

FTA

FEDERAL TRANSIT ADMINISTRATION

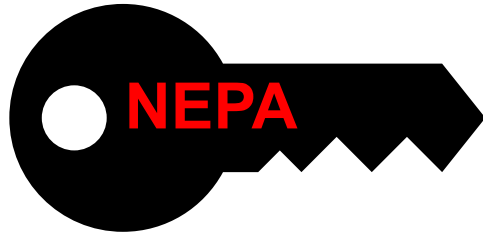
National Environmental Policy Act Overview For Grant Recipients



U.S. Department of Transportation
Federal Transit Administration

NEPA Environmental Review

- The National Environmental Policy Act (NEPA) of 1969 (1970) is a **procedural law** requiring that federal agencies consider the effects of their actions on the environment.
- 23 CFR Part 771 -- *Environmental Impact and Related Procedures* prescribes the policies and procedures of the Federal Highway Administration (FHWA), the Federal Railroad Administration (FRA), and the Federal Transit Administration (FTA) for implementing NEPA.
- All FTA funded projects are required to have an environmental review component.



- Native American Graves Protection and Repatriation Act
- Clean Air Act
- Clean Water Act
- Safe Drinking Water Act
- Endangered Species Act of 1973
- Comprehensive Environmental Response, Compensation, and Liability Act
- Resource Conservation and Recovery Act of 1976
- Section 4(f) of the DOT Act (49 USC 303)
- National Historic Preservation Act of 1966
- Archaeological and Historic Preservation Act
- Archaeological Resources Protection Act
- American Antiquities Act
- American Indian Religious Freedom Act
- Farmland Protection Policy Act
- Fish and Wildlife Coordination Act
- Land and Water Conservation Fund Act
- Water Bank Act
- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
- Americans with Disabilities Act
- Executive Order 12898 (Environmental Justice)
- Executive Order 13045 (Protection of Children)
- Executive Order 11988 (floodplains)
- Executive Order 11990 (wetlands)
- Executive Order 13514 (federal leadership in Environmental, Energy, and Economic Performance)
- Executive Order 13112 (Invasive Species)

The Intent of NEPA

- The essential intent of NEPA is to provide federal agencies with **sufficient** documentation and analysis to make the best environmental decisions through a reasoned study of the existing environment and the likely impacts of the proposed project.
- NEPA **is not** intended to stop or delay projects.
- NEPA **is** intended to provide information to Federal decision-makers.

NEPA asks essentially three questions . . .

1. What is the **current** environment in the project area?
2. Will the project **significantly** impact the existing environment?
3. If there is a significant impact, can the impact be **mitigated**?

NEPA is asking these questions via ‘accessing’ numerous environmental laws, policies, regulations, codes, and executive orders.



- Native American Graves Protection and Repatriation Act
- Section 4(f) of the DOT Act (49 USC 303)
- Clean Air Act
- Clean Water Act
- Safe Drinking Water Act
- Endangered Species Act of 1973
- Comprehensive Environmental Response, Compensation, and Liability Act
- Resource Conservation and Recovery Act of 1976
- National Historic Preservation Act of 1966
- Archaeological and Historic Preservation Act
- Archaeological Resources Protection Act
- American Antiquities Act
- American Indian Religious Freedom Act
- Farmland Protection Policy Act
- Fish and Wildlife Coordination Act
- Land and Water Conservation Fund Act
- Water Bank Act
- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
- Americans with Disabilities Act
- Executive Order 12098 (Environmental Justice)
- Executive Order 12045 (Protection of Children)
- Executive Order 11988 (Floodplains)
- Executive Order 11990 (wetlands)
- Executive Order 13514 (federal leadership in Environmental, Energy, and Economic Performance)
- Executive Order 13112 (Invasive Species)

FTA Region 4 NEPA Responsibilities

- FTA will ask the grantee for a **NEPA Checklist**
- FTA will review environmental documents for final technical and legal sufficiency
- FTA will determine the **class of action** (COA) based on the **NEPA Checklist**
- FTA will initiate **consultation** to satisfy Section 106 of the National Historic Preservation Act
- FTA will guide the Endangered Species Act Section 7 consultation and **decide** the species effect determinations
- FTA is the Federal **decision maker** for NEPA

Grantee Responsibilities

- ▶ The Grantee who is the FTA **direct recipient** will be the conduit/technical advisor for any of the grantee's sub-recipients
- ▶ The Grantee will have a **Local Preferred Alternative (LPA)** before providing FTA with the NEPA Checklist
- ▶ The Grantee will provide a **clear and accurate NEPA Checklist** to FTA
- ▶ The Grantee will **complete** the required NEPA documentation either in-house or through a contractor
- ▶ The Grantee will **provide** FTA with **complete documents** for review
- ▶ The Grantee will **notify** FTA of any changes to the proposed project
- ▶ The grant recipient will **meet** the submission dates of their NEPA schedule

NEPA Checklist - Project Description

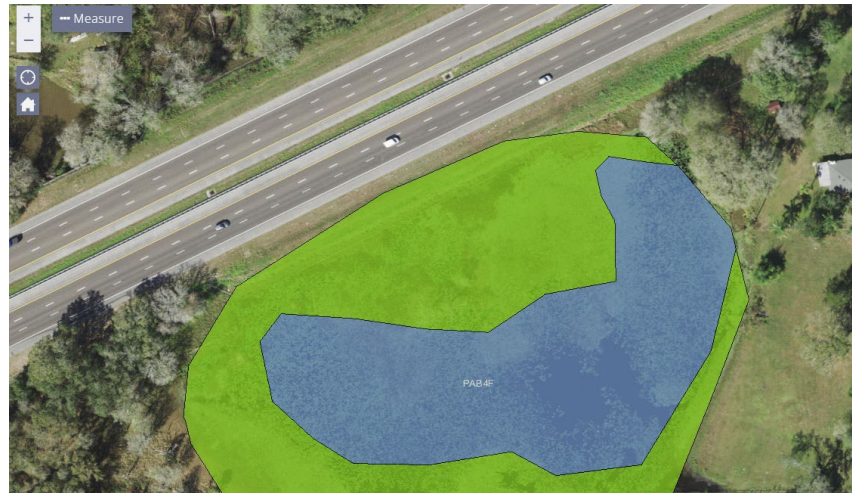
- Description of existing property with map
- Description of complete project with site plan
- Street address
- Photos of buildings on the property
- Photos of buildings as seen from property
- Photos of any natural areas on the property
- List of any public involvement done for the project, to date, if any

NEPA Classes of Action

Class of Action Type	What it Does	Used for . . .
Listed Categorical Exclusion (LCE)	Demonstrates that a project fits a listed category established by FTA through examination of previous NEPA analysis. (23 CFR. §771.118)	Projects with no potential for significant environmental impacts
Documented Categorical Exclusion (DCE)	Project types that may qualify as a CE if appropriately analyzed, documented, and approved by FTA.	Projects meet the above with some additional information/analysis
Environmental Assessment (EA)	Determines whether a project requires an EIS or if it has no significant impact.	Projects where the environmental impacts are unknown
Environmental Impact Statement (EIS)	Documents the impacts of a project on the environment.	Projects that will have a significant environmental impact

Listed CE (LCE) – Items of Note

- Avoid pre-determination language.
 - Do not ‘suggest’ a NEPA Class of Action (COA)
 - FTA will determine the COA based on the **NEPA Checklist**
- Right-of-Way (ROW) does not give an environmental ‘waiver’ or an immediate LCE.



Documented CE (DCE) – Items of Note

- After receiving a DCE COA from FTA, a DCE checklist must be filled out to start the documentation process.
- Short and concise analysis and description wins the day. Simply stating “No” or “None” is not an analysis.
- Complete any requested studies.
- The DCE process is complete when a signed DCE Letter is received from FTA.

Environmental Assessment (EA)

– Items of Note

- Limited to 100 pages.
- Must be placed on the White House ‘Presidential Dashboard’ and completed in one year.
 - Environmental assessments **[completed]** within 1 year unless a senior agency official of the lead agency approves a longer period in writing and establishes a new time limit. One year is measured from the date of agency decision to prepare an environmental assessment to the publication of an environmental assessment or a finding of no significant impact. (*40 CFR 1501.10 ‘Time limits’*)

Environmental Impact Statement (EIS)

– Items of Note

- Limited to 150-200 pages.
- Must be placed on the White House ‘Presidential Dashboard’ and completed in two years.
 - Environmental impact statements **[completed]** within 2 years unless a senior agency official of the lead agency approves a longer period in writing and establishes a new time limit. Two years is measured from the date of the issuance of the notice of intent to the date a record of decision is signed

(40 CFR 1501.10 ‘Time limits’)

NHPA - Section 106

- Federal agencies are required to consider the impact of their undertakings on cultural resources per the National Historic Preservation Act (NHPA) and 36 CFR Part 800
- FTA **will always** initiate Section 106 consultation with the State Historic Preservation Office(r) and Federally recognized Native American Tribes



NHPA - Section 106 (con't)

- SHPOs, Federally recognized Native American Tribes and other parties chosen by FTA may be signatories to agreement documents
- Interested parties, who are not potential signatories to agreement documents, include the interested public, local civic organizations and other parties designated by FTA

Tribal Consultation

- Federally recognized tribes with an interest in the project location will be contacted by FTA to ask if they would like to consult. This is **required** under 36 CFR Part 800
- Due to the government-to-government nature of consultation with Federally recognized tribes, FTA will conduct all such consultation and will **never** delegate this to a grantee

ESA - Section 7

- The purpose of the Endangered Species Act (ESA) is to provide a means to conserve the ecosystems upon which endangered and threatened species depend and provide a program for the conservation of such species. The ESA directs all federal agencies to participate in conserving these species.
- Specifically, section 7(a)(1) of the ESA charges federal agencies to aid in the conservation of [Federally] listed species, and section 7(a)(2) requires the agencies to ensure their activities are not likely to jeopardize the continued existence of federally listed species or destroy or adversely modify designated critical habitat.



ESA - Section 7 (2 of 3)

- **Step 1 – Review:** Grantees will use the US Fish and Wildlife Service’s (USFWS) digital project planning tool, Information for Planning and Consultation (IPaC), to get a list of species and critical habitats that may be present in the project area. This species list is attached to the NEPA Checklist, DCE checklist, and any natural resources surveys completed.
- **Step 2 – Determination, and Informal Consultation (If Applicable):** FTA must initiate informal consultation when any action they authorize, fund, or carry out may affect, not likely to adversely affect a Federally listed endangered or threatened species or designated critical habitat.

ESA - Section 7 (3 of 3)

- **Step 3 - Formal Consultation (If Applicable):** If the FTA determines that the action may affect, likely to adversely affect a Federally listed species, FTA submits to the USFWS (or the National Marine Fisheries Service [NMFS]) a request for formal consultation. Formal consultation may last up to 90 days, after which the USFWS or NMFS will prepare a biological opinion. The intent of a biological opinion is to analyze the effects of the proposed action to the listed species or designated critical habitat.
- **Step 4 - Conclusion of Biological Opinion:** The conclusion of the biological opinion will state whether FTA has ensured that its action is not likely to jeopardize the continued existence of a listed species and/or result in the destruction or adverse modification of critical habitat. A biological opinion usually includes conservation recommendations to further the recovery of listed species, and it also may include reasonable and prudent measures, as needed, to minimize any "take" of Federally listed species. USFWS or NMFS has 45 days after completion of formal consultation to write the biological opinion.

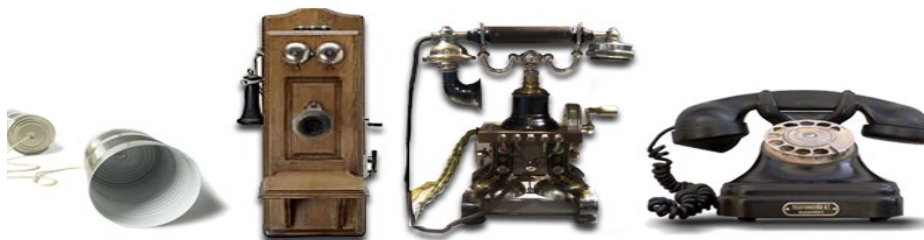
CWA - Section 404

- Section 404 of the Clean Water Act (CWA) requires authorization from the Secretary of the Army, acting through the US Army Corps of Engineers (USACE), for the discharge of dredged or fill material into all Waters of the United States (WOTUS), including wetlands.
- A USACE permit is required whether the work is permanent or temporary. Examples of temporary discharges include dewatering of dredged material prior to final disposal, and temporary fills for access roadways, and cofferdams.
- The USACE Section 404 permitting process can be lengthy and nonchronological to the NEPA timeframe.
- FTA Region 4 will work with grantees on these timelines.



Communication in NEPA

FTA Region 4 is dedicated to reducing single points of failure within the environmental group. To that end, we ask that grantees copy the environmental group when corresponding with the planner and vice versa. This will enable our office to fully coordinate our customer service efforts for our grantees.



Early communication is truly appreciated!

Resources

- Council on Environmental Quality (NEPA) regulations – 40 CFR 1500 et seq., http://energy.gov/sites/prod/files/NEPA-40CFR1500_1508.pdf
- FTA/FHWA regulations implementing NEPA – 23 CFR 771 et seq., <https://www.law.cornell.edu/cfr/text/23/part-771>
 - “Listed CEs” – 23 CFR 771.118(c)
 - “Documented CEs” – 23 CFR 771.118(d)
- 36 CFR Part 800, <http://www.achp.gov/regs-rev04.pdf>
- National Historic Preservation Act, <http://www.achp.gov/docs/NHPA%20in%20Title%2054%20and%20Conversion%20Table.pdf>
- Endangered Species Act, <https://www.fws.gov/service/esa-section-7-consultation>
- US Army Corps of Engineers, South Atlantic Division, <https://www.sad.usace.army.mil/>

Who to Contact

Julia “Carrie” Walker, MHP

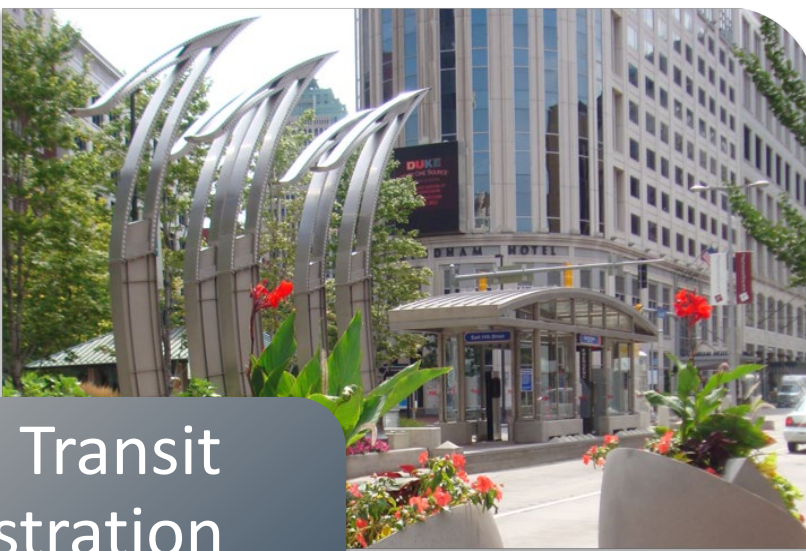
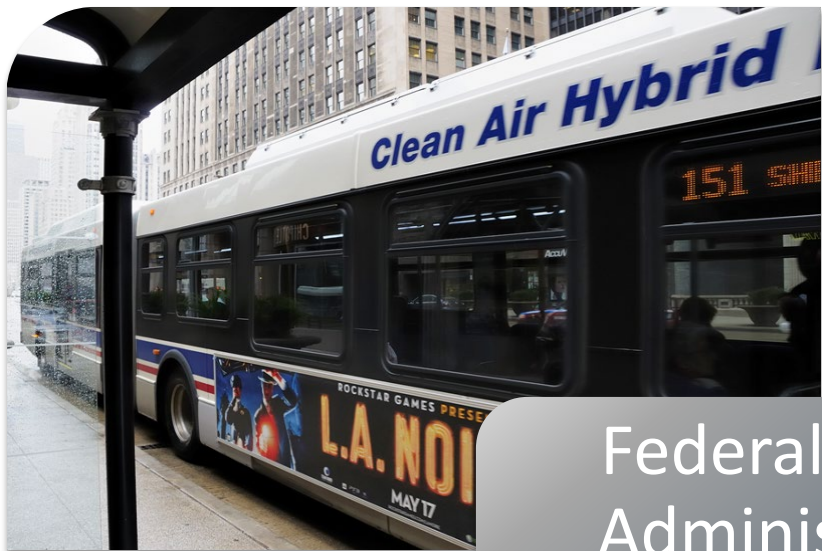
404.865.5645

julia.walker@dot.gov

Ron Smith

404.865.5643

ronald.smith@dot.gov



Federal Transit
Administration
www.fta.dot.gov

