Memorandum

Subject: INFORMATION: Revised Guidance on Cooperating Agencies

From: Director, Office of Environment and Planning

To: Regional Federal Highway Administrators
Federal Lands Highway Program Administrator

Date: March 19, 1992

Reply to
Attn. of: HEP-31

On December 23, 1987, this office sent out guidance on how to identify and work with cooperating agencies. Subsequently, we conducted a series of reviews of how the cooperating agency concept was being implemented around the country. Based on the results of the reviews and our growing experience with the cooperating agency concept, we developed a draft revision of the guidance. This was distributed to relevant Federal agencies and to the field in 1990 for review and comment. The draft revised guidance has been modified and sufficient copies are attached to provide one each for the Regional Office, each Division Office and each State highway agency. We suggest you file this paper in the Environmental Guidebook replacing the original guidance. It will be incorporated in the next annual update.

The Environmental Policy Statement, the results of the 1990 Regional Administrators' Workshop on Section 404, and our new surface transportation bill stress communication and cooperation to help assure that transportation programs protect and enhance the environment. This guidance reflects the overall commitment of the FHWA to involve and utilize the expertise of other agencies. Among other things, the revised guidance expands and clarifies the responsibilities of the lead agency and the cooperating agencies, particularly those involved in the Section 404 permitting process. This includes the resolution of essential issues prior to approval of the final environmental document, such as concurrence that there is no practicable alternative that avoids wetlands. In addition, the paper includes sample letters which can be utilized to request cooperating agencies and promote the desired interaction.

As always we welcome your feedback on experience involving cooperating agencies and your suggestions on how to use the cooperating agency concept to the greatest benefit of the highway program.

/Original Signed by/

Kevin E. Heanue

Attachments

Guidance on Cooperating Agencies

Office of Environment and Planning
Federal Highway Administration
March 1992

INTRODUCTION

The need for early coordination and cooperation with Federal, State, and local agencies in the development of Federal-aid highways has been evident for many years. In 1963, the Federal Highway Administration (FHWA) established a unit in its Headquarters Office to improve interagency coordination and public involvement for highway projects. The FHWA regulations and directives have continually emphasized the importance of interagency coordination and cooperation.

The 1978 Council on Environmental Quality (CEQ) regulations introduced the concepts "lead agency" and "cooperating agency." Effective interagency coordination and cooperation are needed to properly implement these concepts. A lead agency supervises the preparation of an environmental impact statement (EIS) if more than one Federal agency is called upon to take an action on the same project. Federal, State, or local agencies may act as joint lead agencies to prepare the EIS. The lead agency should request all Federal agencies which have an action to take on the project (for example, permit approval) to be a cooperating agency. Agencies with special expertise may also be requested to be a cooperating agency.

The CEQ regulations also encourage (1) the reduction of paperwork and delay,(2) the elimination of duplication with Federal, State and local procedures and environmental documents, and (3) the integration of National Environmental Policy Act (NEPA) requirements and other Federal environmental review and consultation requirements. The lead agency and cooperating agency concepts contribute to the achievement of these objectives. Lead and cooperating agencies can use one environmental document to meet each agency's NEPA responsibilities at the same time satisfying Federal, State, and local environmental requirements.

The cooperating agency concept is most readily applicable to the preparation of EISs, which normally requires the intensive use of time, money, and personnel resources. Normally, the preparation of environmental assessments (EAs) should not require a comparable commitment of resources. Consequently, there is usually not as much to be gained in the use of cooperating agencies on EAs solely for NEPA compliance. However, on projects where a permitting agency is willing to accept an EA as a vehicle for issuing a permit, the cooperating agency concept should be employed.

Being a cooperating agency is more than just being identified as such in a project's environmental document. It is a commitment to a process in which agencies have assigned roles and a mutual

understanding of the process, roles, and issues. It does not necessarily mean that the cooperating agency will make a substantial commitment of resources, or will even prepare portions of the environmental document. Lead and cooperating agencies should work out, specific responsibilities on each project. Inherent in our goal of cooperation is the necessity to resolve issues as early as possible in the project development process. The FHWA and the State highway agency (SHA) should identify and address the concerns of the public and all agencies with jurisdiction.

The FHWA developed its procedures to make the NEPA process an integral part of its longstanding highway planning, location, and design activities and State transportation agency operations. The FHWA process is a comprehensive "umbrella" focusing on integrating numerous requirements of 23 U.S.C. (e.g., Section 109(h), 128, 138, etc.); the requirements of NEPA; executive orders; and over 32 other Federal laws, regulations, (e.g., Uniform Relocation Assistance and Real Property Acquisition Policies Act, Title VI of 1964 Civil Rights Act, Section 404 of the Clean Water Act, Farmland Protection Policy Act, Endangered Species Act, etc.). These requirements are integrated to allow FHWA, State transportation agencies, and other Federal and State review agencies' procedures to run concurrently rather than sequentially. The FHWA's Environmental Policy Statement, published April 20, 1990, emphasizes "the need for effective communication and working with others in a cooperative approach." When conflicting interests are brought together under a creatively open process, the synergistic efforts will often produce positive results.

IDENTIFYING COOPERATING AGENCIES

In accordance with 23 CFR 771, any agency with jurisdiction by law must be requested to be a cooperating agency. Agencies exercising their jurisdictional authority can prevent a highway project from advancing if they do not agree that the environmental impacts and jurisdictional responsibilities have been adequately addressed. Actively participating as a cooperating agency, an agency can identify those environmental impacts and responsibilities it considers most critical and work with FHWA to ensure that the NEPA document adequately addresses them.

Furthermore, active participation by a cooperating agency increases the likelihood that the agency would adopt FHWA's document to satisfy its concerns and jurisdictional responsibilities. Examples of the most frequently encountered agencies with jurisdiction are the U.S. Coast Guard (USCG), the

Corps of Engineers (Corps), the U.S. Forest Service and the Department of the Interior. Table 1 lists these and other examples of Federal agencies having jurisdiction. On many occasions the development of a project could benefit from having an agency with special expertise in a particular environmental area become a cooperating agency. A request would usually come from the lead agencies when it would be advantageous for the agency with special expertise to assume a role greater than simply contributing to the scoping process. Table 2 lists several examples of situations where an agency may become a cooperating agency based on special expertise. In deciding whether or not to invite an agency with special expertise to be a cooperating agency, FHWA and the SHA should carefully assess the extent of coordination required for a successful arrangement. If, due to other program commitments, it appears that the agency will not be able to participate in critical activities, then a cooperating agency request may be inappropriate.

WORKING WITH COOPERATING AGENCIES

The cooperating agency concept is a team concept. By bringing a cooperating agency onto the project development team, the FHWA is offering the cooperating agency an in-depth understanding of the project and is requesting the cooperating agency to do its part by assuring that its responsibilities associated with the project are fulfilled. It is important that the lead agency identify and begin working with the cooperating agency at the earliest possible stage of project development. It is at the initial planning stages, long before scoping is completed, when the input of the cooperating agency can help the most in expediting the project.

The extent of participation and responsibility of a cooperating agency on any particular project depends on how the FHWA, SHA, and cooperating agency wish to approach it. Where an agency will frequently serve as a cooperating agency on highway projects, the FHWA, SHA, and cooperating agency might establish ground rules by means of a general (programmatic) agreement. This approach is described in the document, Applying the Section 404 Permit Process to FederalAid Highway Projects. In dealing with an agency that is seldom a cooperating agency, the FHWA and SHA might come to an agreement with the cooperating agency at the beginning of each project. A basic element to such an agreement is a mutual understanding of lead agency and cooperating agency responsibilities. These responsibilities should be established before the scoping phase of the project. Items on the following list are not statutory requirements but obligations, and may provide a good starting point.

Lead Agency Responsibilities

- Determine project purpose and need.
- Identify potential cooperating agencies.
- Invite agencies to become cooperating agencies. (Appendix A contains an example letter of invitation that outlines the proposed level of involvement expected of the cooperating agency and explains whether the request is being made because of the agency's special expertise or its legal jurisdiction.)
- Invite cooperating agencies to scoping and coordination meetings as early as possible in the project development process.
- Consult with each cooperating agency with jurisdiction by law on the type of environmental document and any special technical studies needed for its action.
- Determine whether it would be desirable to ask the cooperating agencies to perform any major environmental analysis or write a portion of the environmental document.
- Organize joint field reviews.
- Share project information, including the results of technical and environmental studies.
- Consider conducting joint public involvement activities.
- Identify environmentally preferable alternative (in Record of Decision).
- Determine project mitigation utilizing input from cooperating agencies.
- Give each cooperating agency the opportunity to review the pre-draft and pre-final environmental document and to express its views on the adequacy of the documents, alternatives considered, anticipated impacts, and project compliance with other applicable policies and statutes.
- Permit cooperating agencies to use the environmental document to express their views on subjects within their jurisdiction or expertise.
- Select preferred alternative.

- Include in the final environmental document the information needed by the cooperating agency to fulfill its responsibilities to discharge NEPA and other requirements on its approvals, permits, licenses and/or clearances for the proposed action. Draft documents should demonstrate that the scope and content of both the alternatives and impacts analyses are acceptable to the cooperating agency.

Cooperating Agency Responsibilities

- Respond to the invitation to be a cooperating agency. (The response letter should indicate agreement/disagreement with the lead agency's concept of the cooperating agency's involvement, and should describe any constraints on the cooperating agency's participation.)

- Assist in identifying interest groups.

- Attend scoping and coordination meetings and joint field reviews.

- Provide meaningful and early input on issues of concern.

- Participate in joint public involvement activities.

- Review pre-draft and pre-final environmental documents, making sure that the lead agency is informed of any changes needed to reflect the views and concerns of the cooperating agency.

- If needed, perform analyses or write a portion of the environmental document, if requested by the lead agency (This would occur only rarely).

- Adopt the final environmental document if, after an independent review, the cooperating agency concludes that the document satisfies NEPA and other requirements for its approvals, permits, licenses and/or clearances on the proposed action (appropriate only for those agencies with jurisdiction by law).

Additional Agency Responsibilities with the CLEAN WATER ACT Section 404 Permit

In addition to the normal cooperating agency responsibilities listed above, these agencies would be expected to:

- Provide assistance to the lead agency during development of

the project purpose and need.

- Provide information on alternatives. This includes the "no practicable alternative" finding.

- Assist the lead agency in determining appropriate and practicable mitigation, including "all practicable measures to minimize harm." These measures should reflect avoidance, minimization, and compensation.

- Cooperate in the application of principles for integration of NEPA and Section 404 Permits contained in Chapter 11 of Applying the Section 404 Permit Process to Federal-aid Highway Projects.

The lead agency should make every effort to identify and attempt to resolve cooperating agency concerns during early coordination and scoping activities. Deferring such concerns to later stages of project development will only delay or possibly jeopardize the project. Although some concerns may not be completely resolvable despite concerted efforts to reach agreement, there are certain aspects of the project that require concurrence before moving ahead. For example, on projects requiring a permit under Section 404 of the Clean Water Act it is essential to obtain resource and permitting agency concurrence that there is no practicable alternative to locating the alignment in waters of the United States. Furthermore, the Final EIS must adequately support this determination. A cooperating agency does have a right to expect that the highway project's NEPA document will meet its needs, and an obligation to tell the lead agency if, at any point in the process, its needs are not being met. Thus it must be reiterated, that it is in the best interests of all concerned for issues to be resolved as early as possible during project planning. Nevertheless while a cooperating agency has a greater role and a greater interest in the project than other "commenting" agencies, control of the project always rests ultimately with the lead agency.

Appendix B contains an example letter that is suggested for use in initiating the final coordination with the Environmental Protection Agency (EPA) and the Corps. Similar letters should be prepared for the final coordination with other cooperating agencies.

With the travel and personnel constraints that confront all Federal agencies, working effectively with cooperating agencies is more challenging now than ever. Arranging face-to-face meetings and field reviews is often difficult to accomplish. To overcome such obstacles to coordination, the FHWA and the SHA will have to resort to innovative methods. Multi-project

coordination meetings are one way to make the travel budget stretch further. Other these include conference calls, and the use of visual aids, such as maps, approaches include conference calls, and the use of visual aids such as maps, graphics, and videotapes or slides of project features, which can be mailed to the cooperating agency to give it a better visual understanding of the project. Nevertheless, a certain amount of personal contact is critical to building the mutual understanding and trust that is vital to successful lead agency and cooperating agency interaction. Many of these techniques are explained in Applying the Section 404 Permit to Federal-aid Highway Projects. Also, Appendix C of this paper contains an example letter that is suggested when another agency declines to be a cooperating agency or does not respond.

This guidance provides a brief overview of what is involved in working with cooperating agencies. Additional considerations are addressed in the questions and answers which follow. For more information on the subject, the reader is referred to the references listed after the question and answer section.

Table 1. Examples of Federal Agencies with Jurisdiction By Law

Federal Agency	Jurisdiction
U.S. Army Corps of Engineers	Section 10, Section 404 Permits
U.S. Coast Guard	Bridge Permits
Environmental Protection Agency (EPA)	Section 404 Permits, Sole Source Aquifers, Hazardous Waste Sites
National Park Service	Areas funded under Land and Water Conservation Fund Act
U.S. Fish and Wildlife Service	Areas funded under various fish and wildlife related grant programs
Rural Electrification Administration (REA)	Relocation of utilities constructed or assisted with REA loans

Agencies that Manage Federal Lands:	Land Transfer From:
National Park Service	National Park System
U.S. Fish and Wildlife Service	National Wildlife Refuge System
Bureau of Land Management	Public Lands
Forest Service	National Forests
Department of Defense	Military Installations
General Service Administration	Federal Buildings
Bureau of Indian Affairs	Indian Reservations

Table 2. Examples of Federal Agencies Having Special Expertise

Agency	Expertise
U.S. Fish and Wildlife Service or National Marine Fisheries Service	Fish and Wildlife Habitat Wetlands, Stream Relocations, Estuaries, Endangered Species
Advisory Council on Historic Preservation	Historic Sites and Districts, Archeological Sites and Districts
Environmental Protection Agency	Water Supply Reservoirs, Drinking Water, Air Quality, Wetlands
Federal Emergency Management Agency	Regulatory Floodways
National Park Service	Park, Recreation and Cultural Resources

NOTE: For a complete list of Federal agencies with jurisdiction by law or special expertise, see Appendix II to the CEQ regulations (49 CFR 49750).

Questions and Answers Regarding Cooperating Agencies

1. Question: Should a formal request be made asking an agency to become a cooperating agency if interagency coordination is working well?

   Answer: Yes. Cooperating agency status has special meaning attached to it. The cooperating agency is an active participant in the NEPA process and has certain responsibilities to participate in the development of environmental documentation.

   The Federal cooperating agency may adopt an EIS prepared by the lead agency after an independent review without having to recirculate it (40 CFR 1506.3). This option is not available to Federal agencies which are not cooperating agencies.

2. Question: Does an agency have to be a Federal agency to be a cooperating agency?

   Answer: No. While the CEQ regulations developed the cooperating agency concept primarily with Federal agencies in mind, the benefits of designating State or local agencies as cooperating agencies are similar. Entities such as Indian tribes may also become cooperating agencies.

3. Question: Do the CEQ and the FHWA requirements on cooperating agencies apply only when a project is being processed with an EIS or do they also apply to projects processed as categorical exclusions (CEs) or with Findings of No Significant Impact (FONSIs)?

   Answer: In deciding whether to request another agency to be a cooperating agency on projects processed by FHWA with an EA or a CE, the focus should be on the type of documentation needed by the other agency to satisfy its NEPA responsibilities. If a Federal agency with jurisdiction by law indicates in writing it can satisfy its NEPA review responsibilities with a CE or a FONSI, then a cooperating agency request need not be made. On the other hand, if there is any possibility that the agency may require that an EIS be prepared, FHWA should request it to be a cooperating agency.

   Interagency agreements bearing on the question of cooperating agencies should be adhered to. For

example, the joint Memorandum of Understanding by the FHWA and USCG states that the USCG will be a cooperating agency on projects requiring a bridge permit that are processed with either an EA or an EIS. The Memorandum of Agreement between the Department of Transportation (DOT) and the Department of the Army is less specific, indicating only that in the vast majority of cases DOT will be the lead agency and Army will be the cooperating agency.

4. Question: What should we do when another Federal agency declines to be a cooperating agency?

Answer: If that agency is requested to be a cooperating agency based on special expertise, it may decline without recourse. On the other hand, Federal agencies with jurisdiction by law do not have the option of declining, according to the CEQ regulations and guidance. Nevertheless, a Federal agency may feel uncomfortable with being a cooperating agency on a highway project being processed with an EIS where the agency's action (permit or land transfer) constitutes a small part of the overall project. Some agencies feel that being a cooperating agency in such a situation means that they must assume responsibility for the entire project and EIS. In such cases, FHWA should attempt to persuade the agency that the CEQ regulations allow an agency to be responsible for only its portion of the project. If this approach fails, FHWA is willing to accept the agency's declining to be a cooperating agency provided the agency is willing to respond, in writing, that under its own NEPA regulations a separate EIS will not be required in conjunction with its action. If a Federal agency which has jurisdiction by law refuses to be a cooperating agency, this matter should be brought to the attention of FHWA Regional and Headquarters Offices.

5. Question: What are the project obligations for reimbursing a cooperating agency for resources expended in carrying out its responsibilities as a cooperating agency?

Answer: The CEQ regulations are quite specific on this point. Section 1501.6(b)(5) clearly states that a cooperating agency should normally use its own funds and resources. The principal exception to

this rule would be where an agency is a cooperating agency because of special expertise, its work assignment on the project is substantial, and it would not be able to carry out the work without reimbursement.

6. Question: How should FHWA handle the long turnaround times from cooperating agencies in the review of preliminary documents?

   Answer: At the beginning of the project, FHWA and the cooperating agencies should agree to specific time periods for coordination activities such as the review of preliminary documents. The FHWA should make every reasonable effort to assist agencies in meeting deadlines. Nevertheless, cooperating agencies should be aware that failure to reasonably adhere to these schedules could result in their comments not being incorporated in the documents.

7. Question: How should FHWA respond when another Federal agency asks to be a cooperating agency?

   Answer: If that agency has jurisdiction by law, then FHWA should invite it to become a cooperating agency. If the agency has special expertise, then the two agencies should discuss why the agency wants to be a cooperating agency, and whether or not a cooperating agency designation is the most appropriate mechanism for involving the agency in the project.

8. Question: What happens when an agency is not identified as having jurisdiction by law until late in the project development process?

   Answer: If this happens prior to the completion of the NEPA process, an attempt should be made to have the agency officially become a cooperating agency prior to the completion of the final environmental document. If this occurs after completion of the final environmental document, the FHWA should work with the other agency to assist it in satisfying NEPA requirements pertaining to its action.

9. Question: Can a cooperating agency adopt a lead agency's environmental document, then several years later require that a new document be prepared because new issues have arisen?

Answer: Yes, just as FHWA requires that new issues be addressed in a re-evaluation or in a supplemental environmental document, a cooperating agency can require whatever supplemental evaluation or document is appropriate under its procedures. In such cases, FHWA should work closely with the cooperating agency to avoid unnecessary duplication.

10. Question: What is the SHA's responsibility with regard to cooperating agencies?

Answer: As with satisfying most environmental requirements, the SHA can assume many of the responsibilities in dealing with cooperating agencies; however, FHWA must ensure that all Federal requirements are met. Project-specific or State-specific procedures can be developed for assigning responsibilities between the SHA and the FHWA.

11. Question: Under what circumstances would FHWA be a cooperating agency?

Answer: This would typically occur when FHWA is funding a small portion of a project sponsored by another Federal agency or when FHWA approves, without providing funding, a change in access to the Interstate System for a project sponsored by another Federal agency. In either case, FHWA could satisfy its NEPA responsibility by being a cooperating agency and adopting the lead agency's environmental document.

12. Question: How does a cooperating agency adopt a lead agency's environmental document?

Answer: If the cooperating agency feels that the lead agency's document adequately addresses the project and its impacts, it may simply execute its own decision document (FONSI or Record of Decision) which states that the agency has completed an independent review and is adopting the lead agency's environmental document.

13. Question: Under what circumstances would FHWA be a joint lead agency with another Federal agency?

Answer: This would generally occur when both agencies have a substantial role in a major portion of the project. For example, FHWA and the Urban Mass

Transportation Administration have been joint lead agencies on combined highway/mass transit projects.

14. Question: Must the Corps be requested to be a cooperating agency when a nationwide permit is involved?

Answer: No.

15. Question: Should EPA be requested to be a cooperating agency based on its Section 404 jurisdiction?

Answer: Yes. Even though EPA does not have day-to-day jurisdiction, it does have ultimate jurisdiction through its authority, under Section 404(c), to veto permits. Having EPA be a cooperating agency can be an effective way of identifying and addressing EPA's Section 404 concerns early in the process.

16. Question: Does the Advisory Council on Historic Preservation (ACHP) or the State Historic Preservation Officer (SHPO) need to be invited to be a cooperating agency in order to facilitate compliance with Section 106 of the National Historic Preservation Act?

Answer: No, but the ACHP's Section 106 review process should be integrated into the NEPA process so that the two proceed in tandem. Generally speaking, the SHPO should be contacted during scoping or during the early stages of preparing an EIS, EA, or CE documentation. Depending on the complexity of the project, and its effects on historic properties, the requirements for effect determination and consultation set forth in 36 CFR 800.5 should be carried out either during the latter stages of producing a draft environmental document, with the results presented in the draft document, or after the preparation of the draft document, with the results presented in the final document. For an outline of historic preservation information to be included in NEPA documents to ensure that they will fulfill Section 106 review purposes, see 36 CFR 800.8.

17. Question: How do exchanges between FHWA, a SHA and cooperating agencies relate to the Freedom of Information Act (FOIA)?

Answer: All Federal agencies are subject to the FOIA and

most have their own implementing policies. The FHWA has determined that exchanges with cooperating agencies may be exempted pursuant to exemption 5, because of the detrimental effect that public release would have on the conduct of government business. This applies to release of pre-decisional working copies of EAs and EISs. It also applies to exchanges of information (between cooperating agencies) containing advice, comments, opinions and recommendations that are part of the deliberative process. Consequently, when preliminary draft or final EISs are provided to cooperating agencies, they should be apprised of FHWA's position and should be asked not to release such documents.

References

CEQ Regulations, 40 CFR Parts 1500-1508

Section 1501.6 Cooperating Agencies: This section lays out the basic ground rules for designating cooperating agencies.

Section 1503.2 Duty to comment: This section indicates that a cooperating agency that is satisfied with a draft EIS should respond with a "no comment."

Section 1503.3 Specificity of comments: This section indicates the types of comments a cooperating agency with jurisdiction by law should make in reviewing a draft EIS.

Section 1506.3 Adoption: This section provides for a cooperating agency to adopt a final EIS without recirculating it.

CEQ's 40 Questions and Answers, March 16, 1981

Questions 14a, 15, and 30 address various points relating to cooperating agencies. Question 14a concerns itself with the rights and responsibilities of lead and cooperating agencies. Question 15 talks about how EPA's responsibilities to review EISs under Section 309 of the Clean Air Act relate to its being a cooperating agency. Question 30 addresses how a cooperating agency with jurisdiction by law could approach the adoption of an EIS where it is not satisfied with the adequacy of the document.

CEQ "Scoping Guidance," April 30, 1981

Pages 16 and 17 of this CEQ memorandum discuss the fact that lead and cooperating agencies still feel uncomfortable in their respective roles. It goes on to give additional CEQ philosophy regarding lead and cooperating agency responsibilities.

CEQ Guidance Regarding NEPA Regulations, 48 FR 34263, July 28, 1983.

This guidance reiterates lead and cooperating agency responsibilities. It emphasizes the cooperating agency's responsibility to participate fully in scoping and that agencies with jurisdiction by law must accept designation as a cooperating agency if requested.

Appendices to the CEQ Regulations, 49 FR 49750, December 21, 1984.

Appendix II contains a comprehensive list of agencies with jurisdiction by law or special expertise on environmental issues.

Note: The above references are available from the Council on Environmental Quality, 722 Jackson Place N.W., Washington, D.C. 20503.

"Applying the Section 404 Permit Process to Federal-aid Highway Projects," September 1988.

Chapter 11 of this interagency publication provides guidance for the integrating of NEPA and Section 404 Permits. It also provides guidance on the level of design detail that is needed to accomplish such integration.

APPENDIX A
EXAMPLE COOPERATING AGENCY
REQUEST LETTER

Dear Sir or Madam:

The Federal Highway Administration (FHWA) in cooperation with the Pennsylvania Department of Transportation is initiating an environmental impact statement (EIS)[1] for State Route 33 in Northampton County, Pennsylvania. Since the project [will almost certainly require a Section 404 permit and because of your agency's legal jurisdiction over such permits] [may effect fish and wildlife habitat and because of your agency's special expertise] we are requesting you to be a cooperating agency.

Route 33 is ... [describe project location and need, alternatives under consideration, potential environmental impacts, etc.].

Your agency's involvement should entail those areas under its [jurisdiction] [expertise] and no direct writing or analysis will be necessary for the document's preparation.[2] The following are activities we will take to maximize interagency cooperation:

1) Invite you to coordination meetings;

2) Consult with you on any relevant technical studies that will be required for the project;

3) Organize joint field reviews with you;

4) Provide you with project information, including study results;

5) Encourage your agency to use the above documents to express your views on subjects within your jurisdiction or expertise; and

6) Include information in the project environmental documents that cooperating agencies need to discharge their National Environmental Policy Act (NEPA) responsibilities and any other requirements regarding jurisdictional approvals, permits, licenses, and/or

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[1]Substitute environmental assessment (EA) for EIS when the proposed NEPA document is an EA.

[2]If the agency has not already received FHWA's cooperating agency guidance, a copy should be enclosed.

clearances.

You have the right to expect that the EIS will enable you to discharge your jurisdictional responsibilities. Likewise you have the obligation to tell us if, at any point in the process, your needs are not being met. We expect that at the end of the process the EIS will satisfy your NEPA requirements including those related to project alternatives, environmental consequences and mitigation. Further, we intend to utilize the EIS and our subsequent record of decision as our decision making documents and as the basis for the permit application. We expect the permit application to proceed concurrently with the EIS approval process.[3]

We look forward to your response to this request and your role as a cooperating agency on this project. If you have any questions or would like to discuss in more detail the project or our agencies' respective roles and responsibilities during the preparation of this EIS, please contact _____.

Sincerely yours,

Division Administrator
Federal Highway Administration

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[3]Delete this paragraph for agencies having special expertise.

APPENDIX B
EXAMPLE WRAP-UP LETTER TO
AGENCIES HAVE SECTION 404 PERMIT JURISDICTION

Dear Sir or Madam:

The final environmental impact statement (EIS) for the proposed _____ highway project has been completed and submitted to the Federal Highway Administration (FHWA).[4] A copy of that document is enclosed for your use.

Your will note that the EIS has examined several alternative corridors. To the best of our ability, the State DOT and the FHWA have developed this project in compliance with the Section 404(b)(1) guidelines. In this regard several alignment shifts have been examined in an effort to avoid or minimize harm to sensitive water resources. The final EIS contains the wetland finding required by Executive Order 11990. Approval of the document by FHWA will (1) document our approval of the project alternative selected by the State Department of Transportation, (2) constitute our finding that the selected alternative has no practicable alternative, and (3) conclude that the mitigation concepts described in the EIS will provide all practicable measures to minimize harm to wetlands. Before we take action on the EIS, we would appreciate your views on our proposed wetland finding since it is similar to a finding necessary pursuant to issuing a Section 404 Permit.

You will note that the EIS contains a statement that the document contains sufficient information and commitments to demonstrate compliance with the 404(b)(1) guidelines. We would appreciate your views on whether we have met the requirements of the 404 (b)(1) guidelines. It is our intent to submit our 404 permit application to you concurrent with our transmittal of the approved final EIS.

We would appreciate your review of the document, concurrence in our conclusions, and determination whether the EIS will satisfy your needs pursuant to the National Environmental Policy Act. Knowing the State is prepared to make a substantial commitment of resources in the development of detailed information needed

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[4]When the NEPA document is an environmental assessment (EA) that is to be concluded as a finding of no significant impact (FONSI), substitute EA/FONSI for EIS in this letter.

for the permit process, we are requesting that you complete your review, and respond to us within thirty days.

The FHWA has determined that this preliminary document is an intergovernmental exchange that may be withheld under exemption 5 of the Freedom of Information Act. Premature release of this material to any segment of the public could give some sectors an unfair advantage and would be detrimental to orderly decisionmaking, intergovernmental coordination and the success of the cooperating agency concept. For these reasons, we respectfully request that the public not be given access to this document.

Further, to facilitate your review, we would request an opportunity to meet with you and members of your staff at a mutually agreeable time and place. We will contact your office shortly to discuss arrangements for such a meeting.

Sincerely yours,

Division Administrator
Federal Highway Administration

APPENDIX C
EXAMPLE LETTER TO AN AGENCY WITH JURISDICTION BY LAW WHICH DECLINES, OR FAILS TO RESPOND TO, A COOPERATING AGENCY REQUEST

Dear Sir or Madam:

Our letter of _____ requested that your agency be a cooperating agency on _____ project because of the probable need to obtain a section 404 permit which is under your legal jurisdiction. The letter described the project and our agencies' respective roles and responsibilities in developing the project's environmental impact statement (EIS).[1]

This request was declined [or not responded to] by your agency. Because of your jurisdictional responsibility we would like you to reconsider your position and be a cooperating agency, since we believe that your agency's involvement is critical to the expeditious approval and implementation of this project. Furthermore, it is very important to have interagency agreement on the alternatives analysis as early as possible, in order to expedite both the project and the permitting process.

If you still wish not to be a cooperating agency on this project, we request that you inform us in writing that a separate EIS will not be required under your agency's National Environmental Policy Act (NEPA) regulations in conjunction with your agency's permit action.

Sincerely yours,

Division Administrator
Federal Highway Administration

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[1]Substitute environmental assessment (EA) for EIS when the proposed NEPA document is an EA.