

IV. ENVIRONMENTAL REQUIREMENTS

Federal-aid LPA projects must be delivered in compliance with the National Environmental Policy Act (“NEPA”), 49 U.S.C. § 303 (commonly referred to as section 4(f)), the National Historic Preservation Act, the Clean Water Act, the Endangered Species Act, and any other applicable environmental laws and regulations.

The LPA must receive environmental approval from KYTC before beginning final design. FHWA will not authorize final design or subsequent phases without approved environmental documentation¹.

For projects administered by the Office of Local Programs (OLP), KYTC will generally complete the environmental requirements on behalf of the LPA (the LPA should always confirm this).

FHWA’s “Overview of NEPA as Applied to Transportation Projects” Video:

<http://www.fhwa.dot.gov/federal-aidessentials/catmod.cfm?category=environm>

IV.1. Clearinghouse Documents

Pursuant to Presidential Executive Order 12372, all LPA projects require a clearinghouse document which must be requested from the Governor’s Department of Local Government (“DLG”). The clearinghouse affords state government agencies the opportunity to identify and comment on the potential environmental impacts of a project. The LPA must request the clearinghouse document immediately upon filing its application or, for non-application based funding, early in the planning phase. Failure to do so can significantly delay progress on the project. The instructions for requesting the clearinghouse document are located at:

https://kydlgweb.ky.gov/FederalGrants/16_eClearinghouse.cfm.

A copy of these instructions is also provided as an attachment to this chapter.

Once the clearinghouse document is requested by the LPA, various departments of state government are asked to review and comment on the project. When the review period expires, the DLG will send a copy of the clearinghouse document to the LPA. The LPA must provide a copy to the Administering Office. It is important that the LPA read the Clearinghouse comments carefully. If KYTC is to complete the environmental work for the project, the Administering Office will send the clearinghouse document along with the application to the KYTC Division of Environmental Analysis so that it may begin its evaluation process. If KYTC is not completing the environmental work, the LPA must ensure that the clearinghouse comments are incorporated into the environmental document.

IV.2. Environmental Documentation

NEPA regulations require that there be an appropriate amount of public involvement in the decision making process, that alternatives to the project be evaluated, that decisions are made based on a balanced consideration of pertinent information, including environmental factors, and that actions are taken to mitigate any adverse impacts to the environment caused by the project².

¹ 23 CFR § 771.113(a). The exceptions to this rule are found in 23 CFR § 771.113(d).

² 23 CFR § 771.105

The LPA is required to submit an environmental document demonstrating that NEPA requirements have been met. The type of environmental document depends on the classification of environmental impact the project will have. Some environmental review is required to determine potential environmental impact. The likely classification of environmental document should be discussed early in the project development process.

There are three types of environmental documents:

- An Environmental Impact Statement (EIS) is prepared for projects where it is known that the action will have a significant effect on the environment. After the EIS is prepared, it is submitted to FHWA. If FHWA agrees with the EIS, a Record of Decision (ROD) is issued.
- An Environmental Assessment (EA) is prepared for actions in which the significance of the environmental impact is not clearly established. Should it be determined through environmental analysis and interagency review during the EA process that a project has no significant impacts on the quality of the environment, a Finding of No Significant Impact (FONSI) is issued. If a significant environmental impact is found, the agency will be required to prepare an EIS.
- Categorical Exclusions (CEs) are issued for actions that do not individually or cumulatively have a significant effect on the environment. **The majority of LPA projects require this level of documentation.**

There are four levels of Categorical Exclusions: CE for minor projects (CEMP), CE Level 1, CE Level 2, and CE Level 3.

Additional information on NEPA Documentation is provided by FHWA here:
<http://www.environment.fhwa.dot.gov/projdev/pd4document.asp>

KYTC Guidance and forms related to Categorical Exclusions, including the CE Guidance Manual (2008) can be found here:

<https://transportation.ky.gov/EnvironmentalAnalysis/Pages/Project-Management.aspx>

The “CE Matrix” located at this site can be used to determine what level Categorical Exclusion will likely be required for any project.

The LPA may need to hire a KYTC pre-qualified consultant to perform

environmental services (see **Chapter III** for Professional Services procurement). Depending on project type and complexity, KYTC may agree to prepare the environmental document on the LPAs behalf. This arrangement should be included in the MOA between KYTC and the LPA. If environmental studies are required, such as archaeological or biological, project funds must be made available to cover the study costs. As previously mentioned, KYTC will generally prepare the environmental document for all projects administered by OLP. The LPA should always confirm this.

The environmental document is subject to KYTC and, depending on level of effort, FHWA approval.

IV.3. Reassessment or Reevaluation

CEs (most common with LPA projects) and EAs/FONSIs (rare for LPA project) must be reevaluated **prior** to requesting any major approvals for new project Phases (ROW, Utilities, Construction) regardless of the “age” of the environmental document. This is to establish that the approved environmental document or CE designation remains valid. The re-evaluations must accompany funding requests to FHWA. **LPA’s should plan for and request re-evaluations 3-6 months in advance of requesting new phase funding and should communicate/coordinate this with the District Environmental Coordinator. This effort should also be accounted for when establishing the project budget.**

Draft EISs must be reevaluated if an acceptable final EIS is not submitted within three years from the date the draft EIS was circulated. Depending on the result of the reevaluation, the draft EIS may have to be amended, supplemented or redone³. LPA projects of this complexity are extremely rare.

IV.4. Environmental Commitments

If a project will impact a natural or human environment, the LPA may be required to mitigate for these impacts. Mitigation commitments must be detailed in the environmental document and must be implemented through construction.⁴ The LPA's environmental consultant, or, if KYTC is drafting the environmental document, the Administering Office will assist the LPA in determining if its project will affect natural or human environments protected by environmental regulation and in negotiating the environmental commitments, if any are necessary. For infrastructure projects, these commitments will be included on the design plans and in the Bid Proposal later in the process, to ensure they are honored.

IV.5. Environmental Permits

Some projects may require environmental permits, such as from the United States Army Corps of Engineers (USACE), Kentucky Division of Water (KDOW), and/or the Federal Emergency Management Agency (FEMA). Securing appropriate environmental permits is the LPA's responsibility unless otherwise set forth by the project MOA. It is not possible to determine with certainty if a permit will be required until completion of the investigation required for the environmental document. The LPA should work with KYTC early in the project development process to understand the potential need for permits. The LPA must ensure that funding is included in the project budget to cover the costs of required environmental permits and fees. Some of these permits require certifications, or as-built drawings, after the construction is completed. LPAs must include costs for those permit requirements in the project budget.

³ 23 CFR § 771.129(a)

⁴ Environmental legislation that may require mitigation are The Historic Preservation Act (16 USC § 470f and 36 C.F.R. 800), Stream/Wetland Mitigation (23 CFR § 777), Noise Abatement (23 C.F.R. 772), Section 4f (23 USC § 138, 49 USC § 303, and 23 C.F.R. 774); Endangered Species Act (16 USC § 1531 and 50 C.F.R. 402).