

## Chapter 8

# PROJECT SCOPING AND EARLY COORDINATION

**MDT ENVIRONMENTAL MANUAL**

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## Chapter 8

# PROJECT SCOPING AND EARLY COORDINATION

### 8.1 OVERVIEW

The *Council on Environmental Quality (CEQ) Regulations* for implementing the *National Environmental Policy Act (NEPA)* (Title 42 of the *United States Code (USC)*, Section 4321, et seq.) define “Scoping” in 40 CFR 1501.7. The definition indicates it is an early and open process for determining the scope of issues to be addressed in the environmental process and for identifying the significant issues related to a proposed action. It is an early coordination process in which affected Federal, State and local agencies, Tribes and other interested persons are invited to participate and provide their views on the proposed action and associated environmental issues.

Scoping is required for projects involving preparation of an environmental impact statement (EIS) under NEPA. It is also required for projects involving preparation of an EIS under the *Montana Environmental Policy Act (MEPA)* (MCA 75-1-101, et seq.) in accordance with ARM 18.2.241 “Determining the Scope of an EIS.” In addition, scoping is appropriate for a project involving preparation of an environmental assessment (EA) under NEPA when the Federal Highway Administration (FHWA) determines the project is subject to 23 USC 139 “Efficient Environmental Reviews for Project Decision-Making.”

As provided in 23 CFR 771.117 “Environmental Assessments” and ARM 18.2.239 “Preparation and Contents of Environmental Assessments,” a scoping process also may be used on other projects requiring an EA. As an alternative, the necessary exchange of information with affected and interested agencies, Tribes and persons may be accomplished through other early coordination procedures.

For scoping or other early coordination procedures, the fundamental objective is to focus the environmental process on issues and impacts that are important and to ensure the analysis of project alternatives is responsive to those resources and issues.

For projects involving preparation of Corridor Planning Studies in accordance with the *Montana Business Process to Link Planning Studies and NEPA/MEPA Reviews*, the information from the Corridor Planning Study feeds into and complements scoping and early coordination activities for the environmental process. The Corridor Planning Process includes opportunities for involvement of interested agencies, organizations and individuals.

The results of scoping or other early coordination are considered along with information gathered through public involvement procedures, discussed in Chapter 16 “Public Involvement.”

This Chapter provides guidance and procedures for implementing scoping and/or early coordination on proposed MDT projects. See [Chapters 11 “Preparing Environmental Documentation,”](#) [12 “Categorical Exclusion,”](#) [13 “Environmental Assessment/ FONSI”](#) and [14 “Environmental Impact Statement/ROD”](#) for detailed information on preparation and processing of environmental documentation.

## 8.2 LAWS, REGULATIONS AND GUIDANCE

### 8.2.1 40 CFR 1500 through 1508 CEQ Regulations

Paragraph (g) of Part 1500.4 “Reducing Paperwork” in Title 40 of the *Code of Federal Regulations* (CFR) provides that agencies are to reduce excessive paperwork by using the scoping process not only to identify significant environmental issues deserving of study, but also to de-emphasize insignificant issues, narrowing the scope of the environmental impact statement process accordingly.

Paragraph (b)(2) of Part 1501.6 “Cooperating Agencies” requires each cooperating agency to participate in the scoping process.

Paragraph (b) of Part 1508.22 “Notice of Intent” requires the notice to briefly describe the agency’s proposed scoping process including whether, when and where any scoping meeting will be held.

Part 1501.7 “Scoping” establishes the following requirements for the scoping process under NEPA:

1. Scope. The agency is required to have an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. As soon as practicable after its decision to prepare an environmental impact statement and before the scoping process, the lead agency is required to publish a Notice of Intent in the *Federal Register*.
2. Process. As part of the scoping process the lead agency is required to:
  - Invite the participation of affected Federal, State and local agencies, Tribes, the proponent of the action and other interested persons, including those who might not be in accord with the action on environmental grounds. An agency may give notice in accordance with Section 1506.6 “Public Involvement.”
  - Determine the scope and the significant issues to be analyzed in-depth in the environmental impact statement.
  - Identify and eliminate from detailed study the issues that are not significant or that have been covered by prior environmental review. Narrow the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere.
  - Allocate assignments for preparation of the environmental impact statement among the lead and cooperating agencies, with the lead agency retaining responsibility for the statement.
  - Indicate any public environmental assessments and other environmental impact statements that are being or will be prepared that are related to but are not part of the scope of the impact statement under consideration.

- Identify other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the environmental impact statement. See Section 1502.25 “Environmental Review and Consultation Requirements.”
  - Indicate the relationship between the timing of the preparation of environmental analyses and the agency’s tentative planning and decision-making schedule.
3. Guidance. As part of the scoping process the lead agency may:
- set page limits on environmental documents (see Section 1502.7 “Page Limits”),
  - set time limits (see Section 1501.8 “Time Limits”),
  - adopt procedures under Section 1507.3 “Agency Procedures” to combine its environmental assessment process with its scoping process, and
  - hold an early scoping meeting or meetings that may be integrated with any other early planning meetings. These scoping meetings will often be appropriate when the impacts of a particular action are confined to specific sites.
4. Revisions. An agency is required to revise the determinations made under the preceding paragraphs if substantial changes are made later in the proposed action, or if significant new circumstances or information arise that bear on the proposal or its impacts.

### **8.2.2 23 CFR 450, Appendix A “Linking the Transportation Planning and NEPA Processes**

This appendix to the FHWA regulations on “Planning Assistance and Standards” provides information to explain the linkage between the transportation planning and project development/NEPA processes.

### **8.2.3 23 CFR 771 “Environmental Impact and Related Procedures”**

Paragraph (a) of Section 771.111 “Early Coordination, Public Involvement and Project Development” indicates that early coordination with appropriate agencies and the public aids in determining the required environmental review documents, scope of the documents, level of analysis and other related environmental requirements. This involves the exchange of information from the inception of a proposal for action to preparation of the environmental review documents.

Paragraph (e) of Section 771.111 provides that other States and Federal land management entities that may be significantly affected by an action or by any of the alternatives are to be notified early and their views solicited by the applicant in cooperation with FHWA. FHWA will prepare a written evaluation of any significant unresolved issues and furnish it to the applicant for incorporation into the EA or draft EIS.

Paragraph (b) of Section 771.119 “Environmental Assessments” provides that for actions requiring an EA, the applicant, in consultation with FHWA, is responsible for beginning consultation with interested agencies and others to advise them of the scope of the project and to achieve the following objectives:

- determine which aspects of the proposed action have potential for social, economic or environmental impact;
- identify alternatives and measures that might mitigate adverse environmental impacts; and
- identify other environmental review and consultation requirements that should be performed concurrently with the EA.

The applicant, at the earliest appropriate time, is to accomplish this through an early coordination process (e.g., procedures under Section 771.111) or through a scoping process.

Paragraph (b) of Section 771.123 “Draft Environmental Impact Statements” provides that after publication of the Notice of Intent (NOI), FHWA, in cooperation with the applicant, will begin the scoping process. The scoping process is used to identify the range of alternatives and impacts and the significant issues to be addressed in the EIS and to achieve the other objectives of 40 CFR 1501.7 “Scoping.” For FHWA, scoping is normally achieved through public and agency involvement procedures required by Section 771.111.

#### **8.2.4 MCA 75-1-201 through 75-1-220 “Environmental Impact Statements”**

Paragraph (1)(b) of *Montana Code Annotated* (MCA) 75-1-208 “Environmental Review Procedures” provides that, to the extent that the requirements of this Section are inconsistent with Federal requirements, the requirements of this Section do not apply to an environmental review that is being prepared jointly by a State agency pursuant to this part and a Federal agency pursuant to NEPA. They also do not apply to an environmental review that must comply with the requirements of NEPA.

Paragraph (9) of MCA 75-1-208 provides that an agency is responsible for ensuring that the notification for any public scoping process associated with an environmental review is presented in an objective and neutral manner and that the notification does not speculate on the potential impacts of the project.

Paragraph (6) of MCA 75-1-220 defines “Public Scoping Process” as any process to determine the scope of an environmental review.

#### **8.2.5 ARM 18.2.235 through 18.2.261 “Rules Implementing the Montana Environmental Policy Act”**

Paragraph (1) of Rule 18.2.239 “Preparation and Contents of Environmental Assessments” in the *Administrative Rules of Montana* (ARM) provides that MDT may initiate a process to determine the scope of issues to be addressed in an EA. Whenever MDT elects to initiate this process, it is to follow the procedures contained in ARM 18.2.241 “Determining the Scope of an EIS.” Rule 18.2.241 “Determining the Scope of an EIS” establishes the following requirements:

- Prior to the preparation of an EIS, MDT is to initiate the process to determine the scope of the EIS.
- To identify the scope of the EIS, MDT is required to:
  - + invite the participation of affected Federal, State and local government agencies, Tribes, the applicant, if any, and interested persons or groups;
  - + identify issues related to the proposed action that are likely to involve significant impacts and that will be analyzed in depth in the EIS;
  - + determine the issues that are not likely to involve significant impacts, thereby indicating that, unless unanticipated effects are discovered during the preparation of the EIS, the discussion of these issues in the EIS will be limited to a brief presentation of the reasons they will not significantly affect the quality of the human environment;
  - + identify those issues that have been adequately addressed by prior environmental review, thereby indicating that the discussion of these issues in the EIS will be limited to a summary and reference to their coverage elsewhere; and
  - + identify possible alternatives to be considered.

#### **8.2.6 FHWA “SAFETEA-LU Environmental Review Process Final Guidance”**

This document, available on the FHWA website, includes the following guidance pertaining to scoping and early coordination:

- The roles and responsibilities of participating agencies under 23 USC 139 include participating in the scoping process. The scoping process should be designed so that agencies whose interest in the project comes to light as a result of initial scoping activities are invited to participate and still have an opportunity for involvement.
- The scoping process may be conducted concurrently with the process for inviting participating agencies, as long as the potential participating agencies are provided sufficient scoping information and opportunity for involvement.
- The lead agencies should aggressively use the scoping process to solicit public and agency input on methodologies and to reach closure on what methodologies will be used to evaluate important issues. As part of the scoping process, the lead agencies should communicate decisions on methodology to the participating agencies with relevant interests or expertise soon after they are made.
- The US Department of Transportation (USDOT) Federal lead agency will not accept the identification of a preferred alternative until completion of sufficient scoping and analysis of the alternatives to support the identification. The scoping process is not complete until the lead agency has provided the opportunity for the involvement of the public and participating agencies in the development of purpose and need and the range of

alternatives, and has considered their input and comments. Even after completion of scoping and a preliminary analysis of alternatives, the USDOT Federal lead agency may decide that identification of a preferred alternative is premature because there is not yet sufficient information on the alternatives to support the decision.

- The coordination plan prepared pursuant to 23 USC 139 should identify coordination points (e.g., Notice of Intent publication, scoping activities).

### 8.2.7 **FHWA Technical Advisory T 6640.8A**

The “Background” section of the Technical Advisory, dated October 30, 1987, includes the following guidance on early coordination and scoping:

- FHWA considers the early coordination process to be a valuable tool in determining the scope of issues to be addressed, and in identifying and focusing on the proposed action’s important issues. This process normally entails the exchange of information with appropriate Federal, State and local agencies, and the public from inception of the proposed action to preparation of the environmental document or to completion of environmental studies for applicable CEs. Formal scoping meetings may also be held where these meetings would assist in the preparation of the environmental document. The role of other agencies and other environmental review and consultation requirements should be established during scoping.
- Appendix B of the Technical Advisory includes guidance for “Preparation and Processing of Notices of Intent.” The guidance cites the requirement in 40 CFR 1501.7 that the Notice of Intent for an EIS must be published in the *Federal Register* before the scoping process. The guidance also provides a format for a Notice of Intent, which includes a section on “Supplementary Information.” Paragraph c. of this Section indicates it should include a brief description of the proposed scoping process for the particular action, including whether, when and where any scoping meeting will be held. It also notes that a scoping process is not required for a supplement to a final EIS; however, scoping should be discussed to the extent anticipated for the development of the supplement.

### 8.2.8 **Forty Most Asked Questions Concerning CEQ’s NEPA Regulations**

This document includes the following question and response regarding use of the scoping process:

- Q. *Can the scoping process be used in connection with preparation of an environmental assessment (e.g., before both the decision to proceed with an EIS and publication of a Notice of Intent)?*
- A. Yes. Scoping can be a useful tool for discovering alternatives to a proposal or significant impacts that may have been overlooked. In cases where an environmental assessment is being prepared to help an agency decide whether to prepare an EIS, useful information might result from early participation by other agencies and the public in a scoping process.

The regulations state that the scoping process is to be preceded by a Notice of Intent to prepare an EIS, but that is only the minimum requirement. Scoping may be initiated earlier, as long as there is appropriate public notice and enough information is available on the proposal that the public and relevant agencies can participate effectively.

However, scoping done before the assessment, and in aid of its preparation, cannot substitute for the normal scoping process after publication of the NOI, unless the earlier public notice stated clearly that this possibility was under consideration and the NOI expressly provides that written comments on the scope of alternatives and impacts will still be considered.

### **8.2.9 MDT Public Involvement Handbook**

This *Handbook* is designed to serve as both a manual for public involvement during project development and as the approved MDT public involvement/public hearing procedures. See [Chapter 16 “Public Involvement”](#) in this *Manual* for further guidance on project-specific public involvement procedures.

### **8.2.10 Montana Business Process to Link Planning Studies and NEPA/MEPA Reviews**

This document is available through the MDT website. It provides guidance to MDT and its partners on how to link transportation planning processes and NEPA/MEPA, as provided for in the *Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users* (SAFETEA-LU). The document presents a revised Corridor Planning Process intended to feed directly into the NEPA/MEPA process, help advance viable alternatives into NEPA/MEPA and provide the opportunity for involvement of MDT’s planning partners at all stages.

## 8.3 PROCEDURES

### 8.3.1 Corridor Planning Studies

The MDT Rail, Planning and Transit Division (RPTD) evaluates proposed projects early in the planning process to identify those that may warrant a Corridor Planning Study in accordance with the *Montana Business Process to Link Planning Studies and NEPA/MEPA Reviews*. Corridor Planning Studies are conducted to assist in early identification and consideration of factors that will feed into the NEPA/MEPA compliance process (e.g., purpose and need, alternatives, impacts and mitigation, public and agency input). In conducting the evaluation of proposed projects, RPTD considers specific criteria MDT has identified to guide the decision on whether to initiate a Corridor Planning Study. The criteria include determining if a candidate project:

- is regionally significant;
- has environmental constraints and a strong potential for requiring an EIS or EA;
- is costly and if funding is questionable;
- is likely to generate substantial public controversy;
- is likely to have many alternatives;
- has substantial ambiguity about the alternatives; or
- has a need to preserve the corridor for future transportation improvements.

The MDT Planning Administrator consults with MDT Operations Managers, MDT Engineering Division, affected MDT District(s) and FHWA in making the decision on conducting a Corridor Planning Study.

When the consultations result in a determination that a project warrants a Corridor Planning Study, the Planning Administrator establishes a Corridor Planning Team. Core members of the Corridor Planning Team include RPTD representatives (including the Environmental Services Bureau), Engineering Division and the MDT District(s) where the corridor is located. The team also includes a representative from the FHWA Division Office and the consultant, if one is retained. Additional participants may be included, depending upon the anticipated issues involved.

The Corridor Planning Team accomplishes the Corridor Planning Study in accordance with the following steps that are described in further detail in the *Montana Business Process to Link Planning Studies and NEPA/MEPA Reviews*:

1. Develop corridor study work plan.
2. Develop existing and projected conditions report.
3. Identify needs, issues, goals, and screening criteria.
4. Determine alternatives advanced and not advanced.
5. Recommend alternatives.
6. Prepare draft Corridor Study Report.
7. Make recommendations.

The draft Corridor Study Report prepared in Step 6 documents the entire Corridor Planning Process, important findings, needs, screening criteria, draft recommendations and next steps. Key components of the report include:

- documentation of the alternatives and/or options considered, and potential impacts and mitigation opportunities;
- draft recommendations and next steps, including a package of alternatives and/or options; and
- a draft statement of purpose and need.

The Corridor Planning Team obtains resource and other agency review and comment as well as input from the public on the Draft Corridor Study Report and draft purpose and need statement. After considering all comments received, the Corridor Planning Team finalizes the Corridor Study Report that serves as the recommended corridor plan. Recommendations should include specific action items and identify responsible parties to carry them out. The recommended corridor plan transitions forward for consideration in project development and environment review, including scoping and/or early coordination activities.

### **8.3.2 Determining Appropriate Process for Coordination**

The PDE consults with the Design Team (DT) and FHWA to determine whether to use a less formal early coordination process or a formal scoping process to accomplish the exchange of information for identification and evaluation of environmental issues and impacts for a proposed project. This decision occurs after completion of the Preliminary Field Review (PFR) and preliminary determination of the level of environmental documentation. For projects determined to be potentially eligible for a categorical exclusion (CE) and those involving preparation of an EA not subject to 23 USC 139 "Efficient Environmental Reviews for Project Decision-Making," the PDE, DT and FHWA generally opt for a less formal early coordination process. For projects determined to require an EIS and for projects involving preparation of an EA subject to 23 USC 139, the PDE, DT and FHWA implement a formal scoping process. For early coordination or formal scoping, if a Corridor Planning Study was conducted for the project involved, the PDE, DT and FHWA ensure appropriate consideration of the information in the recommended corridor plan.

The following sections provide further guidance on early coordination and scoping processes and procedures.

### **8.3.3 Early Coordination**

#### **8.3.3.1 Objectives**

The basic objectives of the early coordination process for projects that are potentially eligible for a CE or that require an EA not subject to 23 USC 139 are similar to those of the scoping process. The intent is to determine the aspects of the proposed action that have potential for social, economic or environmental impact, identify alternatives and identify measures that might mitigate adverse environmental impacts. Early coordination also identifies other applicable environmental review and consultation requirements so that MDT and FHWA can prepare required analyses concurrent with, and integrated with, the environmental documentation.

### 8.3.3.2 Early Coordination for CE

For projects that may be eligible for a CE, the PDE initiates contacts with potentially interested and/or affected agencies and organizations (see [Tables 8-1, 8-2 and 8-3](#)) to request information necessary for identifying and assessing project-related environmental impacts and issues. Depending on the proposed preliminary scope of work, type of project and geographic/jurisdictional location, the PDE sends Request for Environmental Information letters to various organizations and community, county, State, Tribal and Federal agencies. The PDE coordinates with the appropriate offices within MDT to request information to assist in evaluating the project's potential environmental impacts.

The PDE also considers the results of public involvement activities conducted for the proposed project in accordance with [Chapter 16 "Public Involvement."](#)

### 8.3.3.3 Early Coordination for EA

For projects involving preparation of an EA not subject to 23 USC 139, the PDE coordinates with the DT to initiate contacts with potentially interested and/or affected agencies and organizations (see [Tables 8-1, 8-2 and 8-3](#)) to request information necessary for identifying and assessing project-related environmental impacts and issues. Depending on the proposed preliminary scope of work, type of project and geographic/jurisdictional location, the PDE sends Request for Environmental Information letters to various organizations and community, county, State, Tribal and Federal agencies. The PDE coordinates with appropriate offices within MDT to request information to assist in evaluating the project's potential environmental impacts.

The PDE also considers the results of public involvement activities conducted for the proposed project in accordance with [Chapter 16 "Public Involvement."](#)

For EA projects, the PDE prepares a letter for signature by the Environmental Engineering Section Supervisor or Environmental Services Bureau Chief to inform FHWA of the need to initiate the NEPA Process. This letter is signed and sent to FHWA when the project has progressed sufficiently to provide the required information for inclusion in the letter. This includes type of work, termini, length, general location, list of any other Federal approvals (e.g., Section 404 permits), anticipated for the project and the timeframe in which the environmental review process should be started. This letter notifies FHWA that MDT is ready to proceed with the NEPA phase of project development.

Table 8-1 — FEDERAL JURISDICTIONS AND EXPERTISE

Agency	Jurisdiction/Expertise
US Army Corps of Engineers	<i>Clean Water Act</i> – Section 404 Permits, 404(b)(1) Analysis, Wetland and Stream Impacts/Mitigation <i>Rivers and Harbors Act</i> – Section 10 Permits
US Coast Guard	<i>Rivers and Harbors Act</i> – Section 9 Permits
USDA Forest Service	National Forests <i>Wild and Scenic Rivers Act</i>
USDA Natural Resources Conservation Service	<i>Farmland Protection Policy Act</i>
US Environmental Protection Agency	<i>Clean Air Act</i> <i>Clean Water Act</i> – 401 Water Quality Certification in Indian Country, 404(b)(1) Analysis, 303(d) Impaired Waters, National Pollutant Discharge Elimination System Permits Comprehensive Environmental Response, <i>Compensation and Liability Act, Resource Conservation and Recovery Act</i> – Hazardous Wastes Spill Prevention, Control and Countermeasure Regulation (40 CFR 112)
USDOI Bureau of Indian Affairs	Indian Reservations/Lands
USDOI Bureau of Land Management	Federal Lands <i>Wild and Scenic Rivers Act</i>
USDOI Bureau of Reclamation	Irrigation Districts
USDOI Fish and Wildlife Service	<i>Endangered Species Act</i> <i>Migratory Bird Treaty Act</i> <i>Bald and Gold Eagle Protection Act</i> <i>Fish and Wildlife Coordination Act</i> – Water Body Modification <i>Wild and Scenic Rivers Act</i>
USDOI National Park Service	National Parks and Monuments <i>Land and Water Conservation Fund Act</i> – Section 6(f) Sites <i>Wild and Scenic Rivers Act</i>

**Table 8-2 — TRIBAL JURISDICTIONS AND EXPERTISE**

Tribe	Jurisdiction
All Montana Tribes	Lands/Sites associated with specific Tribe Special Use Permits for modification of irrigation canal crossings on Tribe's lands Plan of Operation Approvals for development of materials sources on Tribe's lands
Blackfeet Tribe	Aquatic Lands Protection Ordinance 90-A – Construction or fill in wetlands, riparian areas and streams on the Blackfeet Indian Reservation 101D Permit for withdrawal or diversion of surface or groundwater on Reservation Tribal Historic Preservation Officer
Chippewa Cree Tribe of the Rocky Boys Reservation	Tribal Historic Preservation Officer
Confederated Salish and Kootenai Tribe of the Flathead Reservation	Aquatic Lands Conservation Ordinance 87-A – Work in, over or near any stream, river, lake or wetland on the Flathead Indian Reservation Aquatic Lands Conservation Ordinance 64-A – Shoreline Protection <i>Clean Water Act</i> – Section 401 Water Quality Certification Tribal Historic Preservation Officer
Crow Tribe	Tribal Historic Preservation Officer
Assiniboine and Sioux Tribes of the Fort Peck Reservation	<i>Clean Water Act</i> – Section 401 Water Quality Certification
Northern Cheyenne Tribe	<i>Clean Water Act</i> – Section 401 Water Quality Certification Tribal Historic Preservation Officer

**Table 8-3 — MONTANA JURISDICTIONS AND EXPERTISE**

<b>Agency</b>	<b>Jurisdiction/Expertise</b>
Department of Environmental Quality	<p><i>Federal Clean Water Act</i> – 401 Water Quality Certifications</p> <p><i>Montana Water Quality Act</i> – 318 Authorizations, Montana Pollutant Discharge Elimination System Permits (for Construction, Small Municipal Separate Storm Sewer Systems (MS4) and Construction Dewatering); Montana Ground Water Pollution Control Permits, 303(d) Impaired Waters, Total Maximum Daily Loads</p> <p><i>Clean Air Act of Montana</i> – Air Quality Permits, Asbestos Control</p> <p><i>Montana Opencut Mining Act</i> – Opencut Mining Permits</p> <p><i>Comprehensive Environmental Response, Compensation and Liability Act, Resource Conservation Recovery Act</i> – Hazardous Wastes</p> <p>Montana Public Water Supply Act - public water and wastewater system approvals</p>
Department of Fish, Wildlife and Parks	<p><i>Montana Stream Protection Act</i> – SPA 124 Notifications</p> <p><i>Land and Water Conservation Fund Act</i> – Section 6(f) Sites</p> <p>Wetlands</p> <p>Non-Game and Endangered Species</p>
Department of Natural Resources and Conservation	<p>Forested State Trust Lands</p> <p><i>Montana Water Use Act</i> – Water Rights</p> <p>Flood Plain and Floodway Management – Floodplain Permits</p> <p>Montana Land-Use License or Easement on Navigable Waters</p>
Montana State Historic Preservation Office	<p><i>National Historic Preservation Act</i></p> <p><i>Montana Antiquities Act</i></p>

### **8.3.4 Scoping**

#### **8.3.4.1 Purpose**

The PDE, DT and FHWA use the scoping process to:

- identify the involvement of affected Federal, Tribal, State and local agencies as either a participating agency (e.g., one that is interested in the project) or a cooperating agency (e.g., one that has jurisdiction by law or special expertise regarding an environmental impact the project involves);
- determine the scope of issues to be addressed and the significant issues to be analyzed in-depth in the environmental document;
- identify and eliminate from detailed study issues that are not significant or that have been covered by prior environmental review;
- identify other environmental review and consultation requirements so that MDT and FHWA can prepare other required analyses concurrent with, and integrated with, the environmental document; and
- address the relationship between the timing of the preparation of environmental analyses and the tentative planning and decision-making schedule for the project.

#### **8.3.4.2 Notification**

For proposed projects requiring an EIS or an EA subject to 23 USC 139, the PDE must address required notification procedures before initiating the scoping process. When the DT notifies the PDE that project development has progressed sufficiently to proceed with the environmental phase, the PDE notifies FHWA of the start of the NEPA process. The PDE prepares a letter for signature by MDT to the FHWA Division Administrator to accomplish the notification. The letter:

- includes information on the type of work, termini, length and general location of the proposed action;
- lists any other Federal approvals (e.g., Section 404 permits) anticipated to be necessary for the project; and
- indicates the anticipated start date for the environmental review process.

#### **8.3.4.3 Coordination Plan**

As soon as practical after notifying FHWA of the initiation of the NEPA process, the PDE, DT and FHWA begin preparation of the coordination plan required for projects subject to 23 USC 139. The plan documents and facilitates structured interaction of MDT and FHWA with the public and other agencies. It also informs the public and other agencies how the interaction will be accomplished. The coordination plan outlines how MDT and FHWA will divide responsibilities for compliance with the various aspects of the environmental review process (e.g., issuance of invitations to participating agencies), and how MDT and FHWA will provide

opportunities for input from the public and other agencies, in accordance with applicable laws, regulations and policies. The plan also identifies key coordination points, including the following as applicable:

- Notice of Intent publication and scoping activities;
- development of purpose and need;
- identification of the range of alternatives;
- collaboration on environmental analysis methodologies and level of detail;
- completion of the draft environmental documentation;
- identification of the preferred alternative and the level of design detail;
- completion of the final environmental documentation;
- completion of the environmental decision document (i.e., Record of Decision or Finding of No Significant Impact); and
- completion of permits, licenses and approvals after the environmental decision.

The coordination plan may establish regularly scheduled meetings and may identify which persons, organizations or agencies should be included for each coordination point. The plan may set time frames for input by those persons, organizations and agencies. If the coordination plan includes a project schedule, the PDE, DT and FHWA must prepare the schedule in consultation with each participating agency. However, participating agency concurrence in the schedule is not required. MDT and FHWA may revise the initial coordination plan as participating agencies are identified or if the complexity of issues involved increases.

#### **8.3.4.4 Notice of Intent**

For projects requiring an EIS, the PDE coordinates with FHWA to develop the required Notice of Intent (NOI) for preparation of an EIS. The NOI is prepared in accordance with the guidance in Appendix B of FHWA Technical Advisory T 6640.8A and 40 CFR 1508.22. It provides the contact names and addresses of the FHWA Operations Engineer and the PDE who can answer questions and/or provide additional information about the proposed action and the EIS. It also briefly describes the proposed:

- action and possible alternatives; and
- scoping process including whether, when and where any scoping meeting will be held.

FHWA signs the NOI and transmits the signed document to the *Federal Register* for publication. The date of the NOI will be consistent with the date specified in MDT's letter to FHWA providing notification of the initiation of the NEPA process.

#### **8.3.4.5 Identification of Involved Agencies**

The PDE coordinates with the DT, other MDT Sections and FHWA to initiate the scoping process for the proposed project. There is no established or required procedure for scoping. The approach should remain flexible. It is important to tailor the type, timing and location of public and agency involvement to the specific project involved.

For projects subject to 23 USC 139, one of the early activities accomplished in the scoping process is the identification of Federal, State, Tribal, regional and local government agencies

that should be invited to participate in the environmental process as participating agencies. This includes agencies that may have an interest in the proposed project and/or may have jurisdiction by law or special expertise with respect to an environmental impact the project may involve.

Federal, Tribal and Montana State agencies that are often requested to participate and their areas of jurisdiction or expertise are provided in [Tables 8-1, 8-2 and 8-3](#), respectively. Other Federal or State agencies not listed in [Tables 8-1, 8-2 and 8-3](#), as well as local agencies, may also have an interest in a project and/or jurisdiction by law or special expertise that would warrant inviting their participation in the process. The PDE evaluates the potential need for involvement of additional agencies for each project, based on the project location, resources involved, etc.

For those agencies identified as potentially interested or as having jurisdiction by law or special expertise, the PDE prepares a hardcopy or email letter in accordance with FHWA “SAFETEA-LU Environmental Review Process Final Guidance” to invite their participation. The letter, or information transmitted with the letter, includes a basic project description and map of the project location. The letter also:

- requests the involvement of the agency as a participating agency and states the reason why the project is expected to be of interest to the agency;
- identifies the lead agencies and describes the roles and responsibilities of a participating agency; and
- specifies a deadline for responding to the invitation (generally no more than 30 days).

The PDE ensures copies of all invitation letters are retained in the project file and for public record. Generally, the letters are scanned and maintained electronically for inclusion in the environmental document.

In addition to the letters, the PDE uses a variety of methods (e.g., news releases, publication of notices in local papers, website postings, mailings, personal contacts with affected landowners) to invite interested persons and organizations to participate in the scoping process. The PDE also contacts other MDT Divisions, Bureaus and Sections for information and/or concerns about the project.

Along with the results of the scoping process, the PDE considers the results of public involvement activities conducted for the proposed project in accordance with [Chapter 16 “Public Involvement.”](#)

#### **8.3.4.6 Benefits**

The PDE, DT and FHWA accomplish scoping with the understanding that it is an ongoing process that continues through the environmental analysis phase. They recognize that it may involve a series of meetings, telephone conversations and/or exchanges of correspondence/ emails from different interested agencies, groups and individuals. They also consider the following points in carrying out scoping activities:

1. Building Public Confidence. Scoping is a crucial first step toward building public confidence in a fair environmental analysis and, ultimately, a fair decision-making process.
2. Reduction of Changes. If scoping is conducted effectively, the environmental document will include a reflection, or at least an acknowledgement, of the concerns voiced by participating agencies and the public. Early inclusion of these concerns reduces the need for changes after a draft is finished, because it reduces the chances of overlooking a significant issue or reasonable alternative. In many cases, this may also increase public confidence in NEPA and the decision-making process, thereby, reducing delays (e.g., from litigation) during right-of-way negotiations and project construction.
3. Scoping Meeting. The following are several reasons to hold a scoping meeting.
  - Some of the best effects of scoping stem from the fact that all parties have the opportunity to meet one another and listen to the concerns of the others. There is no satisfactory substitute for personal contact to achieve this result.
  - If there is any possibility that resolution of underlying conflicts over a proposal may be achieved, this is always enhanced by the development of personal and working relationships among the parties.
  - In a conflict situation, people usually respond positively when they are treated as partners in the project review process. If they feel confident that their views are actually heard and taken seriously, they will be more likely to be satisfied that the decision-making process was fair, even if they disagree with the outcome.
  - It is much easier to show people that the agency is listening to them if a face-to-face meeting is held, than if their only contact is through written comments and form letters. For example, they can see the agency writing down their points and concerns.
  - If the PDE suspects that a particular proposal could benefit from a meeting with the affected public at any time during its review, the best time to have the meeting is during this early scoping stage.
  - Openly discussing a proposal before committing substantial resources often enhances the chances for reaching an accord.
4. Problem Identification. Sometimes the scoping process enables early identification of a few serious problems with a proposed project, which can be changed or resolved because the project is still being developed. In these cases, scoping can actually lead to the solution of a conflict over the proposed action itself. Resolution of conflicts over proposals is not a principal goal of scoping, because it is only possible in limited circumstances. Instead, scoping should be viewed as a tool to reduce the conflicts among affected interests that impede the principal goal to adequately and efficiently conduct the NEPA process.
5. Reduced Litigations. MDT cannot ignore its responsibility to assess each significant impact or alternative even if one is found after scoping. However, according to the CEQ,

anyone who fails to raise something that reasonably could have been raised earlier in the NEPA process will have a hard time prevailing during later stages of the process, or if litigation ensues. Consequently, a thorough scoping process does provide some protection against subsequent lawsuits.

6. Citizen Advisory Committee. Where a high level of community interest or concern regarding a project is anticipated, formation of a citizen advisory committee may be appropriate to resolve issues during the scoping process.

#### **8.3.4.7 Documentation**

The PDE, DT and FHWA document the determinations made as the scoping process proceeds. They may revise the determinations if substantial changes are made in the proposed action, or if significant new circumstances or information arise that bear on the proposal or its impacts.

The PDE makes the scoping results available to other Sections within the Environmental Services Bureau for consideration in determining environmental studies required and the nature and scope of the studies.