FHWA for preliminary review and comment. FHWA has ten calendar days to complete the preliminary review of the package. After any revisions, TDOT then forwards the final package to all participating agencies. The package will include information from the TPR, an updated coordination plan if comments were received from agencies as part of Section 5.5 and a summary of any public input received to date.

The package forwarded to the participating agencies may include the following information:

- A. Description of the core needs of the proposed action,
- B. Explanation of the underlying basis for the project objectives in terms of:
  - 1. Relevant Federal, State, and/or Local policies and/or requests, which may include transportation, economic development, land use, and other policies that demonstrate either the purpose and/or need for the project,
  - 2. Relevant data, which may include data regarding transportation conditions, economic conditions, land use conditions, and other conditions, and
  - 3. Public and agency comments regarding the definition of the project's needs.
- C. Description of the evaluation criteria that will be used to evaluate the effectiveness of an alternative in meeting the purpose and need of the project, and explanation how those evaluation criteria will be used,
- D. Description of any other factors, besides purpose and need that will be considered in the screening of alternatives, such as cost or environmental factors,
- E. Demonstration of the project's logical termini and independent utility,
- F. A list of local/regional planning efforts that may impact/involve the project, and
- G. A map detailing the study area.

### **5.7 Concurrence Point 1 | Purpose and Need and Study Area**

Within 45 calendar days of receipt of the Purpose and Need and Study Area Package, the participating agencies, shall review and provide a response in accordance with Section 4.0. The output from Concurrence Point 1 should include, but is not limited to:

- A. Concurrence or nonconcurrence from the participating agencies on the purpose and need and study area of the project,
- B. Concurrence from the participating agencies on the coordination plan,
- C. Input from the participating agencies on the study approach for establishing the baseline conditions required in the comparison and analysis of each alternative,
- D. Input from participating agencies on the preliminary alternatives being considered, including different modes, and
- E. Input from participating agencies about environmental features/resources of interest.

Following Concurrence Point 1, TDOT shall revise, as appropriate, the Purpose and Need and Study Area Package, the coordination plan and the study approach for the comparison and analysis of each alternative. These comments from the TESA agencies are incorporated into the project's early coordination process, including any required NEPA Scoping (for EISs).

### 5.8 Preparation of Project Alternatives Package

Based on the output from Concurrence Point 1 and any general alternatives analysis conducted in the planning stages of the project development process, TDOT will prepare a Project Alternatives Package. TDOT will forward the project alternatives package to FHWA for preliminary review and comment. FHWA has 10 calendar days to complete the preliminary review of the package. After any revisions, TDOT will forward the final package to all participating agencies. As needed, a field review may be conducted (in accordance with the procedures outlined in the TESA Companion Guide) with participating agencies during this stage of the process. When FHWA/TDOT requires field reviews to be completed more quickly than the standard (as outlined in the TESA Companion Guide) for a participating agency, FHWA/TDOT shall notify and coordinate with the participating agency in advance of the field review. The package forwarded to the participating agencies may include the following information:

- A. Revised purpose and need statement and study area,
- B. Revised coordination plan,
- C. Revised study approach for establishing the baseline conditions required in the comparison and analysis of each alternative,
- D. A summary table of the project alternatives to be evaluated and a map that details the location of all project alternatives and their effectiveness in addressing purpose and need,
- E. Quantitative results of the preliminary alternatives analysis and analysis of environmental impacts (based on existing data sources/GIS inventories),
- F. Discussion of the "no-build" alternative,
- G. Narrative describing the rationale why each of the proposed alternatives is being carried into the draft environmental document for further analysis, including the identification of those alternatives that were considered for inclusion but were later eliminated along with the rationale of why they were eliminated,
- H. Results of the field review conducted for the project, and
- I. Where substantial impacts are anticipated, a refined study approach, including the spatial and temporal limits of any indirect/cumulative impact analyses.

### 5.9 Concurrence Point 2 | Project Alternatives to be Evaluated in the Environmental Document

Within 45 calendar days of receipt of the Project Alternatives Package, the participating agencies, shall review and provide a response in accordance with Section 4.0. The output from Concurrence Point 2 should include, but is not limited to, the concurrence or nonconcurrence from the participating agencies on:

- A. The alternatives to be carried forward into the environmental document for further study,
- B. Any revisions to the purpose and need and study area of the project,
- C. Any revisions to the coordination plan, and
- D. The refined study approach for establishing baseline conditions required in the comparison and analysis of each alternative.

## 5.10 Detailed Analysis of Alternatives

For projects requiring preparation of an Environmental Impact Statement, TDOT shall prepare, and FHWA shall submit to the Federal Register, a Notice of Intent (NOI). Publication of the NOI will occur following the conclusion of the Concurrence Point 2 process.

Based on the output from Concurrence Point 2, TDOT will undertake a detailed analysis of all project alternatives that remain under consideration to address the purpose and need of the proposed project. The analysis will include specific technical analysis as well as any indirect and cumulative analysis, required by environmental laws, regulations, Executive Orders and their accompanying guidance. During this time, TDOT will also be preparing a Preliminary Draft NEPA Document or Preliminary Draft TEER Environmental Document to summarize the findings of the studies. The preliminary environmental document will be provided to the participating agencies for their review and comment after completion of the technical studies and prior to release to the general public as described in Section 5.14.

## 5.11 Coordination Point A | Analysis of Project Alternatives

The Preliminary Draft Environmental Document Package may take anywhere from several months to a year or more to complete. In order to ensure continued communication and coordination with the participating agencies, TDOT may provide an update on the status of the project to the agencies. This update would occur approximately halfway through the analysis of project alternatives, or at the request of one or more of the participating agencies. The update would be provided to the agencies via email, or presented during one of the regularly scheduled TESA meetings. Additional updates may be necessary throughout the analysis of project alternatives if specific questions or concerns arise that need to be discussed with the participating agencies. As part of this Coordination Point, TDOT and FHWA will request feedback or guidance in writing from the participating agencies. In all cases, participating agencies from which feedback or guidance is requested will be given at least 30 calendar days to provide the response, unless otherwise agreed upon by the applicable participating agencies.

## 5.12 Preparation of Preliminary Draft Environmental Document

Based on the analysis of project alternatives, TDOT will prepare and forward a Preliminary Draft NEPA Document simultaneously to FHWA and to the participating agencies for their review and comment. Unlike the process for Concurrence Points 1, 2, and 4, FHWA will not conduct a preliminary review of the draft document prior to forwarding to participating agencies. The Preliminary Draft TEER Document will be sent only to the participating agencies.

If TDOT and FHWA intend to use an errata sheet in-lieu of a traditional FEIS, or to combine the FEIS and ROD as per MAP-21 Section 1319, TDOT will inform the TESA signatories, other participating agencies and the public of the decision as part of the DEIS. In accordance with FHWA guidance, a notice will be placed on the cover page of the DEIS stating that a combined FEIS/ROD will be prepared.

## 5.13 Concurrence Point 3 | Preliminary Draft Environmental Document and Preliminary Mitigation

Within 45 calendar days of receipt of the Preliminary Draft NEPA Document or Preliminary Draft TEER Document, the participating agencies, shall review and provide a response in accordance with Section 4.0. The output from Concurrence Point 3 should include, but is not limited to:

- A. Concurrence or nonconcurrence from participating agencies on the adequacy of the Preliminary Draft NEPA Document or Preliminary Draft TEER Document. Specifically, the participating agencies will specify whether additional information is needed to fulfill other applicable environmental reviews or consultation requirements. In addition, participating agencies shall specify any additional information needed to comment adequately on the draft environmental document analysis of site specific effects associated with the granting or approving by the agency of necessary permits, licenses, or entitlements, and

- B. A preliminary mitigation summary describing the various elements of the proposed mitigation, including a map locating the elements of the alternatives and preliminary mitigation. If the agency determines that it does not have enough information to make a recommendation on mitigation measures, it will comment to that effect. Based on the information provided to the regulatory agencies as of Concurrence Point 3, if the project impacts are deemed substantial by a regulatory agency to the extent that permits would probably be denied, the participating agencies agree to notify the lead agencies and advise them on how to modify the project to reduce impacts. If this is not effective, signatory agencies agree to implement issue resolution to see if the project could be appropriately modified.

The information provided by TDOT at this stage of the process is preliminary, and, as such, any advice regarding permits provided by the participating agencies will be considered preliminary as well. TDOT, FHWA, and the participating agencies acknowledge that changes to the project or additional information made available at future concurrence points may affect any permits required for the project.

### **5.14 Draft NEPA Document/Draft TEER Document**

Based on the output from Concurrence Point 3, TDOT will finalize the Draft NEPA Document for submittal to FHWA, or will finalize the Draft TEER Document for internal approval.

### **5.15 Public Hearing**

Based upon approval of the environmental document by FHWA for Federal-aid projects or by TDOT for State-aid projects, the Draft NEPA Document or Draft TEER Document will be distributed and a public hearing will be conducted in accordance with the applicable requirements. Participating agencies will receive a copy of the approved Draft Environmental Document and will be provided the opportunity to submit comments during the public hearing comment period. Agency comments will be made public and presented (as appropriate) at public forums and in public documents.

### **5.16 Select Preferred Alternative**

Based on the output from Concurrence Point 3 and any issues, concerns and/or opportunities identified during the public hearings and comment period, TDOT shall select a preferred alternative. For Federal-aid projects, TDOT will forward the preferred alternative package to FHWA for preliminary review and comment. FHWA has 10 calendar days to complete the preliminary review of the package. For State-aid projects, TDOT prepares and conducts an internal review of the preferred alternative package. After any revisions, the final package is then forwarded to all participating agencies as part of Coordination Point B.

### **5.17 Coordination Point B|Selection of Preferred Alternative**

In order to ensure continued communication and coordination with the participating agencies, TDOT will provide an update on the status of the project to the agencies, including the proposed initial design for mitigation. This update would occur after TDOT has selected the preferred alternative. The package forwarded to the participating agencies may include the following:

- A. Narrative describing the various elements of the preferred alternative,
- B. Rationale for recommending the preferred alternative, and
- C. Summary of major public and agency comments and summary of responses.

### 5.18 Final Environmental Document

Based on the selection of a preferred alternative, TDOT shall prepare a final environmental document, Finding of No Significant Impact (FONSI) or Final Environmental Impact Statement (FEIS)/Record of Decision (ROD), for submittal to FHWA for Federal-aid projects or a Final TEER document for State-aid projects.

### 5.19 Preparation of Draft Final Mitigation Package

Based on the FONSI, ROD, or Combined FEIS/ROD, TDOT will prepare a Draft Final Mitigation Package. TDOT will forward the draft final mitigation package to FHWA for preliminary review and comment. FHWA has 10 calendar days to complete the preliminary review of the package. After any revisions, TDOT will forward the final package to all participating agencies. As needed, a field review may be conducted with participating agencies during this stage of the process. When FHWA/TDOT requires field reviews to be completed more quickly than the standard for a participating agency, FHWA/TDOT shall notify and coordinate with the participating agency in advance of the field review. The package forwarded to the participating agencies may include the following information:

- A. Results of any additional technical studies performed on the preferred alternative,
- B. Revisions to the preferred alternative based on the additional technical studies,
- C. Draft final mitigation plans, describing in detail the various elements of the proposed mitigation, including a map locating the elements of the preferred alternative and proposed mitigation, and
- D. A summary of the environmental commitments made during the NEPA phase and documentation that the commitments are being carried forward into the final design of the project.

### 5.20 Concurrence Point 4 | Draft Final Mitigation

Within 45 calendar days of receipt of the Draft Final Mitigation Package, the participating agencies shall review and provide a response in accordance with Section 4.0. The output from Concurrence Point 4 should include, but is not limited to:

- A. Concurrence or nonconcurrence from participating agencies on the draft final mitigation. When avoidance of impacts to a resource is not practicable, participating agencies with jurisdiction by law or special expertise will assist TDOT in determining appropriate and practicable mitigation, including all practicable measures to minimize harm.

### 5.21 Applications for Applicable Permits

TDOT shall prepare all necessary applications for all applicable permits based on the decisions contained in the final environmental document as well as decisions agreed to during subsequent coordination with participating agencies during the design phase.

## 6.0 Issue Resolution

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### 6.1 Purpose

All TESA signatory agencies agree to proceed with the Issue Resolution Process only after reasonable consultations with TDOT and FHWA have occurred in an effort to resolve differing opinions. The purpose of the Issue Resolution Process is to provide an informal means to resolve disagreements collaboratively between lead, and signatory or participating agencies. The intent is to expeditiously resolve issues at the lowest level of the organizations through consensus. The process outlined does not preclude other issue resolution processes (e.g., facilitation, mediation, etc.) from being used.

### 6.2 Triggers

The following occurrences shall serve as triggers for initiation of the issue resolution process:

- A. Nonconcurrence at any of the four concurrence points by a participating agency. In accordance with Section 4.6, the nonconcurring agency shall submit a formal written statement to TDOT and FHWA outlining the detailed reason(s) for nonconcurrence.
- B. Disagreement on the interpretation of the Agreement. Any signatory agency can initiate this issue resolution process, which could include issues related to implementation of the Agreement, such as disagreements over the decision to include or exclude certain projects from being subjected to the full environmental review process.

To trigger the issue resolution process, a participating agency shall submit a formal written statement to TDOT and FHWA outlining the detailed reason(s) for disagreement on the interpretation of the Agreement. If TDOT chooses to trigger the issue resolution process, a formal written statement outlining the detailed reasons(s) for disagreement on the interpretation of the Agreement shall be submitted to all signatory agencies.

### 6.3 TESA Issue Resolution Process

When the issue resolution process is triggered (as outlined in Section 6.2), the nonconcurring agencies shall meet with the lead agencies to resolve, the issues that have been raised regarding interpretation of the Agreement or specific project information presented at, or decisions resulting from, any of the concurrence points outlined in the Agreement. All signatory agencies to this Agreement agree to attempt to resolve disagreements at the earliest stage possible and at the lowest appropriate organizational level.

The goal of the issue resolution process is to resolve technical and/or policy issues at the lowest possible staff level in accordance with the FHWA-issued [guidance](#), *Collaborative Problem Solving: Better and Streamlined Outcomes for All, November 2006 Revision*. If TDOT and FHWA deem it necessary and appropriate, third-party mediation or facilitation (as agreed to by all parties) may be used during the issue resolution process. In keeping with this goal, the TESA Issue Resolution Process follows a three-step process:

- Step 1: A meeting with the designated staff-level TESA representative(s) from TDOT, FHWA, and the participating agency(ies) will be convened to discuss and attempt to resolve the issue(s) that triggered the issue resolution process. Depending on the issue(s) being discussed, other participating agencies may be invited to take part in the process.
- Step 2: If the issue(s) cannot be resolved in Step 1, and if TDOT and FHWA deem it necessary, a meeting will be convened with the designated upper-level management representative(s) from TDOT, FHWA, and the regional/district offices of the participating agency(ies) to discuss and attempt to resolve the issue(s) that triggered the issue resolution process. Depending on the

issue being discussed, other participating agencies may be invited to take part in the process. Consultation at this level will include regional/district management of each agency.

- Step 3: If the issue(s) cannot be resolved in Step 2, and if TDOT and FHWA deem it necessary, a meeting will be convened with the designated agency heads from TDOT, FHWA, and the regional/district offices of the participating agency(ies) to discuss and attempt to resolve the issue(s) that triggered the issue resolution process. Depending on the issue being discussed, other participating agencies may be invited to take part in the process. Consultation at this level will include the heads of each agency.

If an issue cannot be resolved during the TESA Issue Resolution Process, then the issue may be elevated in accordance with the Federal Issue Resolution Process outlined in Section 6.4.

### 6.4 Federal Issue Resolution Process

In a situation where there is a serious disagreement that may result in the delay of the project or result in denial of a required approval for the project, an issue resolution process was codified in 23USC§139(h) by SAFETEA-LU, and was subsequently modified with the passage of MAP-21. The process encourages the lead agency(ies) and the participating agencies to work cooperatively to revolve issues that could delay completion of the environmental review process or could result in denial of any approvals required for the project under applicable laws. The Federal issue resolution process is illustrated in the following flow chart.

#### Federal Issue Resolution Process (23USC§139)

- Step 1: A participating agency has a serious disagreement with the lead agency that may delay completion of the environmental review process or result in the denial of any approvals required for the project under applicable laws.
- Step 2: An issue resolution meeting, which may be requested by FHWA, the project sponsor, or the Governor of Tennessee, is convened by the lead agency (FHWA/TDOT) within 21 days of receipt of the request. The project sponsor and all participating agencies (and Governor, if the initial request came from him/her) are invited to the meeting.
- Step 3: If issue resolution is not achieved within 30 days of the first meeting, a second issue resolution meeting is called by FHWA, and the project sponsor, heads of the relevant participating agencies and Governor (if the initial request came from him/her) are invited.
- Step 4: If issue resolution is not achieved within 30 days of the second meeting, FHWA shall refer the matter to the Council on Environmental Quality (CEQ). The CEQ shall hold a meeting with the lead agency, the heads of the relevant participating agencies, the project sponsor, and Governor (if the initial request came from him/her) within 30 days of receipt of the referral.
- Step 5: If issue resolution is not achieved within 30 days of the meeting with CEQ, FHWA shall refer the matter directly to the President.

### **6.5 Advancing the Project**

If FHWA and TDOT determine that they are unable to resolve a substantive issue at the conclusion of the TESA Issue Resolution Process, the decisions on whether to continue to advance a project will be made by the FHWA Division Administrator for Federally-funded projects and by the TDOT Commissioner for State-funded projects. The Federal Issue Resolution Process ends at the President. TDOT will be responsible for notifying the other participating agencies regarding the decision and that the issue resolution process has been concluded.

The nonconcurring agency or agencies will have the option of continuing to participate or ending involvement in the environmental review process in accordance with Section 4.8, or to propose other options within the framework of their own statutory or regulatory authorities for that project. This issue resolution process in no way abrogates this responsibility.

Each agency has expertise and authority in particular areas. These procedures are not intended to – nor can they – diminish, modify, or otherwise affect current or future statutory or regulatory authorities of the agencies involved.

### **6.6 Documenting Issue Resolution**

TDOT will notify all participating agencies prior to the initiation of the Issue Resolution Process. When an issue(s) is resolved, TDOT will provide all participating agencies with written documentation outlining the issue(s) and formal resolution. Within 15 calendar days of receipt, the participating agencies will be required to respond regarding whether any changes to the project, as a result of the issue resolution process, are significant enough to warrant revisiting a specified concurrence point in accordance with Section 4.7.

## 7.0 Agency Commitments

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### 7.1 Responsibilities of Lead Agencies

Both FHWA and TDOT will act as co-lead agencies for all Federal-aid transportation projects, funded under Title 23 United States Code, developed under this agreement. Other interested Federal, State, or Local agencies may be considered for Joint Lead Agency status upon request.

The lead agencies are responsible for NEPA compliance for transportation projects. Unless otherwise agreed in writing, FHWA will be the Federal lead agency for all Federal-aid projects. For Federal-aid projects, TDOT is responsible for preparing the required environmental documents for these actions on FHWA's behalf. Unless otherwise agreed in writing, TDOT will be the lead agency responsible for supervising preparation of the environmental documents required for all State-aid projects.

As a lead agency, the Federal Highway Administration (FHWA) agrees to:

- A. Act as the lead agency responsible for supervising preparation of the environmental document on all Federal-aid transportation projects,
- B. In coordination with TDOT, prepare project specific coordination plans,
- C. With TDOT, and other appropriate lead agencies, determine the type of environmental document required for a project and a timeline for completion,
- D. Participate in the review and comment at each of the concurrence points, as outlined in this Agreement,
- E. Consult with Federally recognized tribes that may have an interest in the project,
- F. Participate in the Issue Resolution Process, and
- G. Provide open and honest communication and a commitment to a collaborative process.

As a lead agency on behalf of FHWA, TDOT agrees to:

- A. Prepare the TPR,
- B. Prepare and forward a notice of project initiation to FHWA,
- C. In coordination with FHWA, prepare project specific coordination plans,
- D. Invite the appropriate signatory agencies, and all Federal, State, Tribal, Regional, and Local government agencies that may have an interest in the project to serve as participating agencies,
- E. Provide participating agencies and the public an opportunity for involvement in the development of the project purpose and need statement and the project alternatives in a timely and meaningful way,
- F. Collaborate with participating agencies to determine the appropriate study approach for establishing the baseline conditions required in the comparison and analysis of each alternative
- G. Provide the information and necessary resources to lead and fully implement the environmental review process and respond to all agency concerns within the timeframes outlined in the Agreement,
- H. Request concurrence from participating agencies at each of the four (4) concurrence points as outlined the Agreement,

- I. Conduct quarterly (or, as needed) interagency meetings to cooperatively discuss ongoing transportation projects and programmatic topics. Facilitate the interagency meetings, utilizing a TDOT representative, consultant, or a designee from another participating agency, including, but not limited to, providing an agenda to all meeting attendees at least five (5) working days before the date of the scheduled meeting,
- J. Prepare summaries of all meetings, including all agreements reached and discussion of pending issues, and distribute the summaries to all participating agencies,
- K. Determine whether it would be desirable to request participating agencies to perform and/or use any environmental analysis work or write a portion of the environmental document (subject to the agreement of the agency to perform such activities),
- L. Conduct design alternatives meetings and field reviews as requested by the appropriate participating agency representative,
- M. Include in the pre-draft and subsequent environmental documents, to the greatest extent practicable, the information needed by agencies with jurisdiction by law to grant required permits, certifications, or approvals,
- N. Give each participating agency the opportunity to review the pre-draft and pre-final environmental document and to express their views on the adequacy of the document, alternatives considered, anticipated impacts, and project compliance with other applicable policies and statutes,
- O. Consider conducting joint public involvement activities with participating agencies,
- P. Include in the final environmental document information and commitments that will aid participating agencies in expediting and fulfilling their responsibilities and requirements for regulatory approvals, permits, certifications and/or clearances for the proposed action to the extent the information is available,
- Q. Consider providing financial and/or other assistance to signatory agencies that directly and meaningfully contribute to expediting and fulfilling their responsibilities and requirements for regulatory approvals, permits, certifications and/or clearances for the proposed action as outlined in this Agreement,
- R. Prepare and submit applications for all necessary and appropriate permits,
- S. Coordinate and participate in the Issue Resolution Process, including preparation of all meeting summaries and agency notification, and
- T. Provide open and honest communication and a commitment to a collaborative process.

### **7.2 Responsibilities of Signatory Agencies**

A signatory agency is any agency that is signatory to this Agreement. Signatory agencies are not required to participate in every project, only in those projects that affect their area of jurisdiction, expertise or interest. All signatory agencies agree to the following tenets of participation:

- A. Devote sufficient resources to understand the intent and procedures of the interagency agreement,
- B. Commit to the environmental review process and timelines outlined in this Agreement,
- C. Respond within the timeframes identified in this agreement to a request to become a participating agency. The response letter shall indicate the anticipated level of the signatory agency's responsibilities as a participating agency,
- D. Participate in the environmental review process, including attendance at project meetings and field reviews, for projects where agencies have jurisdiction by law, special expertise, or other specific interest,
- E. Provide open and honest participation and a commitment to a collaborative process,

- F. Coordinate with State and Local agencies to the fullest extent possible to reduce duplication between NEPA and other State and Local requirements, unless specifically barred from doing so by some other law, and
- G. Participate in the Issue Resolution Process, as appropriate.

### 7.3 Responsibilities of Participating Agencies

A participating agency is any Federal, State, Tribal, Regional, and Local government agency that may have an interest in the project. Participating agencies may include signatory agencies, cooperating agencies and agencies not party to this Agreement. All participating agencies agree to the following tenets of participation:

- A. Participate in the NEPA process starting at the earliest possible time, especially with regard to the development of the purpose and need statement, range of alternatives, study approach for establishing the baseline conditions required in the comparison and analysis of alternatives,
- B. Identify, as early as practicable, any issues of concern regarding the project's potential environmental or socioeconomic impacts,
- C. Provide meaningful and timely input on unresolved issues,
- D. Participate in the scoping process, including attendance at scoping meetings, design alternatives meetings, coordination meetings, and joint field reviews, as appropriate,
- E. Assist in identifying additional interest groups, which may include affected agencies and agencies with jurisdiction by law or special expertise and interest,
- F. Ensure adequate agency staff is available for full participation in the environmental review process outlined in this Agreement,
- G. Review project environmental documents and related materials, provide comments on those materials, and act on the four concurrence points within the timeframes identified in this Agreement,
- H. Provide information and/or technical assistance on issues within the agency's jurisdiction or area of expertise,
- I. Respond with concurrence or nonconcurrence at each concurrence point, as outlined in this Agreement,
- J. Assist TDOT in determining appropriate and practicable mitigation, including all practicable measures to minimize harm,
- K. Assist TDOT, in coordination with all participating agencies to modify the project if impacts are deemed substantial and it is deemed that permits would likely be denied,
- L. Participate in joint public involvement activities, as appropriate,
- M. Adopt the final environmental document if, after an independent review of the document, the agency concludes that the document satisfies NEPA and other requirements for its approvals, permits, licenses and/or clearances on the proposed action (appropriate only for those agencies with jurisdiction by law), and
- N. Participate in the Issue Resolution Process, as appropriate.

### 7.4 Emergency Situations

In the event of a transportation system failure, an imminent threat of failure, or other emergency that TDOT reasonably believes would present a hazard to the traveling public or a significant delay in transportation, participating agencies agree to expedite the request, review, and approval of emergency activities pursuant to the protection and improvement of the quality of the state's land, air, water and recreation resources, as allowable under Federal and State laws, rules, and regulations of the resource and regulatory agencies. For the

## TESA Overall Agreement

purpose of this Agreement, emergencies are defined as occurrences that require immediate transportation system/facility repairs that are necessary to:

- A. Protect the life, safety or health of the public,
- B. Minimize the extent of damage to the transportation system/facilities,
- C. Protect remaining transportation facilities, and/or
- D. Restore essential transportation functions, including traffic flow.

All signatory agencies will assist TDOT in developing Standard Operating Procedures (SOPs) for emergency repairs from natural disasters that provide for quick responses to the emergency situation while ensuring compliance with all Federal and State environmental statutes.

## 8.0 Terms and Conditions

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### 8.1 Effective Date

This agreement will become effective for those agencies having signed the Agreement on the date of initial signature of TDOT, FHWA, and at least one other signatory agency. TDOT will notify all signatory agencies as additional agencies enter into the Agreement.

### 8.2 Revisions

Revisions to this agreement may be proposed by one or more signatory agencies. Proposals for revisions will be circulated to all signatory agencies for a 30 day period of review. Approval of such proposals will be indicated by written acceptance. This provision does not prevent agencies from entering into additional agreements to address issues of limited concern affecting only one or more of the signatory agencies. These additional agreements may include such issues as funding, manpower, schedules, level of review required for concurrence, appropriate personnel to be involved in the issue resolution process, and the relationship of the environmental review process to the participating agency processes, among others.

### 8.3 Withdrawal from Agreement

Any agency may choose to withdraw from this agreement upon 30 day written notice to TDOT, FHWA, and the other signatory agencies of this agreement that have not given prior notice of withdrawal or termination.

### 8.4 Funding

Nothing in this agreement obligates any of the parties to pay any monies to any other party to this agreement. In the event that a party to this agreement enters into a separate contract, grant or Interagency Agreement with another party to this agreement, the validly executed contract, grant or individual agreement shall control the disbursement of any funding, the applicable scope of work and the resolution of any disputes involving the contract, grant or individual agreement.

### 8.5 Submittal/Exchange of Information

Nothing in this Agreement should control the methods and means by which project information is submitted/exchanged in accordance with environmental review process outlined. All agencies are encouraged to use the most readily available, efficient and appropriate methods of information exchange and communication.

## 9.0 Monitoring and Evaluation

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### 9.1 Monitoring

The signatory agencies will monitor the success of the processes outlined in the Agreement and modify it as necessary to improve it. Each signatory agency shall designate a primary representative and an alternate to serve on a monitoring and evaluation team.

### 9.2 Monitoring and Evaluation Team

This agreement will be monitored and evaluated by a team made up of one representative from each signatory agency (each representative should have one appointed alternate). FHWA and TDOT will co-chair the team and coordinate the meetings.

### 9.3 Monitoring and Evaluation Team Meetings

The Monitoring and Evaluation Team shall hold annual meetings to consider and recommend:

- A. Minor editorial corrections to the Agreement,
- B. More substantive proposals for improvement in the agreement processes,
- C. How to monitor and measure the success of the agreement processes,
- D. Changes to the agreement processes to reflect monitoring results, and/or
- E. Continuation of monitoring and evaluation of the agreement processes.

### 9.4 Procedures for Process/Agreement Revisions

The monitoring and evaluation team will:

- A. Present minor revisions to the Agreement to their agencies for concurrence, or
- B. For more substantive issues, recommend a process for obtaining the consensus of all signatory agencies to revise the agreement. This may require reconvening the interagency body that developed the agreement, and/or initiating the issue resolution process at the signatory level.

### 9.5 Reporting

The Monitoring and Evaluation Team shall report to the signatory agencies on the status of the Agreement each year in November.

## Appendix A | Definitions

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### A.1 Introduction

For the purposes of this Agreement, the following definitions are provided.

#### Advisory Comments

Comments provided by a participating agency at a concurrence point that are requested to be addressed prior to reaching the next concurrence point.

#### Alternative

A general term denoting one of a number of specific transportation improvement proposals, alignments, modes, etc., from which one such improvement is typically chosen, or selected. For example, at the macro-level, alternative could mean a mass transit proposal instead of a highway proposal. At a later stage in project development, alternative could mean a western relocation instead of an eastern relocation. The term could also mean a specific improvement type, e.g., four lanes instead of six lanes, on the same centerline.

#### Categorical Exclusion (CE)

Actions/projects under NEPA that do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an EA nor an EIS is required.

#### Conditional Signatory Agency

A conditional signatory agency is any agency that has signed this Agreement and agreed to participate in the TESA process only under certain conditions.

#### Collaboration

The process, as outlined in this Agreement, whereby signatory agencies work together in a cooperative and transparent atmosphere toward common goals, which include: streamlining of the NEPA process using sound scientific and engineering practices for the obtainment of environmental compliance for transportation projects.

#### Concurrence

Written determination by a participating agency that the information to date is adequate and there is no objection to the project being advanced to the next stage of project development without modification, other than minor modifications expressed as advisory comments. An agency's concurrence should be consistent with its statutes and regulations (given available information). Also, concurrence can be achieved after concerns are adequately addressed by TDOT following a nonconcurrence. Agencies agree not to revisit the previous process steps unless conditions change.

#### Concurrence Point

One of the four points in the environmental review process where the lead agency requests formal concurrence from participating agencies.

## Cooperating Agency

A cooperating agency is any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment.

## Coordination Point

One of two points in the TESA process where the lead agency may provide an update on the status of the project to the TESA Participating Agencies.

## Environmental Assessment (EA)

A concise Federal public document that serves to:

- A. Provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact,
- B. Aid an agency's compliance with NEPA when no environmental impact statement is necessary, and
- C. Facilitate preparation of an EIS when one is necessary. An EA shall include brief discussions of the need for the proposal, and the alternatives considered.

## Environmental Document

Any written public document prepared under NEPA for Federal-aid projects or the TEER process for State-aid projects.

## Environmental Impact Statement (EIS)

A detailed written statement as required by 42USC§4332(C).

## Environmental Review Process

The project development process followed when preparing a document required under NEPA regulations for a transportation project. In addition to NEPA requirements, the term also includes the process for compliance with, and completion of, any environmental permit, approval, review, or study required for the transportation project under any Federal law. It also encompasses the TEER process.

## Finding of No Significant Impact (FONSI)

A document by a Federal agency briefly presenting the reasons why an action/project will not have a significant effect on the human environment and for which an environmental impact statement will not be prepared.

## Federal Issue Resolution Process

Process codified in 23USC§139(h) for resolving agency disagreements that may result in the delay of the project or result in denial of a required approval for the project..

## Lead Agency

FHWA and TDOT will act as co-lead agencies for all Federal-aid transportation projects, funded under Title 23 United States Code, developed under this agreement. Other interested Federal, State, or Local agencies may be considered for joint lead agency status upon request. The lead agencies are responsible for NEPA compliance for transportation projects. Unless otherwise agreed in writing, FHWA will be the Federal lead agency (TDOT will be the State lead agency) responsible for supervising preparation of the environmental documents required for all Federal-aid projects, or projects requiring a FHWA approval. Unless otherwise agreed in writing, TDOT will be the lead agency responsible for supervising preparation of the environmental documents required for all State-aid projects.

## Metropolitan Planning Organization (MPO)

An MPO is defined in Federal legislation as the designated local decision-making body that is responsible for carrying out the metropolitan transportation planning process. An MPO must be designated for each urban area with a population of more than 50,000 people.

## Mitigation

Mitigation includes:

- A. Avoiding the impact altogether by not taking a certain action or parts of an action,
- B. Minimizing the impact by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or taking affirmative steps to avoid or reduce impacts,
- C. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment,
- D. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action,
- E. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments, and/or
- F. Monitoring the impact and taking appropriate corrective measures.

## Mode

A means of transportation (i.e. automobile travel, rail, air, ferries, etc., are different modes of transportation).

## Nonconcurrence

Written determination by a participating agency that information to date is insufficient or that the project may not be advanced to the next stage of project development without modification.

## Notice of Intent (NOI)

A notice published in the Federal Register that an environmental impact statement will be prepared and considered.

## Participating Agency

A participating agency is any Federal, State, Tribal, Regional, and Local government agency that may have an interest in the project. Participating Agencies may include Signatory Agencies, Cooperating Agencies and agencies not party to this Agreement. Accepting the designation as a participating agency does not indicate project support and does not provide an agency with increased oversight or approval authority beyond its statutory limits.

## Preferred Alternative

This is the alternative which the lead agencies believe would fulfill their statutory mission and responsibilities, giving consideration to economic, environmental, technical and other factors.

## Public Hearing

A public proceeding consistent with the procedures outlined in TDOT's *Public Involvement Plan* conducted for the purpose of acquiring information or evidence that will be considered in evaluating a proposed transportation project and/or a USACE permit action, and that affords the public an opportunity to present their views, opinions, and information on such projects and permit actions.

## Public Meeting

Public meetings are held to present information to the public and obtain public input. Public meetings can be held at any time during the environmental review process. They are used to disseminate information, provide a setting for public discussion, and get feedback from the community. They can be tailored to specific community needs and can be either formal or informal (e.g., a meeting could be held with a small group of neighbors or a special interest group, or a project could warrant a community-wide meeting). TDOT may request the involvement of participating agencies in public meetings to provide information or respond to questions or public comments.

## Purpose and Need

The Purpose and Need statement is fact-based with sufficient supporting documentation or data included or referenced to support the proposed alternative, or proposed action. The Purpose and Need for a transportation project may include capacity and transportation demand, safety, legislative directive, economic development/planned growth, modal interrelationship, system linkage and roadway deficiencies. In this context the emphasis is on the reasons for a project, not on weighing the extent of impacts against project need.

## Record of Decision

A concise public document prepared by the Federal agency at the time of its decision that:

- A. States the decision,
- B. Identifies all alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives that were considered to be environmentally preferable,
- C. Identifies and discusses relevant factors including economic and technical consideration, agency statutory mission, and any essential considerations of national policy that were balanced by the agency in making its decision, and states how those considerations entered into its decision,
- D. States whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not,
- E. Discusses project-specific mitigation plans, including any enforcement and monitoring commitments, and
- F. Adopts and summarizes monitoring and enforcement programs where applicable for any project-specific mitigation.

## Regulatory Agency

An agency that has jurisdiction by law, i.e., agency authority to approve, veto, or finance all or part of a proposal.

## Resource Agency

An agency that has special expertise with respect to any environmental issue, e.g., statutory responsibility, agency mission, or related program experience.

## Rural Planning Organization

The regional transportation planning organization designated by TDOT to enhance the planning, coordination, and implementation of statewide strategic long-range transportation plans and transportation improvement programs, with an emphasis on addressing the needs of the nonmetropolitan areas of the State. RPOs are multijurisdictional organizations of nonmetropolitan local officials representing units of general purpose local government and/or local officials with responsibility for transportation.

## Signatory Agency

A signatory agency is any agency that has signed this Agreement.

## Study Area

An identified amount of land or topography, selected at the beginning of engineering and environmental evaluations, which is adequate in size to allow for flexibility in alternatives development and for consideration of all potential environmental effects.

## Supplemental Procedures

Within the context of a particular project, TDOT and the FHWA, with the involvement of other signatory agencies, may choose to develop supplemental procedures to permit a degree of flexibility and adaptability to the TESA process. Supplemental procedures are not intended to change or nullify the basic tenants of the TESA process (e.g., additional concurrence points, altering major steps in the process). Supplemental procedures may include defining specific roles and responsibilities of a Cooperating Agency, TESA Participating Agency, or Non-TESA Participating Agency, or outlining additional coordination steps between TDOT, the FHWA, and a Cooperating Agency, TESA Participating Agency, or Non-TESA Participating Agency during the TESA process.

## Tennessee Environmental Evaluation Report (TEER)

The environmental evaluation and documentation process and procedures for State-aid projects, as outlined in the *Tennessee Environmental Procedures Manual*.

## Transportation Planning Report (TPR)

A report prepared by TDOT outlining a project's history, study area, community characteristics, existing transportation conditions (including alternative modes), preliminary purpose and need and options, or alternatives under consideration.

## Appendix B | Conditional Agreements and Consultation Procedures

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### **B.1 Conditional Agreements**

- Tennessee Historical Commission/State Historic Preservation Office
- US Department of Homeland Security, US Coast Guard

## B.1 Conditional Agreements

### Tennessee Historical Commission/State Historic Preservation Office

The Tennessee Historical Commission/State Historic Preservation Office agrees to participate, if feasible and appropriate, in the Tennessee Environmental Streamlining Agreement process by:

- Review Concurrence Point packages
- Attending TESA meetings
- Providing open and honest participation
- Providing meaningful and timely input on unresolved issues
- Providing information and/or technical assistance on issues within their area of expertise
- Assisting TDOT in determining appropriate and practical mitigation

The Tennessee Historical Commission/State Historic Preservation Office agrees to continue assisting and advising the FHWA under the Section 106 process, to continue consultations with TDOT, and to continue to direct municipal governments and transportation enhancement applicants to submit their applications and necessary support documentation for such funds to the TDOT with reference to Section 106 compliance. The Tennessee Historical Commission/State Historic Preservation Office notes the importance of successful completion of the Section 106 review before completion of Concurrence Point 3, and requests that TDOT will evaluate all FHWA projects for cultural resources and project-related effects before submittal to the Tennessee Historical Commission/State Historic Preservation Office for review.

## B.1 Conditional Agreements (continued)

### US Department of Homeland Security, US Coast Guard

The United States Coast Guard agrees to participate, if feasible and appropriate, in the Tennessee Environmental Streamlining Agreement process by:

- Reviewing only Concurrence Point packages for projects that potentially require a United States Coast Guard permit, and provide only advisory comments within 45 days
- Attending TESA meetings when projects of interest to the United States Coast Guard are being discussed
- Providing open and honest participation
- Providing meaningful and timely input on unresolved issues
- Providing information and/or technical assistance on issues within their area of expertise

Projects requiring permits are those that include the construction or modification of a bridge or causeway, including a temporary bridge, across a navigable waterway of the United States. The United States Coast Guard maintains a list of these navigable waterways and their required clearances (Bridge Guide Clearances), but the published list is not all-inclusive. The United States Coast Guard agrees to continue assisting and advising the TDOT on the permit process, as well as assisting in the evaluation of waterways not listed on the Bridge Guide Clearances list.

10.0 Signatures

Signatory Agencies:



John Schroer, Commissioner  
Tennessee Department of Transportation



Pamela Kordenbrock, Division Administrator  
Federal Highway Administration, Tennessee Division



Mary E. Jennings, Field Supervisor Tennessee Field Office  
U.S. Fish and Wildlife Service



US Army Corps of Engineers  
Nashville District

Tammy R. Turley, Chief Nashville Regulatory Branch  
U.S. Army Corps of Engineers, Nashville District



US Army Corps of Engineers  
Memphis District

Jeffrey A. Anderson, District Engineer  
U.S. Army Corps of Engineers, Memphis District



Eric A. Washburn, Bridge Administrator  
U.S. Coast Guard  
Eighth District Western Rivers Bridge Branch



Brenda Brickhouse, Senior Vice President  
Office of Environment and Research  
Tennessee Valley Authority



Robert Martineau, Commissioner  
Tennessee Department of Environment and Conservation



Ed Carter, Executive Director  
Tennessee Wildlife Resources Agency



E. Patrick McIntyre, Jr. Executive Director  
State Historic Preservation Office  
Tennessee Historical Commission