

# GUIDANCE ON ENVIRONMENTAL DOCUMENTATION FOR TEXAS RAIL PROJECTS



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## 1.0 INTRODUCTION

In order to meet the growing transportation demands of Texans in the 21<sup>st</sup> Century, the Texas Department of Transportation (TxDOT) is planning and developing multimodal transportation corridors. In June 2003, the Texas Legislature recognized the need for a multimodal emphasis in transportation planning. HB 3588 provided TxDOT with the authority to acquire, finance, construct, and maintain rail facilities. HB 3588 also directed TxDOT to determine if the department should acquire rail services proposed for abandonment.

Depending upon the Federal Agencies and specific activities involved, the planning and the National Environmental Policy Act of 1969 (NEPA) processes for rail projects can be different from highway improvement projects. As a result, all proposed rail projects should be coordinated with the Environmental Affairs Division (ENV) and the Transportation Planning & Programming (TPP) Multimodal Section early during the planning process.

In some areas, rail facilities may develop adjacent to highway facilities. In other areas, rail corridor projects may diverge from roadway alignments to meet engineering requirements, take advantage of existing rail infrastructure, or serve other needs. Consistent with TxDOT's vision to promote an environmentally sensitive transportation system, the environmental process serves as a critical part of project development for multimodal projects involving rail. The purpose of this guidance is to answer the following questions:

- Which federal agencies would be involved with TxDOT rail projects?
- How is the environmental process for rail projects different from traditional roadway projects?
- What kind of environmental documentation is required for rail projects?

While this guidance focuses on the NEPA process, TxDOT rail projects must also comply with all other applicable Federal, State, and local environmental laws, rules, and regulations such as the National Historic Preservation Act (NHPA), the Antiquities Code of Texas, and the Edwards Aquifer Rules. Finally, TxDOT's Programmatic Agreements (PAs) with the Texas Historical Commission (THC) and the Federal Highway Administration (FHWA) do not apply to rail projects.

## 2.0 FEDERAL AGENCIES THAT COULD BE INVOLVED WITH TXDOT RAIL PROJECTS

Unlike typical roadway infrastructure projects for which the Federal Highway Administration (FHWA) serves as the lead federal agency, rail projects can and do involve other U.S. Department of Transportation (USDOT) agencies. These agencies include the Surface Transportation Board (STB), Federal Railroad Administration (FRA), and Federal Transit Administration (FTA). FHWA also serves as the lead agency on some rail projects such as highway/rail intersection grade separations, and as directed by the FHWA Administrator.

ENV negotiates the terms of any MOU relating to environmental matters. Depending on the project, TPP may also participate in the MOU development process.

The type of planned rail activity or project determines which federal agency or agencies are consulted during the project development/environmental process. **Figure 1** illustrates some of the different types of rail projects and the federal agency typically responsible for environmental review. In some instances, there are co-lead agencies and/or a memorandum of understanding (MOU) between agencies with rail oversight. For example, if a project proposes to incorporate freight and high-speed railways, STB may be the lead agency for the freight component and FRA for the high-speed lines. An MOU may be prepared to document specific agency roles and facilitate cooperation between all parties involved. As previously mentioned, USDOT contains all of the federal agencies with rail responsibilities. The following sections discuss each of these agencies with an emphasis on each agency's environmental procedures. Other environmental laws, rules, and regulations may apply to a given rail project.

**FIGURE 1: DIFFERENT TYPES OF RAIL PROJECTS AND FEDERAL AGENCIES  
TYPICALLY RESPONSIBLE FOR ENVIRONMENTAL REVIEW**

| STB  | FRA   | FTA  | FHWA  |
|--|---|--|---|
| <ul style="list-style-type: none"> <li>• Abandonment Projects</li> <li>• New Freight Rail Construction</li> <li>• Extensions of Existing Freight Rail Lines</li> <li>• Discontinuance of Passenger or Freight Service</li> <li>• Acquisitions, Mergers, Leases, Consolidations</li> <li>• Water Carrier Licensing</li> <li>• Vertical Leases in ROW for Utilities</li> </ul> | <ul style="list-style-type: none"> <li>• High Speed Rail</li> <li>• Magnetic Levitation (MAGLEV) Deployment</li> <li>• Intercity Rail Service</li> <li>• At-Grade Safety Improvement</li> <li>• Grade-Separations or Rail Consolidations</li> <li>• Commuter Rail*</li> </ul> | <ul style="list-style-type: none"> <li>• Intracity Rail Service</li> <li>• Light Rail</li> <li>• Commuter Rail*</li> <li>• Monorail</li> <li>• Trolley</li> <li>• Inclined Railways</li> <li>• Subways</li> <li>• Buses</li> </ul> | <ul style="list-style-type: none"> <li>• TTC &amp; other Multi-modal projects that include rail</li> <li>• Others, as directed by FHWA administrator</li> </ul> |

\*Both FTA and FRA can have oversight responsibilities for commuter rail projects: the source of funding for a proposed rail project will likely determine which of these two agencies takes the lead for the particular project.

## 2.1 What is the Surface Transportation Board?

The Interstate Commerce Commission (ICC) Termination Act of 1995 created STB as the successor to the ICC. STB is not part of USDOT, but is an independent agency that is administratively housed in USDOT. STB has independent decision-making authority. STB regulates mergers, line sales, line construction, and line abandonment. STB, as the jurisdictional agency for restructuring transactions, is also the lead agency for new freight rail construction projects and rail abandonment projects.

STB staff has been divided into five offices. The five offices consist of:

- The Office of Compliance and Consumer Affairs (OCCA) monitors rail operations and enforces regulations throughout the United States. OCCA oversees all aspects of carrier operations subject to the jurisdiction of STB to ensure that those operations are consistent with each carrier's statutory and regulatory responsibilities. OCCA also interacts with the public in a wide range of consumer assistance areas, including its management of STB's Rail Consumer Assistance Program. The Rail Consumer Assistance Program assists the public with rail-related issues nationwide and assists with certain household goods issues related to overcharges. The program derives its authority from the responsibility to receive and maintain tariffs.
- The Office of Congressional and Public Service (OCPS) works with Congress, the public, and the media to answer questions and provide information in regards to STB's procedures, regulations, and actions.
- The Office of Economics, Environmental Analysis, and Administration (OEEAA) performs various functions, including the handling of administrative matters. The Economics Section of this office analyzes rate cases, conducts economic and financial analyses of the railroad industry, and audits Class I railroads.<sup>1</sup> The Section of Environmental Analysis (SEA) is the office within STB responsible for directing the environmental review process, conducting independent analysis of all environmental data, and making environmental recommendations to STB. Typically, SEA conducts environmental analyses or determines that an action is subject to a Categorical Exclusion (CE). SEA conducts independent environmental reviews of cases filed with STB, prepares any necessary Environmental Impact Statements (EISs) or Environmental Assessments (EAs), conducts public outreach to inform the

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<sup>1</sup> U.S. Class I Railroads are line haul freight railroads with 2005 operating revenue in excess of \$319.3million (Association of American Railroads, 2007).

public and communities about proposals before STB, and provides technical advice and recommendations to STB on environmental matters.

- The Office of Proceedings (OP) develops the public record in formal cases (or proceedings) filed with STB, makes recommendations regarding the resolution of issues presented in those cases, and prepares the decisions issued by STB.
- The Office of General Counsel (OGC) acts as a legal advisor and defends agency actions that are challenged in court.

### **2.1.1 What Types of TxDOT Projects Could Involve STB?**

TxDOT needs STB's approval for a number of different types of rail projects. To build an extension of a rail line, or to construct and operate a new rail line, applicants (including TxDOT) must first apply to STB for authority. Some projects that involve STB include the Railport Industrial Park project in Ellis County, the Alamo North Texas Railroad construction project in Wise County, and the Calhoun County/Seadrift Rail Line Construction. STB serves as a cooperating agency on the Tier One EIS for Trans-Texas Corridor 35 (TTC-35). TxDOT would coordinate with STB on projects that require an STB license.

### **2.1.2 What are STB's Environmental Requirements and Procedures?**

Like all other federal agencies, STB must consider the environmental impacts of its actions, including direct, indirect, and cumulative impacts in its decision-making. STB uses a different environmental process than FHWA, with whom TxDOT is most familiar.

Regulation 49 CFR 1105 contains STB's *Procedures for Implementation of Environmental Laws*. This regulation is available electronically at [http://www.access.gpo.gov/nara/cfr/waisidx\\_02/49cfr1105\\_02.html](http://www.access.gpo.gov/nara/cfr/waisidx_02/49cfr1105_02.html). These environmental rules implement the environmental requirements of STB under NEPA. The rules include processes for how the applicant is to carry out STB's responsibilities under NEPA and the National Historic Preservation Act (NHPA) and seek to ensure adequate consideration of environmental factors in STB's decision-making process. STB's *Guide to Environmental Rules* is available on their website at: [http://www.stb.dot.gov/stb/environment/rules\\_guide.html](http://www.stb.dot.gov/stb/environment/rules_guide.html). The guide contains a series of questions and answers, which help familiarize applicants with STB's rules.

### **2.1.3 What are TxDOT's Options for Advancing Rail Projects through the STB Environmental Process?**

Under STB rules, TxDOT would have two options for advancing rail projects involving STB:

1. Retain a third-party pre-approved STB contractor to assist in the preparation of the EAs or EISs.
2. Prepare an environmental (and historic) report, evaluate the potential environmental impacts and any reasonable alternatives to the proposed action, and submit the report at, or prior to, the time the project is filed with STB.

Under the first option, the contractor works independent of TxDOT under the direction, supervision, and control of STB's SEA. Under the third-party contractor option, TxDOT's obligation to submit an environmental and/or historic report is waived. STB's environmental regulations [49 CFR 1105.4(j)] indicate that TxDOT may participate in choosing the contractor; however, to avoid any impermissible conflict of interest, TxDOT may not be responsible for the ultimate selection or control of independent contractors.

Although the contractor works directly for STB and independent of TxDOT, TxDOT pays for all costs associated with the third-party contractor. STB maintains the responsibility for completing the environmental report. The third-party contractor follows STB guidance on the environmental analysis. STB participates in the preparation of the EA or EIS independently evaluates the EA or EIS, and adds its expertise through review and revision, as necessary. STB's policy on third-party contracting is available in the *Federal Register*, March 28, 2001, Volume 66, Number 60, Notices, Page 1697 and on STB's website at: [http://www.stb.dot.gov/stb/environment/contracting\\_seacss25a.html](http://www.stb.dot.gov/stb/environment/contracting_seacss25a.html).

Under the second option, the applicant is required to submit an Environmental Report prior to its application, petition, or notice of exemption on the proposed action. A Historic Report may also be required. The following sections discuss each of these reports in more detail.

### **2.1.4 What is an Environmental Report?**

STB defines an environmental report as a document filed by the applicant(s) that:

1. Provides notice of the proposed action; and
2. Evaluates its environmental impacts and any reasonable alternatives to the action.

An environmental report may be in the form of a proposed Draft EA (DEA) or proposed Draft EIS (DEIS). STB's reporting requirements for an environmental report are as follows [see 49 CFR 1105.7(a) through (g)]:

1. The applicant filing for an action identified in STB's environmental regulations 49 CFR 1105.6 (a) or (b) to STB must submit an environmental report.
2. The applicant must provide copies of the environmental report to any and all agencies that have been consulted in preparing the report. The copies must be submitted at least 20 days prior to filing with STB.
3. The applicant is required to certify in the environmental report that copies of the environmental report were submitted to all the appropriate agencies involved in preparing the report. Also, in every abandonment exemption case, the applicant is responsible for certifying that the notice has been published in a newspaper in order to ensure that the general public has been notified of the proposed abandonment, available reuse alternatives, and how to participate in the STB's proceedings.
4. Written and oral responses that were used in preparing the environmental report should be attached to the report. The applicant must provide a copy or proper citation to any reference materials utilized in the environmental report.
5. The environmental report shall include all the information specified in STB's *Procedures for Implementation of Environmental Laws* Sec 1105.7 (e). Historic reports may be required under regulation 49 CFR 1105.8.
6. STB may require additional information regarding environmental or energy effects of the proposed action.
7. Where an applicant shows that the information being requested is not necessary for STB to evaluate the environmental impacts of the proposed action, STB may choose to waive or modify (in whole or part) the provisions specified in 49 CFR 1105.7.

### **2.1.5 What is a Historic Report?**

A historic report is a document that provides STB and relevant State Historic Preservation Officer(s) (SHPO) with sufficient information to conduct the Section 106 consultation process required by NHPA. Specific content requirements of the historic report are provided in STB's *Procedures for Implementation of Environmental Laws* (see 49 CFR 1105.8). The content requirements outlined in CFR 1105.8 are STB's minimum requirements for a Historic Report. Depending on the specific project, the SHPO may consider STB's minimum Historic Report requirements inadequate for purposes of concurring with a formal finding and additional information may be required.

Regulation 49 CFR 1105.8 outlines the Board's consultation process with the Texas SHPO for Historic Reports. Some rail projects may require SHPO coordination under NHPA even if NEPA does not apply. In addition, consultation with SHPO under state law may be necessary, as provided in the Antiquities Code of Texas (ACT), Chapter 191, Subchapter A.

Information regarding STB's Historic Reports is available on the STB website at: <http://www.stb.dot.gov/stb/environment/preservation.html>.

### **2.1.6 What Type of Environmental Documentation is Required by STB?**

STB requires EAs to be prepared for the following proposed actions [see 1105.6 (b)]:

- Construction of connecting tracks within existing right-of-way (ROW) or on land owned by the connecting railroads;
- New construction on new ROW freight;
- Abandonment of a rail line;
- Discontinuance of passenger or freight service;<sup>2</sup>
- Acquisition, lease, merger, consolidation;
- Water carrier licensing; and
- Vertical leases in ROW for utilities/telecommunications.

An EIS is required for most rail construction proposals with the exception of the construction of certain connecting tracks [see 1105.6 (a)]. A number of other actions are categorically excluded; and therefore, do not require EAs or EISs. **However, such actions could still require historic reports.**

STB categorically excludes and therefore does not require an EA or EIS be prepared for the following [see 1105.8]:

- Motor carrier, broker, or freight forwarder licensing;
- Action(s) that will not result in significant changes in carrier operations;
- Rate, fare, and tariff actions;
- Common use of rail terminals and trackage rights;

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<sup>2</sup> Excludes discontinuances of freight service under modified certificates issued under 49 CFR 1150.21 and discontinuances of trackage rights where the affected line will continue to be operated.

- Discontinuance of freight rail service under a modified certificate issued pursuant to 49 CFR 1150.21;
- Discontinuance of trackage rights where the affected line will continue to be operated; and
- A policy or legislative proposal that has no potential for significant environmental impact.

STB reserves the right to re-classify an individual action as requiring some level of environmental documentation. STB may review any action and decide that it has the potential for significant environmental impacts. Therefore, the applicant should provide an environmental report such as an EA or EIS. An applicant, like TxDOT, can also propose, with adequate written justification, to re-classify the level of required documentation for a particular action/project.

### **2.1.7 How Does STB's Environmental Process Differ from TxDOT's and FHWA's?**

SEA maintains ultimate responsibility for the environmental process for projects requiring STB approval. As the following example indicates, STB's environmental process differs substantially from that of FHWA.

The Alaska Railroad Corporation (ARRC) proposes to construct and operate a new rail line between Eielson Air Force Base and the Delta Junction/Fort Greely area of Alaska. Since the project involves the construction of a new rail line, it is subject to STB approval and requires an EIS. In this case, ARRC is the applicant and STB is the lead federal agency.

As the applicant, ARRC hired a contractor to assist with program management, preliminary engineering, and environmental analysis in support of the EIS process. With the assistance of the contractor, the ARRC may provide technical and environmental information for possible use by SEA in preparing the EIS. ARRC, assisted by its contractor, will also provide public information services, such as a website and newsletters.

However, SEA maintains the ultimate responsibility of preparing the EIS and following the NEPA process. To assist with the NEPA process, SEA hired its own independent, third-party contractor to assist with the preparation of the EIS. The third-party contractor is paid for by the railroad applicant. This contractor acts under the sole direct supervision and control of the SEA (independent of the ARRC and ARRC's contractor).

Should TxDOT pursue a project requiring STB's approval, TxDOT, with or without the assistance of an STB approved contractor, could contribute environmental data and analyses for use in the NEPA process. However, unlike the TxDOT and FHWA relationship where TxDOT conducts the environmental process with FHWA oversight and approval, STB's SEA conducts its own independent environmental analyses and may or may not accept data or analysis from TxDOT. SEA completes the environmental process and demonstrates NEPA compliance prior to approving an application.

Regulation 49 CFR 1105.4 (j) defines a third-party consultant and provides additional explanation regarding the role of contractors, the applicant (i.e., railroad or TxDOT), and the SEA:

Third-Party Consultant means an independent contractor, utilized by the applicant, who works with SEA's approval and under SEA's direction to prepare any necessary environmental documentation. The third party consultant must act on behalf of the Board. The railroad may participate in the selection process, as well as in the subsequent preparation of environmental documents. However, to avoid any impermissible conflict of interest (i.e., essentially any financial or other interest in the outcome of the railroad-sponsored project), the railroad may not be responsible for the selection or control of independent contractors (49 CFR 1105.4 (j)).

STB's EIS process also differs from FHWA. **Figure 2** illustrates the STB EIS process. As indicated in this figure, STB rules require prospective applicants contemplating the preparation of an EIS to notify STB's SEA **six months prior** to filing their application. To initiate the EIS process, STB requires the publication of a Notice of Intent (NOI) in the *Federal Register* (40 CFR 1501.7). This informs the public, other agencies, Tribes, and interested parties of the proposed project, invites their participation in the EIS process, and initiates the scoping phase of the process. After the NOI, scoping occurs. During scoping, interested parties comment on the scope of the proposed undertaking and STB conducts additional research on the project/action.

Through the scoping process, STB develops a Final Scope for the EIS, which is published in the Federal Register. The Final Scope identifies the specific topics, issues, and environmental resources that STB will discuss in the EIS. Once the Final Scope is published, STB prepares the DEIS and issues it for public review and comment for a minimum of 45 days. The DEIS may be modified based on comments and then a Final EIS (FEIS) is issued. STB may or may not hold public hearings upon release of the DEIS.

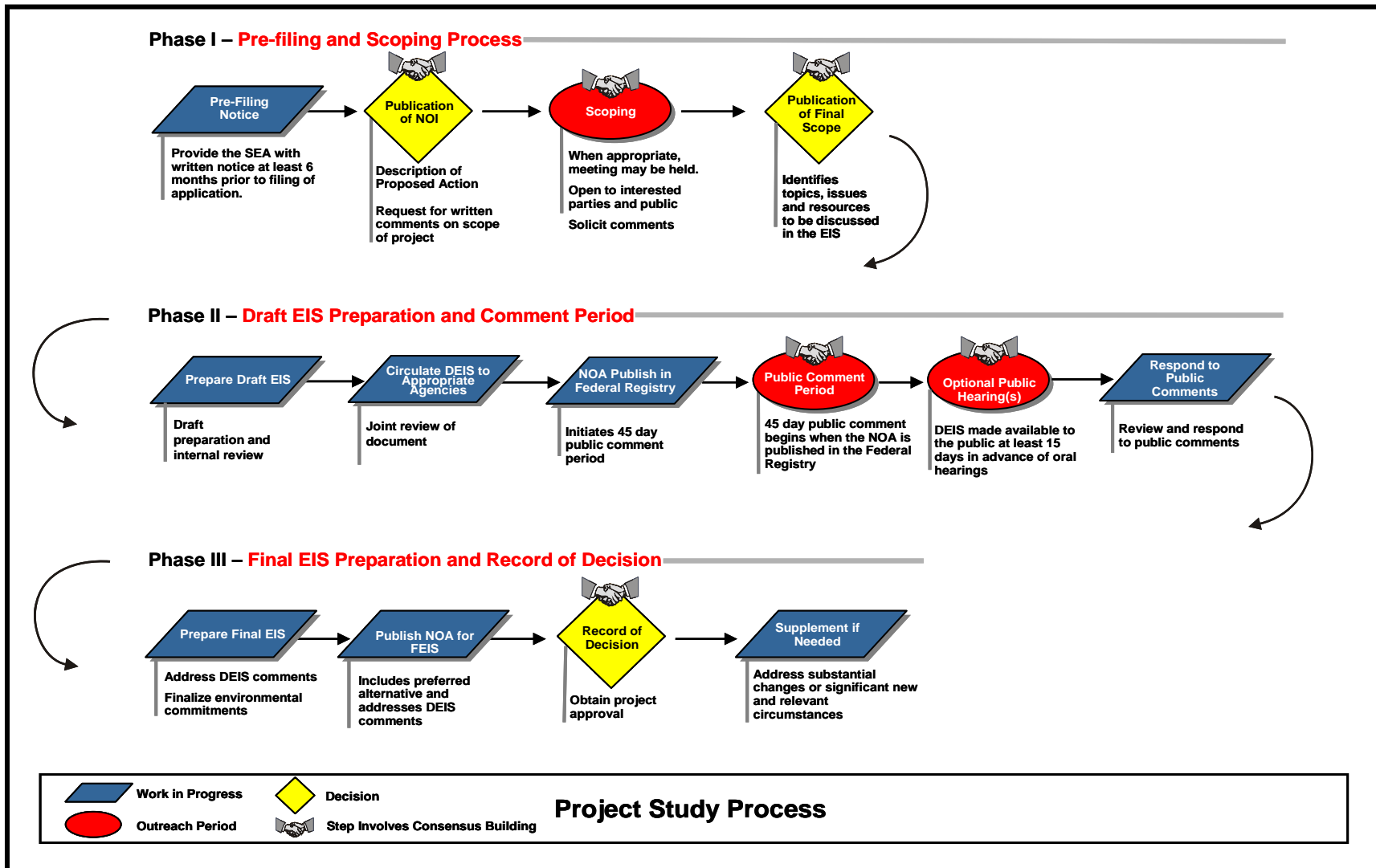
To summarize, the following are some of STB's procedures that differ from those required by FHWA under 23 CFR 771:

- When an EIS is required, TxDOT must provide SEA with written notice six months prior to filing its application;
- STB environmental reports require description of "any reasonable alternatives";
- The trigger for STB's regulations is acquisition, construction, or abandonment of rail facilities, not funding;
- TxDOT will be an applicant to STB in cases where the department acquires, finances, or constructs facilities. TxDOT will not be an applicant if we merely: (a) acquire ROW that in some future date may be used for rail; or (b) purchase an already abandoned rail corridor unless the piece to be abandoned has already been brought before STB for abandonment procedures. If another party wishes to construct a rail facility within TxDOT's right-of-way, that party would be the applicant;
- The STB will file the notice in the Federal Register;
- Procedures for notice of availability of the DEIS and time frames differ slightly;
- All coordination with federal and state agencies is done by SEA;
- There are opportunities for waivers from normal SEA procedures, but they appear to be granted on a case-by-case basis;
- STB decides what, if any, environmental or historic preservation conditions to impose on the applicant;
- If TxDOT conducts an environmental analysis and public involvement on right-of-way that is later proposed to be used for rail project under STB jurisdiction, TxDOT will need to conduct a separate study under 49 CFR 1105, in part because the impacts considered differ; and
- Public involvement differs. Notices in newspapers are required for all projects and STB holds the public meetings and takes oral comments.

### **2.1.8 Where is additional information available regarding STB and its requirements?**

STB's procedures for implementation of environmental laws are found at 49 CFR 1105. STB provides guidance to accompany their rules on their website: [http://www.stb.dot.gov/stb/environment/rules\\_guide.html](http://www.stb.dot.gov/stb/environment/rules_guide.html).

FIGURE 2: STB EIS PROCESS



Source: Adapted from Smith and Butler (TRB, 2005)

## **2.2 What is the Federal Railroad Administration?**

FRA was created pursuant to Section 3(e)(1) of the Department of Transportation Act of 1966 (49 USC 103). FRA's purpose is to promulgate and enforce rail safety regulations, administer railroad assistance programs, conduct research and development in support of improved railroads, and consolidate government support of rail transportation activities. FRA makes determinations as to when FRA regulations apply to proposed fixed guideway transportation systems, as they typically do for commuter rail operations. FRA also plays an active role in the development of the country's intercity rail passenger system. In addition to administering programs for High Speed Rail (HSR) corridor development, Magnetic Levitation (MAGLEV) deployment, and HSR technology development and deployment, FRA is also involved in administering funding to and supporting the development of administration policy regarding the nation's existing intercity passenger rail systems, including Amtrak. FRA also administers federal funding to smaller rail development programs and specific projects in response to specific Congressional mandates. FRA typically serves as the lead federal agency for intercity rail passenger service proposals. Both FTA and FRA can have oversight responsibilities for commuter rail projects: the source of funding for a proposed rail project will likely determine which of these two agencies takes the lead for the particular project.

### **2.2.1 What Types of TxDOT Projects Could Involve FRA?**

FRA, as the lead agency on all high-speed rail development proposals, serves as a cooperating agency with FHWA on the HSR components of the proposed TTC-35. FRA also serves as the lead federal agency on Texas' two HSR corridors, the "South Central" and the "Gulf Coast" corridors. FRA previously served as lead federal agency on the Texas TGV proposal. Additionally, FRA works with state and local officials to ensure that public grade crossings, railroad rollingstock, track, operating practices, and rail transportation of hazardous materials conform to federal rail safety standards and regulations. FRA is responsible for intercity (including high-speed) and commuter rail safety and all freight rail operations. Coordination on safety issues is performed by the FRA regional offices, while the headquarters Office of Railroad Development handles all NEPA reviews. TxDOT would coordinate with FRA for various at-grade safety improvements, grade separations, and/or rail consolidation projects.

## **2.2.2 What are FRA's Environmental Requirements and Procedures?**

FRA maintains agency specific environmental procedures (see *Federal Register*, Volume 64, Number 101, May 26, 1999, Notices, page 28545) pursuant to the Council on Environmental Quality's Regulations for Implementing the National Environmental Policy Act (40 CFR 1500 et seq.). FRA's *Railroad Corridor Transportation Plans – A Guidance Manual* is available on their website at [http://www.fra.dot.gov/Downloads/RRdev/corridor\\_planning.pdf](http://www.fra.dot.gov/Downloads/RRdev/corridor_planning.pdf).

Typically, FRA requires an EIS for any construction of new major railroad lines, new major facilities, or any change that will result in a significant increase in traffic. Similar to FHWA, FRA typically prepares EAs for actions in which the significance of the environmental impact is not clearly established. CEs are actions that do not individually or cumulatively have significant environmental effects and are excluded from the requirement to prepare an EA or EIS. A specific list of CEs normally not requiring NEPA documentation is set forth in FRA procedures [Sec. 64.4(c)]. When appropriately documented, certain actions may also qualify as CEs pursuant to Sec. 64.4(d). Such actions include the enforcement of safety regulations and issuance of emergency orders.

FRA's railroad corridor guidance manual describes the content and preparation of long range rail infrastructure plans for passenger rail services on the general railroad system. FRA typically requires completion of the level of planning described prior to approving funding for major investments in these types of proposals. A railroad corridor transportation plan also serves as an important part of the project description used for environmental analysis and documentation of these proposals.

## **2.3 What is the Federal Transit Administration?**

FTA is a USDOT agency charged with the responsibility of administering programs and funding associated with mass transit. Mass transit includes buses, subways, light rail, commuter rail, monorail, passenger ferryboats, trolleys, inclined railways, and people movers. FTA was created by the Federal Transit Act of 1964 as the Urban Mass Transportation Administration (ISTEA changed the name of the agency to FTA). FTA is the lead federal agency for intra-city rail passenger service and in some cases intercity passenger service when FTA funds are involved. Both FTA and FRA can have oversight responsibilities for commuter rail projects: the source of funding for a proposed rail project will likely determine which of these two agencies takes the lead for the particular project.

The federal government, through FTA, provides financial assistance to develop new transit systems and improve, maintain, and operate existing systems. FTA oversees grants to state and local transit providers, primarily through its regional offices. These grantees are responsible for managing their programs in accordance with

federal requirements. FTA is responsible for ensuring that grantees follow federal mandates along with statutory and administrative requirements. FTA focuses its efforts on those issues and subject areas pertaining or related to commuter rail and multimodal station planning, transit travel demand, and feeder transit services.

### **2.3.1 What Types of TxDOT Projects Could Involve FTA?**

FTA projects that would likely involve TxDOT collaboration include light rail and commuter rail projects. Examples of these types of projects include the Austin-San Antonio Inter-municipal Commuter Rail, a 110-mile commuter rail line that is proposed to run along the I-35 corridor from San Antonio to Georgetown, and Capitol Metro's Urban Commuter Rail Line that will utilize a 32-mile existing freight line to provide commuter rail service from Leander to Downtown Austin. The Red Line of the Dallas Area Rapid Transit (DART) system is an example of a light rail project.

### **2.3.2 What are FTA's Environmental Requirements and Procedures?**

Within FTA, regional offices manage, oversee, participate in, and approve the NEPA review of projects. FTA's Region 6 office, located in Forth Worth, is responsible for FTA activities within Texas. FTA's Office of Planning and Environment provides environmental program guidance through regulations, policy statements, and technical manuals. The Office of Planning works with other federal agencies and provides training and technical assistance on the environmental process in general and on specific impact assessment methods for noise, vibration, air quality, and other potential impacts. In 23 CFR 771, all FHWA, FTA, and USDOT requirements are set forth under NEPA for the processing of highway and urban mass transportation projects. A copy of 23 CFR 771 is available at: [http://www.gpo.gov/nara/cfr/waisidx\\_99/23cfr771\\_99.html](http://www.gpo.gov/nara/cfr/waisidx_99/23cfr771_99.html)

FTA and FHWA operate under the same NEPA implementing regulation and follow essentially the same environmental process. However, FTA requires an assessment of vibration and a noise analysis that differs from roadway projects. FTA projects frequently require an in-depth analysis of social and economic issues and environmental justice as they are often located in urban areas. Although FTA and FHWA use the same NEPA implementing regulations (23 CFR 771) and follow almost identical environmental processes, any existing agreements between TxDOT and FHWA generally **do not** apply to FTA.

TxDOT's Programmatic Agreement for the Review and Approval of NEPA Categorically Excluded Transportation Projects with FHWA does not apply to FTA projects.

### **2.3.3 What Type of Environmental Documentation is Required by FTA?**

FTA's environmental impact regulation (Environmental Impact and Related Procedures (23 CFR 771)), issued jointly with FHWA, describes two types of mass transit projects that normally have significant affects on the environment and require an EIS:

1. New construction or extension of fixed rail transit facilities (e.g., rapid rail, light rail, commuter rail, and automated guideway transit).
2. New construction or extension of a separate roadway for buses or high-occupancy vehicles not located within an existing highway.

A specific list of actions (i.e., CEs) normally not requiring NEPA documentation is set forth in Sec. 771.117(c). When appropriately documented, other actions may also qualify as CEs pursuant to Sec. 771.117(d).

Actions in which the significance of the environmental impact is not clearly established require the preparation of an EA to determine the appropriate level of environmental documentation required. Other types of mass transportation projects may also require an EIS based on FTA's review of an individual project and whether its impacts are judged to be potentially significant.

## **2.4 What are Some Other Environmental Considerations for Rail Projects?**

Projects involving rail vary in complexity from simple signal upgrades at rail/highway intersections to the development of multimodal corridors like TTC-35. Complex rail projects would, in some cases, benefit from using a tiered approach. Tiering can be appropriate when funding, design, and construction of improvements extend over a long period of time or when multiple modes of transportation spanning large distances are under consideration.

### **2.4.1 What is Tiering and How Does it Apply to Rail Projects?**

NEPA regulations allow the tiering of environmental documents for major transportation actions, including rail corridor projects [23 CFR 771.111 (g) and 40 CFR 1502.20]. Agencies may tier their environmental documents to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review (40 CFR 1508.28).

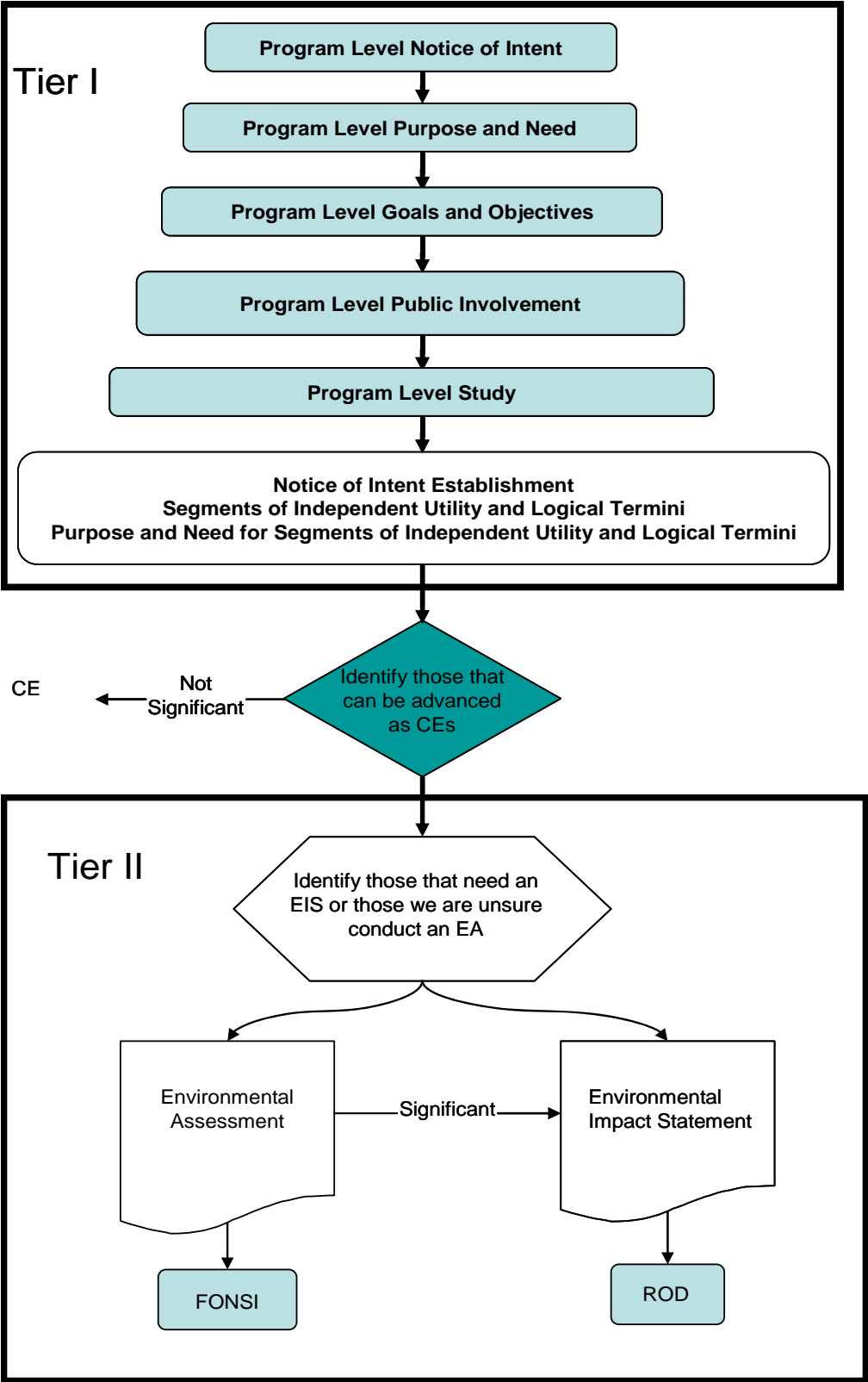
Tier I studies involve the preparation of a document that examines broad issues such as general location, transportation mode choice, major project design

features, and area-wide air quality and land use implications of the proposed action or program. Tier II studies incorporate by reference the general discussions contained in the Tier I document and address site-specific issues such as project impacts, costs, and mitigation measures. Tier II studies involve the preparation of one of several separate NEPA documents that could include additional EISs, EAs, or even CEs depending on the complexity of the site-specific issues.

TxDOT is currently engaged in tiered studies, including TTC-35. The Tier I TTC-35 study investigated a 77-county, 800-mile-long area to identify broad multiuse corridors that could accommodate highway, rail, and utility components. Tier II studies will focus on developing specific alignment alternatives within the Tier I corridor that have independent utility. Rail corridor projects could be developed in a similar manner. A tiered project development approach would provide TxDOT multiple public involvement opportunities to identify and address concerns in the early formative project development stages. **Figure 3** illustrates a tiered approach for a rail project.

Tiering is intended to streamline the existing process by eliminating the need to repeat policy level discussions in any secondary site-specific environmental documentation. When tiering is utilized, program level decisions should be incorporated into the Tier I environmental document. Tier II project specific environmental documents should incorporate by reference discussions from Tier I environmental document. Therefore, the Tier II project specific environmental document focuses primarily on issues relevant to the specific proposal. The Tier II document should not duplicate material found in the Tier I document but rather incorporate by reference as appropriate.

**FIGURE 3: TIERING PROCESS**



Source: TxDOT, 2005

## **2.4.2 What is air quality conformity and how does it apply to rail projects?**

Air quality conformity is mandated by the federal Clean Air Act Amendments of 1990 (CAAA) with portions revised under SAFETEA-LU. It is the process wherein federally supported plans, programs and projects are shown to meet the air quality requirements of the CAAA and the applicable State Implementation Plan (SIP). The SIP is the plan that demonstrates how the state will attain and maintain compliance with the National Ambient Air Quality Standards (NAAQS). The SIP contains requirements, emission limits and regulations to control and reduce air emissions in areas failing to meet one or more NAAQS. Such areas are called nonattainment areas. Lack of an adequate SIP can result in EPA imposing sanctions that may include cutting off federal highway funds to a nonattainment area.

Rail projects in nonattainment areas receiving federal funds are subject to air quality conformity. Conformity is a way to ensure that federal funding and approval are given to those transportation activities that are consistent with air quality goals. It ensures that emissions attributed to transportation activities do not worsen air quality nor delay timely attainment of the NAAQS or otherwise interfere with the purpose of the SIP, which is to meet the EPA standards for air quality. TxDOT generally participates in a formal coordination process for transportation conformity. Conformity for rail projects would require coordination with the federal funding agency (FHWA, FTA, STB, or FRA), EPA, TCEQ, TxDOT, and possibly the MPO. Freight projects and projects generally under the jurisdiction of STB or FRA, are subject to general conformity requirements. STB or FRA would take lead responsibility for coordinating general conformity requirements with partner agencies. Light rail and transit projects are subject to transportation conformity. The MPO takes the lead in coordinating conformity with partner agencies.

The conformity coordination process may take six to nine months (or longer), and should be addressed as an early step in the project development process. Conformity is discussed in NEPA documents.

In Texas, four major metropolitan areas are currently subject to conformity: (1) Houston/Galveston area [Harris, Montgomery, Galveston, Brazoria, Chambers, Fort Bend, Liberty and Waller Counties]; (2) Dallas/Fort Worth area [Dallas, Tarrant, Denton, Collin, Ellis, Kaufman, Rockwall, Johnson, and Parker Counties]; (3) Beaumont/Port Arthur area [Jefferson, Hardin, and Orange]; and (4) El Paso area [El Paso County].

FHWA or FTA funded rail projects required for inclusion in the TIP, are subject to transportation conformity. For example, in the Dallas/Fort Worth (DFW) area the

Trinity Railway Express commuter rail line between Dallas and Fort Worth was funded in part through federal funds and was part of the area's transportation conformity demonstration. Light rail and commuter rail projects are subject to transportation conformity. New light rail lines in nonattainment areas cannot be built without a conforming regional transportation plan.

Transportation Control Measures (TCMs) are activities for reducing emissions or concentrations of air pollution from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. TCMs are used to achieve emissions credits toward transportation conformity analysis. CAA requires nonattainment areas classified as "serious" and above to demonstrate that growth in vehicle miles traveled (VMT) is consistent with an attainment plan and, if not, then develop and implement a TCM Plan. Conformity regulations allow certain transportation projects, like a transit rail extension, to be classified as a transportation control measure (TCM) but the process to have a rail project designated as a TCM may take time to accomplish. The MPO should be contacted early in order to coordinate TCM activities.

On November 30, 1993, EPA promulgated the General Conformity Regulations, which apply to actions approved or funded by federal agencies other than FHWA or FTA and thus not covered under transportation conformity. These regulations ensure that other federal actions also conform to the SIPs ([58 FR 63214](#)). Airport projects, port projects, rail yards, and construction activities are usually subject to general conformity rules. Freight rail activities would fall under the general conformity regulations.

#### **2.4.3 Can Congestion Management Air Quality (CMAQ) funds be used for rail projects?**

SAFETEA-LU authorized new projects that could possibly be funded by Congestion Mitigation Air Quality (CMAQ) funds. These types of projects include retrofits or replacements of locomotive engines with cleaner technologies. FHWA could also fund the construction of freight rail lines as a means of providing an on highway benefit. Such funding would be contingent upon demonstrating that roadway truck traffic could be reduced and an air quality benefit gained. Transportation conformity would apply to new rail lines in non-attainment areas involving federal funding or a federal nexus.

#### **2.4.4 When must rail activities in metropolitan areas be incorporated into the TIP?**

The TIP is a planning document developed by an MPO, which lists all metropolitan projects for which Federal funds are anticipated, along with non-Federally funded projects that increase capacity or are otherwise regionally significant.

According to 40 CFR 93.121, usual recipients of federal funds such as TxDOT are required to incorporate significant transportation projects into the TIP even if no federal funds are utilized. Also, 23 CFR 450.324 requires that all regionally significant FTA or FHWA funded (or approved) projects regardless of funding sources need to be shown within the MPO's long-range transportation plan and TIP. However, private sectors can develop a railroad project without the project being incorporated into the TIP because they are not utilizing federal funds. Therefore, all private railroad projects are not included in the TIP.

#### **2.4.5 Can planning studies be incorporated into NEPA documents for rail?**

As presented in the USDOT guidance on linking planning and NEPA processes (<http://www.fhwa.dot.gov/hep/plannepa050222.pdf>), planning activities can contribute to establishing the purpose and need for a transportation project, determining the range of reasonable alternatives, assessing the cumulative impacts of the projects in the plan, and developing an approach to mitigating the adverse impacts of a project. Generally, planning studies need to be of sufficient disclosure and embrace the principles of NEPA so as to provide a strong foundation for the inclusion of planning decisions in the NEPA process. The degree to which studies, analyses, or conclusions from the transportation planning process can be incorporated into the project development and NEPA processes will depend upon how well these studies, analyses, or conclusions meet certain standards established by NEPA regulations and guidance. Not all planning studies will meet these conditions.

While Congress has refined and strengthened the planning process over the years as the foundation for project decisions, the environmental analyses produced to meet the requirements of NEPA have often been produced in isolation from the analyses used to develop MPO plans. When the NEPA and transportation planning processes are not well coordinated, the NEPA process may lead to the development of information during NEPA that should have been more appropriately developed in the planning process, resulting in duplication of work and delays in transportation improvements. The transportation planning process and the environmental analysis required during project development by NEPA should work in tandem, with the

results of the transportation planning process informing but not substituting for the NEPA process.

### **3.0 CONCLUSION**

The environmental process for rail projects varies according to the type of project and the lead agency. FTA's environmental process most closely parallels that of FHWA. FRA operates under different environmental rules but is procedurally similar to FHWA and FTA. For projects led by STB, the environmental process varies considerably from that of the other agencies involved in advancing rail projects or responsible for actions involving rail. STB serves in a regulatory capacity and, as a result, strives to minimize a potential conflict of interest by conducting the environmental process independently of applicants, including TxDOT. STB maintains a list of approved contractors and directs the activities of contractors. For the most part, STB actions and projects require EAs or EISs.

***For any projects involving rail, Districts should consult with ENV and TPP staff to determine the appropriate agencies to involve, which environmental process to follow, and what level of environmental documentation would be required. ENV and TPP can also assist District staff in determining what analyses, technical studies, etc. completed during the transportation planning process can be used to fulfill some of NEPA's procedural requirements. ENV and TPP can also assist District staff in determining what other laws, rules, and regulations apply to a specific rail project and with developing compliance strategies to satisfy all applicable requirements. Finally, ENV's Cultural Resource Management Section can assist Districts with project specific cultural resource issues and compliance with all applicable cultural resource laws, rules, and regulations.***