



NEPA: Environmental and Historic Preservation Compliance

November 2023





DISCLAIMER

This presentation is for informational purposes only and is intended solely to assist recipients in better understanding the Federal Program and Federal Interest regulations required by the National Telecommunication and Information Administration (NTIA). The guidance does not and is not intended to supersede, modify, or otherwise alter applicable statutory or regulatory requirements, or the specific requirements set forth in each program's Notice of Funding Opportunity (NOFO).

In all cases, statutory and regulatory mandates, and the requirements set forth in the relevant program's NOFO, shall prevail over any inconsistencies contained in the information presented.



Agenda

- 1 NEPA and NHPA overview
- 2 Broadband Project Types and Project Descriptions
- 3 EHP Responsibilities and Report Guidance
- 4 Project Design Best Practices
- 5 EHP Next Steps and Resources
- 6 Q&A

NEPA and NHPA Overview

What is NEPA?



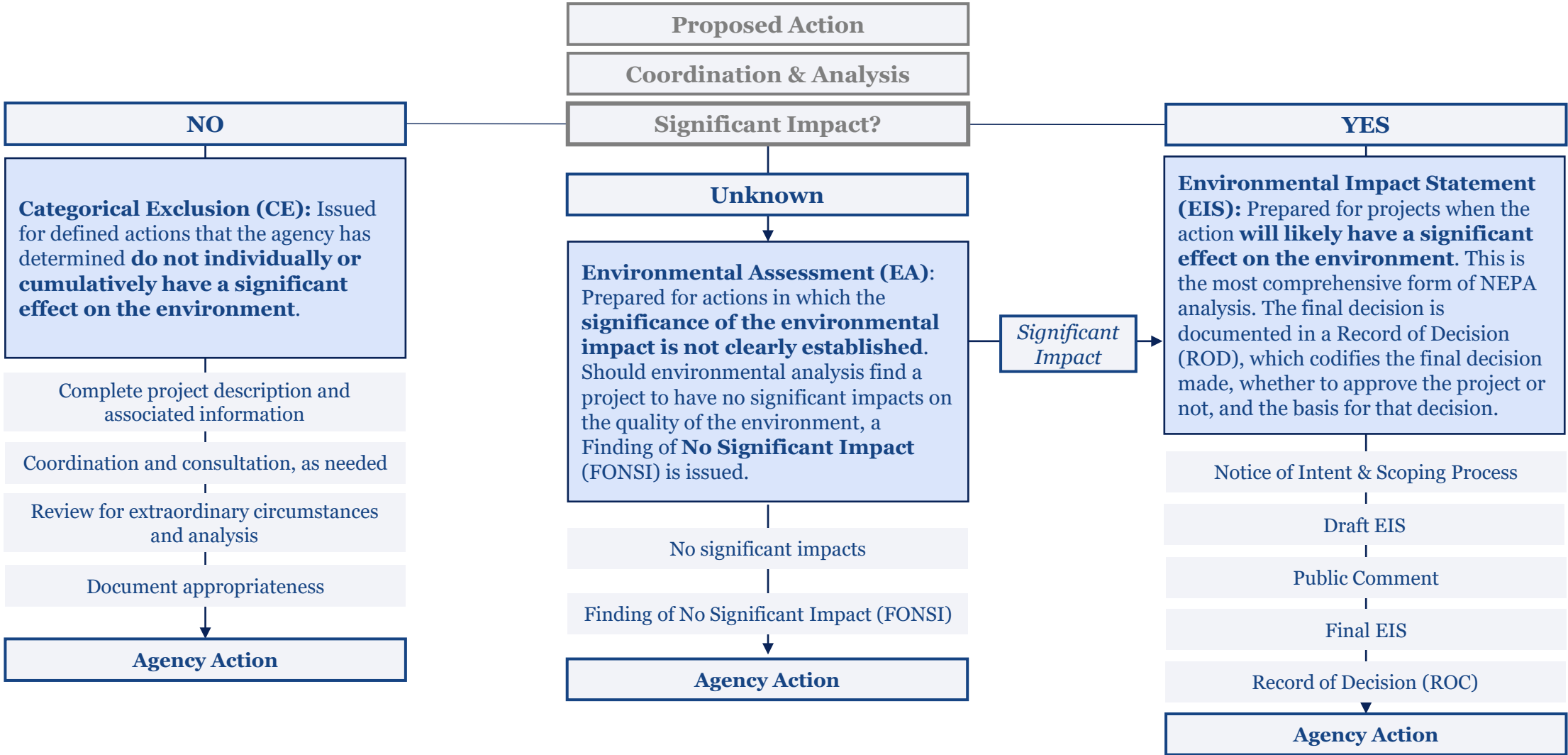
Passed in 1970, the National Environmental Policy Act (NEPA) is considered an “umbrella law” as it provides a framework within which all other environmental, historic, and cultural resources laws can be evaluated. It set forth the requirement for environmental reviews and formally established environmental protection as a Federal policy. NEPA, as well as the National Historic Preservation Act of 1966 (NHPA), requires federal agencies to “stop, look, and listen” before making decisions that impact historic properties and the human environment.

NEPA does not contain a mandate for conservation as other laws do; it is a process law.

- Requirements with NHPA and dozens of other environmental and historic preservation laws and Executive Orders can be addressed as part of the NEPA process.
- NEPA and NHPA review, including consultation, must be completed before awarded project can begin.
- The NEPA process requires that the government make a transparent, informed decision, but it does not require that decisions have no impacts to the environment.
- Documentation and analysis demonstrates that the government has not made an “arbitrary and capricious” decision.



Levels of NEPA Review



NEPA Timelines



These timelines do not take into account any other outstanding agency approvals. A project is not considered cleared for NEPA until NTIA issues a decision document (CE, FONSI or ROD).



Categorical Exclusion

NTIA will develop after receiving information from the grantee sufficient to evaluate the appropriateness of a CE and determine whether Extraordinary Circumstances (ECs) are present. If required, all consultation must be complete before NTIA may begin evaluation. Typically 3 – 6 months to develop and deliver to NTIA. Approximately **30-45 days** for NTIA to evaluate and issue a CE.



Environmental Assessment

Grant recipient will develop in coordination with NTIA, approximately **3-12 months** to develop and deliver to NTIA. All consultations must be complete before a Final EA may be published. Once approved by NTIA, a 30-day public comment period will be required, and NTIA will develop a FONSI.



Environmental Impact Statement

Grant recipient will develop in coordination with NTIA, extensive public involvement requirements apply, approximately **12 –24 months** to develop and deliver to NTIA. Public comment periods will be required in accordance with NEPA. After the Final EIS public comment concludes, NTIA will develop a ROD.



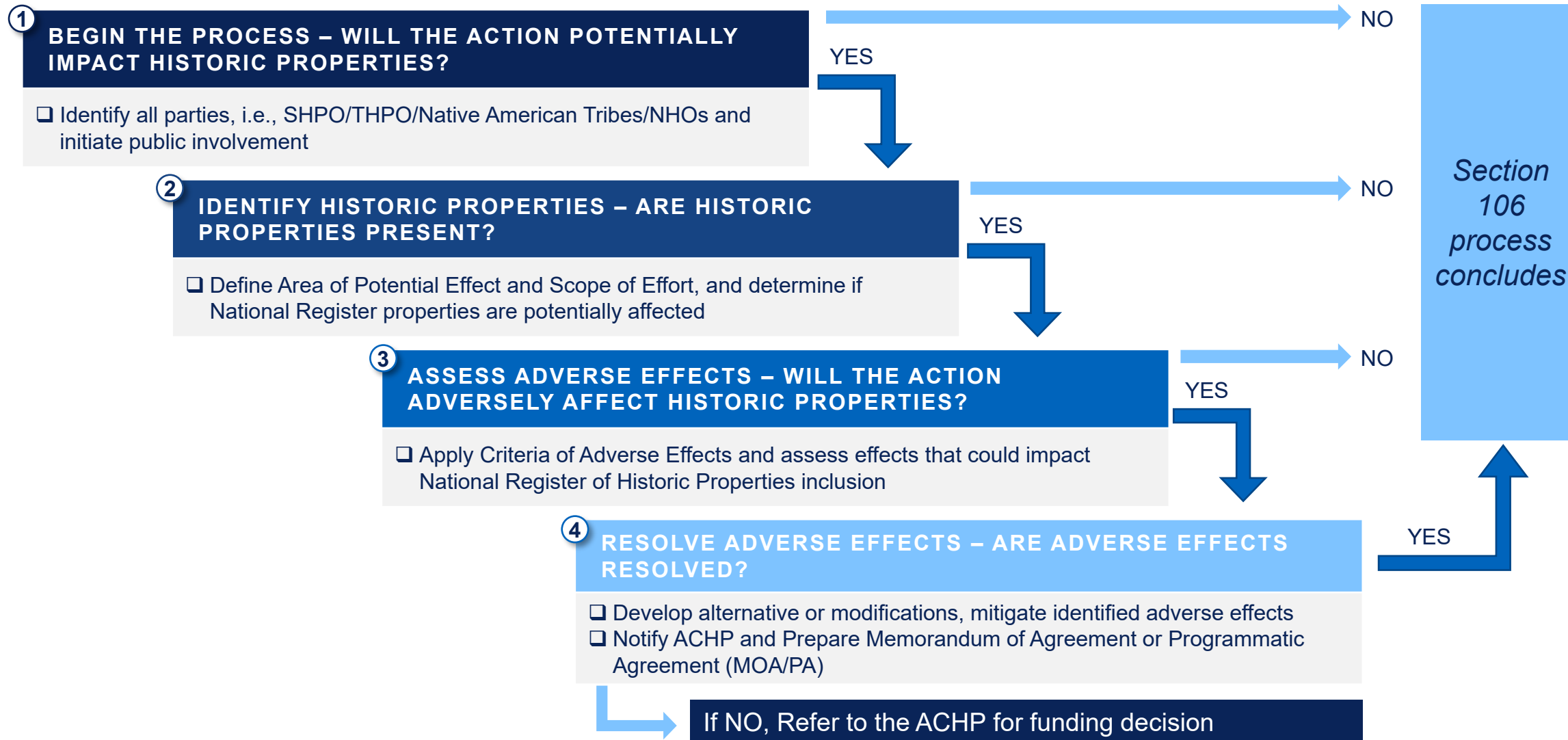
Section 106 of the National Historic Preservation Act



- Section 106 specifically requires federal agencies to consider the effects of projects they carry out, approve, or fund (“undertakings”) on historic properties
- Regulations issued by the Advisory Council on Historic Preservation (ACHP) spell out the Section 106 review process
- Federal agencies are responsible for initiating Section 106 reviews with either the State Historic Preservation Office (SHPO), Tribal Historic Preservation Office (THPO), or Native Hawaiian organization (NHO), as applicable



What is the Section 106 Process?



Broadband Project Types and Project Descriptions

What are common allowable broadband project types?



Broadband Infrastructure Deployment

- Fiber deployment (underground)
- Fiber deployment (overhead)
- Wireless deployment
- Satellite connections
- Submarine cable deployments and landing stations

Broadband Use and Adoption

- Personal property costs (hardware, devices, etc.)
- Technology/software (software licenses/learning platform access)
- Training (digital literacy, educational materials, etc.)
- Community Outreach/Engagement (awareness materials for training/community workshop)
- Evaluation and reporting (Data collection tools/Reporting tools/survey/study)
- Affordable broadband programs (prepayment or subsidy of services)
- Deployment of public WIFI (non-ground breaking)
- Broadband equipment installation or replacement (non-ground breaking)



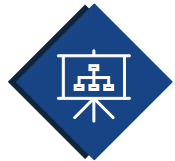
Environmental & Historic Preservation Requirements



EHP documentation must contain sufficient information to allow for initial NEPA analysis:



Applicants must submit a detailed project description, including applicable supporting documentation, with their application package (*See following slides*)



If the project cannot be cleared with the information provided, funds may be withheld under a specific award condition until the Awardee develops and submits required environmental compliance information or analysis of environmental impacts of the project



It is strongly recommended that applicants engage subject matter experts (SMEs) to develop their NEPA documentation if they do not have such expertise in-house



Awardees will be required to obtain all required federal, tribal, state, and local governmental permits and approvals and complete all agency consultations prior to beginning their project – ***this does not need to be done pre-award***



A good project description is essential for NTIA to determine the level of NEPA review required



Describe **what** the project is (e.g., construction of a 150' monopole communication tower)



Describe **where** the project is proposed (e.g., 123 Main Street, Anytown, USA) and/or provide a detailed outline of the route the project will use



Provide a physical description of the site and surrounding area (e.g. developed land vs. open space; adjacent natural resources, such as rivers, wetlands, or forests; and any protected lands)



Describe **how** the project will be implemented (e.g., requiring 1-acre of ground disturbance at an approximate depth of 5 feet, and the installation of a concrete pad, an equipment shed, and an emergency generator with a 1,000-gallon above-ground fuel storage tank)

Project Description (Cont'd)



In addition to a detailed project description that includes all environmental aspects and expected impacts of your project, be sure to include the following in your application:

- Ground-level and aerial photos of the proposed project area and project plan drawings,
- Floodplain map** from the Federal Emergency Management Agency (FEMA) Map Service Center with your project overlain to show if and where your project falls in the flood zone,
- Wetlands map** from the US Fish and Wildlife Service's (USFWS) National Wetlands Inventory with your project overlain to show if your project will impact wetlands or waterways and including buffer zones,
- Initial Consultation with State Historic Preservation Officers (SHPO) or Tribal Historic Preservation Officers (THPO) including a listing of any historic or archaeological resources within the vicinity of your construction activities,
- Initial Consultation with the USFWS to determine if there are **threatened or endangered species or critical habitat** in the vicinity of your project,
- Initial plans for assessment of potential climate risks impacting the proposed project, and mitigation actions (i.e., design changes, method of construction or other) being considered.



EHP Responsibilities and Report Guidance

EHP Review Responsibilities



NTIA Responsibilities

- NTIA is responsible for determining the appropriate level of NEPA analysis and making the determination that the analysis is sufficient.
- NTIA will provide guidance, sample documents, examples, and templates to clearly communicate requirements.
- NTIA will provide technical support and assistance and is responsible for making determinations regarding the level of NEPA analysis required for a project, as well as reviewing all documentation for technical and legal sufficiency.
- NTIA is responsible for generating and signing all final decision documents.

Grantee Responsibilities

- Grantees are critical partners in successful compliance with EHP requirements.
- Grantees are responsible for the development of the NEPA analyses and timely submission of materials.
- Grantees should ensure that proposed project timelines and budgets account for EHP compliance.



Categorical Exclusion Report



A CE may be applied by NTIA to a proposed project after NTIA has carefully reviewed and determined that the proposed project fits within the category of actions encompassed by the CEs and does not have any Extraordinary Circumstances. If needed, the CE environmental review report will be developed by the grantee and the report must analyze the reasonable likelihood that the proposed action will/will not:



Occur within an environmentally sensitive or unique geographic area



Restrict access to and use of Indian cultural sacred sites by Indian practitioners or adversely affects the physical integrity of such sites



Impact species listed or proposed to be listed as Endangered or Threatened Species or has adverse effects on designated Critical Habitat for these species, migratory birds or their habitats



Adversely impact waterbodies, wetlands, floodplains, water quality, sole source aquifers, public water supply systems, or state, local, or tribal water quality standards established under the Clean Water Act or the Safe Drinking Water Act



Affect historic, archeological, or cultural sites, including Native American Traditional Cultural Properties, properties listed or eligible for listing on the National Register of Historic Places, or land identified by archeologists as having high potential to contain archeological resources



Categorical Exclusion Report (cont'd)



The report must analyze the reasonable likelihood that the proposed action will/will not:



Have a disproportionately high and adverse effect on low-income populations or minority populations.



Violate a federal, state, local, or tribal law, regulation, policy, or requirement imposed for the protection of the environment.



Involve the generation of ionizing or non-ionizing radiation or use of any radiation.



Include other impacts on human health or the environment that have not been otherwise addressed.



Action is controversial because of the introduction or employment of unproven technology, highly scientifically uncertain or unique environmental effects, substantial disagreement over the possible size, nature, or effect on the environment, or likelihood of degrading already existing poor environmental conditions.



Involve construction on or near an active, inactive, or abandoned contaminated or hazardous waste sites.



Environmental Assessments



If the proposed project does not qualify for a CE, grantees must prepare an environmental assessment (EA). The EA is a more in-depth report that must describe and analyze the following:

- Purpose and Need
- Description of Proposed Action and Alternatives
- Description of the Affected Environment
 - Noise, Air Quality, Geology and Soils, Water Resources, Biological Resources, Historic and Cultural Resources, Aesthetic and Visual Resources, Land Use, Infrastructure, Socioeconomic Resources, Human Health and Safety
- Analysis of Environmental Impacts
 - Same resources as above plus **Cumulative Impacts**
- Applicable Environmental Permits and Regulatory Requirements
- Consultations



Reach out to your FPO and EPO for NTIA templates and samples of Project Descriptions, CE Environmental Review Reports, and Environmental Assessments



Consultations and Permitting



Federal	State	Regional & Local
<p>Depending upon the impact to resources, required federal permits and approvals may include the following:</p> <ul style="list-style-type: none"> ➤ US Army Corps of Engineers Section 10/404 – Impacts to wetlands and waterways of the US ➤ SHPO and/or THPO - Section 106 consultation ➤ US Coastal Zone Management - For project located within the Coastal Zone prepare a Consistency Review ➤ US Fish and Wildlife Service (USFWS) – Section 7 Consultation ➤ Hazardous Materials storage and transport (federal requirements for storage, marking, labeling under OSHA, and transportation under DOT) ➤ Hazardous Waste – compliance with EPA 40 CFR requirements for generation, transport and disposal 	<p>States have varying permitting requirements including:</p> <ul style="list-style-type: none"> ➤ State Environmental Quality or Protection Programs (EX: CEQA, MEPA, TCEQ) ➤ Stormwater ➤ Wetlands and Land Disturbing Permits ➤ Spill Prevention Control and Countermeasure (SPCC) (federal requirement but must apply to a state level) ➤ Hazardous Materials storage and transport (federal and state requirements may apply) 	<p>Regional and Local Entities have permitting and approval processes including:</p> <ul style="list-style-type: none"> ➤ Regional Planning organizations ➤ Local Noise and Idling ordinance

Applicants are responsible for identifying and obtaining applicable Federal, State and Local permits required to conduct their project; not all permits need to be done for the NEPA process to conclude. **Look to NTIA to determine what is needed prior to the conclusion of NEPA review. If consulted parties request to work directly with NTIA, NTIA will support required consultation activities. Government to Government Tribal consultation is to be initiated by NTIA.**

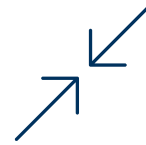


Project Design Best Practices

Project Design



NEPA requires that a range of reasonable alternatives be considered when deciding how to implement the Proposed Action (project). This can include what was considered in the planning process, even if it was dismissed from further consideration.



Determine how to best incorporate EHP impact avoidance and minimization measures into project designs.



Ensure project designs do not limit the choice of reasonable alternatives. Regulations require that no commitments can be made to any alternative being evaluated in the NEPA process until it has concluded.



Coordinate early with federal, state, and local agencies that may be required to issue a permit for the project to determine timelines and potential red flags.



Best Practices for Minimizing Impacts



Grantees can do the following in the project planning process to avoid or minimize impacts to sensitive resources:

1. Consult the *2013 U.S. Fish and Wildlife Service (USFWS) Revised Voluntary Guidelines for Communication Tower Design, Siting, Construction, Operation, Retrofitting, and Decommissioning* for any portion of your project that may require towers.
2. Reach out to federal land- or resource-managing agencies early, if applicable, to determine if your proposed project that crosses those lands is feasible. These agencies can include the U.S. Forest Service, the Bureau of Land Management, the U.S. Fish and Wildlife Service, the Bureau of Indian Affairs, the National Park Service, and others.
3. Consult the National Wetlands Inventory's Wetlands Mapper and the US Army Corp of Engineers (USACE) Nationwide Permit Information to understand the potential presence of wetlands in your project area, and whether USACE permits may apply.
4. Consult with your State Historic Preservation Office to inform project design.
5. Plan for Tribal engagement – this is required early in the process and often!

The most common factors that extend the EHP process are impacts to sensitive resources – understanding how to avoid or minimize those impacts is crucial for moving through the process efficiently



Definitions



Grant recipients frequently ask if their project may be broken down into smaller components. It is essential to understand the following definitions and adhere to NTIA determinations.



Segmentation occurs when an agency artificially divides a major federal action into smaller components to avoid proper application of NEPA to the project components. Segmentation is a violation of NEPA and is not allowable.



Connected actions occur if portions of the project would not exist without the other project. Connected actions must be considered together to prevent dividing a project into several smaller actions (“segmentation”), each of which might have an insignificant impact when considered in isolation, but that taken as a whole, could have a substantial impact.



Independent Utility occurs when an action or activity can reasonably satisfy the agency's purpose and need for the project even if no other project (or related portion of the project) is implemented. Independent utility is the **exception**, not the rule, and can only be designated by NTIA.



EHP Next Steps and Resources

Next Steps



- ✓ **Identify all appropriate landowners/agencies** that must grant access for the deployment.
- ✓ Fully **understand all required permits and processes in your area**, not just focusing on broadband-related permits.
- ✓ **Prepare early for a NEPA/EHP analysis.**
- ✓ **Engage early and schedule pre meetings** with all relevant agencies to ensure application completeness.
- ✓ **Submit all required documents** and track the timelines.



Program and Project Efficiencies and Tools



Projects can gain efficiencies using programmatic agreements, shared tools, and other best practices.

PROJECT LEVEL TOOLS

Examples may include:

- Tribal monitors during construction and archeology surveys
- Utilizing GPR and LIDAR for subsurface analyses
- Face-to-face G2G formal consultation
- Establishment of milestones and concurrence points
- Synchronized environmental review and permitting
- Administrative DEA/DEIS reviews
- Routing in disturbed, existing right of ways
- Pre-application meetings
- Early surveys and right-sizing NEPA reviews
- USFWS IPAC system, Wetlands Mapper, and other online data resources

PROGRAM LEVEL EFFICIENCIES

Examples may include:

- MOUs with relevant Federal partners
- PAs with State Historic Preservation Offices
- Programmatic ESA reviews. Example: CA Middle Mile Programmatic BA
- Funded Liaison positions
- NWP 57
- FAST Act Coverage where eligible and appropriate
- BIA Broadband National Policy Memorandum
- Construction work windows for ESA species
- Providing technical assistance on minimally invasive deployment methodologies



Closing Comments and Additional Resources



NTIA provides resources to support successful broadband project deployment.

Internet For All Website

For detailed program information about the Internet For All Grants, use InternetForAll.gov to search by program.

Program Progress by State & Territory

Broadband Equity, Access, and Deployment (BEAD)

Select State or Territory:

PROGRAM STATUS	
Broadband Equity, Access and Deployment (BEAD)	
STATUS	STATE/TERRITORY
Planning Application Submitted	56
Planning Grant awarded	16

[Interactive Funding Map](#)

EHP Resources

NTIA has developed EHP factsheets, guides, and templates. Inquire with your FPO for these resources which will also be posted on the NTIA broadband technical assistance hub.

[Technical Assistance Hub | BroadbandUSA \(doc.gov\)](#)

For more information, visit the [BroadbandUSA State and Local Government](#) webpage.



Polls and Questions

Polling question #1



What is your broadband project type?

- A. Aerial or Buried Fiber
- B. Satellite Connection
- C. Technology/software, training, or community outreach workshops
- D. Submarine Cable
- E. Combination of above
- F. Other



Polling question #2



What is your primary concern in completing the NEPA process?

- A. Project timeline impact
- B. Associated costs
- C. Documentation requirements
- D. How the process works
- E. Knowing where to even begin!



Q & A



Thank You

