

Chapter 24 Environmental Processes

24.1 General Discussion

This chapter summarizes the regulations and federal coordination requirements that local agencies must follow on projects that receive funding from the Federal Highway Administration (FHWA). Detailed guidance for complying with the federal requirements is provided in the publication entitled *NEPA Categorical Exclusions - A Guidebook for Local Agencies*.

Projects involving federal funds, permits, or land are governed by a number of environmental requirements, including but not limited to:

- National Environmental Policy Act (NEPA) of 1969, 42 USC 4321, et. seq.
- Council on Environmental Quality Regulations for Implementing NEPA, 40 CFR Part 1500, et. seq.
- Federal Highway Administration and Federal Transit Administration Implementing Regulations, 23 CFR Parts 771, 772, and 774
- Environmental Impact and Related Procedures, 49 CFR Part 622
- Section 7 of the Endangered Species Act (ESA), 50 CFR Part 402
- Section 106 of the National Historic Preservation Act, 36 CFR Part 800
- Presidential Executive Order 12898 - Environmental Justice
- Presidential Executive Order 14096- Revitalizing Our Nation's Commitment to Environmental Justice for All
- Section 4(f) of the U.S. Department of Transportation Act of 1966, 23 CFR 774

Prior to approval of final NEPA documents, FHWA regulations require that a subsequent phase of a project be programmed into the current State Transportation Improvement Plan (STIP). Eligible phases include Right of Way and Construction. In cases where no federal Right of Way or Construction funding is available for a subsequent phase, projects may be listed in the STIP by allocating local agency money for the subsequent project phase.

Approval of NEPA, in particular the final signature on the Categorical Exclusion Documentation Form, does not signify an approval of the State Environmental Policy Act (SEPA), nor any applicable local, state, and federal permits. Local agencies are responsible for ensuring compliance with SEPA and obtaining all applicable local, state, and federal permits. While the local agency may utilize the analysis completed in the NEPA process to assist in the completion of SEPA and applicable permits, NEPA approval must not be misconstrued as a guaranteed approval of any other local, state, or federal requirement. The local agency must work with other agencies, as appropriate, to provide the required analysis to complete their responsibilities under SEPA and other local, state, and federal permit and process requirements.

24.2 NEPA Classification

Projects subject to NEPA fall into one of the three following classifications:

- Class I Projects require preparation of an Environmental Impact Statement (EIS) because the action is likely to have significant adverse environmental impacts.
 - Class II Projects are Categorical Exclusions (CE). These actions are not likely to cause significant adverse environmental impacts. They meet the definitions contained in 40 CFR 1508.4 and 23 CFR 771.117.
- .21 Class III Projects require preparation of an Environmental Assessment (EA) because the project's impact on the environment is not clearly understood.
- .22 **NEPA Class I Projects (EIS)** – Actions that are likely to have significant impact on the environment because of their effects on land use, planned growth, development patterns, traffic volumes, travel patterns, transportation services, natural resources, or because they could create substantial public controversy. See Appendix B in the *NEPA Categorical Exclusions – A Guidebook for Local Agencies* for guidance on preparing an EIS. Projects that usually require an EIS, as defined in 23 CFR 771.115, are:
- New controlled-access freeway.
 - Highway project of four or more lanes in a new location.
 - New construction or extension of a fixed rail transit facility (e.g., rapid rail, light rail, commuter rail, bus rapid transit) that will not be located primarily within an existing transportation right-of-way.
 - New construction or extension of a separate roadway for buses not located primarily within and existing transportation right-of-way.

Although examples are given, it is important to remember that the quantity and significance of the potential impacts determine the need for an EIS, not the size of the project.

- .23 **NEPA Class II Projects (CE)** – Actions that meet descriptions contained in NEPA rules (40 CFR 1508.4, 23 CFR 771.117) and do not individually or cumulatively involve significant environmental impacts. Unless specifically requested by other agencies or due to either unusual circumstances or public controversy, these actions do not require an EIS or an EA. Class II projects typically:
- Do not induce significant impacts to planned growth or land use.
 - Do not require the relocation of significant numbers of people.
 - Do not have a significant impact on any natural, cultural, recreational, historic, or other resource.
 - Do not involve significant air, noise, or water quality impacts.
 - Do not have significant impacts on travel patterns.
 - Do not otherwise, either individually or cumulatively, have any significant environmental impacts.

Class II Projects are subdivided into two subcategories, which determine the documentation and approval requirements. The CE Guidebook Appendix A has a list of federal actions meeting the CEQ and FHWA criteria for CEs per FHWA regulations.

1. **C-list Categorical Exclusions (c-list CE)** – Class II Projects that FHWA has delegated approval to WSDOT. These projects can be approved by Local Programs without signature by FHWA. These are generally 23 CFR 771.117 (c)1 through (c)30.
2. **D-list Categorical Exclusions (d-list CE)** – Class II Projects that typically require additional documentation and may require FHWA approval. The second part of CFR (23 CFR 771.117 (d)) is known as the “d-list”. Examples of d-list projects identified in 23 CFR 771.117 (d)1 through (d)13. Project situations that can require this level of review include:
 - Hardship or protective early ROW acquisition.
 - Displacements, or more than minor amounts of ROW acquisition.
 - Bridge permit from the US Coast Guard, or an Individual Permit (not Nationwide Permit) from the US Army Corps of Engineers.
 - Adverse effects to historic properties under the National Historic Preservation Act.
 - The use of a resource protected under 23 U.S.C. 138 or 49 U.S.C 303 (Section 4(f)), except for actions resulting in a *de minimis* finding.
 - “Likely to adversely affect” determination for threatened or endangered species, or for designated critical habitats listed under the Endangered Species Act.
 - Major traffic disruptions, including temporary or permanent road closures or changes in access control,
 - Floodplain encroachment other than bridges or trails.
 - Construction activities in, across or adjacent to a river component designated or proposed for inclusion in the National System of Wild and Scenic Rivers.
- .24 **NEPA Class III Projects (EA)** – Actions that have uncertain or poorly understood impacts on the environment. The EA determines the extent and level of environmental impact. An EA may support a Finding of No Significant Impact (FONSI) or indicate that an EIS is warranted. The content and complexity of an EA will vary depending on the project. See Appendix C of the *NEPA Categorical Exclusions – A Guidebook for Local Agencies* for details on EA procedures and documentation requirements.

24.3 Early Project Coordination & Environmental Mitigation

Many projects require early coordination with a range of federal, state, local agencies and tribal governments to ensure there are a minimum of delays to permitting and construction. Local agencies are encouraged to coordinate and communicate with federal, state and local agencies and tribal governments to discuss technical issues. However, discussions related to environmental mitigation require the advance participation by the FHWA Area Engineer and/or the designated Local Programs Environmental Engineer to assure that all parties understand whether potential environmental mitigation measures will be eligible for federal reimbursement prior to a commitment being made.

Note that all elements of Emergency Repair (ER) project work require advance coordination and approval by FHWA to ensure that Federal participation is allowable.

When there are multiple federal lead agencies, early coordination between those agencies is crucial to ensure that all agencies’ NEPA requirements are met.

24.4 Project Re-Evaluation

Whenever single or cumulative conditions have occurred that might cause new or more severe environmental impacts, the local agency shall re-evaluate an environmental document.

A written re-evaluation is required when any one of the following conditions exists:

1. There is a change to the project scope. This requires a re-evaluation even if the NEPA approval is less than three years old. (Some kinds of scope changes, such as those that include work outside of the previous study areas, are likely to result in a determination that a supplemental NEPA document is needed.)
2. An acceptable Final EIS has not been submitted to FHWA within three years from the date of the Draft EIS circulation.
3. Federal approvals of major steps to advance the project (such as FHWA approval to acquire right-of-way or approval of PS&E) have not occurred within three years of NEPA approval (that is, FHWA's approval of the NEPA CE Documentation Form, or issuance of a FONSI or ROD).
4. There is a law change that is relevant to the information provided in the original document (i.e., a new species is listed as threatened or endangered under ESA). This is required even if the NEPA approval is less than three years old.
5. New information or circumstances relevant to environmental concerns and bearing on the proposed action or its impacts would result in environmental impacts not evaluated in the NEPA document. (This is likely to result in a determination that a supplemental NEPA document is needed.)

The re-evaluation needs to indicate whether any new information is known that alters the previous analysis and findings. If so, the local agency needs to conduct appropriate environmental studies to support the updated conclusions.

The re-evaluation is submitted in written form to the Region LPE. The Region LPE will transmit a copy of the re-evaluation to Local Programs for review and coordination with FHWA. Based on the findings of the re-evaluation, FHWA will determine if additional documentation is appropriate (for example, a supplemental EIS, updated EA or NEPA CE Documentation Form, depending on the original NEPA classification).

24.5 Supplemental Document

If a project re-evaluation results in a determination that the NEPA document must be supplemented, the supplement should follow the same procedures as those used for the original document. The scope of the supplement can be limited to the changes to the project. FHWA should be consulted regarding the scope and disciplines that must be analyzed.

24.6 Other Federal Requirements

The NEPA document must include information on how the project complies with other federal regulations and requirements. These include but are not limited to cultural resources (Section 106 of the National Historic Preservation Act), federally listed threatened and endangered species and their critical habitat (Section 7 of ESA), parklands and historic properties (Section 4(f) of the Department of Transportation Act), and environmental justice (Executive Order 12898 and 14096, Title VI of the Civil Rights Act of 1964).

The *NEPA Categorical Exclusions – A Guidebook for Local Agencies* provides guidance on meeting the federal regulations and requirements that must be considered under NEPA.

24.7 Tribal Consultation

In addition to the Section 106 process, FHWA and local agencies must consult with the affected tribes on projects that potentially affect tribal treaty rights, real estate holdings, transportation, employment, or other impacts. Local Programs process for sharing discipline reports with tribes is described in the *NEPA Categorical Exclusions – A Guidebook for Local Agencies* (Appendix O).

24.8 Environmental Permitting

The local agency is responsible for ensuring that all required permits and approvals are obtained prior to initiating construction. [Chapter 500](#) the *Environmental Manual* provides an overview of environmental permits that commonly apply to transportation projects.

The Governor's Office of Regulatory Assistance has developed a web-based tool to assist users to identify the permits that are required for different types of projects.

This tool can be accessed at:

www.oria.wa.gov/site/aliasoria/347/Permitting.aspx

24.9 NEPA Categorical Exclusion Documentation Forms

<https://wsdot.wa.gov/business-wsdot/support-local-programs/technical-assistance/environmental-services>

24.10 NEPA Categorical Exclusions – A Guidebook for Local Agencies

<https://wsdot.wa.gov/sites/default/files/2022-10/LP-CE-Guidebook-Secure.pdf>

24.11 Plain Talk Toolkit

https://wsdot.wa.gov/sites/default/files/2021-10/ENV-NSEPA_RdrFrlyFolio.pdf

24.12 Reader-Friendly Tool Kit

https://wsdot.wa.gov/sites/default/files/2021-10/ENV-NSEPA_RFToolKit.pdf

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