Addressing Project Revisions in NEPA
Change can come from many sources or reasons…

- Design or Construction Needs
- Change in Environmental Conditions
- Regulatory Requirements
- Change in Proposed Actions

Change Required
Identification of significant adverse impacts

Considering mitigation measures or revised actions to eliminate or lessen adverse impacts

Assessment of likelihood of “significant impacts” from the project

Transitioning from one process (CE, EA, EIS) to another
e.g., Transition from EA to EIS

When “significant impacts” are identified that cannot be mitigated to insignificant status, an EA process may need to transition to an EIS.

What steps are required:

- Notice of Intent
- Additional scoping?
- Public involvement?
- Additional alternatives considered?
- Greater depth or breadth of analyses?
e.g., Transition from EIS to EA

When anticipated “significant impacts” were not identified in analysis -- an EIS process can transition to an EA

What steps are required:
- Stakeholder/agency input
- Notice of Process Change (rescind NOI)
Changes after initial NEPA process—federal process

- Re-evaluations of environmental analyses (23CFR771.129)
  - Rule of thumb – three year shelf-life
  - Changes in proposal or surrounding conditions
- Use of supplemental environmental documentation (e.g., Supplemental FEIS—23CFR771.130)
Re-evaluations of past work -- federal process

The reevaluation of an approved NEPA document or decision is required prior to the request for FHWA action (i.e. final design, ROW, PS&E), generally when there has been a time lag or changes related to the study have occurred between the previous NEPA approval and the request for action.

Reevaluations are not required by NEPA or Council on Environmental Quality regulations, but are required by FHWA/FTA regulations, (23 CFR 771.129) and have been upheld in court as an appropriate mechanism for determining whether or not a supplemental EIS is necessary.
Re-evaluations

Informal process: Consultations with FHWA

Consultation is generally adequate for most projects before the project sponsor requests action or approval. The required consultation is generally between the project sponsor and the FHWA Division office.

Formal process: written reevaluation

A “written reevaluation” is a more formal process of documenting the reevaluation of projects with significant impacts that require the preparation of an EIS and must be prepared when a final EIS is not submitted to FHWA for approval within 3 years from the date of the draft EIS circulation; and are also necessary if major steps to advance the project have not occurred within 3 years after approval of the final EIS, supplemental EIS or the last major approval or grant related to the project.

It is important to remember that all reevaluations (consultations and written) must be documented in the project file.
Post-state MEPA process changes -- EAW

Minnesota Rules 4410.1000, Subp. 5 – Change in project; new EAW

‘If, after a negative declaration has been issued…the RGU determines that substantial change has been made…which may affect the potential for significant adverse effects that were not addressed in the existing EAW, a new EAW is required.’
Post-state MEPA process changes -- EIS

Minnesota Rules 4410.3000, Supplementing an EIS

- Minor changes = EIS addendum
- Supplemental EIS if 1) substantial changes in project that affect adverse environmental effects or 2) substantial new information re: effects or availability of alternatives with lesser environmental effects
Supplemental EISs – federal process

CEQ Regulations require Supplemental EISs when:

- Agency makes substantive changes in proposed action that are relevant to environmental concerns
- There are significant new circumstances or information regarding environmental concerns and bearing on proposed action or its impacts
Project Revisions/NEPA Process -- Summary
Change can come from many sources or reasons...

- Design or Construction Needs
- Change In Environmental Conditions
- Change In Proposed Actions
- Regulatory Requirements

Change Required
Consult with OES–EAU/FHWA (Mn/DOT projects) or SALT/FHWA (State Aid projects) as changes occur, to identify the appropriate analysis and/or documentation needed when changes occur.
Your Questions???

• Dan Johnson, *FHWA Resource Center*
• Phil Forst, *FHWA MN Division*
• Jennie Ross, *Mn/DOT OES*
• Skip Spensley, *Spensley & Assoc*
Examples

Post NEPA/MEPA
• TH 212 corridor – SW Metro
• TH 610

During NEPA/MEPA
• TH 23 Spicer
• Wakota Bridge