This resource is intended for use with the Beltway Expansion Commenting Webinar slides to simplify incorporating legal authorities into your comment. Use this resource to identify the legal standard that relates to the issue you are commenting on. Each citation is hyperlinked if you wish to view the authority in full.

General Resources
- National Environmental Policy Act
- NEPA Regulations
- Dept. of Transportation NEPA Resources

Environmental Justice
- Executive Order 12,898 mandates that each Federal agency “identify[] and address[], as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.”
- DOT incorporates the following environmental justice and equity principles into all transportation planning and decision-making processes and project-specific environmental reviews:
  - To ensure the full and fair participation of all potentially affected communities in the transportation decision-making process.
  - To avoid, minimize or mitigating disproportionately high and adverse human health or environmental effects, including social and economic effects, on minority or low-income populations.
  - To fully evaluate the benefits and burdens of transportation programs, policies, and activities upon low-income and minority populations. U.S. Dep’t of Transp., Environmental Justice Strategy (Nov. 15, 2016).
- DOT is obligated to identify a project’s disparate impact on EJ communities and consider alternatives that would minimize and/or mitigate those impacts. This necessitates directly comparing a project’s impacts on EJ communities to non-EJ communities. DOT Order 5610.2(a) (Actions to Address Environmental Justice in Minority Populations and Low-Income Populations).

Purpose and Need
- The Statement of Purpose and Need is essential to the NEPA process because it guides the agencies’ scope of review. See 40 C.F.R. § 1502.13.
- An agency is not permitted “to contrive a purpose so slender as to define competing ‘reasonable alternatives’ out of consideration.” Simmons v. U.S. Army Corps of Eng’rs, 120 F.3d 664, 666 (7th Cir. 1997).

Insufficient Economic Impact Analysis

*This resources is purely educational and is not intended to provide specific legal advice.*
FHWA is obliged to consider the economic impact of the project on both public and private property. 40 C.F.R. § 1508.8(b) (defining “effects” as including “esthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative”)

The NEPA requires agencies to balance a project's economic benefits against its adverse environmental effects. Misleading economic assumptions can impair an agency's consideration of the adverse environmental effects of a proposed project. Similarly, misleading economic assumptions can also skew the public's evaluation of a project. *Hughes River Watershed Conservancy v. Glickman*, 81 F.3d 437, 446 (1996).

**Improper Segmentation**

- Improper segmentation is "breaking up one project into smaller projects and not studying the overall impacts of the single overall project." *Webster v. United States Dep't of Agric.*, 685 F.3d 411, 426 (2012).
- Proposed projects are considered connected if they: (i) automatically trigger other actions which may require environmental impact statements; (ii) cannot or will not proceed unless other actions are taken previously or simultaneously; or (iii) are interdependent parts of a larger action and depend on the larger action for their justification." *Defenders of Wildlife v. N.C. DOT*, 762 F.3d 374, 394-95 (citing 40 C.F.R. § 1508.25)
- Agencies must also assess ">cumulative actions," and ">similar actions" with "common timing or geography" in the same impact statement. *Defenders of Wildlife v. N.C. DOT*, 762 F.3d 374, 394-95
- A project is properly segmented if it: (1) connects logical termini and is of sufficient length to address environmental matters of a broad scope; (2) has independent utility or independent significance; and (3) will not restrict consideration of alternatives for other reasonably foreseeable transportation improvements. 23 C.F.R. § 711.111(f).

**Insufficient Alternatives Analysis**

- Agencies have a “duty under NEPA . . . to study all alternatives that appear reasonable and appropriate for study at the time of drafting the EIS, as well as significant alternatives suggested by other agencies or the public during the comment period.” *Roosevelt Campobello Int'l Park Comm'n v. U.S. EPA*, 684 F.2d 1041, 1047 (1st Cir. 1982).
- Failure to give “substantial treatment” to a reasonable alternative without providing “adequate justification for its omission” is a violation of NEPA. *Southeast Alaska Conservation Council v. FHWA*, 649 F.3d 1050, 1059 (9th Cir. 2011).

**Insufficient Traffic Forecasts**

- Agencies are obligated to disclose when their analysis contains incomplete information or out of date information. Failing to do so mischaracterizes the baseline data underlying the analysis of the “no-build” alternative and the agency’s ability to consider information about significant environmental impacts. *N. Carolina Wildlife Fed'n v. N. Carolina Dept. of Transp.*, 677 F.3d 596, 603–05 (4th Cir. 2012).

**Discussion of Environmental Effects**

- NEPA requires consideration of indirect effects, defined as those effects that are “caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.” 40 C.F.R. § 1508.8(b).
NEPA documents should specifically include “growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.” Id.

Courts have repeatedly held that an analysis of GHG impacts must legally be part of the agencies’ “hard look” at environmental impacts likely to result from the project. See, e.g., Sierra Club v. Fed. Energy Regulatory Comm’n, 867 F.3d 1357, 1373–74 (D.C. Cir. 2017) (holding FERC violated NEPA in not providing estimate of GHG emissions and rejecting argument that “it is impossible to know exactly what quantity of greenhouse gases will be emitted as a result of this project”); Ctr. For Biological Diversity v. Nat’l Highway Traffic Safety Admin., 538 F.3d 1172, 1223–24 (9th Cir. 2008) (holding NHTSA was arbitrary and capricious when EA did not take a hard look at climate change impacts of NHTSA Final Rule).

Mitigation Discussion

Agencies must address “all relevant, reasonable mitigation measures that could improve the project” and “use all practicable means . . . to restore and enhance the quality of the human environment and avoid or minimize any possible adverse [environmental] effects. 40 C.F.R. §§ 1502, 1502.14(f), 1502.16(h).

FHWA’s mitigation policy states that “measures necessary to mitigate adverse impacts will be incorporated into the action and are eligible for Federal funding when the Administration determines that (1) the proposed impacts requiring the mitigation actually result from the action and (2) the mitigation measures are reasonable in light of their costs and the purported benefits. See 23 C.F.R. 771.105(d).

Under NEPA, mitigation must be discussed in environmental impact statement (EIS) in sufficient detail to ensure that environmental consequences have been fairly evaluated. Neighbors of Cuddy Mountain v. U.S. Forest Service, 137 F.3d 1372 (9th Cir. 1998).

Parklands and Historic Property Impacts

Section 4(f) of the Department of Transportation Act mandates that the Agencies may only use parks, recreation areas, or wildlife refuges if no feasible and prudent avoidance alternative exists. 23 C.F.R. § 774.3.

Section 106 of the National Historic Preservation Act (“NHPA”) requires the Agencies to take into account impacts to historic sites or cultural properties. 36 C.F.R. §§ 800.3–8.

Section 4f is intended to assure that highway projects for which federal funding might become available are carried out in a way that will afford the statutory protection both to those displaced and to the environment, including public parks. La Raza Unida of Southern Alameda County v. Volpe, 488 F.2d 559 (9th Cir. 1973). Unlike NEPA, Section 4(f) imposes substantive restraints on an agency's action.” Defenders of Wildlife v. N. Carolina Dept. of Transportation, 762 F.3d 374, 398–99 (4th Cir. 2014).