

# I-49 LAFAYETTE CONNECTOR - HANDOUT



Vision and Values Workshop  
Saturday, January 23, 2016  
9:00 AM – 12 Noon

Location of Event  
125 Gallian Street,  
Lafayette, LA 70501

State Project No. H.004273.5  
Federal Aid Project No. H004273  
I-49 Lafayette Connector

**Overview of NEPA and Other  
Environmental Investigations,  
Reviews, and Consultations  
as required to Complete the  
Functional Plan for the  
I-49 Lafayette Connector**

This handout contains excerpts from the Federal Highway Administration (FHWA) guidance regarding:

- The National Environmental Policy Act (NEPA) found on line in the FHWA Environmental Toolkit,
- Other Environmental Investigations, Reviews, and Consultations and
- FHWA guidance relative to the Re-evaluation of NEPA documents.

It is intended to provide:

- An overview of NEPA,
- An understanding of the purpose and preparation of an Environmental Impact Statement (EIS) and Record of Decision (ROD), and
- The Purpose of a Re-evaluation.

This Overview is divided into three parts:

- I. NEPA and Project Development,**
- II. Other Environmental Investigations, Reviews, and Consultations, and**
- III. Guidance for the Re-evaluation of an EIS**

## **I NEPA and Project Development**

On January 1, 1970 NEPA was signed into Law. NEPA established a national environmental policy intentionally focused on Federal activities and the desire for a sustainable environment balanced with other essential needs of present and future generations of Americans.

### **NEPA Requirements and FHWA Commitment**

NEPA requires, to the fullest extent possible, that the policies, regulations, and laws of the Federal Government be interpreted and administered in accordance with its environmental protection goals.

NEPA requires Federal agencies to use an interdisciplinary approach in planning and decision-making for any action that adversely impacts the environment.

NEPA requires and FHWA is committed to the examination and avoidance of potential impacts to the social and natural environment when considering approval of proposed transportation projects. In addition to evaluating the potential environmental effects, FHWA takes into account the transportation needs of the public in reaching a decision that is in the best overall public interest. The FHWA NEPA project development process is an approach to balanced transportation decision-making that takes into account the potential impacts on the human and natural environment and the public's need for safe and efficient transportation.

### **It is FHWA's Policy (23 CFR § 771.105) that:**

To the fullest extent possible, all environmental investigations, reviews, and consultations be coordinated as a single process, and compliance with all applicable environmental requirements be reflected in the environmental document required by this regulation.

In addition to NEPA, the other environmental investigations, reviews, and consultations that are required relative to the I-49 Connector as defined in the ROD include:

## I-49 LAFAYETTE CONNECTOR - HANDOUT

- Section 4(f) of the USDOT Act of 1966,
  - Section 106 of the National Historic Preservation Act,
  - Section 404 of the Clean Water Act, and
  - Executive Order 12898 - Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 1994
- Some of the modifications that have been proposed recently also may require consideration of Section 6(f) of the Land and Water Conservation Act.
  - Alternative courses of action [two or more Build Alternatives and the No Build Alternative] be evaluated and decisions be made in the best overall public interest based upon a balanced consideration of the need for safe and efficient transportation; of the social, economic, and environmental impacts of the proposed project; and of national, state, and local environmental protection goals.
  - Public involvement and a systematic interdisciplinary approach be essential parts of the development process for proposed actions.
  - Measures necessary to mitigate adverse impacts be incorporated into the action.

### Environmental Review Toolkit

The sections of the Toolkit presented below address the following elements of the Transportation Decision-making Process that can be found at

<https://www.environment.fhwa.dot.gov/index.asp>

On the site, each section also provides links to other sites with additional guidance.

- A. Purpose and Need
- B. Alternatives
- C. Impacts
- D. Mitigation
- E. Interagency Coordination
- F. Public Involvement

### A Purpose and Need

The purpose and need of a project is essential in establishing a basis for the development of the range of reasonable alternatives required in an EIS and assists with the identification and eventual selection of a preferred alternative.

The following may be listed, described and discussed in the purpose and need statement for a proposed action. These are not all-inclusive or applicable in every situation but are intended as a guide.

- Project Status (including project history) ending, schedules, etc.
- Capacity (the facility's ability to meet traffic demands)

For additional detail presented in a form that relates directly to local government and its constituents, you are referred to the following FHWA website:

<http://www.fhwa.dot.gov/federal-aidessentials/index.cfm>

It is suggested that when visiting this site, you should first view the Federal-Aid Essentials Video Library/Environment tab that contains

A series of videos summarizing key requirements and processes, and Other links to provide more in depth information.

While all the videos, except those addressing Categorical Exclusions and Environmental Assessments, relate to the NEPA process and the I-49 Connector, the videos that apply most directly to the I-49 Lafayette Connector project and the current project phase to Complete the Functional Plan are the following:

- Overview of NEPA as applied to Transportation Projects,
- Documentation and the Environmental Process,
- NEPA Compliance and Classes of Action,
- Environmental Impact Statement,
- Overview of Other Laws and Requirements,
- Section 4(f) of the USDOT Act of 1966,
- Section 106 of the National Historic Preservation Act, and
- Section 404 of the Clean Water Act.

## I - 49 LAFAYETTE CONNECTOR - HANDOUT

- System Linkage (does the project compete a gap in the system?)
- Legislation (if there is a Federal, state, or local mandate for the action?)
- Social Demands or Economic Development
- Modal Interrelationships (Explaining how the action will interface with rail and port facilities, mass transit services, etc.)
- Safety
- Roadway Deficiencies (Including substandard geometrics, high maintenance costs, etc.)

### B Alternatives

The identification, consideration, and analysis of alternatives are key to the NEPA process and the goal of objective decision-making. Consideration of alternatives leads to a solution that satisfies the transportation need and protects environmental and community resources. The Council on Environmental Quality (CEQ) agencies to:

- Rigorously explore and objectively evaluate all reasonable alternatives.
- Discuss the reasons. early alternatives which were eliminated from detailed study.
- Include the alternative of no action.
- Identify the agency's preferred alternative or alternatives.
- Include appropriate mitigation measures not already included in the proposed action or alternatives- (40 CFR 1502.14)

### Alternatives Screening

Alternatives analysis should clearly indicate why and how the particular range of project alternatives was developed, including what kind of public and agency input was used. In addition, alternatives analysis should explain why and how alternatives were eliminated from consideration. It must be made clear what criteria were used to eliminate alternatives, at what point in the process the alternatives were removed, who was involved in establishing the criteria for assessing alternatives, and the measures for assessing the alternatives' effectiveness.

### Range of Alternatives

During the draft EIS stage all reasonable alternatives, or the reasonable range of alternatives, should be considered and discussed at a comparable level of detail to avoid any indication of a bias towards a particular alternative(s).

Although the "no-build alternative" might not seem reasonable, it must always be included in the analysis. In some cases, the no-build alternative may be a reasonable alternative, especially when the impacts are great and the need is relatively minor. Generally it serves as a baseline against which the other alternatives can be compared.

Transportation System Management alternatives are often evaluated as potential design options. These may include high-occupancy vehicle lanes, ridesharing, signal synchronization, and other actions. Where appropriate, mass transit options should be considered even when they are outside FHWA's funding authority.

### Logical Termini and Segmentation

In order to ensure meaningful evaluation of alternatives and to avoid commitments to transportation improvements before they are fully evaluated, the action evaluated in a NEPA document shall:

- Connect logical termini and be of sufficient length to address environmental matters on a broad scope;
- Have independent utility or independent significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and

- Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements. -- 23 CFR 771.111(f)

When developing a transportation project, its sponsors should consider how the end points are determined, both for the improvement itself and for the environmental analysis. Whether the action has "logical termini" or not is also a concern. Logical termini are defined as rational end points for both a transportation project and a review of the environmental impacts.

In developing a concept that can be advanced through the stages of planning, environment, design, and construction, the sponsor needs to consider a "whole" or integrated action that should satisfy an identified need, such as safety, economic development, or capacity improvement. The action also should be considered in the context of local socio-economics and topography, future travel demand, and other infrastructure improvements. Without these considerations, sponsors may only peripherally meet project needs or may cause unexpected effects requiring additional corrective action. Sponsors also should be aware of the problem of "segmentation", which may occur when a transportation need extends throughout an entire corridor, but project sponsors discuss the environmental issues and transportation need of only a segment of the corridor.

### C Impacts

The CEQ regulations (40 CFR §§ 1508.7 and 1508.8) define the impacts and effects that must be addressed and considered by Federal agencies in satisfying the requirements of the NEPA process, which includes direct, indirect and cumulative impacts:

"Cumulative impact" is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time - 40 CFR 1508.7

#### "Effects" include:

1. Direct effects: those caused by the action and at the same time and place.
2. Indirect effects: those caused by the action but later in time or farther removed in distance although still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in land use, population density or growth rate, and effects on air, water and other natural systems.

Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial - 40 CFR 1508.8

According to the CEQ regulations (40 CFR §§ 1500-1508), the determination of a significant impact is a function of both *context* and *intensity*.

Context means that the significance of an action must be analyzed in the contexts of society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. In the case of a site-specific action, it would usually depend upon the local effects rather than worldwide. Both short- and long-term effects are relevant.

Intensity refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

1. Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.
2. The degree to which the proposed action affects public health or safety.
3. Unique characteristics of the project area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.
4. The degree to which the effects on the quality of the human environment are likely to be highly controversial.
5. The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.
6. The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.
7. Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.
8. The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.
9. The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act.
10. Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.-- 40 CFR 1508.27

To determine NEPA significance, the severity of the impact must be examined in terms of the type, quality and sensitivity of the resource involved; the location of the proposed project; the duration of the effect (short- or long-term) and other consideration of context. Significance of the impact will vary with the setting of the proposed action and the surrounding area.

Significance is primarily a factor in determining the NEPA class of action for a project. NEPA requires an EIS for major Federal actions that significantly affect environmental quality.

### **D Mitigation**

The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment- 40 CFR § 1500.1(b): Purpose

Federal agencies shall, to the fullest extent possible, use all practicable means consistent with the requirements of the Act and other essential considerations of nation policy, to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions on the quality of the human environment.- 40 CFR 1500.2(f)

The mitigation of impacts must be considered whether or not the impacts are significant.. Agencies are required to identify and include in the action all relevant and reasonable mitigation measures that could improve the action. The CEQ regulations define mitigation as:

#### **AVOID adverse effects**

- Avoiding the impact altogether by not taking a certain action or parts of an action.

#### **MINIMIZE adverse effects when avoidance is not possible**

- Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

#### **MITIGATE remaining adverse effects by**

- Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

## I - 49 LAFAYETTE CONNECTOR - HANDOUT

- Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- Compensating for the impact by replacing or providing substitute resources or environments. - 40 CFR 1508.20

This ordered approach to mitigation is known as "sequencing" and involves understanding the affected environment and assessing transportation effects throughout project development. Effective mitigation starts at the beginning of the NEPA process, not at the end. Mitigation must be included as an integral part of the alternatives development and analysis process.

FHWA's mitigation policy states that measures necessary to mitigate adverse impacts will be incorporated into the action and are eligible for Federal funding when the Administration determines that:

- The impacts for which the mitigation is proposed actually result from the Administration action; and
- The proposed mitigation represents a reasonable public expenditure after considering the impacts of the action and the benefits of the proposed mitigation measures. In making this determination, the Administration will consider, among other factors, the extent to which the proposed measures would assist in complying with a Federal statute, Executive Order, or Administration regulation or policy.- 23 CFR 771.105(d)

### **E Interagency Coordination**

The combined requirements of the NEPA and Title 23 United States Code create a challenging position for the FHWA in carrying out its transportation mission. Title 23 restricts Federal funding to those projects that meet certain engineering, environmental, and safety requirements. Under NEPA, as the lead Federal agency and "owner" of the resultant environmental document, FHWA assumes responsibility for the integrity of the NEPA process.

As lead Federal agency in the NEPA process, FHWA is responsible for scoping, inviting cooperating agencies, developing consensus among a wide range of stakeholders with diverse interests, resolving conflict, and ensuring that quality transportation decisions are fully explained in the environmental document. These responsibilities force the FHWA to balance transportation needs, costs, environmental resources, safety, and public input in order to arrive at objective and responsible transportation decisions.

The FHWA Environmental Policy Statement stresses the full involvement of all partners. Effective communication is critical to successful implementation of FHWA's transportation mission and environmental policy. FHWA continually strives to communicate their commitment to protect and enhance the environment, to increase partnerships with private enterprise on infrastructure investments and to bring together the multifaceted and diverse interests in an open and cooperative process to create a synergy that will produce positive and effective solutions. It is FHWA policy to:

- Pursue communication and collaboration with Federal, state, and local partners in the transportation and environmental communities, including other USDOT modal administrations.
- Seek new partnerships with tribal governments, businesses, transportation and environmental interests groups, resource and regulatory agencies, affected neighborhoods, and the public.
- Ensure that those historically underserved by the transportation system, including environmental justice populations, are included in outreach.
- Actively involve partners and all affected parties in an open, cooperative, and collaborative process, beginning at the earliest stages and continuing through project development, construction, and operations.
- Ensure the development of comprehensive and cooperative public involvement programs during statewide and metropolitan planning and project development activities.

Effective interagency coordination is the key to achieving environmentally responsible transportation decisions. The CEQ regulations introduced the concepts of "lead agency" and "cooperating agency" to help streamline the environmental process, eliminate duplication in Federal, state, and local procedures, and integrate NEPA requirements with other Federal environmental review and consultation requirements.

SAFETEA-LU further defined the role of agencies involved with a transportation project receiving Federal funds. The SAFETEA-LU Environmental Review Process Final Guidance, issued November 15th, 2006, defines the role of Lead Agencies, Participating Agencies, and Cooperating Agencies. The purpose of the environmental streamlining provisions are to coordinate Federal agency involvement in major highway projects under the NEPA process and to address concerns relating to delays in implementing projects, unnecessary duplication

### **F Public Involvement Overview**

It is FHWA policy that public involvement and a systematic interdisciplinary approach are essential parts of the development process for proposed actions. - 23 CFR § 771.105(c)

Each State must have procedures approved by the FHWA to carry out a public involvement/public hearing program pursuant to 23 U.S.C. 128 and 40 CFR parts 1500 through 1508.

State public involvement/public hearing procedures must provide for:

- Coordination of public involvement activities and public hearings with the entire NEPA process.
- Early and continuing opportunities during project development for the public to be involved in the identification of social, economic, and environmental impacts, as well as impacts associated with relocation of individuals, groups, or institutions.
- One or more public hearings to be held at a convenient time and place for any Federal-aid project which requires significant amounts of right-of-way, substantially changes the layout or functions of connecting roadways or of the facility being improved, has a substantial adverse impact on abutting property, otherwise has a significant social, economic, environmental or other effect, or for which the FHWA determines that a public hearing is in the public interest.
- Reasonable notice to the public of either a public meeting or a public hearing. Such notice will indicate the availability of explanatory information. The notice also shall provide information required to comply with public involvement requirements of other laws, Executive Orders, and regulations. - 23 CFR § 771.111(h)

### **II Other Required Environmental Investigations, Reviews, and Consultations**

Beyond the CEQ requirement of evaluating all, or a reasonable number representative of the full spectrum of reasonable alternatives, there are other requirements for analyzing alternatives. These fall under Section 4(f), the Executive Orders on Wetlands and Floodplains, and the Section 404(b)(1) guidelines. To address these requirements and conclusively demonstrate that some alternatives are not prudent or practicable, project sponsors must develop a well-justified purpose and need statement.

The use of land from a Section 4(f) protected property may not be approved unless a determination is made that there is no feasible and prudent alternative for such use. Many factors exist that could render an alternative "not prudent," including cost and environmental impacts. If an alternative does not meet the action's purpose or need, then the alternative is not prudent, provided the purpose and need section can substantiate that unique problems will be caused by not developing the action.

If a proposed action is in a wetland or significantly encroaches upon a floodplain, a finding must be made that there is no practicable alternative to the wetland use or floodplain encroachment. Alternatives that do not meet the need for the action are not practicable. If the action's purpose and need are not adequately addressed, specifically delineated, and properly justified, resource agencies, interest groups, the public, and others will be able to generate one or possibly several alternatives that avoid or limit the impact and "appear" practicable. A well-described justification of the action's purpose

and need may prevent long and involved negotiations or additional analyses demonstrating that an alternative is not practicable.

If an alternative does not satisfy the purpose and need for the action, it should not be included in the analysis as an apparent and reasonable alternative.

Other requirements that apply to the concept for the I-49 Connector as defined in the ROD include the following:

- A. Section 4(f) of the USDOT Act of 1966,
- B. Section 106 of the National Historic Preservation Act,
- C. Section 404 of the Clean Water Act, and
- D. Executive Order 12898 - Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 1994

In addition, this section of this Overview includes

- E. Section 6(f) of the Land and Water Conservation Act that may apply to the Re-evaluation of the I-49 Connector as a result of modifications that have been suggested.

### **A Section 4(f) of the USDOT Act of 1966**

Section 4(f) of the Department of Transportation Act (DOT Act) of 1966 stipulates that FHWA and other DOT agencies cannot approve the use of land from the following land uses:

- publicly owned parks, recreational areas, wildlife and waterfowl refuges, or
- public and private historical sites  
unless the following conditions apply:
- There is no feasible and prudent avoidance alternative to the use of land;  
and  
The action includes all possible planning to minimize harm to the property resulting from such use;  
or
- The Administration determines that the use of the property will have a *de minimis* impact.

The term use—as it relates to Section 4(f)—denotes an adverse impact to, or occupancy of, a Section 4(f) property. There are three conditions under which use occurs:

- Permanent Incorporation occurs when a Section 4(f) property is acquired outright for a transportation project.
- Temporary Occupancy occurs when there is temporary use of property that is adverse in terms of Section 4(f)'s preservationist purpose.
- Constructive Use occurs when the proximity impacts of a transportation project on a Section 4(f) property, even without acquisition of the property, are so great that the activities, features and attributes of the property are substantially impaired. Constructive use may include impacts such as noise, access restrictions, vibration, ecological intrusions and visual impacts.

When a transportation project results in a use of land from a Section 4(f) property, the sponsoring agency, generally acquires interest in the property through a fee simple acquisition, a permanent easement, or a temporary easement.

Once a use has been determined, the intensity or magnitude of impact to the Section 4(f) property can be described either as "*de minimis*" or not "*de minimis*." In addition, there is a host of unique situations that are termed "Other Considerations" and that do not necessarily fit into any of the three main categories of use.

At the time that is ROD was issued, the Sterling Grove National Register Historic District was the only identified 4(f) property that was affected and this effect was determined by FHWA to be a constructive use based on the visual effects of the project. These effects will be mitigated through implementation of

## I - 49 LAFAYETTE CONNECTOR - HANDOUT

a Sterling Grove Mitigation Plan that will be prepared as part of the on-going Functional Plan based on the stipulations in the Memorandum of Agreement completed in 2002.

At this time, the Freetown-Port Rico neighborhood has been nominated for listing on the National Register and a survey of standing structures to determine properties that are potentially eligible for listing is underway. A Section 4(f) Statement will be prepared for one or more of these properties pending the final determination of their eligibility and the conceptual design of the roadway. Potential adverse effects of both the ROD concept and suggested modifications are being considered in conjunction with the considerations of the proposed modifications.

No other Section 4(f) properties were affected at the time that the ROD was issued. However, some modifications that have been suggested could have adverse impacts to protected properties between Taft Avenue and the Vermillion River.

Additional information can be found at <https://www.environment.fhwa.dot.gov/4f/index.asp>

### **B Section 106 of the National Historic Preservation Act,**

The text of Section 106 states: "The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under Title II of this Act a reasonable opportunity to comment with regard to such undertaking."

As both NEPA and Section 106 are required when a federal action is proposed, the two processes are commonly undertaken together. The process to satisfy the joint responsibility under NEPA and NHPA is known as Consultation. The *Handbook for Integrating NEPA and Section 106*, issued by CEQ, the Executive Office of the President, and Advisory Council on Historic Preservation defines Consultation as the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the Section 106 process.

In conjunction with the EIS and the ROD, a Consultation produced a Memorandum of Agreement (MOA) that defines the mitigation for Sterling Grove, the plan for archaeological investigations, and the monitoring of the terms of the MOA. In consideration of the expiration of the MOA in July 2017, the nomination of Freetown-Port Rico to the NRHP, and the outcome of the Standing Structures survey, Section 106 Consultation will be renewed during the completion of the Functional Plan after the survey is completed.

The Handbook and additional information can be found at:

[http://www.achp.gov/docs/NEPA\\_NHPA\\_Section\\_106\\_Handbook\\_Mar2013.pdf](http://www.achp.gov/docs/NEPA_NHPA_Section_106_Handbook_Mar2013.pdf)

<http://www.achp.gov> and [http://www.nps.gov/hps/fapa\\_110.htm](http://www.nps.gov/hps/fapa_110.htm)

### **C Section 404 of the Clean Water Act**

Section 404 regulates the discharge of dredged or fill material into navigable waters, which are defined by the Clean Water Act to include wetlands. Under Section 404, no discharge should occur as long as a practicable alternative exists or if it will result in significant harm.

The I-49 Connector may result in the discharge of dredged or fill material in wetlands based on the ROD concept due to the proposed extension of a runway at Lafayette Regional Airport. At this time the extent and nature of this potential adverse effect is dependent on the requirements of the FAA, which are not currently determined.

Additional information can be found on the following sites:

<http://www.epa.gov/cwa-404/section-404-permit-program>

<http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits.aspx>

### D Executive Order 12898 - Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 1994

Executive Order 12898 - Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 1994 states "Each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations."

There are three fundamental Environmental Justice principles:

- To avoid, minimize, or mitigate disproportionately high and adverse human health and environmental effects, including social and economic effects, on minority populations and low-income populations.
- To ensure the full and fair participation by all potentially affected communities in the transportation decision-making process.
- To prevent the denial of, reduction in, or significant delay in the receipt of benefits by minority and low-income populations.

Title VI of the Civil Rights Act prohibits discrimination on the basis of race, color, or national origin. Executive Order 12898 and the DOT and FHWA Orders on Environmental Justice pertain to minority populations and low-income populations as defined **by** USDOT and FHWA environmental justice orders, are described below:

- **Minority: Black**, a person with origins in the black racial groups of Africa; **Hispanic**, a person with Spanish culture or origin, regardless of race; **Asian**, a person with origins in the Far East, Southeast Asia, or the Indian subcontinent; **American Indian and Alaskan Native**, a person with origins in the original people of North America and who maintains cultural identification through tribal affiliation or community recognition; and **Native Hawaiian or Other Pacific Islander**, a person with origins in the Pacific Islands.
- **Low-Income**, as defined, "a person whose household income is at or below the Department of Health and Human Services (HHS) poverty guidelines." The HHS poverty guidelines are used as eligibility criteria for the Community Services Block Grant Program and a number of other Federal programs. However, a State or locality may adopt a higher threshold for low-income as long as the higher threshold is not selectively implemented and is inclusive of all persons at or below the HHS poverty guidelines. The HHS Poverty guidelines are updated annually. The most current HHS poverty guidelines can be found at HHS's website: <http://aspe.hhs.gov/poverty/>

If a US Census Tract has a minority or low income population that exceeds the percentage of minority or low income residents found within the Parish, it is found to be an Environmental Justice tract. The I-49 Connector right-of-way is entirely within tracts with minority populations that meet the finding of Environmental Justice, and one of these tracts also is Environmental Justice based on low income.

Additional information can be found at

[http://www.fhwa.dot.gov/environment/environmental\\_justice/overview/](http://www.fhwa.dot.gov/environment/environmental_justice/overview/)

### E Section 6(f) of the Land and Water Conservation Act

Section 6(f) of the Land and Water Conservation Act requires that the conversion of lands or facilities acquired with Land and Water Conservation Act funds be coordinated with the Department of Interior. Usually, replacement in kind is required. At the time that the ROD was issued, no conversion was expected, but some modifications that have been suggested could result in a conversion in conjunction with adverse effects to Section 4(f) properties between Taft Avenue and the Vermillion River.

Section 6(f)(3) of the Act states that “No property acquired or developed with assistance under this section shall, without the approval of the Secretary, be converted to other than public outdoor recreation uses. The Secretary shall approve such conversion only if he finds it to be in accord with the then existing comprehensive statewide outdoor recreation plan and only upon such conditions as he deems necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location.”

The requirements for conversion are as follows:

(a) *Background and legal requirements* - Section 6(f)(3) assures that a site funded with L&WCF assistance is maintained continually in public recreation use unless NPS approves substitution property of reasonably equivalent usefulness and location and of at least equal fair market value.

(b) *Prerequisites for conversion approval* - Requests from the project sponsor for permission to convert L&WCF assisted sites, in whole or in part, to other than public recreation use must be submitted by the State Liaison Officer to the appropriate National Park Service (NPS) Regional Director. NPS will consider conversion requests if the following prerequisites have been met:

- All practical alternatives to the proposed conversion have been evaluated,
- The fair market value of the property to be converted has been established and the property proposed for substitution is of at least equal fair market value as established by an approved appraisal (prepared in accordance with uniform Federal appraisal standards) excluding the value of structures or facilities with no recreation purpose,
- The property proposed for replacement is of reasonably equivalent usefulness and location as that being converted. At the discretion of the Regional Director, the replacement property need not provide identical recreation experiences or be located at the same site, if it is in a reasonably equivalent location. Generally, the replacement property should be administered by the same political jurisdiction as the converted property.

Additional information can be found at <http://www.nps.gov/ncrc/programs/lwcf/protect.html>

### **III Guidance for the Re-evaluation of an EIS**

This section summarizes the FHWA Re-evaluation guidance relative to the I-49 Connector. Additional information can be found at

<https://www.fhwa.dot.gov/resourcecenter/teams/environment/vol5iss2.pdf>

Reevaluations are required by the FHWA/FTA regulations, (23 CFR 771.129), but are not required under the NEPA (42 USC 4321) or CEQ Regulations (40 CFR 1500-1508), and have been upheld in court as an appropriate mechanism for determining whether or not a supplemental EIS is necessary.

Before requesting FHWA approval for final design, ROW or construction activities, the project sponsor must consult with the FHWA to determine whether the original NEPA decision remains valid. Many factors are considered including, but not limited to, changes in the project scope, laws, study area conditions, and local, state or national priorities. The amount of time a study has been complete is also an important consideration when there has been a time lag or changes related to the study have occurred between the previous NEPA approval and the request for action.

Reevaluations should be thought of as a continuation of the NEPA project development process and are necessary at certain key points in the overall process to establish whether or not the NEPA document (EIS) and final project decision (ROD) remain valid for the subsequent federal action. During a reevaluation, attention is given to determining what changes have occurred in the project and the study including changes in the design or scope of a project, new or modified laws and regulations, circumstances or project area changes or new information in general. The finding or conclusion of a reevaluation is that the NEPA document and decision are valid or that additional analysis is required. A reevaluation provides evidence for the FHWA in determining whether or not the preparation of a supplemental EIS is necessary in order to advance the project to the next stage. [23 CFR § 771.129(c)]