

# INSTRUCTIONAL MEMORANDUMS

## To Local Public Agencies



To: Counties and Cities	Date: November 21, 2024
From: Local Systems Bureau	I.M. No. 4.020
Subject: NEPA Process	

**Contents:** This Instructional Memorandum (I.M.) includes guidelines and procedures for a Local Public Agency (LPA) to protect the environment and meet the requirements of the National Environmental Policy Act (NEPA) of 1969 ([NEPA](#)). The NEPA Process, as designated in this I.M., applies to Federal-aid projects. This I.M. also includes the following attachments:

- [Attachment A](#) - NEPA Process Flowchart
- [Attachment B](#) - Environmental Assessment / FONSI Process Flowchart
- [Attachment C](#) - Environmental Impact Statement / ROD Process Flowchart
- [Attachment D](#) - Section 4(f) Process Flowchart

### General

The National Environmental Policy Act of 1969 ([NEPA](#)) mandates that Federal agencies consider the environmental consequences of their actions. For Federal-aid projects, the Federal Highway Administration (FHWA) has delegated NEPA document preparation to the Iowa Department of Transportation (DOT), but the final approval of NEPA Class of Action and the NEPA document is the responsibility of the FHWA. NEPA is required in order to receive approval from FHWA for the use of Federal-aid for construction. The purpose of these procedures is to provide consideration of a wide variety of social or environmental impacts that may result from the project. For projects that aren't utilizing Federal-aid funds through FHWA, another Federal agency may complete their NEPA process, but it may look different than NEPA through FHWA.

### NEPA Class of Action

Submittal of the Concept Statement ([Form 517001](#)) marks the beginning of the NEPA Class of Action process. There are three main NEPA Class of Actions, as listed in 23 CFR 771.115. These Class of Actions describe the level of documentation required to satisfy the procedural requirements of NEPA. They are described below from the simplest to the most complex level of required documentation. Note: These descriptions only provide a general framework for evaluating anticipated project impacts. Each project will be evaluated individually according to the specific types of impacts that may occur. See [Attachment A](#) to this I.M.

#### Categorical Exclusion (CE)

Projects in this classification do not individually or cumulatively have significant environmental impacts; therefore, they are considered categorically excluded from the requirements to prepare either an environmental impact statement or environmental assessment because the projects do not have significant impacts on the human and natural environment. Most projects will fall into this category. There are two types of CEs.

1. Programmatic CE: This type of CE is for non-controversial projects with no potential for environmental impacts. The project fits the [Programmatic CE Agreement](#) between Iowa DOT Location and Environment Bureau and FHWA. Projects meeting the Programmatic CE criteria do not require review and concurrence by FHWA; however, FHWA does periodic audits of the Iowa DOT's Programmatic CE documentation to ensure it functions in accordance with the Programmatic Agreement for CEs.

Examples of a Programmatic CE would include rehabilitation, resurfacing, restoration (3R), or bridge replacement projects with minor right-of-way needs.

2. Individual CE: This type of CE is for non-controversial projects containing unusual environmental circumstances, such as a 4(f) property or other environmental issues. It would also include projects that do not fit the programmatic CE agreement, but from past experience do not have potential for significant environmental impacts. An individual CE requires FHWA review and concurrence.

Examples of an Individual CE would include: 3R projects, bridge replacement projects with minor right-of-way needs and / or minor alignment shifts, projects that involve a historic bridge, or projects that involve minor impacts to parks or recreational areas.

#### Environmental Assessment (EA)

This classification is used for projects where it is uncertain if there will be significant environmental impacts. The purpose of the EA is to find out if there will be significant impacts to the environment. Should environmental analysis and interagency review during the EA process find a project to have no significant impacts on the quality of the environment, a finding of no significant impact (FONSI) is issued. If the EA reveals that significant impacts are likely, an Environmental Impact Statement (EIS) will be required. See [Attachment B](#) to this I.M.

Examples of an EA might include capacity improvements with alignment shifts requiring residential relocations and / or other potential environmental impacts, such as historic properties, parks, or wildlife areas.

#### Environmental Impact Statement (EIS)

This classification is for projects that will likely result in significant environmental impacts. An EIS is required for major actions that significantly affect the quality of the human environment. An EIS is a full disclosure document that details the process through which a transportation project was developed, includes consideration of a range of reasonable alternatives, analyzes the potential impacts resulting from the alternatives, and demonstrates compliance with other applicable environmental laws and executive orders. The EIS process is completed in the following ordered steps: Notice of Intent (NOI), draft EIS, final EIS, and record of decision (ROD). See [Attachment C](#) to this I.M.

Examples of an EIS may include conversion of a two-lane highway to a four-lane highway or construction of an all new roadway on a new alignment.

### NEPA Requirements

In order to meet the requirements of NEPA, many environmental factors are considered and are discussed below.

#### Section 4(f) Process

49 USC 303 states that the U.S. Government should make a special effort to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites. Section 4(f), as described in 23 CFR 774, requires governmental agencies minimize impacts to Parks, Recreational Areas, Historic Properties and Wildlife Refuges.

Evaluations of 4(f) properties may lead to finding a project has:

- no impact
- temporary impact (refer to 23 CFR 774.13)
- a “de minimis” impact, meaning there is no adverse effect on the qualities or function of a 4(f) property (refer to 23 CFR 774.17).
- a Programmatic Evaluation, meaning a minor use of a 4(f) property that meets criteria established by FHWA (refer to 23 CFR 774.3(d)). The amount of time necessary to complete this process can be significant.
- or an Individual Evaluation, meaning use of a 4(f) property that does not meet Programmatic Evaluation criteria (refer to 23 CFR 774.3(a)). The amount of time necessary to complete this process can be significant.

For projects in parks or recreational lands, such as trail projects or enhancement projects, the LPA shall complete [Form 760006](#), to document the coordination with the Official with Jurisdiction of that property.

The LPA shall identify on the Concept Statement whether any public parks, recreation lands, wildlife / waterfowl refuges, and/or historic sites are within the project’s proximity. If so, refer to [Attachment D](#) to this I.M. for more information and the steps involved in the Section 4(f) Process.

## Water Trails and Paddling Routes

Water Trails and Paddling Routes are considered recreational areas under 23 CFR 774. If a project has the potential for obstruction or falling debris, signage and/or coordination will be required. For more information on this process, see [I.M. 4.200](#), “Water Trails and Paddling Routes”.

## Endangered Species Act

Prior to a project receiving the NEPA Class of Action, the project must be reviewed for impact to any threatened or endangered species. For more information on this process, see [I.M. 4.110](#), “Threatened and Endangered Species”.

## National Historic Preservation Act

The National Historic Preservation Act protects historic and cultural resources. The National Historic Preservation Act includes the Section 106 process, which involves cultural resources and historic properties, including Native American artifacts. The process for reviewing cultural resources and historic properties is detailed in [I.M. 4.120](#), Cultural Resource Regulations. Cultural resource regulations must be reviewed prior to the completion of the NEPA Process.

## Farmland Protection Policy Act

The purpose of the Farmland Protection Policy Act (FPPA) is to “minimize the extent to which Federal programs contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses, and to assure that Federal programs are administered in a manner that, to the extent practicable, will be compatible with State, unit of local government, and private programs and policies to protect farmland.” (7 U.S.C. 4201(b)). If a project requires five acres or less of new right-of-way per mile or per site, the project does not present a significant impact to farmland and the FPPA process is complete. For more information, see [I.M. 4.170](#), Farmland Protection Policy Act.

## **Additional Environmental Requirements**

### Clean Water Act

Projects must be reviewed for impact to Waters of the U.S. This does not need to occur prior to a project receiving NEPA Class of Action, but is an additional environmental consideration necessary for projects impacting Waters of the U.S. For more information, see [I.M. 4.130](#) “404 Permit Process”.

## **NEPA Approval**

The Location and Environment Bureau submits its determination of projects meeting the Programmatic CE to the LPA, as these do not require review and concurrence by FHWA. The Location and Environment Bureau will submit its determination of Individual CE, EA, and EIS project classifications to FHWA for concurrence. Upon concurrence, a notification is sent to the project sponsor indicating the requirements of the classification. If the classification is for an EA or EIS project type, the project sponsor will need a project manager (typically a consultant) who is experienced in preparing environmental documents and thoroughly understands the process for developing these types of projects in accordance with FHWA procedures and standards.

The NEPA process places limits on when certain project activities may begin. One of the activities limited by the NEPA process is final design. Until NEPA Approval has been obtained, final design activities may not begin.

Environmental and related engineering studies, agency coordination, public involvement activities, and preparation of Preliminary Plans are not considered final design. Therefore, these activities may proceed prior to completing the NEPA process. However, work directly associated with preparation, review, or submittal of Check Plans or Final Plans is considered final design.

If Federal-aid is used in the cost of acquiring right-of-way, or if the cost of acquiring right-of-way is being used as a match to Federal-aid, the acquisition may not begin until after NEPA Approval has been obtained. One exception to this requirement is when property is acquired because of a hardship on the property owner, or when purchase is necessary to protect a corridor for future transportation use. However, individual parcels to be

acquired under the hardship or protective buying provisions still must have prior approval by the Iowa DOT and the FHWA.

If Federal-aid is not being used in the cost of acquiring right-of-way, nor is the right-of-way acquisition being used as match to Federal-aid, an LPA may acquire right-of-way prior to completion of NEPA, but they do so at their own risk. The level of risk is unpredictable and will vary by project. Right-of-way acquisitions must still comply with [I.M. 3.600](#), Right-of-Way Acquisition and the Uniform Act. The largest risk is associated with NEPA.

Acquired right-of-way shall not influence the NEPA decision. And it is possible that a NEPA decision could impact right-of-way needs. Also worth noting, FHWA may hesitate to approve a countersigned CE or an EA/EIS document if it appears that right-of-way influenced the NEPA decision. FHWA approval is required for a countersigned CE or an EA/EIS document.

The NEPA Approval milestone in project development is marked by different events for different types of projects, depending on the anticipated level of environmental impacts. The event that marks the completion of the NEPA process depends on the NEPA Class of Action that is required for the project:

- For projects that are classified as a Categorical Exclusion (CE), the NEPA process is complete as of the effective date of NEPA Approval, which is specified in the written notice the LPA will receive from the Iowa DOT Location and Environment Bureau.
- For projects that require an Environmental Assessment (EA) or Environmental Impact Statement (EIS) document, the NEPA process is considered complete as of the date that the FHWA signs the Finding of No Significant Impact (FONSI) or Record of Decision (ROD) document, respectively.

### **Project Scope Changes and NEPA Re-Evaluation**

After NEPA Approval, changes or additions to the project limits require Re-Evaluation. Changes in the physical limits or impacts of the project from the previously approved Concept Statement, if any, shall be identified. This includes changes to the project termini, depth of ground disturbance, and additional impacts to adjacent properties that were not reflected in the approved Concept Statement. The LPA is responsible to communicate these changes to the Administering Team and the Location and Environment Bureau, so NEPA can be re-evaluated.

The approved NEPA document also applies to all projects within the project limits approved by the NEPA document. For example: A project originally receiving NEPA approval involves a historic bridge. The LPA doesn't want to follow all the NEPA requirements for the historic bridge, so the LPA decides to reduce the project scope, and only construct the pavement on either side of the bridge, for the Federal-aid project. A year later, the LPA avoids the NEPA requirements and removes the historic bridge. This is referred to as avoidance, which is not allowed.

Projects also shall have logical termini and shall not be split in separate projects to avoid Federal-aid requirements and NEPA requirements.

If questions or other unique scenarios arise, consult the Administering Team and the Location and Environment Bureau.

### **Combined (Tied) Projects**

When combining non-Federal-aid projects with Federal-aid projects into one contract, in certain situations the NEPA requirements will also apply to the non-Federal-aid projects. The general principle that governs the application of NEPA can be stated as follows: NEPA does not apply to a non-Federal-aid project that is combined with a Federal-aid project, if all the following conditions are met:

1. The projects have independent utility. This means that each project can be constructed and serve its intended purpose, even if the other project is not built. For example, a grading project and a paving project for the same physical limits do not have independent utility, because the grading project itself doesn't result in a useable transportation facility. As another example, a bridge deck overlay and an adjacent roadway overlay would have independent utility, because it is possible to construct one without the other and each would result in a useable transportation facility.

2. The funding and payments for each project can be segregated and tracked separately. This condition is not directly related to NEPA, but since one project has Federal participation and the other doesn't, this is required to ensure that Federal-aid is not used to reimburse ineligible project costs.

3. The non-Federal-aid project was not "de-federalized" simply to avoid NEPA requirements. This means that if the LPA begins developing a Federal-aid project and then run into environmental issues that will require more work than anticipated, the LPA cannot simply remove the Federal-aid or divide the Federal-aid project into separate Federal-aid and non-Federal-aid projects. The potential environmental impacts of a project may be considered before deciding which type of funds to use, but once the Federal-aid project development process begins, the LPA must comply with the NEPA requirements.

If the combined projects do not meet the criteria outlined above, for purposes of NEPA, they will be viewed as one project, and therefore the NEPA process and associated requirements would apply to all the combined projects. Please note this guidance pertains only to the applicability of NEPA. The criteria outlined above has no effect on other Federal requirements, some of which always apply to the whole contract, including any non-Federal-aid projects included in the contract. Examples include Davis-Bacon wage rates and Buy America provisions.

If an LPA has project-specific questions, or if are unsure whether their project meets these criteria, please contact the appropriate Iowa DOT Administering Team. The Administering Team will consult with the Iowa DOT Location and Environment Bureau as needed to determine whether NEPA will apply to non-Federal-aid projects combined with Federal-aid projects.

### **Federalizing a Project**

A project is (or may be) considered "Federalized" if any of the following exist:

- A project has a FHWA Environmental Concurrence (NEPA Clearance) that results in a CE, EA, or EIS. A project with a NEPA Clearance that results in a Programmatic CE is not considered Federalized.
- A project has been authorized by FHWA to expend Federal funds.
- A project has utilized Federal-aid for any phase of work, such as Preliminary Engineering, Construction, Right-of-Way, Utilities, etc.
- A project had a Planning Study that utilized Federal-aid *may* have been Federalized.
- Approval of an Interstate System Access change (commonly referred to in Iowa as an Interchange Justification Report or IJR) for a new or revised access, it has likely been Federalized.
- Any other "Federal Action" by FHWA has been granted.

If a project is considered "Federalized" and the project is not going to utilize Federal-aid, then there are certain Federal requirements that will still apply to a project. Build America, Buy America (BABA) will still apply, as do any commitments made during the NEPA process. However, traditional Federal-aid requirements such as the FHWA-1273 and Davis-Bacon wages do not apply in this situation. Contact the Administering Team for additional information.