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# NEPA: Environmental and Historic Preservation Compliance

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April 2024





# 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 Project Descriptions
- 3 EHP Responsibilities
- 4 What's New at NTIA?
- 5 Questions

# NEPA and NHPA Overview

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# What is NEPA?



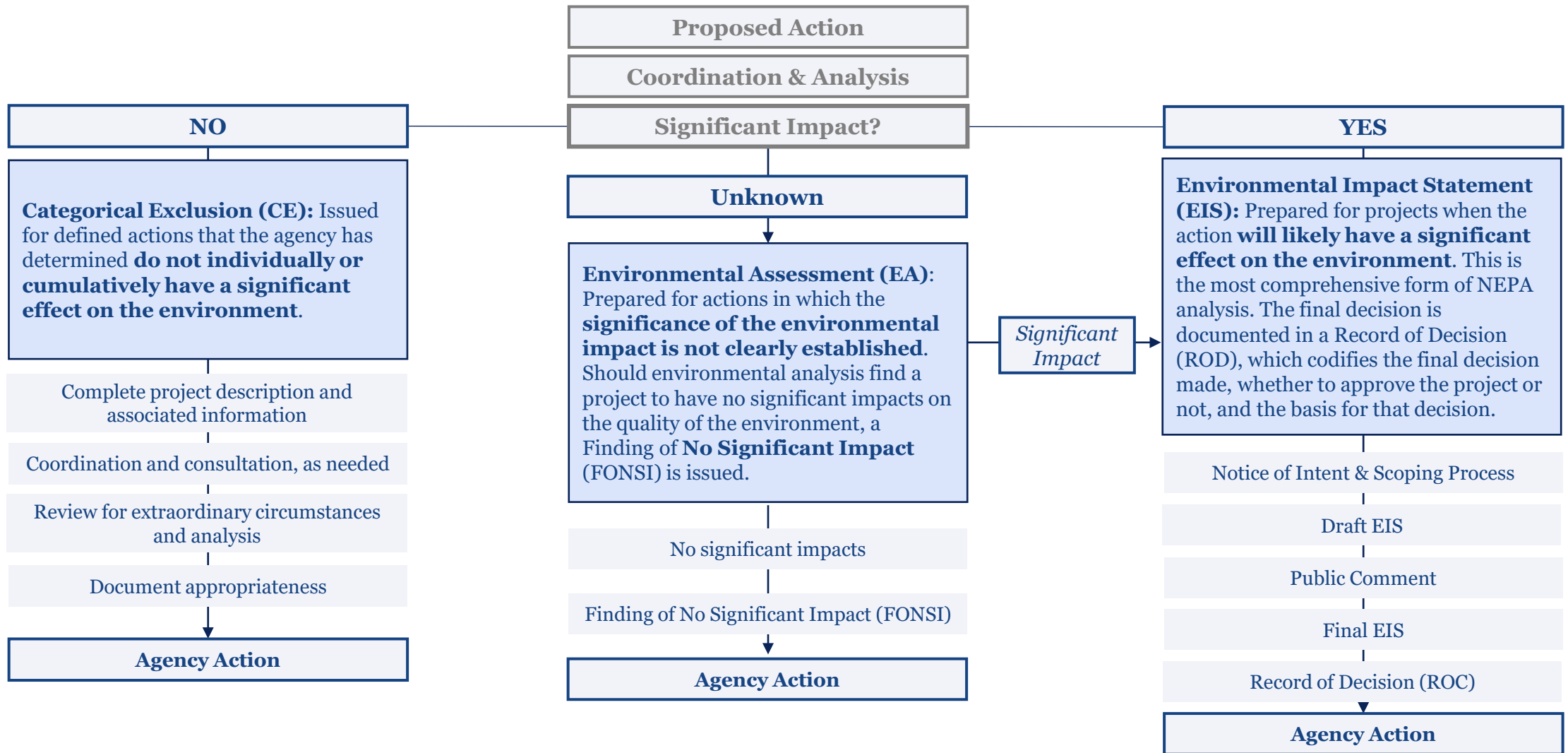
Passed in 1970, the National Environmental Policy Act (NEPA) is considered an “umbrella law” as it provides a framework within which all other environmental, historic, and cultural resources laws can be evaluated. It set forth the requirement for environmental reviews and formally established environmental 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 (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 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 NHPA



- 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) govern the Section 106 review process
- Federal agencies initiate Section 106 review with the State Historic Preservation Office (SHPO) or Tribal Historic Preservation Office (THPO) for projects on Tribal lands
- Consulting parties, including potentially affected Tribes, participate in Section 106 consultations





# What is the Section 106 Process?



## 1. **Begin the Process** – Will the action potentially impact historic properties?

- *Identify all parties, i.e., SHPO/THPO/Native American Tribes/NHOs, initiate public involvement, and identify the Area of Potential Effect*

YES



## 2. **Identify Historic Properties** – Are historic properties present?

- *Determine the Scope of Effort required to identify potentially affected historic properties*

YES



## 3. **Assess Adverse Effects** – Will the action adversely affect historic properties?

- *Apply Criteria of Adverse Effects to assess potential to affect National Register eligibility*

YES



## 4. **Resolve Adverse Effects** – Are adverse effects resolved?

- *Develop alternatives or modifications, mitigate identified adverse effects*
- *Notify ACHP and Prepare MOA or PA*

If NO,  
Section 106  
Concludes



# Section 106 Compliance Tools for Broadband in ROWs



[Program Comment to Avoid Duplicative Reviews for Wireless Communications Facilities Construction and Modification](#)

[Program Comment for Communications Projects on Federal Lands and Property](#)

[36 CFR 800 Subpart B Section 106 Review Process](#)

[FHWA State Programmatic Agreements](#)

[NTIA Section 106 Tribal Outreach via the Tower Construction Notification System \(TCNS\)](#)



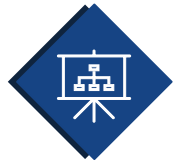
# Environmental & Historic Preservation Requirements



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***



# Project Descriptions

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# Project Description



## 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**

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# 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





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

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.**



# **What's New at NTIA?**

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# Questions

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# Thank You

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