

TENNESSEE ENVIRONMENTAL STREAMLINING AGREEMENT

FOR THE ENVIRONMENTAL AND REGULATORY COORDINATION OF TRANSPORTATION PROJECTS

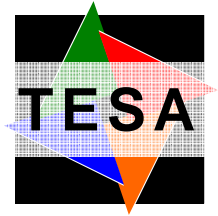




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1.0 Overview

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.

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."*

Most recently, 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, establishes 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 provides an opportunity for public and interagency involvement once the purpose and need of a project has been defined and requires the establishment of a plan for coordinating public and agency participation. Finally, the law encourages an opportunity for a range of alternatives to be considered for a project as early as practicable in the process.

A series of workshops have been 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. The result of these meetings and discussions is 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

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 and MPO 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, and the Aquatic Resource Alteration Permit (ARAP) 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 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU),
- G. 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
- H. 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 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 increased environmental protection and improve and enhance the natural resources in watersheds 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 problems/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, and
- I. Integrate the information and products developed in the highway and transit planning process into the NEPA process.

3.0 Applicability

3.1 Transportation Projects

The process outlined in this Agreement applies to all transportation construction projects in the State of Tennessee, regardless of project funding source, administered by TDOT 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).

The parties to this Agreement 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, the parties to this agreement 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. This allows for consideration of federally-funded projects that do not require FHWA approval of an EA or EIS as well as state-funded projects that may have impacts to sensitive environmental or cultural resources.

3.2 Parties to the Agreement

Parties to this Agreement are the:

- Federal Highway Administration, Tennessee Division (FHWA)
- Tennessee Department of Transportation (TDOT)
- 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)
- US Environmental Protection Agency, Region 4 (EPA)
- Tennessee Valley Authority (TVA)
- National Park Service (NPS)
- USDA Forest Service (USDA)
- US Coast Guard (CG)
- Tennessee Department of Environment and Conservation (TDEC)
- Tennessee State Historic Preservation Office (Tennessee SHPO)
- Tennessee Wildlife Resources Agency (TWRA)
- Metropolitan Planning Organizations (MPO)
 - Bristol Urban Area Metropolitan Planning Organization
 - Chattanooga-Hamilton County/North Georgia Transportation Planning Organization
 - Clarksville-Montgomery County Regional Metropolitan Planning Organization
 - Cleveland Urban Area Metropolitan Planning Organization
 - Jackson Metropolitan Planning Organization
 - Johnson City Metropolitan Transportation Planning Organization
 - Kingsport Metropolitan Planning Organization
 - Knoxville Regional Transportation Planning Organization
 - Lakeway Metropolitan Transportation Planning Organization
 - Memphis Metropolitan Planning Organization
 - Nashville Area Metropolitan Planning Organization

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 responsible for supervising preparation of the environmental documents required for all Federal-aid projects. Unless otherwise agreed in writing, TDOT will be the State 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 an agency or organization that agrees to participate in the environmental process for a specific project as outlined in this Agreement. Upon receiving a notice of project initiation from TDOT, agencies must decide whether or not to become participating agencies in the environmental review process for an individual project. Designation as a participating agency shall not imply that the participating agency supports a proposed project.

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.

If the terms of this agreement are inconsistent with statutes or regulations, then those portions of this agreement that are determined to be inconsistent shall be invalid; but the remaining terms and conditions not affected by the inconsistency shall remain in full force and effect. 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.

4.0 Concurrence Process

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. 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 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 project moves forward 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
4. Preferred Alternative and Preliminary Mitigation

4.3 Interagency Consultation

To support and encourage interagency cooperation and consultation, TDOT will hold bimonthly (or, as needed) meetings for all participating agencies to cooperatively discuss ongoing transportation projects. The projects to be discussed will be in various stages of the environmental review process. Some will be new projects where general information will be shared and preliminary technical issues will be discussed. Other projects will be further along in the process, where specific technical issues will be discussed, or concurrence will be obtained. The meetings will also afford the participating agencies an opportunity to mutually decide whether or not a project will go through the full Environmental Review Process (Section 5.0).

When TDOT makes its determination that the participating agencies have sufficient knowledge of the project and information to determine concurrence, 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 a supplemental package to all participating agencies within 10 calendar days. All participating agencies, except TDOT, 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 nonconcurrence, 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.

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 at the same time as concurrence or nonconcurrence. 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. If an extension is granted, each participating agency will be notified and will have the original 45 days plus 15 additional calendar days in order to respond. At the end of this 60 day 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 the Issue Resolution Process (Section 6.0). All agency responses will be tracked by TDOT and a summary will be provided to all participating agencies within 15 calendar days of the close of the concurrence period.

4.6 Nonconcurrency

Nonconcurrency is a written determination by a participating agency that information to date is inadequate or that the project may not be advanced to the next stage of project development without modification. A nonconcurrency submitted by a participating agency shall be accompanied by a detailed explanation of the reasons for nonconcurrency. Once a nonconcurrency has been submitted, the Issue Resolution Process (Section 6.0) will commence and the project will not proceed to the next concurrence point until each issue has been resolved.

A nonconcurrency 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, and/or
- C. Discovery of a sensitive impact, resource or related information that was not previously identified or did not previously exist.

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. TDOT will make a determination regarding whether or not a concurrence point should be revisited based on the information provided. All participating agencies will be notified of this decision. 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.

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.



5.0 Environmental Review Process

5.1 Introduction

The following is a brief overview of the environmental review process that will be utilized to execute this Agreement. The process outlined includes the overall project development process followed 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 Rural Planning Organization (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 shall prepare and forward a notice of project initiation to FHWA. This notice will summarize 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.

5.4 Project Coordination Plan

Once a project has been initiated, the lead agencies will cooperatively develop a project specific coordination plan. 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.

As a part of the project specific coordination plan, based on information collected and analysis completed to date, TDOT shall submit to FHWA a recommendation for the appropriate level of environmental documentation, an anticipated schedule for completion of the environmental process and the appropriate methodologies and level of detail required in the analysis of the alternatives. FHWA shall review this draft recommendation and concur or request additional information or clarification before making a final determination.

5.5 Invitation to Participating Agencies

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.

The invitation will include a basic project description and map of the project location. The invitation will clearly request the involvement of the agency as a 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 participating agency and solicit comments on the coordination plan. Per SAFETEA-LU, 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 must 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.

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 or declines the invitation, regardless of the reasons for declining, the agency should not be considered a participating agency.

Within 30 days of receipt of the invitation, the signatory agencies and other potential participating agencies, shall decide whether to become participating agencies on the project. 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 Purpose and Need and Study Area Package

TDOT will prepare and forward a purpose and need and study area package to all participating agencies. The package will include information from the TPR, the updated coordination plan 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 objectives of the proposed action, as well as any secondary objectives,
- B. Explanation of the underlying basis for the project objectives in terms of:
 - 1. Relevant Federal, State, and/or Local policies, which may include transportation, economic development, land use, and other policies,
 - 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 objectives,
- C. Description of the evaluation criteria that will be used to evaluate the effective-

ness of an alternative in meeting the purpose and need of the project, and explanation how those evaluation criteria will be utilized,

- D. Description any other factors, beside 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 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:

- A. Concurrence 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 appropriate methodologies to be used and the level of detail required in the analysis of each alternative,
- D. Input from participating agencies on the alternatives being considered, including different modes, and
- E. Input from participating agencies about environmental features/resources of concern.

5.8 Public Scoping

Based on the output from Concurrence Point 1, TDOT shall revise, as appropriate, the Purpose and Need and Study Area Package, the coordination plan and methodologies. For projects requiring preparation of an Environmental Impact Statement, a Notice of Intent shall be prepared and published.

5.9 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. As needed, a field review may be conducted with participating agencies during this stage of the process. 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 methodologies to be used and the level of detail required in the 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 abandoned, and
- H. Where substantial impacts are anticipated, refined scopes and methodologies of studies, including the spatial and temporal limits of any indirect/cumulative impact analyses.

5.10 Concurrence Point 2 — Project Alternatives to be Evaluated in the Environmental Document

Within 45 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:

- A. Concurrence from participating agencies on the alternatives to be carried forward into the environmental document for further study,
- B. Concurrence from the participating agencies on any revisions to the purpose and need and study area of the project,
- C. Concurrence from the participating agencies on any revisions to the coordination plan, and
- D. Concurrence from the participating agencies on the refined scopes and methodologies to be used and the level of detail required in the analysis of each alternative.

5.11 Detailed Analysis of Alternatives Package

Based on the output from Concurrence Point 2 and any detailed indirect and cumulative impacts analysis and/or community characteristics inventory conducted in the planning stages of the project development process, TDOT will prepare and forward a Preliminary Draft NEPA Document or Preliminary Draft TEER Environmental Document to the participating agencies for their review and comment.

5.12 Concurrence Point 3 — Preliminary Draft Environmental Document

Within 45 days of receipt of the Preliminary Draft NEPA Document or Preliminary Draft TEER Environmental Document, the participating agencies, shall review and provide a response in accordance with Section 4.0. The output from Concurrence Point 3 should include:

- A. Concurrence from participating agencies on the adequacy of the preliminary draft NEPA document or preliminary draft TEER environmental 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.

5.13 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 approval. Based upon approval of the environmental document by FHWA for Federal-aid projects or by TDOT for State-aid projects, a public hearing will be conducted in accordance with the applicable requirements.

5.14 Preferred Alternative and Preliminary Mitigation Package

Based on the output from Concurrence Point 3, along with any issues, concerns and/or opportunities identified during the public hearings, TDOT shall prepare a Preferred Alternative and Preliminary Mitigation Package. 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 preferred alternative,
- C. A preliminary mitigation summary describing the various elements of the proposed mitigation, including a map locating the elements of the preferred alternative and preliminary mitigation, and
- D. Summary of major public and agency comments and summary of responses.

5.15 Concurrence Point 4 — Preferred Alternative and Preliminary Mitigation

Within 45 days of receipt of the Preferred Alternative and Preliminary 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:

- A. Concurrence from participating agencies on the selection of the preferred alternative and preliminary 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. If the agency determines that it does not have enough information to make a recommendation on mitigation measures, it will comment to that effect. 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 advise the lead agencies 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.

5.16 Final Environmental Document

Based on the output from Concurrence Point 4, TDOT shall select a preferred alternative and prepare a final environmental document, Finding of No Significant Impact (FONSI) or Final Environmental Impact Statement (FEIS), for submittal to FHWA for Federal-aid projects or a Final TEER document for State-aid projects.

5.17 Applications for Applicable Permits

Based on the final environmental document, TDOT shall prepare all necessary applications for all applicable permits.



6.0 Issue Resolution

6.1 Purpose

The purpose of the Issue Resolution Process is to provide a means to resolve disagreements between 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 utilized.

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 provide written 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).

6.3 Issue Resolution Process

The participating agencies shall meet with the lead agencies in any consultation necessary to resolve, whenever possible, the concerns 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.

The goal of the issue resolution process is to resolve technical and/or policy issues at the lowest possible staff level. But, if this is not possible, it is desired that the process be invoked as soon as possible so that differences of opinion are not allowed to become divisive or polarizing. If an issue can not be resolved at the staff level, then the issue is elevated in accordance with the process outlined in this section.

Level I

A nonconcurrence submitted by a participating agency shall be accompanied by a detailed explanation of the reasons for nonconcurrence. The nonconcurring agency or agencies and/or TDOT can initiate the issue resolution process. TDOT will be responsible for notifying the other participating agencies that the issue resolution process has been initiated. TDOT will arrange a meeting (or conference call) with FHWA, any other lead agencies, the nonconcurring agency or agencies, as well as any other participating agencies that wish to discuss the issue. It is desired that such meetings involve the working level staff from the participating agencies.

Level II

If FHWA and TDOT determine that they are unable to resolve a substantive issue at Level I, they will convene a meeting (or conference call) with the working level staff and their first-level supervisors from the appropriate agencies to discuss and resolve the issue. It is expected that most issues can be resolved in this way. As appropriate, agencies will consider employing third party, facilitated mediation at

this point to assist in resolving outstanding issues. TDOT will be responsible for notifying the other participating agencies that the issue resolution process has been elevated.

Level III

If FHWA and TDOT determine that they are unable to resolve a substantive issue at Level II, they will convene a meeting (or conference call) of the executives from the appropriate agencies to address the outstanding issue. It is anticipated that the FHWA Division Administrator, TDOT Chief of Environment and Planning, and their equivalent at the associated agency would meet to discuss and resolve the issue. The respective agencies would draw on their headquarters support staff as needed to address the outstanding issue. TDOT will be responsible for notifying the other participating agencies that the issue resolution process has been elevated.

Level IV

If FHWA and TDOT determine that they are unable to resolve a substantive issue at Level III, the ultimate decisions on whether or not 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. 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 to pursue 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. In the event of any conflict between these procedures and other statutes or regulations, the statutes or regulations control.

6.4 Documenting Issue Resolution

At the conclusion of each level in the Issue Resolution Process, TDOT will notify all participating agencies of an elevation in the process or that the issue has been resolved. An elevation notice will include a brief summary of negotiations to-date. 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

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 responsible for supervising preparation of the environmental documents required for all Federal-aid projects. Unless otherwise agreed in writing, TDOT will be the State 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, and
- F. Participate in the Issue Resolution 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 in a timely and meaningful way,
- F. Collaborate with participating agencies to determine the appropriate methodologies to be used and the level of detail required in the 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. Obtain concurrence from participating agencies at each of the four (4) concurrent points as outlined the Agreement,
- I. Conduct bimonthly (or, as needed) interagency meetings to discuss ongoing projects. Facilitate the interagency meetings, utilizing a TDOT representative, consultant, or a designee from another participating agency,
- 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,
- 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 the information needed by the participating agencies to fulfill their responsibilities and requirements on approvals, permits, certifications and/or clearances for the proposed action.
- Q. Provide financial and/or other assistance to signatory agencies that directly and meaningfully contribute to expediting and improving the planning and delivery of transportation projects as outlined in this Agreement.
- R. Prepare and submit applications for all necessary and appropriate permits, and
- S. Coordinate and participate in the Issue Resolution Process, including preparation of all meeting summaries and agency notification.

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 inter-agency 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 for projects where agencies have jurisdiction by law, special expertise, or other specific interest,
- E. Provide open and honest participation,
- 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 agencies 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, methodologies, and the level of detail for the 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 the extent allowed by law, 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. For the purpose of this Agreement, emergencies are defined as occurrences which 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.



8.0 Terms and Conditions

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 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

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.
- 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.
- 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 implementation of the agreement each year in July.



10.0 Signatures



 Commissioner
 Tennessee Department of Transportation

11/15/2007

Date



 Division Administrator
 Federal Highway Administration, Tennessee Division

11/15/2007

Date



 Commissioner
 Tennessee Department of Environment and Conservation

11/15/2007

Date



**US Army Corps
 of Engineers®**
 Nashville District

 District Engineer
 U.S. Army Corps of Engineers, Nashville District

05/30/2008

Date



**US Army Corps
 of Engineers®**
 Memphis District

 District Engineer
 U.S. Army Corps of Engineers, Memphis District

05/30/2008

Date



 Regional Administrator
 U.S. Environmental Protection Agency, Region 4

07/24/2008

Date



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

07/24/2008

Date



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

07/14/2008

Date

FOR THE ENVIRONMENTAL AND REGULATORY COORDINATION
OF TRANSPORTATION PROJECTS

SIGNATURES



<hr/> Executive Director Tennessee Wildlife Resources Agency	09/10/2008 <hr/> Date
<hr/> Deputy State Historic Preservation Officer Tennessee Historical Commission	<hr/> Date
<hr/> Forest Supervisor, Cherokee National Forest USDA Forest Service	<hr/> Date
<hr/> Chief, Bridge Branch - Second Coast Guard District U.S. Coast Guard	<hr/> Date
<hr/> Regional Director National Park Service	<hr/> Date
<hr/> Board Chair Bristol Urban Area Metropolitan Planning Organization	<hr/> Date
<hr/> Board Chair Chattanooga-Hamilton County/North Georgia Transportation Planning Organization	<hr/> Date
<hr/> Board Chair Clarksville-Montgomery County Regional Metropolitan Planning Organization	<hr/> Date



SIGNATURES

Board Chair
Cleveland Urban Area Metropolitan Planning
Organization
Date

Board Chair
Jackson Metropolitan Planning Organization
Date

Board Chair
Johnson City Metropolitan Transportation Planning
Organization
Date

Board Chair
Kingsport Metropolitan Planning Organization
Date

Board Chair
Knoxville Regional Transportation Planning
Organization
Date

Board Chair
Lakeway Metropolitan Transportation Planning
Organization
Date

Board Chair
Memphis Metropolitan Planning Organization
Date

Board Chair
Nashville Area Metropolitan Planning Organization
Date

A. Definitions

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.

Concurrence

Written determination by a participating agency that the information to date is adequate and that the project can be advanced to the next stage of project development without modification. 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

Points in the environmental 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. Cooperating agencies are those agencies with jurisdiction by law or special expertise.

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 Section 102 (2)(c) of NEPA.

Environmental Review

The process of planning and development of a draft environmental document for proposed transportation projects under NEPA, the TEER process, and to the extent practicable, other environmental laws.

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.

Issue Resolution

Process for resolving agency disagreements related to the implementation of this Agreement.

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 responsible for supervising preparation of the environmental documents required for all Federal-aid projects. Unless otherwise agreed in writing, TDOT will be the State 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 an agency that information to date is inadequate or that the project may not be advanced to the next stage of project development without modification.

Notice of Intent (NOI)

A notice that an environmental impact statement will be prepared and considered.

Participating Agency

A Participating Agency is any Federal, State, tribal, regional, and local government agencies 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 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.

Purpose and Need

Justification for project development. Basis 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 or recommendation to Congress that:

- A. States what the decision was,
- 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, and
- E. Adopts and summarizes monitoring and enforcement programs where applicable for any 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.

Signatory Agency

A Signatory Agency is any Agency that is signatory to 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.

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.

B. Statutory Authorities for Agreement

B.1 Introduction

The following list of Federal and State legislation and regulations provides the basic statutory authority to enter into this Agreement. This list is not intended to be all-inclusive.

B.2 Federal Legislation and Regulations

The following is the list of Federal legislation and regulations which provides the basic statutory authority to enter into this Agreement.

- A. National Environmental Policy Act of 1969, as amended
 - 1. 23 CFR 771, Environmental Impact Statements and Related Procedures,
 - 2. 33 CFR Parts 230 and 325, (Appendix B) Environmental Quality; Procedures for Implementing NEPA, and
 - 3. 40 CFR Parts 1500-1508, Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act
- B. SAFETEA-LU (Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users)
- C. Sections 401, 402 & 404 of the Federal Water Pollution Control Act (Clean Water Act) of 1972, as amended
 - 1. 33 CFR Parts 320 through 331, Regulatory Programs of the Corps of Engineers,
 - 2. 40 CFR Part 230 Guidelines for Specifications of Disposal Sites for Dredged or Fill Material, and
 - 3. 40 CFR Part 121, State Certification of Activities Requiring a Federal License or Permit
- D. Sections 9 and 10 of the Rivers and Harbors Act of 1899, as amended
- E. Section 106 of the National Historic Preservation Act of 1966, as amended 36 CFR Part 800, Protection of Historic Properties
- F. Section 7 of the Endangered Species Act of 1973, as amended
- G. Section 2 of the Fish and Wildlife Coordination Act
- H. Section 1424(e) of the Safe Drinking Water Act
- I. Clean Air Act, as amended
 - 1. 40 CFR Part 93, Transportation Conformity
- J. Fish and Wildlife Act of 1956

- K. Section 4(f) of the Department of Transportation Act of 1966
- L. Other applicable Federal guidance1. Executive Order 11990, Protection of Wetlands,2. Executive Orders 11988, Flood Plain Management,3. Executive Order 12898, Environmental Justice, 4.FHWA Order 6640.23, FHWA Actions to Address Environmental Justice in Minority Populations and Low Income Populations, and 5. Executive Order 13274, Environmental Stewardship and Transportation Infrastructure Project Reviews
- M. Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA)
- N. Resource Conservation and Recovery Act of 1976 (RCRA)
- O. Section 26a of the TVA Act (16 USC 831y-1)
- P. Wild and Scenic Rivers Act of 1968
- Q. Farmlands Protection Policy Act of 1981
- R. Noise Control Act of 1972
- S. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970
- T. Native American Graves Protection and Repatriation Act of 1990
- U. Public Law 87-852 (40 USC 1314 – Easements)
- V. 23 CFR 450, Planning Assistance and Standards
- W. Wild and Scenic Rivers and National Trails Presidential Directive (8/2/79)
- X. National Trails System Act as amended 2002
- Y. The Organic Act of 1916
- Z. The National Park Service General Authorities Act of 1970
- AA. The Antiquities Act of 1906
- BB. The Land and Water Conservation Act of 1965
- CC. Wilderness Act of 1964
- DD. Archaeological Resources Protection Act of 1979
- EE. Cumberland Gap National Historic Park - June 11, 1940 (54 Stat. 262)
- FF. Obed Wild and Scenic River - Public Law 94-486
- GG. Great Smoky Mountains National Park - February 21, 1925 (43 Stat. 958)

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- HH. Stones River National Battlefield - 5 U.S.C. Secs, 124-132 Executive Orders 6166 and 6228
- II. Fort Donelson National Battlefield and Cemetery - March 26, 1928 (46 Stat. 69)
- JJ. Natchez Trace Parkway - July 15, 1968 (16 U.S.C. 4601-22 (b))
- KK. Shiloh National Military Park December 27, 1894 (28 Stat. 597)
- LL. Andrew Johnson National Historic Site- Aug 29, 1935 (49 Stat. 958)
- MM. Big South Fork National River and Recreation Area - March 1974 (P.L. 93-251, 88 Stat. 12)
- NN. Chickamauga and Chattanooga National Military Park
- OO. OMB Circular A-87, "Provisions for Specialized and Technical Services to State and Local Governments"
- PP. OMB Circular A-97, "Provisions for Specialized and Technical Services to State and Local Governments"
- QQ. OMB Circular A-102, as codified by 43 CFR Part 12, Subpart C, "Uniform Administrative Requirements for Grants-in-Aid to State Governments"
- RR. OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations"
- SS. FAR Clause 52.203-12, Paragraphs (a) and (b), "Limitation on Payments to Influence Certain Federal Transactions"
- TT. Non-Discrimination - All activities pursuant to this Agreement shall be in compliance with the requirements of Executive Order 11246; Title VI of the Civil Rights Act of 1964, as amended, (78 Stat. 252; 42 U.S.C. §§2000d et seq.); Title V, Section 504 of the Rehabilitation Act of 1973, as amended, (87 Stat. 394; 29 U.S.C. §794); the Age Discrimination Act of 1975 (89 Stat. 728; 42 U.S.C. §§6101 et seq.); and with all other federal laws and regulations prohibiting discrimination on grounds of race, color, sexual orientation, national origin, disabilities, religion, age, or sex.
- UU. Lobbying Prohibition - 18 U.S.C. §1913, Lobbying with Appropriated Moneys - No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to Members of Congress on the request of any Member or to Congress, through the proper official channels, requests for legis-

lation or appropriations which they deem necessary for the efficient conduct of the public business.

VV. Anti-Deficiency Act - 31 U.S.C. §1341 - Nothing contained in this Agreement shall be construed as binding the NPS to expend in any one fiscal year any sum in excess of appropriations made by Congress for the purposes of this Agreement for that fiscal year, or other obligation for the further expenditure of money in excess of such appropriations.

WW. Minority Business Enterprise Development - Executive Order 12432 - It is national policy to award a fair share of contracts to small and minority firms. The NPS is strongly committed to the objectives of this policy and encourages all recipients of its Cooperative Agreements to take affirmative steps to ensure such fairness by ensuring procurement procedures are carried out in accordance with 43 CFR § 12.944 for Institutions of Higher Education, Hospitals and Other Non-Profit Organizations, and 43 CFR §12.76 for State and Local Governments.

B.3 State Legislation and Regulations

The following is the list of State legislation and regulations which provide the basic statutory authority to enter into this Agreement.

- A. TCA 70-4-206, Pollution of Waters – Penalty for violations – nuisance
- B. TCA 70-4-206, The Rare Plant Protection and Conservation Act of 1985
- C. TCA 11-13-101, The Tennessee Scenic Rivers Act of 1968
- D. TCA 11-14-101, The Tennessee Natural Areas Preservation Act of 1971
- E. Tennessee Water Quality Control Act of 1977 (TCA 69-3-101-304)
- F. The Tennessee Nongame and Endangered or Threatened Wildlife Species Conservation Act of 1974
- G. Executive Order No. 65 Providing for Protection of Wetlands