Planning for the Environmental Process: The LPAs Guide

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NEPA

• Outline
  - NEPA What and When
  - Levels of Documentation/Thresholds
  - Select Resource Categories
  - Timelines
  - Tips to Avoid Delays
  - Questions, Comments, and Suggestions
What is NEPA?

• National Environmental Policy Act
  ➢ Boring Legal Definition and Date

• Types of NEPA Documents
  ➢ Federal Highway Administration (INDOT)
  ➢ Office of Community and Rural Affairs (OCRA)
  ➢ Federal Transit Authority (FTA)
  ➢ Department of Housing and Urban Development (HUD)
When is NEPA Needed

• When federal or state money is used on a project

• “Any local project, financed, assisted, conducted or approved by a federal agency”
Levels of NEPA Documentation

- **Categorical Exclusion (CE)**
  - Programmatic CE (PCE)
  - Level 1 (CE1)
  - Level 2 (CE2)
  - Level 3 (CE3)
  - Level 4 (CE4)

- Environmental Assessment (EA)
- Environmental Impact Statement (EIS)
- Additional Information Documents (AI)
## INDOT / FHWA CE Threshold Chart

<table>
<thead>
<tr>
<th></th>
<th>Level 1</th>
<th>Level 2</th>
<th>Level 3</th>
<th>Level 4</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Relocations</strong></td>
<td>None</td>
<td>≤ 2</td>
<td>&gt; 2</td>
<td>&gt; 10</td>
</tr>
<tr>
<td><strong>Right-of-Way</strong></td>
<td>&lt; 0.5 acre</td>
<td>&lt; 10 acres</td>
<td>≥ 10 acres</td>
<td>≥ 10 acres</td>
</tr>
<tr>
<td><strong>Length of Added Through Lane</strong></td>
<td>None</td>
<td>None</td>
<td>Any</td>
<td>Any</td>
</tr>
<tr>
<td><strong>Permanent Traffic Pattern Alteration</strong></td>
<td>None</td>
<td>None</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>New Alignment</strong></td>
<td>None</td>
<td>None</td>
<td>&lt; 1 mile</td>
<td>≥ 1 mile²</td>
</tr>
<tr>
<td><strong>Wetlands</strong></td>
<td>&lt; 0.1 acre</td>
<td>&lt; 1 acre</td>
<td>&lt; 1 acre</td>
<td>≥ 1 acre</td>
</tr>
<tr>
<td><strong>Stream Impacts</strong></td>
<td>≤ 300 linear feet of stream impacts, no work beyond 75 feet from pavement</td>
<td>&gt; 300 linear feet impacts, or work beyond 75 feet from pavement</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td><strong>Section 4(f)</strong></td>
<td>None</td>
<td>None</td>
<td>None</td>
<td>Any impacts</td>
</tr>
<tr>
<td><strong>Section 6(f)</strong></td>
<td>None</td>
<td>None</td>
<td>Any impacts</td>
<td>Any impacts</td>
</tr>
<tr>
<td><strong>Section 106</strong></td>
<td>&quot;No Historic Properties Affected&quot; or falls within guidelines of Minor Projects PA</td>
<td>&quot;No Adverse Effect&quot; or &quot;Adverse Effect&quot;</td>
<td>N/A</td>
<td>If ACHP involved Or Historic Bridge Involvement³</td>
</tr>
<tr>
<td><strong>Noise Analysis Required</strong></td>
<td>No</td>
<td>No</td>
<td>Yes³</td>
<td>Yes³</td>
</tr>
<tr>
<td><strong>Threatened/Endangered Species</strong></td>
<td>&quot;Not likely to Adversely Affect&quot;, or Falls within Guidelines of USFWS 9/8/93 Programmatic Response</td>
<td>N/A</td>
<td>N/A</td>
<td>&quot;Likely to Adversely Affect&quot;⁴</td>
</tr>
<tr>
<td><strong>Sole Source Aquifer Groundwater Assessment</strong></td>
<td>Detailed Assessment Not Required</td>
<td>Detailed Assessment Not Required</td>
<td>Detailed Assessment Not Required</td>
<td>Detailed Assessment Required</td>
</tr>
<tr>
<td><strong>Approval Level</strong></td>
<td>ESM³</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>ES⁶</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>FHWA</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>
The CE / EA Form

- Public Involvement
- Purpose & Need
- Project Description
- Other Alternatives Considered
- Roadway Character
- Design Criteria for Bridges
- Maintenance of Traffic During Construction
- Estimated Project Cost and Schedule
- Right-of-Way
- Streams, Rivers, Watercourses, and Jurisdictional Ditches
- Other Surface Waters
- Wetlands
- Terrestrial Habitat
- Karst
- Threatened and Endangered Species
- Ground Water, Surface Water, Drinking Water, Wellhead Protection Areas, and Sole Source Aquifers
- Floodplains
- Farmland
- Cultural Resources
- Section 4(f)
- Section 6(f)
- Air Quality
- Noise Impacts
- Regional, Community & Neighborhood Factors
- Indirect and Cumulative Impacts
- Public Facilities and Services
- Environmental Justice
- Relocation of People, Businesses, or Farms
- Joint Development
- Hazardous Materials and Regulated Substances
- Permits
- Environmental Commitments
- Early Coordination
Questions?
Streams, Rivers, Watercourses, Jurisdictional Ditches, & Wetlands

• Waters Report / Wetland Delineation
  ➢ Identifies the presence/absence of potentially jurisdictional resources
  ➢ Performed during the growing season (generally May to October)
  ➢ Can include piped waterways (captured streams)

• Identify worst-case scenario impacts
  ➢ Linear feet of stream impact
  ➢ Acreage of wetland impact

• Identify the need for and anticipated quantity of mitigation
Permits

• Environmental document approval only requires the identification of resources and potential impacts

• Anticipated permits and associated levels
  - IDEM 401
  - USACE 404
  - IDNR Construction in a Floodway
  - Rule 5

• PERMITS DO NOT HAVE TO BE ISSUED TO OBTAIN ENVIRONMENTAL DOCUMENT APPROVAL
Threatened & Endangered Species

• Federal and state species

• Potential species identified during early coordination
  ➢ US Fish and Wildlife & IDNR

• Indiana bat and Northern long-eared bat
  ➢ Restricted tree clearing
    • Typically April 1 to Sept. 30
    • Time of year restrictions may vary depending on region – coordinate with USFWS

• Mussels
Cultural Resources

• Section 106
  ➢ Above Ground and Below Ground Resources Evaluated
    • Minor Project PA
  ➢ Indiana Historic Bridge Inventory
    • Select and Non-Select
  ➢ Determination of Effect
    • No Historic Properties, No Adverse Effect, Adverse Effect
      • Signed by INDOT concurred with by SHPO
  ➢ Adverse Effect
    • Acquisition of property, visual, replacement of historical features...
    • Memorandum of Agreement
    • Consulting Parties
Section 4(f)

- Section 4(f) of the US Department of Transportation Act of 1966
  - Applies only to US Transportation Agencies
  - Publicly owned park, recreational, and refuge lands and National Register [of Historic Places] listed or eligible properties
  - Prohibits conversion of such properties to transportation uses without analysis and coordination
  - 4(f) Documentation (level determined by lead Federal Agency)
    - Individual Evaluation
    - Programmatic (5 Types)
      - Historic Sites
      - Historic Bridges
      - Public Parks, Rec. Lands & Refuges
      - Independent Bikeways or Walkways
      - Net Benefit
    - De minimis
Section 6(f)

• Lands purchased with or improved using funds from the Land and Water Conservation Fund Act of 1965

• Cannot acquire land from these properties unless replacement land is approved through the National Park Service
  ➢ Replacement property must be determined equal in function and value
Hazardous Materials & Regulated Substances

• Step 1 – Red Flag

• Step 2 - Phase I Initial Site Assessment
• Step 3 - Phase II Preliminary Site Investigation
• Phase I/II not required to complete Environmental Document
Environmental Justice

• EJ analysis required for projects with more than two relocations or more than one-half acre of permanent right-of-way

• Identify elevated minority and low-income populations

• If elevated EJ populations are present, determine if project impacts disproportionately when compared to non-EJ populations

• Disproportionately high and adverse impacts could require additional public outreach targeted specifically to the impacted EJ population
Noise

• Required for all Type I projects
• Evaluate noise levels at sensitive noise receptors (FHWA Traffic Noise Model)
• If impacted receptors identified – consideration of mitigation (even without limited access r/w)
• Mitigation may be required if determined **feasible & reasonable**
Public Involvement

Why Needed:

- NEPA requires the encouragement and facilitation of public involvement affecting the quality of the human environment
- Consensus not needed, just demonstration of open public communication

Hearing Requirements:

- Environmental Assessments & Environmental Impact Statements
  - *Hearing is always required before the environmental document can be approved*

- Categorical Exclusions
  - *Opportunity to request a hearing required if project meets one of the conditions identified in INDOTs Public Involvement Manual (IV.C.4, pg. 36)*

- Categorical Exclusions involving Historic Bridges
  - *Requires a hearing*
Schedule

- Schedule varies depending on complexity of project
- Consideration needs to be given for length of time for INDOT reviews

<table>
<thead>
<tr>
<th>CE LEVEL</th>
<th>AVG. COMPLETION TIME</th>
<th>REVIEWED BY</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>LPA Projects</td>
</tr>
<tr>
<td>CE-1</td>
<td>6 to 8 weeks</td>
<td>ES Only</td>
</tr>
<tr>
<td>CE-2</td>
<td>4 to 6 months</td>
<td>ES Only</td>
</tr>
<tr>
<td>CE-3</td>
<td>5 to 8 months</td>
<td>ES Only</td>
</tr>
<tr>
<td>CE-4</td>
<td>6 to 12 months</td>
<td>ES &amp; FHWA</td>
</tr>
<tr>
<td>EA</td>
<td>18 to 24 months</td>
<td>ES &amp; FHWA</td>
</tr>
<tr>
<td>EIS</td>
<td>3 to 5 Years</td>
<td>ES &amp; FHWA</td>
</tr>
</tbody>
</table>
What Can We Do About the Timeline?

• Start coordination early
• Know the critical resources and try to avoid them
• Ensure project is listed in the State Transportation Improvement Program (STIP) & Transportation Improvement Program (TIP)
  ➢ Fiscal constraints
  ➢ Air quality conformity demonstration
Tips to Avoid Delays

• Avoid R/W acquisition from critical resources:
  ➢ Historic properties
  ➢ Parks and recreational areas
  ➢ Wetlands and Waterways

• Start involving the public early

• **Start NEPA process early** – assume worst-case scenario if project details aren’t clear

• Ensure proper project listing on the STIP and TIP

• Avoid defining preferred alternative and level of environmental documentation in contract language
Resources

- 2008 Procedural Manual for Environmental Studies
- CE Preparation Manual (June, 2013)
- LPA Manual
- Indiana Cultural Resources Manual (March, 2014)
- Public Involvement Manual
Contact Information

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Questions?