Project Delivery
Overview

- Eligible Activities
- Hiring a Consultant or Contractor
- Planning
- Project Delivery
  - Overview
  - Influence/Cost
  - Environment
  - PS&E
  - Right-of-Way
  - Project Package
  - Construction
  - Maintenance
  - Design
  - Right-of-Way
  - Environmental
  - Design Exceptions
  - PS&E
  - Tribal Resolution
  - Right-of-Way Certification
  - Environmental Compliance
  - Procurement

TTIP
FHWA-APPROVED

U.S. Department of Transportation
Federal Highway Administration
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Influence/Cost

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![Diagram showing project delivery phases with influence and cost](image)

Figure 1 Impact of variables based on project time (Project Management Institute 2008)
### NEPA and Other Environmental Requirements

- **NEPA**: National Environmental Policy Act (1969)
- **It** is the “National Charter” for protection of the environment, and it applies to all federal actions (including funding).
- **Requires** that a Federal agency consider the impacts of its activities on the **natural and human environment**.
- **NEPA** provides a comparative process that allows the decision maker (FHWA) to make an informed decision.
- **FHWA** and TTP Implementing Regulations: 23 CFR 771 and 25 CFR 170.450-453
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NEPA Umbrella

National Historic Preservation Act
Endangered Species Act
Coastal Zone Management Act
Clean Air Act
Clean Water Act
Section 4(f) - Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites
Section 6(f) - Land and Water Conservation Fund Act
Fish and Wildlife Coordination Act
Farmland Protection Policy Act
Native American Graves Protection and Repatriation Act
Protection of Wetlands Executive Order
Floodplain Management Executive Order
Procedures for Abatement of Highway Traffic Noises and Construction Noises
Applicable Tribal/State laws
Other applicable Federal laws and regulations
Compliance with other Environmental Requirements (examples, but not all-inclusive)

- Section 106 of National Historic Preservation Act
- Section 7 of Endangered Species Act
- Protection of Wetlands Executive Order 11990
- Section 4(f) of the Department of Transportation Act
- Clean Water Act
- Clean Air Act
- Floodplain Management Executive Order 11988
Three Types of NEPA Documents

- **Environmental Impact Statement**
  - Used when a project will or is likely to result in significant environmental impacts

- **Categorical Exclusion**
  - Used for certain types of projects that normally will not result in significant environmental impacts

- **Environmental Assessment**
  - Used when it is uncertain if a project will result in significant environmental impacts
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NEPA Process Options (Classes of Action)

Proposed Action
Coordination and Analysis
Significant Impact?

NO

Listed CE
Documented CE
Coordination and analysis as needed
Document appropriately
Agency Action

Environmental Assessment
Finding of No Significant Impact (FONSI)
Agency Action

Session A-2

YES

Significant impact
Notice of Intent & Scoping Process
Draft EIS
Public Comment
Final EIS
Record of Decision (ROD)
Agency Action
Think of the “NEPA” document as a Box

The box will hold all of the necessary Environmental Information for understanding potential impacts for a project in one place.

FHWA determines the size of the box (and when it is full)
  - The type of documentation (CE, EA or EIS).

The box will contain all of the necessary Regulations.
  - Pertinent Regulations under the NEPA Umbrella
• The Regulations that fill the box are “owned” by other agencies (Agency with Jurisdiction).
  o FHWA needs to “ask permission” to place those regs in the box. (This is consultation and coordination)
    • Cultural is “owned” by the THPO or SHPO
    • Biology is “owned” by USFWS
    • ROW (often) is “owned” by BIA
    • Etc.

• FHWA needs to be sure that all of the necessary environmental regulations and information has been placed in the box before “putting on the lid” (issuing clearance).
**NEPA is a CONSULTATION PROCESS (not regulatory)**

- It is “Procedural” not “Substantive”

- About the process, not necessarily about the resulting decision.

- Did we follow the process? Did we do our “due diligence”? Did we attempt to discern all impacts and take them into account? Did we include and coordinate with all affected parties?

- The “owned” regulations that the NEPA process covers may be regulatory.
Exercise: Which Project is a Cat Ex?

- Chip Seal Project on 58 miles of roadway.
- Creation of Bike Trails through a local park
- 23 Miles of New Asphalt Roadway
- Paving 17 miles of a previously dirt road
• **It’s All about the Impacts**

• NEPA documentation and Mitigations are about IMPACTS, not project type.
  o Even lists of Categorical Exclusions were created based on potential impacts

• An impact can be defined as a change (that the project will produce) on the natural, cultural, historic, and human environment.

• Need to be able to evaluate and explain these changes to interested parties (and get their input)
Environmental Commitments

- Tribe must follow through on its commitments to avoid, minimize, and mitigate environmental impacts.
- Commitments result from coordination with agencies and the public. Also from conditions listed in permits issued by regulatory agencies.
- As much as possible, commitments should be listed in the NEPA document.
- Incorporate them into final design as appropriate.
Environmental Permits

- Under PAs and G2Gs, Tribes are responsible for obtaining and complying with all necessary permits associated with a project.

- Environmental Permits (examples, but not all-inclusive)
  - Corps of Engineers 404 permit
  - Environmental Protection Agency 402 permit (NPDES) and 401 certification
  - Floodplain permit
  - Fish habitat permit
If a Tribe has a Program Agreement with FHWA, then FHWA is the approving agency for NEPA, otherwise BIA has NEPA approval.

Regardless of whether BIA or FHWA is the lead agency for NEPA, if applicable, TTP-funded projects can use FHWA’s categorical exclusions (25 CFR 170.453)

Majority of TTP projects are Categorical Exclusions

Even if your project is cleared as a CE, it does not mean other environmental laws do not apply.

Under a Program Agreement with FHWA or G2G with BIA, the Tribe is responsible for studies/analyses to support NEPA and other environmental decisions.
Plans, Specifications & Estimates (PS&E):

- Conforms to the project scope and the TTIP
- Must follow design standards listed in 25 CFR Part 170 Appendix B to Subpart D
- Design Exceptions
- Typical design milestones include:
  - 30% (preliminary/conceptual design)
  - 75% (intermediate design)
  - 100% (final design)
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- **AASHTO - A Policy on Geometric Design of Highways and Streets, 7th Edition 2018** (the “Green Book”) at [https://store.transportation.org/item/collectiondetail/180](https://store.transportation.org/item/collectiondetail/180)


- FHWA-approved State standards
Other design standards may be approved by FHWA for a specific project if they:

- Meet or exceed those listed in 25 CFR 170;
- Provide a 20-year (or longer) design life for highway projects, and 75-year design life for highway bridges.
What should be included in the PS&E:

- Design standards
- Summary of quantities
- Typical sections
- Horizontal and Vertical
- Drainage needs
- Erosion Control
- Traffic Control
A Tribe may **approve** PS&E’s and proceed to construction if:

- PS&E is stamped (certified) by a State licensed engineer, and the certification is provided to BIA or FHWA.
- Assures construction will meet or exceed applicable health and safety standards
- Additional requirements may be in Tribe’s Agreement with BIA or FHWA
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- Tribe submits Design Exception requests for FHWA consideration:
  - Should submit **early** in the development of the PS&E.
  - Before licensed engineer certifies (seals) the plans.
  - Must include Engineer of record’s written justification (and supporting documents), based on their engineering analysis.
  - Tribe needs to inform and coordinate with the owner (Public Authority) of the road regarding the exception.
  - Send to FHWA or BIA point of contact
• FHWA has 30 days from receiving the request to approve or decline the exception.

• FHWA may **approve** Design Exceptions for:
  1. Experimental features on projects; and
  2. Projects where conditions justify the exceptions.

• Document the exception using the Highway Design Standards Certification form, or equivalent information.
- Highway Design Standards Certification:
  - Optional form, but good way to document reasoning for request
Right-of-Way (ROW) and Utilities

- Acquisition cannot begin until NEPA document is complete and approved.
- Many types of property (trust/non-trust)*
- Regulations for acquisition
  - 25 CFR Part 169 (ROW over Indian land)
  - Uniform Relocation Act (ROW over fee land)
- Certification of Right-of-Way clearances
- Real Estate Acquisition Guide for Local Public Agencies

* See Indian Land Tenure Foundation website
Project Package

- Provide to BIA or FHWA before the start of construction
- Includes documentation identified in 25 CFR §170.460:
  - Plans, Specification, Estimate (may be approved by Tribe)
  - Required environmental clearances.
  - Right-of-Way certification
  - Approved design exceptions
  - Tribal resolution or other authorized document supporting the project
- Approved by Public Authority before starting construction
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- Pre-Advertisement Checklist (optional).
- Tool to ensure Project Package is complete.
Questions?