Environmental Review

Location and Environment Bureau
Iowa Department of Transportation
Section 7 of the Endangered Species Act of 1973

Mary Kay Solberg
Environmental Specialist Senior
Location and Environment Bureau
Iowa Department of Transportation
Presentation Overview

- Section 7 Process
- Determination of Effects
- Concurrence
- Species Specific Information
Section 7 Purpose

- Promote stewardship and conservation of species and the habitats they depend on.
- Insure that an action by FHWA will not jeopardize the continued existence of an endangered species; or result in the destruction; or adverse modification of critical habitat.
https://iowadot.gov/ole/Endangered_species
Section 7 Process

- Review Iowa DNR’s Natural Areas Inventory for county lists of state protected species.
  https://programs.iowadnr.gov/naturalareainventory/pages/Query.aspx

  Request an Environmental Review from the Iowa DNR

- Review USFWS Midwest Region for county lists of federally protected species.
  www.fws.gov/midwest/endangered/lists/iowa_cty.html

- Other data (soil surveys, aerial photography).

- Field data collection as necessary

- Based on information from agencies, qualified professionals may need to perform field surveys for the presence/absence and habitat within the project area.
Determination of Effect

- Following evaluation one of the following determinations of effect need to be made:
  
  **No effect:** consultation with USFWS is not required, document determination in CE documentation.
  
  **May affect, not likely to adversely affect:** this includes good effects. Informal consultation with USFWS is required.
  
  **May affect, likely to adversely affect:** harm to the species is likely to occur. An incidental take statement from USFWS is required, and formal consultation with USFWS is required in the form of a Biological Assessment and/or Biological Opinion.
  
  **Jeopardy:** harm to the species will occur, formal consultation with the USFWS is required, requires changing the project by using reasonable and prudent alternatives to avoid jeopardy.

- A Determination of Effect form has been created specifically for LPA projects (Form 760005.doc)
Determination of Effect for Threatened & Endangered Species
For Local Public Agencies

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Determine what species to look for: Check IADNR and USFWS website. Attach findings.
- List species noted on IADNR website:
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Describe the habitat in your project area: Attach photos.

Review habitat characteristics as described on IADNR and USFWS websites, is there habitat? □ Yes □ No
- If No, mark No Effect and Section 7 is complete. Submit form with attachments.
- If Yes, move on to the next question.

Will the project affect potentially suitable habitat? □ Yes □ No
- If No, mark No Effect and Section 7 is complete. Submit form with attachments.
- If Yes, move on to the next question.

Are there measures that can be taken to avoid potential impacts to habitat? □ Yes □ No
- If Yes, mark No Effect with noted avoidance measures and Section 7 is complete. Submit form with attachments.
- If No, move on to the next question.

Are there measures that can be taken to minimize potential impacts to habitat? □ Yes □ No
- If yes, mark May Affect – Not likely to adversely affect with the noted minimization measures. Complete letter exchange with IADNR and provide information to IADOT for USFWS consultation.
- If No, Contact IADOT for additional information.

DETERMINATION OF EFFECT
□ No Effect
□ May Affect – Not Likely to Adversely Affect
□ May Affect – Likely to Adversely Affect

Measures to avoid or minimize

References:
□ Natural Areas Inventory □ IA DNR Environmental Review Letter □ Aerial Photos □ Soils of Concern Data
□ IA DNR Website □ USFWS Website □ Other:

Print Name of Preparer and Name of Organization:

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- If Yes, move on to the next question.

**Will the project affect potentially suitable habitat?**
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**Measures to avoid or minimize**

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- Other:

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Date: __________
Section 7 Process

- Describe the habitat in your project area:
  - Describe setting – rural, urban, agricultural
  - Describe vegetation
  - Provide photographs
## Determination of Effect for Threatened & Endangered Species

### For Local Public Agencies

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Attach photos.

### Review habitat characteristics as described in IADNR and USFWS websites, is there habitat?

- Yes
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- USFWS Website
- Other:

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Agency Concurrence: ____________________________ Date: ____________________________
Section 7 Process

Is there Habitat?

No – Complete the Determination of Effect Form and indicate that there is “No Effect”. Section 7 is Complete.

Yes – Move on to the next step.
Section 7 Process

- Review Habitat Characteristics:

  Using the response letters from USFWS and Iowa DNR, look up the species cited on each agency’s website. The websites describe the habitats needed for each species.

www.fws.gov/midwest/endangered/lists/iowa_cty.html

# USFWS Habitat List:

<table>
<thead>
<tr>
<th>Wapello</th>
<th>Indiana bat</th>
<th>Myotis sodalis</th>
<th>Endangered</th>
<th>Caves, mines (hibernacula); small stream corridors with well developed riparian woods; upland forests (foraging)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Map of Indiana Bat range in Iowa (PDF)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Northern long-eared bat</td>
<td>Myotis septentrionalis</td>
<td>Proposed as Endangered</td>
<td>Hibernates in caves and mines - swarming in surrounding wooded areas in autumn. Roosts and forages in upland forests during late spring and summer.</td>
<td></td>
</tr>
<tr>
<td>Prairie bush clover</td>
<td>Lespedeza leptostachya</td>
<td>Threatened</td>
<td>Dry to mesic prairies with gravelly soil</td>
<td></td>
</tr>
<tr>
<td>Western prairie fringed orchid</td>
<td>Platanthera praecula</td>
<td>Threatened</td>
<td>Wet prairies and sedge meadows</td>
<td></td>
</tr>
</tbody>
</table>
Habitat
Data
Sheets

U.S. Fish & Wildlife Service

Threatened and Endangered Species

Indiana Bat
(Myotis sodalis)

The Indiana bat is an endangered species. Endangered species are animals and plants that are in danger of becoming extinct. Threatened species are those that are likely to become endangered in the foreseeable future. Identifying, protecting, and restoring endangered and threatened species are primary objectives of the U.S. Fish and Wildlife Service’s endangered species program.

What is the Indiana Bat?
Description
The scientific name of the Indiana bat is Myotis sodalis and it is an accurate description of the species. Myotis means “mouse ear” and refers to the relatively small, mouse-like ears of the bats in this group. Sodalis is the Latin word for “companion.” The Indiana bat is a very social species; large numbers cluster together during hibernation. The species is called the Indiana bat because the first specimen described to science in 1826 was based on a specimen found in southern Indiana’s Wyandotte Cave in 1804.

The Indiana bat is quite small, weighing only one-quarter of an ounce (about the weight of three pennies). In flight, it has a wingspan of 9 to 11 inches. The fur is dark-brown to black. The Indiana bat is similar in appearance to many other related species. Biologists can distinguish it from similar species by comparing characteristics such as the structure of the foot and color variations in the fur.

Habitat
Indiana bats hibernate during winter in caves or, occasionally, in abandoned mines. For hibernation, they require cool, humid caves with stable temperatures, under 50°F or above freezing. Very few caves within the range of the species have those conditions.

Hibernation is an adaptation for survival during the cold winter months when no insects available for bats to eat. Bats must store energy in the form of fat before hibernating. During the six months of hibernation the stored fat is their only source of energy. If bats are disturbed or cave temperatures increase, more energy is needed and hibernating bats may starve.

After hibernation, Indiana bats migrate to their summer habitat in wooded areas where they usually roost under loose tree bark on dead or dying trees. During summer, males roost alone or in small groups, while females roost in larger groups of up to 100 bats or more. Indiana bats also forage in or along the edges of forested areas.

Reproduction
Indiana bats mate during fall before they enter caves to hibernate. Females store the sperm through winter and become pregnant in spring soon after they emerge from the caves.

After migrating to their summer areas, females roost under the peeling bark of dead and dying trees in groups of up to 100 or more. Such groups are called maternity colonies. Each female in the colony gives birth to only one pup per year. Young bats are nursed by the mother, who leaves the roost tree only to forage for food. The young stay with the maternity colony throughout their first summer.

Feeding Habits
Indiana bats eat a variety of flying insects found along rivers or lakes and in uplands. Like all insect-eating bats, they benefit people by consuming insects that are considered pests or otherwise harmful to humans. Their role in insect control is not insignificant—Indiana bats eat up to half their body weight in insects each night.

Range
Indiana bats are found over most of the eastern half of the United States. Almost half of all Indiana bats (207,000...
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Describe the habitat in your project area: Attach photos.

Review habitat characteristics as described on IADNR and USFWS websites, is there habitat? 

Yes ☐ No ☐ 

If No, mark No Effect and Section 7 is complete. Submit form with attachments.
If Yes, move on to the next question.

Will the project affect potentially suitable habitat? 

Yes ☐ No ☐ 

If No, mark No Effect and Section 7 is complete. Submit form with attachments.
If Yes, move on to the next question.

Are there measures that can be taken to avoid potential impacts to habitat? 

Yes ☐ No ☐ 

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Agency Concurrence: 

Date: 

Federal-aid Overview Seminar
Section 7 Process

Are there measures that can be taken to avoid potential impacts to habitat?

Yes – Complete the Determination of Effect Form and mark there is “No Effect”, describe how it was avoided. Section 7 is Complete.

No – Move on to the next step.
## Determination of Effect for Threatened & Endangered Species
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Section 7 Process

Are there measures that can be taken to minimize potential impacts to habitat?

Yes – Complete the Determination of Effect Form and mark “May Affect – Not likely to adversely affect: with the noted measures. Complete Iowa DNR review and coordination and Iowa DOT will consult with USFWS on behalf of FHWA.

No – Will require more coordination with Iowa DOT, USFWS, and Iowa DNR.
Concurrence

- **Informal:**

  - Informal concurrence involves sending written project information, a Determination of Effect on federally-listed species/habitat and a request for concurrence to USFWS. For state listed species the Iowa DNR is contacted.

    - Concurrence from USFWS concludes informal consultation
    - If the USFWS does not concur, additional surveys or preparation of a Biological Assessment (BA) may be required.
Concurrence

- Formal:
  
  □ Formal concurrence requires a BA and request for formal consultation by FHWA. The USFWS must reply within 30 days, stating whether they concur with the findings of the BA.

  □ Formal consultation ends 90 days after initiated and a Biological Opinion (BO) must be provided by USFWS 45 days after that. The BO answers question of jeopardy/no jeopardy.
Species Specific Information

**Indiana bat**

- To determine whether or not suitable habitat for Indiana bats may exist review the USFWS website
- DOT Standard Specifications requires all tree clearing be performed between October 1 – April 1
**Northern long-eared bat**

Listed as threatened April 2, 2015

Iowa DOT Specifications require winter tree clearing on all projects (effective October 2014)

Guidance, to date, from USFWS identifies winter tree clearing as mitigation measure
Species Specific Information

Topeka Shiner

- To determine whether or not critical habitat for the Topeka shiner exists review the USFWS website.
- When working in Topeka shiner watersheds, include Standard Note 281-6, Best Management Practices – Iowa DOT ‘Special Conditions for Working in Topeka Shiner Watersheds’.
Species Specific Information

- **Bald Eagle**

  - The Bald eagle is not longer listed as threatened or endangered by USFWS or the Iowa DNR.

  - The Bald eagle is protected under the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act.

  - The Iowa DNR recommends limiting disturbance of known nesting sites and winter roosts by creating a minimum ¼ mile no disturbance buffer.
Species Specific Information

- **Migratory Birds**

  - Migratory Bird Treaty Act protects migratory birds, their occupied nests, and their eggs from disturbance or destruction.
  
  - Do not conduct construction activities where active nests are present between the dates of April 1\textsuperscript{st} and July 15\textsuperscript{th} or until the birds have fledged and left the structure.
  
  - If nests are discovered after beginning work, or become established, immediately stop work and notify the Engineer.
  
  - Remove all non-active, existing migratory bird nests and monitor weekly to prevent the establishment of active nests.
  
  - Contact the Iowa DNR with any questions.
Questions?

- Reference Documents:
  - I.M. 4.110, Threatened and Endangered Species

- Iowa DOT Contact Person:
  Mary Kay Solberg
  Location and Environment Bureau
  515-239-1741
  MaryKay.Solberg@iowadot.us
National Environmental Policy Act (NEPA) & Section 4(f)

DeeAnn Newell
NEPA Section Leader
Location and Environment Bureau
Iowa DOT
“The National Environmental Policy Act (NEPA) is our basic national charter for protection of the environment”

40 CFR 1500.1(a)
“NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken.”

40 CFR 1500.1(b)
40 CFR Ch. V – Council on Environmental Quality (CEQ), Part 1500-1508
  □ Establishes policy
  □ Sets goals
  □ Provides means for carrying them out

23 CFR § 771 – Environmental Impact and related procedures
  □ Supplements 40 CFR Ch. V, Part 1500-1508
  □ Process for highway and public transportation projects
From the 1960s, environmental laws pertaining to transportation have increased significantly. (Courtesy FHWA)
When does NEPA apply?

- Federal funding,
- Federal jurisdiction,
- Federal permit, or
- Federal approval.
NEPA - Classes of Action

- Class I - Environmental Impact Statement
- Class II - Categorical Exclusion
- Class III - Environmental Assessment

23 CFR 771.115
## NEPA - Classes of Action

### Class I

**Environmental Impact Statement (EIS)**

Required for actions likely to have significant environmental effects that cannot be mitigated.

Examples include:

- A new, controlled-access freeway
- A highway project of four or more lanes in a new location
Environmental Impact Statement (EIS)

- Draft EIS
- Final EIS
- Record of Decision (ROD)
Compare Alternatives and their impacts
Environmental Studies. The investigations of potential environmental impacts to determine the environmental process to be followed and to assist in the preparation of the environmental document.
Environmental Impact Statement (EIS)

Environmental Studies:
- Cultural resources
- Floodplains
- Prairies
- Recreational areas
- Refuge areas
- Regulated materials
- Sovereign lands
- Special rivers
- Streams
- T&E, wildlife, plant
- Unique land forms
- Wetlands
- Woodlands
- Businesses
- Church’s/cemeteries
- Farmland
- Homes
- Community impacts /Social impacts
- Noise
- Environmental justice
Environmental Impact Statement (EIS)

- Agency and Public Involvement
  - Early Coordination and Scoping Meeting
  - Public Information Meetings
  - Concurrence Point Meetings
  - Public and Agency Review of Draft EIS
  - Public Hearings
  - Public and Agency Review of Final EIS
  - Notice of Decision (Federal Register)
EIS Documentation

- Full Disclosure Document
- Tell the project story
- Keep it brief and use clear concise writing
- Clearly demonstrate regulatory compliance
- Use appropriate graphics to help the reader
- Consistent format
# NEPA - Classes of Action

## Class II

### Categorical Exclusion (CE)

Required for actions that do not individually or cumulatively have a significant environmental effect.

Necessary environmental studies and compliance with all applicable requirements are still required for the project.

### Examples include:
- Pedestrian facilities
- Landscaping
- Routine maintenance, including resurfacing, bridge replacement and rehabilitation, and minor widening
# (c) and (d) lists

## (c) lists

<table>
<thead>
<tr>
<th>§771.117 Citation</th>
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<td>(c)(18)</td>
<td>Track and Railbed Maintenance</td>
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<td>(c)(01)</td>
<td>Funding</td>
<td>(c)(19)</td>
<td>Purchase or Installation for Transit Facility</td>
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<td>Planning</td>
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<td>Promulgation of rules, regulations</td>
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<td>Intelligent Traffic Systems</td>
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<td>Transfer of Federal Lands</td>
<td>(c)(26)</td>
<td>Adding an Auxiliary Lane</td>
</tr>
<tr>
<td>(c)(06)</td>
<td>Noise Barriers</td>
<td>(c)(26)</td>
<td>Grading</td>
</tr>
<tr>
<td>(c)(07)</td>
<td>Landscaping</td>
<td>(c)(26)</td>
<td>Improvement</td>
</tr>
<tr>
<td>(c)(08)</td>
<td>Fencing, signs, pavement markings, traffic signals</td>
<td>(c)(26)</td>
<td>Interchange</td>
</tr>
<tr>
<td>(c)(08)</td>
<td>Railroad Warning Devices or Crossings</td>
<td>(c)(26)</td>
<td>Maintenance</td>
</tr>
<tr>
<td>(c)(09)(i)</td>
<td>Emergency Repair</td>
<td>(c)(26)</td>
<td>New Pavement</td>
</tr>
<tr>
<td>(c)(09)(ii)</td>
<td>Emergency Repair</td>
<td>(c)(26)</td>
<td>Reconstruction</td>
</tr>
<tr>
<td>(c)(10)</td>
<td>Scenic Easements</td>
<td>(c)(26)</td>
<td>Rehabilitation</td>
</tr>
<tr>
<td>(c)(11)</td>
<td>Payback for Property</td>
<td>(c)(26)</td>
<td>Resurfacing</td>
</tr>
<tr>
<td>(c)(12)</td>
<td>Rest Area</td>
<td>(c)(27)</td>
<td>Iowa Clean Air Attainment Program</td>
</tr>
<tr>
<td>(c)(13)</td>
<td>Ridesharing</td>
<td>(c)(27)</td>
<td>Safety Improvement</td>
</tr>
<tr>
<td>(c)(14)</td>
<td>Bus and Railcar Rehabilitation</td>
<td>(c)(28)</td>
<td>Bridge</td>
</tr>
<tr>
<td>(c)(15)</td>
<td>ADA Requirements</td>
<td>(c)(28)</td>
<td>Culvert</td>
</tr>
<tr>
<td>(c)(16)</td>
<td>Transit Administration</td>
<td>(c)(29)</td>
<td>Ferry Vessels - Purchase</td>
</tr>
<tr>
<td>(c)(17)</td>
<td>Purchase Vehicles</td>
<td>(c)(30)</td>
<td>Ferry Vessels - Rehabilitation</td>
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## (d) lists

<table>
<thead>
<tr>
<th>§771.117 Citation</th>
<th>Project/Action Type</th>
<th>§771.117 Citation</th>
<th>Project/Action Type</th>
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</thead>
<tbody>
<tr>
<td>(d)(04)</td>
<td>Corridor Fringe Parking</td>
<td>(d)(13)</td>
<td>Bridge</td>
</tr>
<tr>
<td>(d)(05)</td>
<td>New Rest Areas</td>
<td>(d)(13)</td>
<td>Culvert</td>
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<tr>
<td>(d)(05)</td>
<td>New Truck Weigh Stations</td>
<td>(d)(13)</td>
<td>Grading</td>
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<tr>
<td>(d)(06)</td>
<td>Disposal of excess ROW</td>
<td>(d)(13)</td>
<td>Improvement</td>
</tr>
<tr>
<td>(d)(06)</td>
<td>Limited Use of ROW</td>
<td>(d)(13)</td>
<td>Interchange</td>
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<tr>
<td>(d)(07)</td>
<td>Access Control Changes</td>
<td>(d)(13)</td>
<td>Iowa Clean Air Attainment Program</td>
</tr>
<tr>
<td>(d)(08)</td>
<td>New bus storage or maintenance</td>
<td>(d)(13)</td>
<td>Maintenance</td>
</tr>
<tr>
<td>(d)(09)</td>
<td>Restoration</td>
<td>(d)(13)</td>
<td>New Pavement</td>
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<tr>
<td>(d)(10)</td>
<td>Bus Transfer Facilities</td>
<td>(d)(13)</td>
<td>Reconstruction</td>
</tr>
<tr>
<td>(d)(11)</td>
<td>Rail Storage Areas</td>
<td>(d)(13)</td>
<td>Rehabilitation</td>
</tr>
<tr>
<td>(d)(12)(i)</td>
<td>Hardship Acquisition</td>
<td>(d)(13)</td>
<td>Resurfacing</td>
</tr>
<tr>
<td>(d)(12)(ii)</td>
<td>Protective Acquisition</td>
<td>(d)(13)</td>
<td>Safety Improvement</td>
</tr>
</tbody>
</table>
Categorical Exclusion (CE)

Do not have significant impacts:

- on **planned growth** or land use for the area;
- on **relocations** of people;
- on **natural, cultural, recreational, historic** or other resources;
- on **air, noise, or water quality**;
- on **travel patterns**;
- either **individually or cumulatively**.

23 CFR 771.117
Programmatic Agreement

- Projects subject to 23 CFR 771.117 (c) and (d) lists.
- Established procedures to expeditiously and efficiently process certain actions.
- Iowa DOT certifies that certain projects meet the criteria set forth in the agreement.
- Recent version dated February 2012.
CE Process:

<table>
<thead>
<tr>
<th>Countersigned</th>
<th>Programmatic</th>
</tr>
</thead>
<tbody>
<tr>
<td>Submit Concept to Iowa DOT</td>
<td>Submit Concept to Iowa DOT</td>
</tr>
<tr>
<td>NEPA classification concurrence with FHWA is required</td>
<td>NEPA classification concurrence with FHWA is not required</td>
</tr>
<tr>
<td>Sponsor provides results of <strong>environmental studies</strong> and agency coordination</td>
<td>Sponsor provides results of <strong>environmental studies</strong> and agency coordination</td>
</tr>
<tr>
<td>Agency consultation (if needed) is completed by Iowa DOT and Project Sponsor</td>
<td>Agency consultation (if needed) is completed by Iowa DOT and Project Sponsor</td>
</tr>
<tr>
<td>Project sponsor will complete memorandum summarizing the results.</td>
<td>Iowa DOT will complete the Environmental Review Summary and project certification.</td>
</tr>
<tr>
<td>The memorandum is countersigned by FHWA Iowa Division and Iowa DOT.</td>
<td></td>
</tr>
<tr>
<td>Iowa DOT will notify the project sponsor when the memorandum is signed and mark the project cleared in TPMS/PSS.</td>
<td>Iowa DOT will notify the project sponsor when certification is complete and mark the project cleared in TPMS/PSS.</td>
</tr>
</tbody>
</table>
Countersigned compared to Programmatic

98%

SFY 2018

CE
PCE
# NEPA - Classes of Action

## Class III

### Environmental Assessment (EA)

<table>
<thead>
<tr>
<th>Environmental Assessment (EA)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Required for actions that do not qualify as a CE, but where there is insufficient information to determine whether the project’s impacts warrant an EIS. An EA may also be a useful tool in that it incorporates environmental considerations with project design and can aid in NEPA compliance when an EIS is not required.</td>
</tr>
</tbody>
</table>

### Examples include:

- Construction of a new highway interchange
- Adding lanes to an existing highway.
Environmental Assessment (EA)

- EA
- Finding of No Significant Impact (FONSI)
EA Documentation

- Primary purpose of an EA is to help the FHWA and HA decide whether or not an EIS is needed
- Address only those resources or features which that will have a likelihood for being significantly impacted
- Concise document and should not contain long descriptions or detailed information
# NEPA Completion Statistics

<table>
<thead>
<tr>
<th>Cleared Projects</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>EIS/ROD</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>EA/FONSI</td>
<td>2</td>
<td>4</td>
<td>5</td>
<td>2</td>
</tr>
<tr>
<td>CE</td>
<td>8</td>
<td>16</td>
<td>12</td>
<td>3</td>
</tr>
<tr>
<td>PCE</td>
<td>355</td>
<td>356</td>
<td>324</td>
<td>251</td>
</tr>
<tr>
<td>Re-evaluations</td>
<td>189</td>
<td>324</td>
<td>394</td>
<td>99</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Average Completion Time</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>EIS/ROD</td>
<td>6 years</td>
</tr>
<tr>
<td>EA/FONSI</td>
<td>4 years</td>
</tr>
<tr>
<td>CE</td>
<td>16 months</td>
</tr>
<tr>
<td>PCE</td>
<td>4 months</td>
</tr>
<tr>
<td>Re-evaluations</td>
<td></td>
</tr>
</tbody>
</table>
Completed NEPA Decisions

98%

SFY 2018

PCE
CE
EA
Section 4(f)

- 49 USC § 303(c)
  It is the policy of the United States Government that special effort should be made to **preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites.**

- 23 USC § 138
  Preservation of parklands

- 23 CFR 774
  The purpose of this part is to implement 23 USC § 138 and 49 USC § 303, which were originally enacted as Section 4(f) of the Department of Transportation Act of 1966 and are still commonly referred to as “Section 4(f).”
Section 4(f)

The Administration (FHWA) may not approve the use of land from a significant publicly owned public park, recreation area, or wildlife and waterfowl refuge, or any significant historic site unless a determination is made that:

(a)(1) There is no feasible and prudent avoidance alternative and (2) The action includes all possible planning to minimize harm to the property resulting from such use; or

(b) (FHWA) determines that the use of the property, including any measure(s) to minimize harm (such as avoidance, minimization, mitigation, or enhancement measures) committed to by the applicant, will have a de minimis impact on the property.
Feasible and Prudent

- Feasible
  - Alternative constructed with sound engineering

- Prudent
  - Evaluation of unusual factors or unique problems, such as cost, environmental impacts, social and economic impacts, or community disruption, that reach extraordinary magnitude
Official with Jurisdiction (OWJ)

Park, Recreational and Refuge Facilities
Individual(s) given responsibility for managing the facility. (i.e. city park director, USACE, County Conservation Board, etc.)

Historic Properties
State Historical Preservation Office
Section 4(f) *de minimis*

- For historic sites, it is found that the project will have "no adverse effect" on the historic property.

- For parks, recreational areas and wildlife and waterfowl refuges, it is where it will not adversely affect the features, attributes, or activities qualifying the property for protection under Section 4(f).
### 4(f) Evaluations

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>No 4(f)</td>
<td>• No impacts to existing 4(f) property OR the property is not subject to 4(f)</td>
</tr>
<tr>
<td>“No Use”</td>
<td>No incorporation of land from a 4(f) property into a transportation facility</td>
</tr>
<tr>
<td>de minimis</td>
<td>“Use,” but because of minimization or mitigation, there is no adverse effect on the qualities or function of the 4(f) property</td>
</tr>
<tr>
<td>Programmatic Evaluation</td>
<td>Minor “Use” of a 4(f) property that meets criteria established by FHWA</td>
</tr>
<tr>
<td>Individual Evaluation</td>
<td>“Use” of a 4(f) property that does not meet Programmatic Evaluation Criteria</td>
</tr>
</tbody>
</table>
## Individual Section 4(f)

### Draft Section 4(f)
- Introduction
- Description of Proposed Action
- Description of Section 4(f) Resources
- Description of Impacts
- Avoidance & Minimization Alternatives
- Mitigation
- Coordination

### Final Section 4(f)
- All the information included in the draft evaluation
- Evidence of unique problems or unusual factors that avoidance alternatives would cause
- Evidence of extraordinary costs or other disruption that avoidance alternatives would cause
- Evidence that the proposed action includes all possible planning to minimize harm
- A summary of the official coordination with all relevant agencies
- Relevant documentation of all comments received
Programmatic Section 4(f)

- Historic Bridges.
- Minor Involvements with Public Parks, Recreation Lands, and Wildlife and Waterfowl Refuges.
- Minor Involvements with Historic Sites.
- Independent Bikeway or Walkway Construction Projects.
- Net Benefit to a Section 4(f) Property.
Section 4(f) Process
23 CFR 774.13 Exceptions

a) **Restoration, rehabilitation, or maintenance** of transportation facilities that are on or eligible for the National Register.

b) **Archeological sites** that are on or eligible for the National Register.

c) Designations of park and recreation lands, wildlife and waterfowl refuges, and historic sites that are made, or determinations of significance that are changed **late in the development** of a proposed action.

d) **Temporary occupancies** of land that are so minimal as to not constitute a use within the meaning of Section 4(f).

e) **Park road** or parkway projects under 23 U.S.C. 204.

f) Certain **trails, paths, bikeways, and sidewalks**.

g) **Transportation enhancement** projects and mitigation activities.

Note: Exceptions require a letter from the official with jurisdiction over the property that states they agree that the project will enhance an activity, feature, or attribute that qualifies the property for Section 4(f) protection.
NEPA CLASSIFICATION
Key items for NEPA Classification

- Attach a location map to indicate the new ROW limits with permanent and temporary easements. Include areas of potential disturbance.
- If available attach preliminary designs indicating where construction is relative to existing alignment.
- Attach photos.
- List potential environmental impacts.
- Identify any unusual features not adequately addressed by concept.
Environmental Review Buffer:

- Create a shape around project limits and provide with concept. Recommend a ± 25 foot buffer from the limits of construction.
- NEPA will clear all project activities inside the limits of your shape.
- Any project activity outside of the buffer, will require a re-evaluation prior to any action.
The Iowa DOT, Office of Location and Environment classified this project as a Countersigned Categorical Exclusion (CE) for the purpose of complying with the National Environmental Policy Act (NEPA). FHWA has concurred with this determination. This is not your NEPA Clearance.

You are required to provide and prepare the necessary information documenting compliance. Janet Vine, of the NEPA Compliance Section will be available to assist you in the NEPA process and provide guidance for you on how to prepare the necessary documentation. Contact Janet at 515.239.1467 to get started on your CE.

Templates and guidance material can be found on the Iowa DOT website: http://www.iowadot.gov/ole/OLESite/Local.aspx?tabname=localce

The Office of Location and Environment procedures manual can be used as a reference when preparing your CE documentation: http://www.iowadot.gov/ole/olemanual.html

Janet may also be reached at: janet.vine@dot.iowa.gov

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FHWA concurred with the CE classification. This is not “clearance”. The project will be cleared after FHWA receives and signs the memo describing the impacts of the proposed project.
NEPA Classification

Classification is not NEPA clearance. This only indicates what type of documentation is required for your project.

Must wait for official NEPA certification or clearance to begin final design and to purchase ROW.

* 23 U.S.C. 108 – Advance Acquisition of Real Property

Map-21 Section 1302 clarifies and expands the types of property interests that may be federally funded and revises the conditions the property may be acquired prior to NEPA review of the project that would use the property
NEPA CLEARANCE
NEPA Certification or Clearance

The NEPA Certifications and Clearances can be found in ERMS as follows:

**Area:** Highway  
**Cabinet:** Environmental  
**Search Group:** NEPA  
**Drawer:** NEPA Document  
**NEPA ID:** 6997
Questions?

- Reference Documents:
  - I.M. 4.020, NEPA Process
  - 23 CFR 771 & 774
Iowa DOT NEPA Section Contacts

- DeeAnn Newell
  515-239-1364
  DeeAnn.Newell@iowadot.us

- Shelby Ebel
  515-239-1999
  Shelby.Ebel@iowadot.us

- Madeline LaPage
  515-239-1467
  Madeline.LaPage@iowadot.us

- Jorge Zamora
  515-239-1251
  Jorge.Zamora@iowadot.us

- Matt Oetker
  515-239-1786
  Matthew.Oetker@iowadot.us
Section 106 of The National Historic Preservation Act of 1966

Cultural Resources Section
Location and Environment Bureau
Iowa Department of Transportation
Presentation Overview

- Section 106
- Applications
- Compliance Steps
- Archaeological & Historic Surveys
- Consultation
- SHPO Review
- Transportation Alternatives Program
Section 106

- The “106 Process”
- Applies to federal actions with potential to affect Historic Properties
  - Highway funding, Army Corps permits, cell towers, etc.
- Historic property
  - Listed in or eligible for listing in the National Register of Historic Places
- Historic properties can be structures, archaeological sites, objects, landscapes
Application

- Governing regulations, 36 CFR 800, are issued by the Advisory Council on Historic Preservation in Washington D.C.

- Federal Agency has responsibility for consultation and compliance, but tasks are usually delegated.

- Iowa Federal Highway Administration (FHWA) delegates administration of most consultation and compliance steps to the DOT.

- State Historic Preservation Officer (SHPO) consults for the majority of projects.
Compliance Steps

- 1st - Is it a Federal Action?
- 2nd - Is it a project type with potential impacts?
- Yes, submit Concept Statement or application for review
  - Needed information - ROW, easements, ground disturbance, structures, known historic properties nearby

1. Identify and evaluate potential historic properties with archaeological and/or historic surveys

2. Assess effects on identified National Register eligible properties

3. Consult to Avoid or Mitigate Adverse Effects
Archaeological & Historic Surveys

- Surveys may be required for any right of way or easement needs impacted by earthmoving activities.
- Notify our bureau about any changes affecting the impact area.
- Lists of qualified archaeologists and historians available from the DOT.
- Our bureau or a University of Iowa staff person can provide advice regarding the need for an archaeology survey.
Consultation

- Review and consultation with the SHPO required for most federal projects
- Official submittals for consultation on FHWA funded projects must go through the DOT
- Consultation also involves interested parties, Tribes, and the public
- SHPO staff can provide additional advice
  - Example: discuss how to rehab historic buildings
SHPO Review

- SHPO has 30 days after receipt of an official submittal to complete a review
- Average SHPO review time is 10 days
- SHPO provides comments, not clearance
- SHPO comments are just one step in Environmental Concurrence process
- National Environmental Policy Act (NEPA) requires evidence of Section 106 compliance
Transportation Alternatives Program (TAP)

- TAP projects cannot have an adverse effects to historic properties
- Historic preservation enhancements review begins with review of the concept/application
- Historic Structures applying for enhancement funds for rehabilitation must be listed in or eligible for listing in the National Register of Historic Places
- For unevaluated structures, consult with SHPO and complete Iowa Structural Inventory Form available on State Historical Society website
TAP (continued)

- Historic building restorations or rehabilitations must follow the Secretary of Interior Standards for Historic Preservation
  - Plan note should reference Standards

- SHPO reviews plans for rehabilitation of historic structures
Advisory Council Flowchart

Initiate Section 106 Process
- Establish undertaking
- Identify appropriate SHPO/THPO
- Plan to involve the public
- Identify other consulting parties

Undertaking is type that might affect historic properties

Identify Historic Properties
- Determine scope of efforts
- Identify historic properties
- Evaluate historic significance

Historic properties are affected

Assess Adverse Effects
- Apply criteria of adverse effect

Historic properties are adversely affected

Resolve Adverse Effects
- Continue consultation

Failure to Agree

No undertaking/no potential to cause effects

No historic properties affected

No historic properties adversely affected

Memorandum of Agreement

Council Comment
For More Information

References:

- I.M. 4.120, Cultural Resource Regulations
- Section 106 Regulations
  36 CFR Part 800 (16 U.S.C.)
- Advisory Council website
  [www.achp.gov/usersguide.html](http://www.achp.gov/usersguide.html)
- SHPO website
  [www.iowaculture.gov/history/](http://www.iowaculture.gov/history/)
- Iowa Code Section 314.24
Questions?

- Iowa DOT Contacts:
  
  Matt Donovan (for Districts 1 and 6)
  515-239-1097
  Matt.Donovan@iowadot.us

  Jacob Woodcock (for Districts 4 and 5)
  515-239-1035
  Jacob.Woodcock@iowadot.us

  Brennan Dolan (for District 2 and District 3)
  515-239-1795
  Brennan.Dolan@iowadot.us