

Permitting Needs Assessment

August 2024



Overview

An initial assessment of permitting and access considerations can help grantees, subgrantees, and project team members ensure the success of broadband infrastructure deployments.

HOW TO USE THIS RESOURCE:



➡ Checklists are provided for each of the four featured technical categories illustrated in the cells to the left, framed around three assessment areas:

- Stakeholder engagement
- Streamlining permitting
- Safety and service requirements

➡ Utility easements, access, and zoning approval considerations are provided on Slide 7.

➡ A Glossary defines terms and provides links to additional resources.



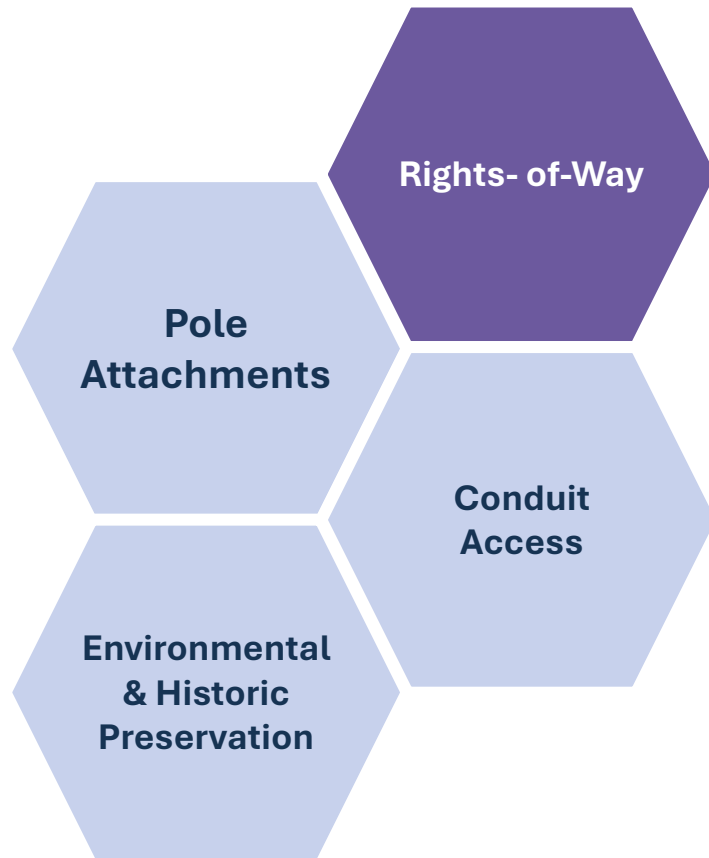
The checklists in this resource offer a starting place to consider and identify permitting and access issues that can pose risks to broadband deployments.

NTIA-funded projects must comply with all federal, state, and local laws.

This document is intended solely to assist applicants in better understanding the requirements set forth in the Notice of Funding Opportunity (NOFO) applicable to several of NTIA's broadband grant programs and follow-on policies and guidance. This document does not and is not intended to supersede, modify, or otherwise alter applicable statutory or regulatory requirements, the terms and conditions of the award, or the specific application requirements set forth in the NOFO. In all cases, statutory and regulatory mandates, the terms and conditions of the award, the requirements set forth in the NOFO, and follow-on policies and guidance, shall prevail over any inconsistencies contained in this document.

Checklist: Rights-of-Way

Grantees and subgrantees **must prepare to access rights-of-way (ROWs) under federal, state, and local jurisdictions.**



Stakeholder Engagement

- ☐ What ROWs will I need for my project?
- ☐ Which federal, state and local agencies or private entities do I need to contact about obtaining ROW?
- ☐ Which other stakeholders should be engaged to review or authorize ROW applications, easements and permits?

Streamlining Permitting

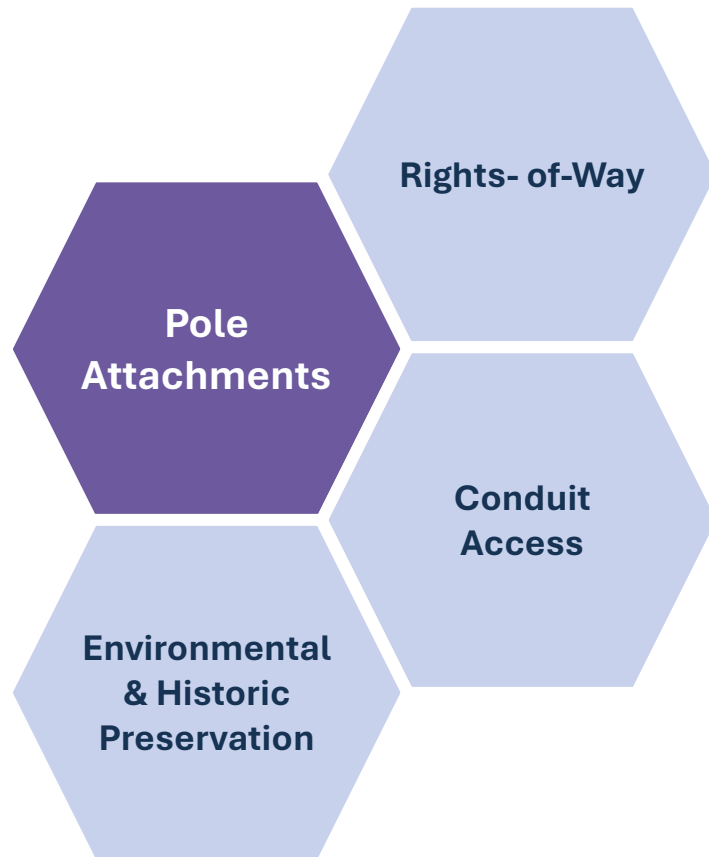
- ☐ What policies and tools exist to streamline ROW access and permitting in the state(s) where my project is located and how can I leverage them?
- ☐ Can permitting requirements for my project be expedited by incorporating Best Management Practices (BMPs), mitigations or minimally invasive construction practices?
- ☐ Can I apply online? Am I sure my application is complete?

Safety & Service Requirements

- ☐ What are the safety and service requirements specific to the ROW needed for the project? Should other measures be enforced to ensure worker safety and avoid service disruptions for broadband in ROW?
- ☐ How should project owners be engaged to take corrective or restorative actions to ensure worker safety and continuous service?

Checklist: Pole Attachments

Grantees and subgrantees must prepare to obtain pole attachment approvals.



Stakeholder Engagement

- ☐ Who regulates pole attachments in my state?
- ☐ Who owns the poles I need to access for deployment and what are their requirements?
- ☐ Should other stakeholders be involved? What are the local industry perspectives on pole attachments?

Streamlining Permitting

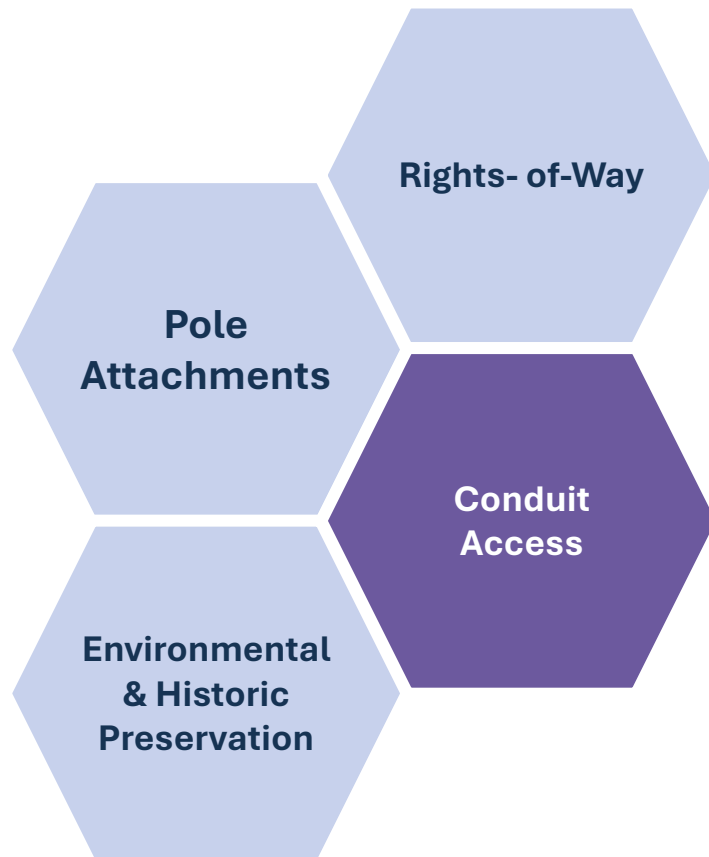
- ☐ What policies and tools exist to streamline pole attachment approvals and permits in the state(s) where my project is located and how can I leverage them?
- ☐ Do the FCC's pole attachment rules and requirements apply?
- ☐ How can I coordinate with state and local agencies to facilitate expedited pole access?

Safety & Service Requirements

- ☐ What measures should be enforced during broadband deployments on poles to ensure worker safety and avoid service disruptions?
- ☐ How should project or infrastructure owners be engaged to take corrective or restorative actions to ensure worker safety and continuous service?

Checklist: Conduit Access

Grantees and subgrantees **must prepare to obtain conduit access.**



Stakeholder Engagement

- ☐ Which entity has regulatory authority for conduit access?
- ☐ Which stakeholders should be engaged to review and approve permit applications?
- ☐ What are the industry perspectives on conduit access?

Streamlining Permitting

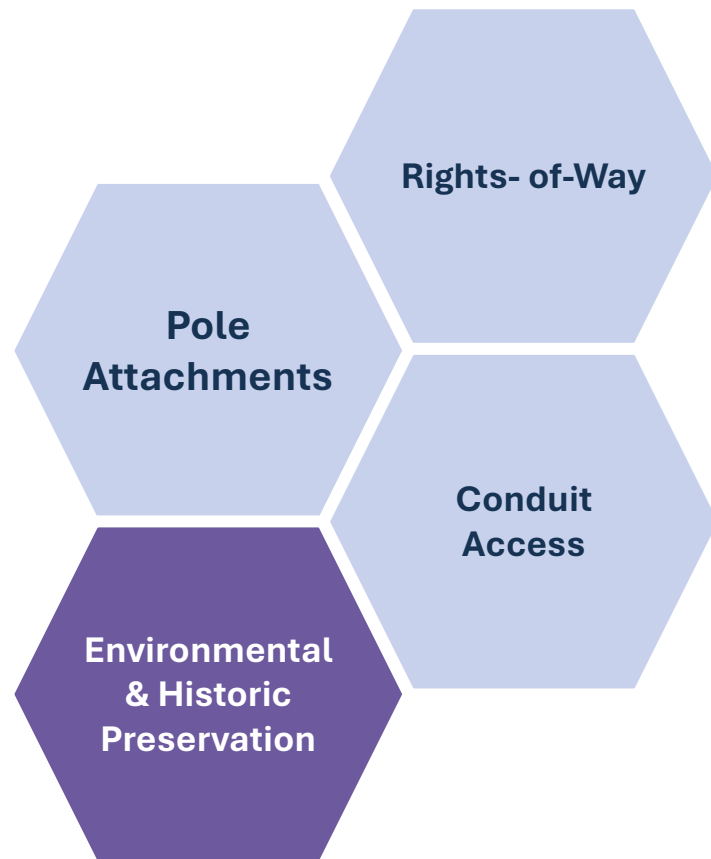
- ☐ Are there dig once policies that would require or encourage project owners to install multiple conduits or micro-ducts for future use?
- ☐ What other measures might reduce constructions costs?
- ☐ How can I coordinate with state and local permitting agencies to facilitate expedited approvals and authorizations?

Safety & Service Requirements

- ☐ What measures should be enforced during broadband deployments to ensure worker safety and avoid service disruptions?
- ☐ How should project owners be engaged to take corrective or restorative actions to ensure worker safety and continuous service?

Checklist: Environmental Planning/Historic Preservation

Grantees and subgrantees must prepare for Environmental and Historic Preservation (EHP) compliance, including National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA) reviews.



Stakeholder Engagement

- ☐ Which EHP reviews are required? Which agencies are involved?
- ☐ What stakeholder notification and engagement is needed? At what points? Who should be involved as cooperating agencies or consulting parties?
- ☐ What are the information needs of each stakeholder group?
- ☐ What are the timelines, durations and dependencies for meeting state and federal EHP and permitting requirements?

Streamlining Permitting

- ☐ What programmatic tools are available to streamline EHP reviews?
- ☐ What online screening tools are available to identify sensitive resources?
- ☐ Can surveys and documentation requirements for permit applications and EHP reviews be consolidated or coordinated? (e.g., archeological, biological, wetlands assessments)
- ☐ Can agencies cross-coordinate to reduce application processing time?

Safety & Service Requirements

- ☐ What health and safety related protocols, inspections and permits are required? Who is responsible?
- ☐ What measures should be enforced during fieldwork (e.g., test pits or geotechnical borings) to ensure worker safety?

Additional Considerations for Deploying in ROW

Assessing access, utility, and easement needs and gaining zoning approvals are critical to successful deployment.

Utility Easements

- ☐ Review the new survey to ensure the utility easements are drawn and labeled correctly. Proof the metes and bounds description, ensure that the survey and written description are recorded.
- ☐ Draft an easement that allows the owner to regrant or convey the right to use the utility easement to others, including the provider and subtenants.
- ☐ Address additional future utility easements that may be requested by the tenant, provider, or subtenant.
- ☐ Address the potential for future technological advances and the need to accommodate additional providers.
- ☐ Ensure that the subleasing language also permits subtenants the right to use the utility easements.
- ☐ Verify if an encroachment permit in the public right of way will be required.
- ☐ Obtain a separate utility easement from the access point to the beginning of the access easement.

Access Easements

- ☐ Obtain a survey showing the location of the access easement, including proper nomenclature, widths, ownership, and metes and bounds.
- ☐ Review the survey to ensure the access easement is shown and labeled correctly.
- ☐ Ensure the access easement is bounded by a public ROW, and not a private road.
- ☐ Ensure the width of the access easement meets zoning and local regulatory requirements.
- ☐ Ensure there are no limitations or restrictions on accessing the easement and emergency access is addressed.

Zoning Approval

- ☐ Obtain a digital copy of the applicable zoning ordinance and determine all associated requirements.
- ☐ Prepare a zoning letter that includes all project information, application timelines, application forms and requirements, and identifies a point of contact.
- ☐ Submit a complete zoning application, including a cover letter, index, and narrative, that should address every application provision of the ordinance.



Glossary and Resources

Glossary | 1 of 2

| Term | Definition |
|--|---|
| Access Easement | Type of legal agreement which allows travel across another person's land to get to a nearby location, like a road. An access easement is a limited right to use or control the land for a specific purpose, like crossing it to get to a public road. |
| Best Management Practices (BMPs) | Standard practice or combination of practices considered to be the most effective means (including technological, economic, institutional considerations) of implementing an action or plan. |
| Conduit | Pipe or tube that contains and protects fiber optic cable, wires or other telecommunication utilities. |
| Conduit Access | The ability to use or gain entry to a conduit. |
| Dig Once Policy | Dig once policies encourage or require project owners to install multiple conduits or micro-ducts for future use during any construction (e.g., telecoms, transportation, utilities) along the public ROW, especially in highways and roads. |
| Environmental and Historic Preservation (EHP) Compliance | The reviews conducted to fulfill an agency's obligations to consider environmental, historic, and cultural resources in decision making and federal undertakings under NEPA, NHPA, and other statutes. |
| National Environmental Policy Act (NEPA) | The National Environmental Policy Act (NEPA) was signed into law on January 1, 1970. NEPA requires federal agencies to assess the environmental effects of their proposed actions prior to making decisions. |

Glossary | 2 of 2

| Term | Definition |
|--|--|
| National Historic Preservation Act (NHPA) Section 106 Review | Passed in 1966, NHPA establishes a national preservation program and a system of procedural protections, which encourage both the identification and protection of historic resources at the federal level and indirectly at the state and local level. Section 106 of the NHPA establishes a review process to ensure that federal agencies consider the effects of federally licensed, assisted, regulated, or funded activities on historic properties. |
| Pole Attachment | Access to occupy surplus space, or to use excess capacity, on or in any support structure owned, controlled or used by a utility company. |
| Programmatic EHP Tools | Tailored rules or approaches that streamline review requirements for a category of activities or undertakings. |
| Right-of-Way (ROW) | A ROW establishes a legal right to use or pass along a specific route through grounds or property owned by another, including public lands and property, for an agreed period of time. |
| Stakeholder Engagement | Communication and/or collaboration with individuals and communities who have an interest or concern in an issue. |
| Utility Easement | Type of legal agreement which allows utility companies the right to access land for the purpose of constructing and maintaining utility lines (electric, telephone, cables, water, and sewer services). |
| Zoning Approval | Approval required by or issued pursuant to any applicable land use, planning, zoning, development, or similar law by a state or local Government Entity, Indian Tribe, or Native Hawaiian organization. |
| Zoning Ordinance | Local or municipal laws that define how property in a specific area can be used. |

Explore Available NTIA Resources

NTIA has developed many additional resources to support grantees and subgrantees understand permitting and EHP processes.

Best Management Practices (BMPs) and Mitigation Measures



Best Management Practices (BMP) and Mitigation Measures

U.S. Department of Commerce
National Telecommunications and Information Administration



[Download Here](#)

National Environmental Policy Act (NEPA) Guidance



Guidance on NTIA National Environmental Policy Act Compliance

April 2024



U.S. Department of Commerce
National Telecommunications and Information Administration

[Download Here](#)

Local Permitting Importance, Challenges, and Strategies



Local Permitting Importance, Challenges, and Strategies



August 2024

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