



Guidance

Instructions for Using the Scope Development Tool

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Introduction

These instructions explain how to use the Scope Development Tool (SDT) to identify required actions that need to be entered into a project scope. The form is interactive and programmed to change based on the user's entries. In addition to identifying actions, the SDT records negative findings in cases where actions are not needed, and records certain regulatory findings required by FHWA.

Using the Scope Development Tool

General Conditions

The use of the SDT is not a substitute for professional judgement. It does not replace the need for informed background research. The combination of professional knowledge from the project sponsor, department delegate, and designer; results of a risk assessment; project site visit; and desktop evaluations are all needed to ensure sound scoping. The SDT is only as good as the information the user acquires before filling it out. The decision-making logic built into the SDT assumes that questions are answered correctly. The user's primary responsibility is to ensure that background research is sound.

ENV subject matter experts (SME) and District staff reserve the right to make project level decisions regarding required actions and/or findings generated by the SDT. In this event the ENV SME and/or District Staff will be responsible for documenting these project level decisions in the Texas Environmental Compliance Oversight System (ECOS).

All interpretations of the questions found within the SDT should be directed towards the applicable environmental handbooks located in the TxDOT NEPA and Project Development Toolkit. In the event that the environmental handbooks do not resolve the issue of interpretation, consult with the appropriate ENV SME.

Completing the SDT

The SDT should be used at the earliest stage of project development as possible. Subsequent changes to project design may require an updated SDT to be completed. The intent of the SDT is to capture potential project impacts that will require inclusion into the project scope.

The SDT was designed to generate required actions that need to be included within the project scope, as well as to generate findings for issues that do not require further analysis based on the information provided in the SDT. The SDT uses built in logic and question sequencing to act as a screening tool for project activities and/or impacts. In order to achieve the most accurate results from the form there are a few rules that should be followed when completing the form:

The form was designed to operate within the Adobe Reader and Adobe Acrobat programs. Completing the form outside of either of these two programs can result in a malfunction of the form, which would essentially invalidate all of the information generated.

As question sequencing plays an important role in the form, it is also important to remember that the form questions should be completed in order. Failure to complete the questions in order may result in unnecessary work. The SDT has been designed to interpret logic that is built into the question sequencing. Each question in the SDT was specifically designed to function as a screening tool. If you are to skip around on the form, you may end up answering questions that would have otherwise not applied to the project. If an input field is visible, it is a required field.

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It is understood that due to the timing in which the SDT is intended to be completed, some aspects of the project will not be fully known. In these circumstances it is recommended that you leave the question blank and return to it when the information becomes available, or you may assume the worst-case scenario for the issue at hand. There are a few instances where an option of “Unknown” will be available. It should be understood that an answer of “Unknown” will result in a requirement to perform additional research and a likely scope amendment.

Environmental Classification

Guidance related to the selection of an environmental classification can be found in the Environmental Handbook for Project Development Process Overview, located in the TxDOT NEPA and Project Development Toolkit.

Based on the information that is available, select the most appropriate environmental classification for the project. As information about the project and its potential for impacts becomes available, return to this section and make the necessary adjustments.

For projects that anticipate being processed as a (c)-list or (d)-list categorical exclusion (CE), the user will be required to identify the appropriate criterion under which the project will be cleared.

For projects with “Other federal agency” selected as the lead agency, “(c)-list CE” and “(d)-list CE” will not be options in the dropdown box. These projects will only allow the user to select between “CE”, “EA”, and “EIS”.

Select the specific CE from the Drop-Down Menu (e.g., (26) Modernization of a highway). Be aware of the following while making the selection.

- The lists of criteria are not visible until either the (c)-list or (d)-list Option is selected.
- A few criterion descriptions listed in the drop-down menus were shortened because of space limitations. Refer to 23 CFR 771.117(c) and (d) or the Guidance on Choosing Categorical Exclusions for full listings.
- CEs (5), (6), (11), and (20) are not listed on the criteria for (c)-list CEs because TxDOT cannot perform these actions.

For projects that are being classified as (c)(23), the SDT will require the user to provide estimated values for the federal funding that will be used on the project. The estimate must be based on the total federal funds for the CCSJ, including any CSJs that are not individually classified as (c)(23).

Additional CSJs

A group of CSJs under a single CCSJ sometimes can collectively amount to a large construction project. In some situations it may be appropriate to include multiple CSJs on a single SDT. In these cases, the user would evaluate each project prior to answering questions on the SDT. There is considerable risk with this approach, as the SDT will not distinguish between the CSJs. If each CSJ may have independent issues, it is recommended that you evaluate it on a separate SDT.

For CEs, guidance related to grouping multiple CSJs can be found in the Guidance for Choosing a Categorical Exclusion, located in the TxDOT NEPA and Project Development Toolkit.

For projects where multiple CSJs with various environmental classifications, the SDT will require the user to justify why the “Main” CSJ was chosen in place of the other CSJs. This justification does not have to be elaborate. Examples include, but are not limited to:

- The main CSJ accounts for most of the work; or

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- The main CSJ causes the need for other CSJs (e.g., if it weren't for adding shoulders, the bridge would not be widened); or
- The CCSJ has several (d)-list components, and the main CSJ is the largest of the (d)-list components.
- When classifying a CSJ as a (c)(22), determine if any CSJs associated with it will require new ROW or permanent easements. If any CSJ under a CCSJ has new ROW or permanent easements, then none of the CSJs can be classified as a (c)(22) under current FHWA policy.

All CSJs that are being reviewed on the SDT are required to be listed. When the CSJs have different environmental classifications, identify the environmental classification along with the CSJ.

Documenting the SDT in the Project File

The project scope is kept up to date throughout project development via amendment when or if there are changes to the project or if there is new environmental information requiring changes in scoped activities. An initial SDT should accompany the project scope in the official project file.

Best Practices

The SDT uses the following automation and question logic to ensure that adequate documentation is provided as a result of the data provided in the form:

- As previously mentioned, scope amendments may become necessary. A revised copy of the SDT should be uploaded every time the project scope is changed on the basis of new information entered into the SDT.
- Maintain a living version of the SDT in your working file. This will allow you to quickly make adjustments to the information collected in the form without having to start from a blank form.
- Each time you upload the SDT into ECOS, you should print the form as a PDF. Printing as a PDF will provide you with an static form that will not be editable.

Project Description

The SDT fulfills a wide range of project description needs. TxDOT traditionally considers a project description to be a description of the existing facility and proposed construction activities. FHWA has a broader concept that includes aspects of the project's context. For example, for a (c)(22) CE, FHWA expects the project description to contain enough explicit information about the existing ROW for a cold reader to identify the features of the ROW that qualify it as existing operational ROW. The existing clear zone and existing facility are defined in law as part of the operational ROW. So confinement of the project to the existing clear zone or existing facility are features of the project description that qualify the project as a (c)(22) CE. Total federal funds less than \$5 million for the CCSJ is a feature of the project description that qualifies it as a (c)(23) CE. Not having an effect on interstate access is a feature of the project description that qualifies it as a (c)(26), (27), or (28) CE. They also regard certain findings to be necessary components of a project description. For example, if a project is confined to the clear zone, they consider the sentence, "Therefore the project area meets the criteria for operational ROW" to be part of the project description for a (c)(22) CE.

When fully completed, the SDT provides a complete project description that meets FHWA and TxDOT requirements. Automation within the SDT scales the project description to the characteristics of the

project and project area. The output of findings guards against inadequate project descriptions for CE projects that have specific requirements. For EAs and EISs, it documents the decision process for identifying subject matters that do not require detailed discussion in the environmental document.

NEPA Constraint Mechanisms and Documentation

Projects processed as a CE must meet the requirements of 23 CFR 771.117 (c) and (d) and 43 TAC 2.81. First, the project sponsor must review the project information to determine the project activities. If the project activities are not consistent with the actions listed in 23 CFR 771.117 (c) and (d), the project cannot be processed as a CE. If the project can be processed as a CE, select the appropriate type of CE from the (c)-list or (d)-list (23 CFR 771.117 (c) and (d)).

23 CFR 771.117(c)(22)

Projects, as defined in 23 U.S.C. 101, that would take place entirely within the existing operational right-of-way. Existing operational right-of-way refers to right-of-way that has been disturbed for an existing transportation facility or is maintained for a transportation purpose. This area includes the features associated with the physical footprint of the transportation facility (including the roadway, bridges, interchanges, culverts, drainage, fixed guideways, mitigation areas, etc.) and other areas maintained for transportation purposes such as clear zone, traffic control signage, landscaping, any rest areas with direct access to a controlled access highway, areas maintained for safety and security of a transportation facility, parking facilities with direct access to an existing transportation facility, transit power substations, transit venting structures, and transit maintenance facilities. Portions of the right-of-way that have not been disturbed or that are not maintained for transportation purposes are not in the existing operational right-of-way.

The SDT uses the following questions to monitor the project's compliance with the constraints of 23 CFR 771.117(c)(22):

- Would the project require new ROW?
- Would the project require a permanent easement?
- Would the project activities be limited to existing ROW and easements previously disturbed or maintained for transportation uses, excluding temporary easements?
- Does the CCSJ include any CSJs for which new ROW or permanent easements are required?

If the answer to either of the first three questions is "No" or the answer to the last question is "Yes", the project would not meet the constraints of 23 CFR 771.117(c)(22). When 23 CFR 771.117(c)(22) is selected and the SDT detects that the applicable constraints are not met a warning message is generated and alerts the user of the discrepancy. Following the user's acknowledgment of the discrepancy, the (c)-list criterion will be removed from the selection and another criterion must be used.

Documentation Fulfilment

The SDT uses the following automation and question logic to ensure that adequate documentation is provided as a result of the data provided in the form:

- Is the project classified as a Seal Coat or Overlay?

Projects that have been identified as a seal coat or overlay have been interpreted by TxDOT to be restricted to the previously disturbed operational right of way by definition. By selecting “Yes” to this question, the user is documenting that the project activities would be restricted to the previously disturbed operational right of way and would therefore meet the constraints imposed by 23 CFR 771.117(c)(22).

When (c)(22) is chosen as the classification and the CCSJ does not include any CSJs for which new ROW or permanent easements are required, automation within the form would generate the following statement to serve as the documentation for the project’s compliance with the applicable constraints:

For seal coats: “Under current TxDOT guidance, a seal coat is contained within the operational ROW by definition, and the project meets the criteria for (c)(22).”

For overlays: “Under current TxDOT guidance, an overlay is contained within the operational ROW by definition, and the project meets the criteria for (c)(22).”

- Are the project activities limited to the existing paved surface?

Projects in which all construction activities would be limited to the existing paved surface have been interpreted by TxDOT to be restricted to the previously disturbed operational right of way by definition. By selecting “Yes” to this question, the user would be prompted to provide a brief description of the major construction activities associated with the project. This user provided information is documentation that the project activities would be restricted to the previously disturbed operational right of way and would therefore meet the constraints imposed by 23 CFR 771.117(c)(22).

When (c)(22) is chosen as the classification and the CCSJ does not include any CSJs for which new ROW or permanent easements are required, automation within the form would generate the following statement to serve as the documentation for the project’s compliance with the applicable constraints:

“All activities will be contained within the existing facility and clear zone. Therefore, all activities will be contained within the operational ROW, and the project meets the criteria for (c)(22).”

- Would construction activities be contained within 10 feet of the existing pavement or between the flowlines of the ditches, whichever is greater?

Projects that have been identified as having all construction activities contained within 10 feet of the existing pavement or between the flowlines of the ditches, whichever is greater have been interpreted by TxDOT to be restricted to the previously disturbed operational right of way by definition. By selecting “Yes” to this question the user would be prompted to provide the following project information:

- description of the major construction activities; and
- typical section information for the existing and proposed facilities.

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This user provided information is documentation that the project activities would be restricted to the previously disturbed operational right of way and would therefore meet the constraints imposed by 23 CFR 771.117(c)(22). Documentation can be narrative, graphic, or both. Reference to a file name and location can be entered in these fields if the information is uploaded into ECOS.

When (c)(22) is chosen as the classification and the CCSJ does not include any CSJs for which new ROW or permanent easements are required, automation within the form would generate the following statement to serve as the documentation for the project's compliance with the applicable constraints:

“All activities will be contained within 10 feet of the existing pavement and/or within the flowlines of the ditches. Therefore, all activities will be contained within the operational ROW by definition under current TxDOT guidance, and the project meets the criteria for (c)(22).”

NOTE: *The following question is only applicable to projects classified as (c)(22) and that will not be requiring any new ROW or permanent easements.*

- Would the project activities be limited to existing ROW and easements previously disturbed or maintained for transportation uses, excluding temporary easements?

Projects that are determined to occur completely within the existing ROW and easements previously disturbed or maintained for transportation uses require the following user provided information:

- description of the major construction activities;
- typical section information for the existing and proposed facilities; and
- description of the area that has been designated as operational ROW, including reference to characteristics that qualify the project area for inclusion under the definition of operational ROW; and
- description of the easement requirements (only applicable for temporary easements).

This user provided information is documentation that the project activities would be restricted to the previously disturbed operational right of way and would therefore meet the constraints imposed by 23 CFR 771.117(c)(22). Documentation can be narrative, graphic, or both. Reference to a file name and location can be entered in these fields if the information is uploaded into ECOS.

When (c)(22) is chosen as the classification and the CCSJ does not include any CSJs for which new ROW or permanent easements are required, automation within the form would generate the following statement to serve as the documentation for the project's compliance with the applicable constraints:

“All construction activities will be contained within the existing facility and in areas previously disturbed for a transportation purpose.

<Insert the description of the area that has been designated as operational ROW.>

Therefore, the project meets the criteria for (c)(22).”

23 CFR 771.117(c)(23)

This classification is for Federally-funded projects:

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- that receive less than \$5,000,000 of Federal funds; or
- with a total estimated cost of not more than \$30,000,000 and Federal funds comprising less than 15 percent of the total estimated project cost.

The SDT uses the following question to monitor the project's compliance with the constraints of 23 CFR 771.117(c)(23):

- Is FHWA a lead agency?
- Total estimated federal funds for CCSJ?

If the project DOES NOT include federal funding, FHWA IS NOT the lead agency, or the total project cost exceeds \$5,000,000 in federal funds; the project would not be eligible for classification as 23 CFR 771.117(c)(23). When 23 CFR 771.117(c)(23) is selected and the SDT detects that the applicable constraints are not met a warning message is generated and alerts the user of the discrepancy. Following the user's acknowledgment of the discrepancy, the (c)-list criterion will be removed from the selection and another criterion must be used.

Documentation Fulfilment

The SDT uses the following automation and question logic to ensure that adequate documentation is provided as a result of the data provided in the form:

- Who is the lead agency responsible for the approval of the entire project?

When FHWA is not the lead agency on the project, the project would not be eligible for clearance under the (c)(23) criterion.

- Total estimated federal funds for CCSJ:

When (c)(23) is chosen as the classification and the sum of federal funds on the project is less than \$5,000,000; automation within the form would generate the following statement to serve as the documentation for the project's compliance with the applicable constraints:

"Federal funds used on the project would not exceed \$5,000,000. Based on the provided information the proposed action would be consistent with the constraints of 23 CFR 771.117(c)(23)."

23 CFR 771.117(c)(26), 23 CFR 771.117(c)(27), and 23 CFR 771.117(c)(28) concerning 23 CFR 771.117(e)

Actions described in 23 CFR 771.117(c)(26), (c)(27), and (c)(28) may not be processed as CEs if they involve:

- An acquisition of more than a minor amount of right-of-way or that would result in any residential or non-residential displacements;
- An action that needs a bridge permit from the U.S. Coast Guard, or an action that does not meet the terms and conditions of a U.S. Army Corps of Engineers nationwide or general permit under section 404 of the Clean Water Act and/or section 10 of the Rivers and Harbors Act of 1899;
- A finding of "adverse effect" to historic properties under the National Historic Preservation Act, the use of a resource protected under 23 U.S.C. 138 or 49 U.S.C. 303 (section 4(f)) except for actions resulting in de minimis impacts, or a finding of "may affect, likely to adversely affect" threatened or endangered species or critical habitat under the Endangered Species Act;

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- Construction of temporary access, or the closure of existing road, bridge, or ramps, that would result in major traffic disruptions;
- Changes in access control;
- A floodplain encroachment other than functionally dependent uses (e.g., bridges, wetlands) or actions that facilitate open space use (e.g., recreational trails, bicycle and pedestrian paths); or construction activities in, across or adjacent to a river component designated or proposed for inclusion in the National System of Wild and Scenic Rivers.

23 CFR 771.117(e)(1)

An acquisition of more than a minor amount of right-of-way or that would result in any residential or non-residential displacements.

The SDT uses the following question to monitor the project's compliance with the constraints of 23 CFR 771.117(e)(1):

- Would the project require the acquisition of more than a minor amount of ROW?
- Will the project result in any displacements?

If the answer to either of the previously mentioned questions are "Yes", the project would not meet the constraints of 23 CFR 771.117(e)(1). When 23 CFR 771.117(c)(26), 23 CFR 771.117(c)(27), or 23 CFR 771.117(c)(28) are selected and the SDT detects that the applicable constraints are not met a warning message is generated and alerts the user of the discrepancy. Following the user's acknowledgment of the discrepancy, the (c)-list criterion will be removed from the selection and another criterion must be used.

Documentation Fulfilment

The SDT uses the following automation and question logic to ensure that adequate documentation is provided as a result of the data provided in the form:

Condition 1 - "An acquisition of more than a minor amount of right-of-way."

The SDT uses the following automation and question logic to ensure that adequate documentation is provided as a result of the data provided in the form:

- Is the project classified as a Seal Coat or Overlay?

Projects that have been identified as a seal coat or overlay have been interpreted by TxDOT to be restricted to the previously disturbed operational right of way by definition and would not require the acquisition of any new right of way and/or permanent easements. By selecting "Yes" to this question, the user is documenting that the project activities would meet the constraints imposed by 23 CFR 771.117(e)(1).

When (c)(26), (c)(27), or (c)(28) is chosen as the classification, automation within the form would generate the following statement to serve as the documentation for the project's compliance with the applicable constraints:

"The proposed action would not require the acquisition of new ROW."

- Are the project activities limited to the existing paved surface?

Projects in which all construction activities would be limited to the existing paved surface have been interpreted by TxDOT to be restricted to the previously disturbed operational right

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of way by definition and would not require the acquisition of any new right of way and/or permanent easements. By selecting “Yes” to this question, the user is documenting that the project activities would meet the constraints imposed by 23 CFR 771.117(e)(1).

When (c)(26), (c)(27), or (c)(28) is chosen as the classification, automation within the form would generate the following statement to serve as the documentation for the project’s compliance with the applicable constraints:

“The proposed action would not require the acquisition of new ROW.”

- Would construction activities be contained within 10 feet of the existing pavement or between the flowlines of the ditches, whichever is greater?

Projects that have been identified as having all construction activities contained within 10 feet of the existing pavement or between the flowlines of the ditches, whichever is greater are by definition confined to the existing ROW and/or easements; therefore, and would not require the acquisition of any new right of way and/or permanent easements. By selecting “Yes” to this question, the user is documenting that the project activities would meet the constraints imposed by 23 CFR 771.117(e)(1).

When (c)(26), (c)(27), or (c)(28) is chosen as the classification, automation within the form would generate the following statement to serve as the documentation for the project’s compliance with the applicable constraints:

“The proposed action would not require the acquisition of new ROW.”

- Would the project require any additional ROW and/or easements?

By selecting “No” to this question, the user is documenting that the project activities would meet the constraints imposed by 23 CFR 771.117(e)(1). If “Yes” is chosen for this question the user would be prompted to identify whether the project would acquire “New ROW”, “Permanent Easements”, and/or “Temporary Easements”. By selecting “No” to this question OR the answer to this question is “Yes” and “New ROW” IS NOT selected, the user is documenting that the project activities would meet the constraints imposed by 23 CFR 771.117(e)(1).

When (c)(26), (c)(27), or (c)(28) is chosen as the classification, automation within the form would generate the following statement to serve as the documentation for the project’s compliance with the applicable constraints:

“The proposed action would not require the acquisition of new ROW.”

- Would the project require the acquisition of more than a minor amount of ROW?

Projects that identify a need for new ROW are prompted to make a determination as to whether or not the project would require the acquisition of more than a minor amount of ROW. In addition to the previous information, the user would be prompted to provide a description of the ROW/easement requirements for the project.

TxDOT interprets this condition to be met if the action does not involve:

- Acquisition of more than 30 acres or more than 20% of the existing ROW (whichever is greater) for new land holdings for transportation related facilities (i.e. safety rest area, intersection, maintenance yards, border safety inspection facilities, etc.), or
- Acquisition of more than 6 acres per linear mile, or 30 acres (whichever is greater) within a linear projects limits.

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By selecting “No” to this question, the user is documenting that the project activities would meet one of the constraints imposed by 23 CFR 771.117(e)(1). When (c)(26), (c)(27), or (c)(28) is chosen as the classification, automation within the form would generate the following statement to serve as the documentation for the project’s compliance with the applicable constraints:

“The proposed action would not require the acquisition of more than a minor amount of ROW. <Insert the description of the ROW acquisition needs.>”

Condition 2 - “Residential or non-residential displacements”

The SDT uses the following automation and question logic to ensure that adequate documentation is provided as a result of the data provided in the form:

- Are permanent community impacts anticipated as a result of the proposed project?

By selecting “No” to this question, the user is documenting that the project activities would meet the constraints imposed by 23 CFR 771.117(e)(1). When (c)(26), (c)(27), or (c)(28) is chosen as the classification, automation within the form would generate the following statement to serve as the documentation for the project’s compliance with the applicable constraints:

“The proposed action would not result in any residential or non-residential displacements.”

- Will the project result in any displacements?

By selecting “No” to this question, the user is documenting that the project activities would meet one of the constraints imposed by 23 CFR 771.117(e)(1). When (c)(26), (c)(27), or (c)(28) is chosen as the classification, automation within the form would generate the following statement to serve as the documentation for the project’s compliance with the applicable constraints:

“The proposed action would not result in any residential or non-residential displacements.”

In addition to the automation associated with 23 CFR 771.117(e)(1); when the SDT has identified that all of the conditions of 23 CFR 771.117(e)(1) have been met, automation within the form would generate the following statement to serve as the documentation for the project’s compliance with the applicable constraints:

“Therefore, the project meets the criteria for (e)(1).”

23 CFR 771.117(e)(2)

An action that needs a bridge permit from the U.S. Coast Guard, or an action that does not meet the terms and conditions of a U.S. Army Corps of Engineers nationwide or general permit under section 404 of the Clean Water Act and/or section 10 of the Rivers and Harbors Act of 1899.

The SDT uses the following question to monitor the project’s compliance with the constraints of 23 CFR 771.117(e)(2):

- Will the project involve the construction or modification (including changes to lighting) of a bridge or causeway across a water body determined to be navigable by the USCG under Section 9 of the Rivers and Harbors Act?
- Is the project expected to qualify for a waiver from bridge permitting?

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- Would the project require the use of an USACE Individual Permit?

If the answer to the previously mentioned questions are “Yes”, the project would not meet the constraints of 23 CFR 771.117(e)(2). When 23 CFR 771.117(c)(26), 23 CFR 771.117(c)(27), or 23 CFR 771.117(c)(28) are selected and the SDT detects that the applicable constraints are not met a warning message is generated and alerts the user of the discrepancy. Following the user’s acknowledgment of the discrepancy, the (c)-list criterion will be removed from the selection and another criterion must be used.

Documentation Fulfilment

The SDT uses the following automation and question logic to ensure that adequate documentation is provided as a result of the data provided in the form:

Condition 1 - “An action that needs a bridge permit from the U.S. Coast Guard.”

The SDT uses the following automation and question logic to ensure that adequate documentation is provided as a result of the data provided in the form:

- Will the project involve the construction or modification (including changes to lighting) of a bridge or causeway across a water body determined to be navigable by the USCG under Section 9 of the Rivers and Harbors Act?

By selecting “No” to this question, the user is documenting that the project activities do not require a bridge permit from the USCG under Section 9 of the Rivers and Harbors Act.

For projects with FHWA Involvement:

By selecting “Yes” the user will be prompted to determine whether the proposed action would qualify for a waiver from bridge permitting. Projects with FHWA involvement that qualify for a waiver from bridge permitting are not considered to require a bridge permit from the USCG under Section 9 of the Rivers and Harbors Act.

If (c)(26), (c)(27), or (c)(28) is chosen as the classification and Condition 1 is satisfied, automation within the form would generate the following statement to serve as the documentation for the project’s compliance with the applicable constraints:

“The proposed action would not require a bridge permit from the U.S. Coast Guard.”

Condition 2 – “An action that does not meet the terms and conditions of a U.S. Army Corps of Engineers nationwide or general permit under section 404 of the Clean Water Act and/or section 10 of the Rivers and Harbors Act of 1899.”

The SDT uses the following automation and question logic to ensure that adequate documentation is provided as a result of the data provided in the form:

- Does the project area contain any water body, wetland or floodplain?

Projects that do not contain any water body, wetland or floodplain, would not require the use of a USACE nationwide or general permit and would not be subject to the conditions of Section 10 of the Rivers and Harbors Act of 1899. By selecting “No” to this question, the user is documenting that the project activities would meet the constraints imposed by 23 CFR 771.117(e)(2).

When (c)(26), (c)(27), or (c)(28) is chosen as the classification, automation within the form would generate the following statement to serve as the documentation for the project’s compliance with the applicable constraints:

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“The proposed action does not have the potential to affect any water body, wetland, or floodplain and would not be subject to the conditions of a USACE nationwide or general permit and Section 10 of the Rivers and Harbors Act.”

- Are Waters of the U.S. (WOUS) present on the project site?

Projects that do not contain any Waters of the U.S. would not require the use of a USACE nationwide or general permit and would not be subject to the conditions of Section 10 of the Rivers and Harbors Act of 1899. By selecting “No” to this question, the user is documenting that the project activities would meet the constraints imposed by 23 CFR 771.117(e)(2).

When (c)(26), (c)(27), or (c)(28) is chosen as the classification, automation within the form would generate the following statement to serve as the documentation for the project’s compliance with the applicable constraints:

“The project area does not contain any Waters of the U.S. and would not be subject to the conditions of a USACE nationwide or general permit and Section 10 of the Rivers and Harbors Act.”

- Will any 404-regulated activity occur within WOUS(s)?

Projects that do not involve a 404-regulated activity would not require the use of a USACE nationwide or general permit and would not be subject to the conditions of Section 10 of the Rivers and Harbors Act of 1899. By selecting “No” to this question, the user is documenting that the project activities would meet the constraints imposed by 23 CFR 771.117(e)(2).

When (c)(26), (c)(27), or (c)(28) is chosen as the classification, automation within the form would generate the following statement to serve as the documentation for the project’s compliance with the applicable constraints:

“The proposed actions would not involve a 404-regulated activity and would not be subject to the conditions of a USACE nationwide or general permit and Section 10 of the Rivers and Harbors Act.”

- Does the project require an Individual Permit?

Projects that involve a 404-regulated activity and would not require the use of an individual permit meet the conditions of USACE nationwide or general permit and/or Section 10 of the Rivers and Harbors Act of 1899. By not selecting an Individual Permit as a requirement for the project, the user is documenting that the project activities would meet the constraints imposed by 23 CFR 771.117(e)(2).

When (c)(26), (c)(27), or (c)(28) is chosen as the classification, automation within the form would generate the following statement to serve as the documentation for the project’s compliance with the applicable constraints:

“The proposed actions would involve a 404-regulated activity and would not require the use of an individual permit. Based on the provided information the project would comply with the conditions of the USACE nationwide or general permit and Section 10 of the Rivers and Harbors Act.”

In addition to the automation associated with 23 CFR 771.117(e)(2); when the SDT has identified that all of the conditions of 23 CFR 771.117(e)(2) have been met, automation within the form would generate the following statement to serve as the documentation for the project’s compliance with the applicable constraints:

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“Therefore, the project meets the criteria for (e)(2).”

23 CFR 771.117(e)(3)

A finding of “adverse effect” to historic properties under the National Historic Preservation Act, the use of a resource protected under 23 U.S.C. 138 or 49 U.S.C. 303 (section 4(f)) except for actions resulting in de minimis impacts, or a finding of “may affect, likely to adversely affect” threatened or endangered species or critical habitat under the Endangered Species Act.

The SDT uses the following question to monitor the project’s compliance with the constraints of 23 CFR 771.117(e)(3):

- Would the proposed action result in an adverse effect to a historic property under the NHPA?
- Will the use have de minimis impacts?
- Do the project activities result in a finding other than "no effect" and "may affect, not likely to adversely affect" threatened or endangered species or critical habitat under the Endangered Species Act (ESA)?

When 23 CFR 771.117(c)(26), 23 CFR 771.117(c)(27), or 23 CFR 771.117(c)(28) are selected and the SDT detects that the applicable constraints are not met a warning message is generated and alerts the user of the discrepancy. Following the user’s acknowledgment of the discrepancy, the (c)-list criterion will be removed from the selection and another criterion must be used.

Documentation Fulfilment

Condition 1 - “A finding of “adverse effect” to historic properties under the National Historic Preservation Act.”

The SDT uses the following automation and question logic to ensure that adequate documentation is provided as a result of the data provided in the form:

- Does the cultural resources section of the SDT indicate that further scoping or studies are needed for archeology and/or historical resources?

Automation within the form will monitor the cultural resources section to determine whether further scoping or studies have been recommended. When the form indicates that no further archeological or historical studies are needed, form automation will answer this question as “No”.

When (c)(26), (c)(27), or (c)(28) is chosen as the classification, automation within the form would generate the following statement to serve as the documentation for the project’s compliance with the applicable constraints:

“The proposed action would not result in an adverse effect to a historic property under the National Historic Preservation Act (NHPA).”

- Would the proposed action result in an adverse effect to a historic property under the NHPA?

By selecting “No” to this question, the user is indicating that the results of archeological and or historical studies support this finding and are documented accordingly in ECOS. This ENV-CRM language in ECOS would document that the project activities do not result in a finding of “adverse effect” to historic properties under the National Historic Preservation Act.

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When (c)(26), (c)(27), or (c)(28) is chosen as the classification, automation within the form would generate the following statement to serve as the documentation for the project's compliance with the applicable constraints:

“The proposed action would not result in an adverse effect to a historic property under the National Historic Preservation Act (NHPA).”

By selecting “Unlikely” to this question, the user is indicating that there are factors preventing a formal determination of adverse effect prior to the issuing of a project decision. In these scenarios, documentation in ECOS would support the decision to move forward with the project approval as adverse effects to archeological and/or historical studies are not expected to occur as a result of the project actions.

When (c)(26), (c)(27), or (c)(28) is chosen as the classification, automation within the form would generate the following statement to serve as the documentation for the project's compliance with the applicable constraints:

“The proposed action is not expected to result in an adverse effect to a historic property under the National Historic Preservation Act (NHPA).”

Condition 2 - “The use of a resource protected under 23 U.S.C. 138 or 49 U.S.C. 303 (Section 4(f)) except for actions resulting in de minimis impacts.”

The SDT uses the following automation and question logic to ensure that adequate documentation is provided as a result of the data provided in the form:

- Does the project have any USDOT involvement?

If the SDT detects that the proposed project would not have any USDOT involvement, automation within the form will provide documentation to support the project's compliance with the constraints of 23 CFR 771.117(e)(3), condition 2.

When (c)(26), (c)(27), or (c)(28) is chosen as the classification, automation within the form would generate the following statement to serve as the documentation for the project's compliance with the applicable constraints:

“The proposed action does not have any USDOT involvement and therefore would not result in the use of a resource protected under 23 U.S.C. 138 or 49 U.S.C. 303.”

- Do any parks or recreation areas and/or wildlife or waterfowl refuges occur in the project area?

By selecting “No” to this question, the user is documenting that the project area does not contain any resources protected by section 4(f). This documentation will support the project's compliance with the constraints of 23 CFR 771.117(e)(3), condition 2.

When (c)(26), (c)(27), or (c)(28) is chosen as the classification, automation within the form would generate the following statement to serve as the documentation for the project's compliance with the applicable constraints:

“The project area does not include any recreation areas and/or wildlife or waterfowl refuges and therefore would not result in the use of a resource protected under 23 U.S.C. 138 or 49 U.S.C. 303.”

- Do the project activities have the potential to result in a permanent or temporary use of any potential Section 4(f) property?

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By selecting “No” to this question, the user is documenting that the project area contains resources protected by Section 4(f) and that project activities would not have the potential to result in a permanent or temporary use of any resources protected by section 4(f). The user would be prompted to identify and describe the location of the protected resources. This documentation will support the project’s compliance with the constraints of 23 CFR 771.117(e)(3), condition 2.

When (c)(26), (c)(27), or (c)(28) is chosen as the classification, automation within the form would generate the following statement to serve as the documentation for the project’s compliance with the applicable constraints:

“The project activities would not have the potential to result in a permanent or temporary use of any resources protected under 23 U.S.C. 138 or 49 U.S.C. 303.”

- Do the project activities result in the use of a Section 4(f) property?

By selecting “No” to this question, the user would be prompted to provide an explanation to support the determination that the project activities would not result in the use of Section 4(f) resources in the project area. The user would be prompted to provide an explanation supporting this finding. This documentation along with any other supporting documentation in ECOS, will support the project’s compliance with the constraints of 23 CFR 771.117(e)(3), condition 2.

When (c)(26), (c)(27), or (c)(28) is chosen as the classification, automation within the form would generate the following statement to serve as the documentation for the project’s compliance with the applicable constraints:

“The proposed action would not result in the use from any resources protected under 23 U.S.C. 138 or 49 U.S.C. 303.

<value of explain field*>

- Will the use have de minimis impacts?

By selecting “Yes” to this question, the user would be prompted to provide an explanation to support the determination that the project activities would not result in the use of Section 4(f) resources in the project area. This documentation along with any other supporting documentation in ECOS, will support the project’s compliance with the constraints of 23 CFR 771.117(e)(3), condition 2.

When (c)(26), (c)(27), or (c)(28) is chosen as the classification, automation within the form would generate the following statement to serve as the documentation for the project’s compliance with the applicable constraints:

“The proposed action would result in a de minimis impact which is acceptable under 23 CFR 771.117(e)(3) as a project that would not result in the use from any resources protected under 23 U.S.C. 138 or 49 U.S.C. 303.”

Condition 3 - “A finding of “may affect, likely to adversely affect” threatened or endangered species or critical habitat under the Endangered Species Act”

The SDT uses the following automation and question logic to ensure that adequate documentation is provided as a result of the data provided in the form:

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- Do the project activities result in a finding other than "no effect" or "may affect, not likely to adversely affect" "threatened or endangered species or critical habitat under the Endangered Species Act (ESA)?

By selecting "No" to this question, the user is documenting that the project activities would not result in a finding of "may affect, likely to adversely affect" threatened or endangered species or critical habitat under the Endangered Species Act. This documentation will support the project's compliance with the constraints of 23 CFR 771.117(e)(3), condition 2.

For projects that are classified as a Seal Coat or Overlay, automation within the form will monitor the Endangered Species Act (ESA) questions within the Biological Resources Section of the form to answer the above question.

When (c)(26), (c)(27), or (c)(28) is chosen as the classification, automation within the form would generate the following statement to serve as the documentation for the project's compliance with the applicable constraints:

"The proposed action would not result in a finding of "may affect, likely to adversely affect" threatened or endangered species nor would it impact any critical habitat."

In addition to the automation associated with 23 CFR 771.117(e)(3); when the SDT has identified that all of the conditions of 23 CFR 771.117(e)(3) have been met, automation within the form would generate the following statement to serve as the documentation for the project's compliance with the applicable constraints:

"Therefore, the project meets the criteria for (e)(3)."

23 CFR 771.117(e)(4)

Construction of temporary access, or the closure of existing road, bridge, or ramps, that would result in major traffic disruptions.

The SDT uses the following question to monitor the project's compliance with the constraints of 23 CFR 771.117(e)(4):

- Would the detour or road/ramp/bridge closure result in major traffic disruptions?

If the answer to the previously mentioned questions are "Yes", the project would not meet the constraints of 23 CFR 771.117(e)(1). When 23 CFR 771.117(c)(26), 23 CFR 771.117(c)(27), or 23 CFR 771.117(c)(28) are selected and the SDT detects that the applicable constraints are not met a warning message is generated and alerts the user of the discrepancy.

Following the user's acknowledgment of the discrepancy, the (c)-list criterion will be removed from the selection and another criterion must be used.

Documentation Fulfilment

The SDT uses the following automation and question logic to ensure that adequate documentation is provided as a result of the data provided in the form:

- Would the project require a detour or a road/ramp/bridge closure, temporary or permanent?

By selecting "No" to this question, the user is documenting that the project activities would meet the constraints imposed by 23 CFR 771.117(e)(4).

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If (c)(26), (c)(27), or (c)(28) is chosen as the classification, automation within the form would generate the following statement to serve as the documentation for the project's compliance with the applicable constraints:

“The proposed action would not require a detour or a road/ramp closure. Based on the provided information the proposed action would be consistent with the constraints of 23 CFR 771.117(e)(4).”

- Would the detour or road/ramp/bridge closure result in major traffic disruptions?

By selecting “No” to this question, the user would be prompted to provide a description of the detour or road/ramp/bridge closure and an explanation to support the determination that the actions would not result in a major traffic disruption. This documentation would support that the project meets the constraints imposed by 23 CFR 771.117(e)(4).

If (c)(26), (c)(27), or (c)(28) is chosen as the classification, automation within the form would generate the following statement to serve as the documentation for the project's compliance with the applicable constraints:

“The proposed action would include a detour or road/ramp closure.

<Insert description of the detour or road/ramp/bridge closure.>

<Insert explanation to support the determination that the project would not result in major traffic disruptions.>

Therefore, the project meets the criteria for (e)(4).”

23 CFR 771.117(e)(5)

Changes in access control.

The SDT uses the following question to monitor the project's compliance with the constraints of 23 CFR 771.117(e)(5):

- Would the project require any changes in access control to an interstate highway?

If the answer to the previously mentioned questions are “Yes”, the project would not meet the constraints of 23 CFR 771.117(e)(5). When 23 CFR 771.117(c)(26), 23 CFR 771.117(c)(27), or 23 CFR 771.117(c)(28) are selected and the SDT detects that the applicable constraints are not met a warning message is generated and alerts the user of the discrepancy.

Following the user's acknowledgment of the discrepancy, the (c)-list criterion will be removed from the selection and another criterion must be used.

Documentation Fulfilment

The SDT uses the following automation and question logic to ensure that adequate documentation is provided as a result of the data provided in the form:

- Would the project require any changes in access control to an interstate highway?

By selecting “No” to this question, the user is documenting that the project activities would meet the constraints imposed by 23 CFR 771.117(e)(5).

When (c)(26), (c)(27), or (c)(28) is chosen as the classification, automation within the form would generate the following statement to serve as the documentation for the project's compliance with the applicable constraints:

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“The proposed action would not result in changes of access to an interstate highway. Therefore, the project meets the criteria for (e)(5).”

23 CFR 771.117(e)(6)

A floodplain encroachment other than functionally dependent uses (e.g., bridges, wetlands) or actions that facilitate open space use (e.g., recreational trails, bicycle and pedestrian paths); or construction activities in, across or adjacent to a river component designated or proposed for inclusion in the National System of Wild and Scenic Rivers.

The SDT uses the following question to monitor the project’s compliance with the constraints of 23 CFR 771.117(e)(6):

- Does the floodplain encroachment have a functionally dependent use?
- Does the project include construction activities in, across or adjacent to a river component designated or proposed for inclusion in the National System of Wild and Scenic Rivers?

When 23 CFR 771.117(c)(26), 23 CFR 771.117(c)(27), or 23 CFR 771.117(c)(28) are selected and the SDT detects that the applicable constraints are not met a warning message is generated and alerts the user of the discrepancy. Following the user’s acknowledgment of the discrepancy, the (c)-list criterion will be removed from the selection and another criterion must be used.

Condition 1 - “A floodplain encroachment other than functionally dependent uses (e.g., bridges, wetlands) or actions that facilitate open space use (e.g., recreational trails, bicycle and pedestrian paths).”

The SDT uses the following automation and question logic to ensure that adequate documentation is provided as a result of the data provided in the form:

- Does the project area contain any water body, wetland or floodplain?

By selecting “No” to this question, the user is documenting that the project limits do not contain a base floodplain and would therefore, not result in a floodplain encroachment.

If (c)(26), (c)(27), or (c)(28) is chosen as the classification, automation within the form would generate the following statement to serve as the documentation for the project’s compliance with the applicable constraints:

“The proposed action would not result in an encroachment of a floodplain.”

- Will the project involve an action within the limits of the base floodplain?

By selecting “No” to this question, the user is documenting that the project would not involve actions within a base floodplain and would therefore, not result in a floodplain encroachment.

If (c)(26), (c)(27), or (c)(28) is chosen as the classification, automation within the form would generate the following statement to serve as the documentation for the project’s compliance with the applicable constraints:

“The proposed action would not result in an encroachment of a floodplain.”

- Does the floodplain encroachment have a functionally dependent use?

By selecting “Yes” to this question, the user would be prompted to provide a description of the project activities to support this determination. This documentation would support that the project would not result in a floodplain encroachment other than for a functionally dependent use or an action that facilitate open space use.

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When (c)(26), (c)(27), or (c)(28) is chosen as the classification, automation within the form would generate the following statement to serve as the documentation for the project's compliance with the applicable constraints:

“The proposed action would result in an encroachment of a floodplain; however, such actions would be intended for functionally dependent uses. <Insert supporting explanation.>”

Condition 2 - “Construction activities in, across or adjacent to a river component designated or proposed for inclusion in the National System of Wild and Scenic Rivers.”

The SDT uses the following automation and question logic to ensure that adequate documentation is provided as a result of the data provided in the form:

- Is the project located in a county that is subject to the regulations of the National System of Wild and Scenic Rivers?

When the SDT detects that the project would not occur in a county that is subject to the regulations of the National System of Wild and Scenic Rivers, automation within the form would provide the necessary documentation to support that the project meets the constraints of 23 CFR 771.117 (e)(6), condition 2.

When (c)(26), (c)(27), or (c)(28) is chosen as the classification, automation within the form would generate the following statement to serve as the documentation for the project's compliance with the applicable constraints:

“The proposed action is not located within a county that is subject to the regulations of the National System of Wild and Scenic Rivers and therefore would not involve construction activities in, across or adjacent to a river component designated or proposed for inclusion in the National System of Wild and Scenic Rivers.”

- Does the project include construction activities in, across or adjacent to a river component designated or proposed for inclusion in the National System of Wild and Scenic Rivers?

By selecting “No” to this question, the user is documenting that the project activities would meet the constraints of 23 CFR 771.117 (e)(6), condition 2.

When (c)(26), (c)(27), or (c)(28) is chosen as the classification, automation within the form would generate the following statement to serve as the documentation for the project's compliance with the applicable constraints:

“The proposed action would not result in construction activities in, across or adjacent to a river component designated or proposed for inclusion in the National System of Wild and Scenic Rivers.”

In addition to the automation associated with 23 CFR 771.117(e)(6); when the SDT has identified that all of the conditions of 23 CFR 771.117(e)(6) have been met, automation within the form would generate the following statement to serve as the documentation for the project's compliance with the applicable constraints:

“Therefore, the project meets the criteria for (e)(6).”

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Appendix A: Acronyms

Acronym	Full Name
ECOS	Environmental Compliance Oversight System
ENV	Environmental Affairs Division
NEPA	National Environmental Policy Act
SDT	Scope Development Tool
SME	Subject Matter Expert
TxDOT	Texas Department of Transportation

Instructions for Using the Scope Development Tool

Appendix B: Revision History

The following table shows the revision history for this document.

Revision History	
Effective Date Month, Year	Reason for and Description of Change
September 2015	Version 1 was released.