



# National Environmental Policy Act Overview

## 2024 United South and Eastern Tribes Impact Week Transportation Committee



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**Federal Highway  
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# FHWA Office of Tribal Transportation Tribal Transportation Program National Environmental Policy Act (NEPA)

- What is NEPA?
- It is the “National Charter” for protection of the environment, and it applies to all federal actions.
- 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 (Federal Agency) to make an informed decision.





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# Great, But What IS NEPA?

**NEPA is a  
CONSULTATION  
PROCESS**

- It is “Procedural” not “Substantive”
- There is no proscribed outcome
- 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 all affected parties?
- The regulations that the NEPA process covers may be regulatory



# Who is responsible for NEPA?



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- Approving agency for NEPA:
  - FHWA when a Tribe has a Program Agreement with FHWA
  - BIA when a Tribe does not have a Program Agreement with FHWA
- Regardless of whether BIA or FHWA is the lead agency for NEPA, if applicable, Tribal Transportation Program (TTP) funded projects can use FHWA's categorical exclusions (25 CFR 170.453)
- This presentation is about FHWA's NEPA process for the Tribes





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# Tribal Responsibility for NEPA

- Under a Program Agreement with FHWA, the Tribe is responsible for:
  - Consultation with applicable resource agencies
  - Conducting the necessary studies/analyses to support NEPA and other environmental decisions under the NEPA Umbrella
  - Public involvement, commensurate with level of impacts
  - Determine impacts to resources and develop mitigation
  - Prepare the final NEPA document
  - Reevaluating NEPA if anything changes in the project design
  - Obtaining environmental permits
  - Completing environmental mitigation after NEPA document is approved





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# Law and Implementing Regulations

- National Environmental Policy Act, 1969, as amended
  - 42 USC. §4321 et seq.
- National Environmental Policy Act Implementing Regulations
  - 40 CFR §1500-1599
- Tribal Transportation Program Environmental and Archeological Requirements
  - 25 CFR §170.450-453
- Federal Highway Administration, Department of Transportation, Environmental Impact and Related Procedures
  - 23 CFR §23.771







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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





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# 3 Types of NEPA Classes of Action

- ✓ Environmental Impact Statement (EIS)
  - ✓ Used when a project **will or is likely to result in significant environmental impacts**
- ✓ Categorical Exclusion (CatEx or CE)
  - ✓ Used for certain types of projects that normally **will not result in significant environmental impacts**
- ✓ Environmental Assessment (EA)
  - ✓ Used when it is **uncertain if a project will result in significant environmental impacts**







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# Determining NEPA Class of Action

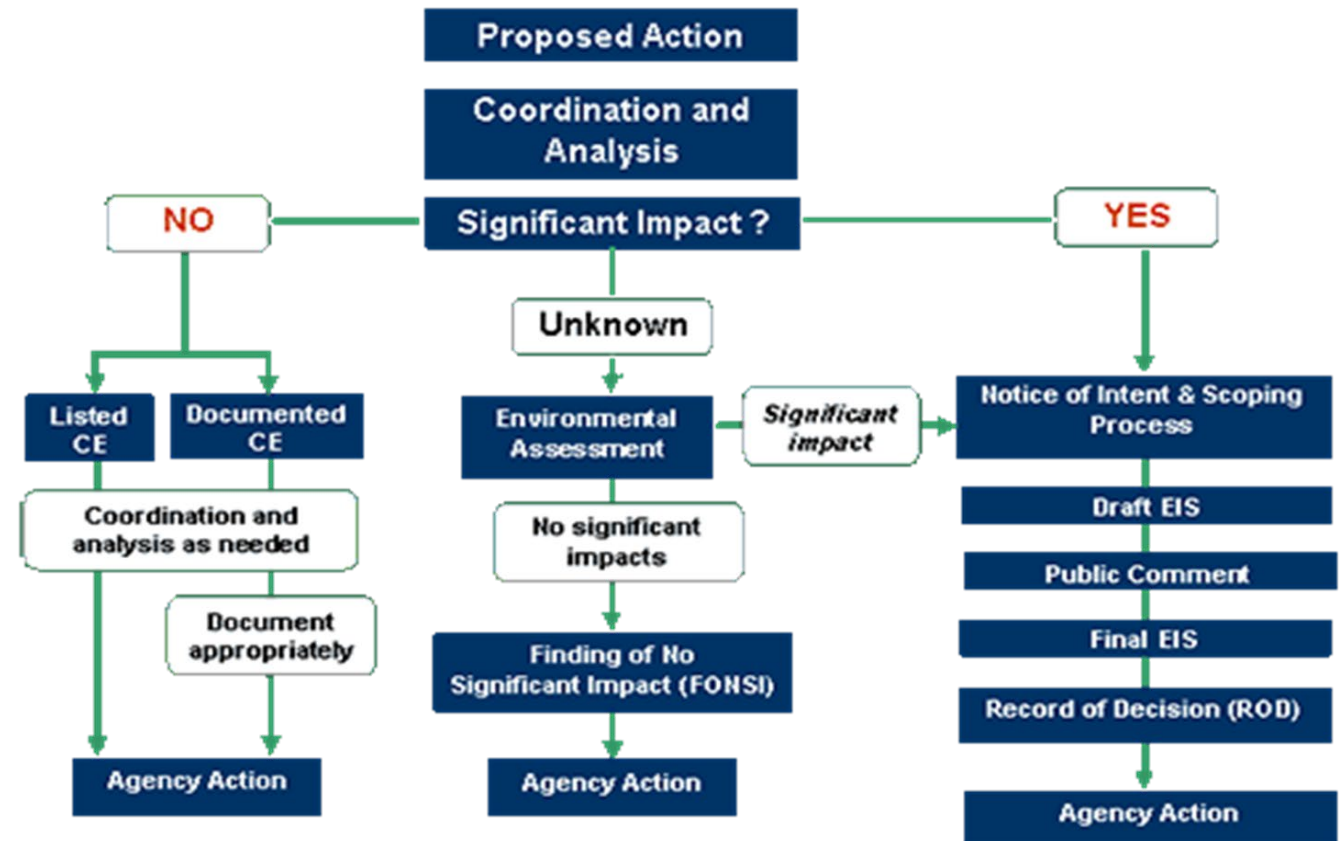
- ✓ NEPA class of action is about IMPACTS, not (necessarily) project type
- ✓ An impact can be defined as a change (that the project will produce) on the natural, cultural, historic, and human environment
- ✓ The NEPA impacts are an evaluation of the overall impacts of all of the resources under the NEPA Umbrella



# Determining NEPA Class of Action



- ✓ Consult with FHWA early to determine NEPA class of action and corresponding document type



# FHWA Categorical Exclusions



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- ✓ 23 CFR 771.117(a) Actions which meet the definition contained in 40 CFR 1508.4, and, based on past experience with similar actions, do not involve significant environmental impacts, either individually or cumulatively
- ✓ Unusual circumstances listed in 23 CFR 771.117(b) may mean that a Categorical Exclusion cannot be used
- ✓ List of FHWA CEs in 23 CFR 771.117(c) and (d)





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# FHWA Categorical Exclusions

- ✓ Categorical Exclusion does not mean that a project is excluded from the NEPA process or NEPA Umbrella and can automatically proceed
- ✓ Though a project may be documented as a Categorical Exclusion for NEPA, Lead Agencies still needs to fulfill requirements and obligations of ALL regulations under the NEPA Umbrella (e.g., Section 106, Section 7)
- ✓ >90% of all FHWA funded projects will be Categorical Exclusions



# NEPA Process



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- ✓ Pre-NEPA activities in the Environmental Process should begin much earlier than project development, during Planning
  - ✓ Background research of available information concerning resources, GIS, published data
- ✓ NEPA usually begins during Preliminary Engineering phase
- ✓ “NEPA” officially begins with a clear purpose and need, scope of work, range of alternatives, and initiation of the consultation process.



# NEPA Process



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- ✓ Consult with applicable resource agencies, such as the US Fish and Wildlife Service, Tribal or State Historic Preservation Office, State Departments of Natural Resources
- ✓ Conduct the necessary studies/analyses to support NEPA and other environmental decisions under the NEPA Umbrella
- ✓ Public involvement, commensurate with level of impacts
- ✓ Determine impacts to resources and develop mitigation
- ✓ Prepare the final NEPA document





# Approval of NEPA Document



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- FHWA will approve NEPA document for Tribes with a Program Agreement with FHWA
  - Approved document will often contain required mitigation
  - Mitigation is binding; project funding is dependent on completion
  - Mitigation should be included in Plans, Specifications, & Estimates (PS&E) and be included in Bid Package
- **Final Design cannot begin until the NEPA document is approved**
- **Once it is approved, the Environmental process is not finished!**





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# After the NEPA Document is Approved

- Additional steps in the Environmental process:
  - If anything changes in the project design, must reevaluate NEPA
  - Must obtain environmental permits
  - Must complete environmental mitigation after NEPA document is approved
    - Before construction – e.g., archaeology
    - During construction – e.g., protective fencing
    - After construction – e.g., wetland replacement monitoring



# Environmental Permits



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- 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
  - US Coast Guard permit





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# The Office of Tribal Transportation Environmental Checklist

## NEPA Umbrella

TTP Environmental Checklist/Categorical Exclusion	
Tribe Name:	Is Project on an approved TTIP?
Project Name/Number:	NTTFI Route No. and Section:
<b>SECTION 1: PROJECT DETAILS</b>	
<b>A. Purpose and Need:</b> Briefly describe what the transportation problems are that need to be addressed and why. Do not provide solutions to the problems in this section.	
<b>B. Project Description:</b> Briefly describe project including location, limits, design elements, and construction activities. Describe how the proposed project will address the needs described above. Use Continuation Sheet, if necessary. Attach maps, aerials, photos, etc. to help visualize the project.	

- ✓ 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
- ✓ Floodplain Management Executive Order 11988
- ✓ Clean Air Act



# Questions?



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# References



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National Environmental Policy Act Implementing Regulations, 40 CFR §1500-1599

<https://www.ecfr.gov/current/title-40/chapter-V/subchapter-A/part-1500>

Tribal Transportation Program Environmental and Archeological Requirements, 23 CFR §170.450-453

<https://www.ecfr.gov/current/title-25/chapter-I/subchapter-H/part-170#subject-group-ECFR0966b596e0a8c29>

FHWA Environmental Impact and Related Procedures, 23 CFR §23.771

<https://www.ecfr.gov/current/title-23/chapter-I/subchapter-H/part-771>

FHWA Tribal Transportation Program Environment Website

<https://highways.dot.gov/federal-lands/programs-tribal/environment>

FHWA The Office of Tribal Transportation NEPA Checklist

<https://highways.dot.gov/federal-lands/programs-tribal/guide/environmental-checklist>







# Contacts



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