

# Environmental and Historic Preservation (EHP) Documentation (Requirement 14)

## 14.1 Environmental and Historic Preservation Documentation

**NTIA Guidance: Attachment: Submit a document which includes the following:**

- Description of how the Eligible Entity will comply with applicable environmental and historic preservation (EHP) requirements, including a brief description of the methodology used to evaluate the Eligible Entity's subgrantee projects and project activities against NTIA's National Environmental Policy Act (NEPA) guidance. The methodology must reference how the Eligible Entity will use NTIA's Environmental Screening and Permitting Tracking Tool (ESAPTT) to create NEPA project records, evaluate the applicability of categorical exclusions, consider and document the presence (or absence) of Extraordinary Circumstances, and transmit information and draft NEPA documents to NTIA for review and approval.
- Description of the Eligible Entity's plan to fulfill its obligations as a joint lead agency for NEPA under 42 U.S.C. 4336a, including its obligation to prepare or to supervise the preparation of all required environmental analyses and review documents.
- Evaluation of the sufficiency of the environmental analysis for your state or territory that is contained in the relevant FirstNet Regional Programmatic Environmental Impact Statement (PEIS), available at <https://www.firstnet.gov/network/environmental-compliance/projects/regional-programmatic-environmental-impact-statements>.
- Evaluation of whether all deployment related activities anticipated for projects within your state or territory are covered by the actions described in the relevant FirstNet Regional PEIS.
- Description of the Eligible Entity's plan for applying specific award conditions or other strategies to ensure proper procedures and approvals are in place for disbursement of funds while projects await EHP clearances.

## Purpose

The purpose of this document is to provide information on how the Indiana Broadband Office (IBO) will ensure subgrantees will comply with environmental and historic preservation requirements including but not limited to the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*) (NEPA), Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*) (NHPA), Section 7 of the Endangered Species Act (16 U.S.C. 1521, *et seq.*), Section 404 of the Clean Water Act (33 U.S.C. 1251, *et seq.*), and all other applicable Federal, state, and local environmental laws and regulations.

## **Environmental and Historic Preservation Requirements**

The IBO will ensure full compliance with all applicable environmental and historic preservation (EHP) requirements by adhering to the requirements of the National Environmental Policy Act (NEPA), Section 106 of the National Historic Preservation Act (NHPA), Section 7 of the Endangered Species Act, and Section 404 of the Clean Water Act, as applicable, and NTIA's programmatic guidance. This compliance is a critical part of the project review process, and all subgrantee projects will undergo a detailed evaluation to ensure minimal environmental and historic impacts.

### **NEPA Compliance**

The IBO will serve as a joint lead agency for NEPA and will design and implement a program to ensure compliance by the work implemented by subgrantees. As a joint lead agency, the IBO will fulfill the role of lead agency, as defined in 42 U.S. Code § 4336a, with respect to proposed deployment activities undertaken. The IBO shall supervise the preparation of required EHP compliance documents or, depending on the complexity of the deployment activity and the capability of the subgrantee implementing the deployment activity, may directly assist in the preparation of such documents. The IBO shall utilize an outside contractor consultant with appropriate subject matter expertise to support the preparation and review of required EHP compliance documents. The IBO will assign an employee staff member to serve as a liaison between subgrantees and the outside contractor and facilitate the IBO's review and concurrence with the findings and recommendations of all EHP compliance documentation prior to approval. The IBO has retained consultant subject matter experts (SME) and GIS specialists to both coordinate review activities and to prepare environmental review documents, as necessary.

The IBO has assigned 1,103 project areas to the participating subgrantees throughout the state. The IBO will use its online reporting and compliance platform to receive project implementation plans for these project areas from the subgrantees, detailing the description and location of deployment activities intended to service the project area. The IBO's consultant SMEs will review the information provided in the subgrantee's submittal and, in coordination with the IBO, determine the appropriate level of review required based on NTIA's programmatic and general NEPA guidance.

The environmental review shall be performed by the subgrantee under the supervision of the IBO. In certain circumstances, such as complex deployment activities where environmental assessment is required, the IBO may engage with the subgrantee during the preparation process, providing technical assistance as appropriate, and shall retain the authority of final approval prior to implementation of the deployment activities in question. The IBO shall conduct ongoing discussions with the subgrantees prior to project implementation to determine the appropriate course of action to ensure EHP compliance, taking into consideration the volume and complexity of projects assigned to each subgrantee and the technical EHP capability of each subgrantees.

## NHPA Compliance

The IBO will not allow to be initiated, as enforceable by the Subgrant Agreement, any grant funded implementation activities prior to the completion of reviews required under Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470, et seq.), including any consultations required by Federal law, to include consultations with the State Historic Preservation Office and Federally recognized Native American tribes.

To ensure the timely completion of historic preservation review for all BEAD-funded activities, the IBO will require that Subgrantees provide all such information required to:

- At the earliest possible time, provide the NTIA-assigned Environmental Program Officer sufficient information to initiate Tribal notification via the FCC's Tower Construction Notification System (TCNS) when required for grant-funded activities;
- Provide notified Tribes with information regarding grant-funded activities via their preferred communication means, as identified in TCNS;
- Apply the Advisory Council on Historic Preservation (ACHP) Program Comment to Avoid Duplicative Reviews for Wireless Communications Facilities or any other applicable program comment or program alternative developed to address the Section 106 review of communications facilities;
- Notify NTIA of any Tribal request for government-to-government consultation or any identification that a grant-funded activity may impact a historic property of religious or cultural significance to a Tribe; and
- Provide all consulting parties with the statutorily required time to respond to its determination of a grant-funded activity's effect on historic properties.

## Joint Lead Agency Responsibility Summary

The IBO understands that it shall serve as a joint lead agency to implement EHP requirements under 42 U.S. Code § 4336a, particularly the obligations listed in paragraph (2). As such, the IBO will supervise the preparation of the required analyses and review documents as described in the scenarios in the above section. The IBO is in the process of retaining consultant subject matter experts to direct and coordinate this compliance program.

## Description of FirstNet Regional PEIS Evaluation

The IBO has reviewed the FirstNet Regional Programmatic Environmental Impact Statement (PEIS) utilizing an environmental consulting firm with specialized subject matter expertise to support the evaluation. The FirstNet Regional PEIS Evaluation Memo is attached to this document and contains detailed information regarding the evaluation findings. Based on a thorough review of the Central Region-Indiana PEIS, the IBO has determined that the analysis remains valid for use in subsequent environmental documents. The subgrantees selected by the IBO, and their contractors, must adhere to the latest version of all applicable recommendations and requirements included in Chapter 19 BMPs and Mitigation Measures and all applicable agency documentation.

Currently, it is anticipated that deployment-related activities for projects within Indiana are covered by the actions described in Chapter 19 of the PEIS. In all cases, project scopes will be reviewed, once proposed, to evaluate whether the activities are covered by the FirstNet Regional PEIS. In the event that subgrantee proposed projects are not sufficiently covered by the FirstNet Regional PEIS, additional analysis will be conducted by subject matter experts to determine whether supplemental environmental assessment is required to address identified gaps or deficiencies.

The IBO also reviewed the PEIS with regard to the following:

- Regulatory Changes: no known changes to the environmental or historic preservation laws and regulation in the state of Indiana would have a material impact on the analysis presented in the PEIS.
- Affected Environment: The PEIS adequately described the potentially affected environment in Indiana, including infrastructure and biological resources. It should be noted that one reptile species and one bird species have been listed on the Fish and Wildlife Service's (FWS) Endangered and Threatened Species List since the publication of the PEIS and are believed to or known to occur in Indiana. Additionally, one species of bird previously listed, the least tern, was removed from federal listing. These changes do not have a material potential to impact broadband deployment activities apart from the analyses and protections already in place for threatened and endangered species in the State. The species added to the FWS list since the publication of the PEIS include the following:
  - Eastern massasauga (*Sistrurus catenatus*)
  - Eastern black rail (*Laterallus jamaicensis*)

## NTIA CE Screening Description

The IBO and consultant subject matter experts will utilize the Environmental Screening and Permitting Tracking Tool (ESAPTT) to identify, confirm, and categorize projects that likely qualify for Categorical Exclusions (CATEX) under NTIA's NEPA guidance and those that require further environmental review:

1. **Input Project Information:** A project map and project description will be uploaded to ESAPTT.
2. **Complete ESAPTT Questionnaires:**
  - a. **Categorical Exclusion Questionnaire:** The IBO will utilize ESAPTT to evaluate potential environmental impacts. The IBO's consultant SMEs will complete a questionnaire on the project's scope to identify applicable CATEX, select the CATEX that apply, and confirm that the project qualifies. This review helps in determining whether the project falls under a CATEX or requires further analysis.
  - b. **Extraordinary Circumstances (EC) Questionnaire:** The consultant SMEs will identify if environmentally sensitive resources (e.g., endangered species or historic properties) are present, upload documentation directly through ESAPTT, and indicate mitigation comments to avoid potentially significant impacts.
3. **Summary, Validation, Submittal, and Approval:** The consultant will use their professional expertise to validate that the categorical exclusion should be applied and transmit the Draft NEPA Decision Memo to NTIA for review and approval within ESAPTT.

## Specific Award Conditions (SACs) Description

The Subgrant Agreement to be used for deployment activities includes provisions prohibiting subgrantees from initiating or allowing any grant-funded implementation activities prior to the following:

- The completion of any review required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.) (NEPA), and issuance, as required, of a Categorical Exclusion (Cat Ex) determination, Record of Environmental Consideration (REC), Finding of No Significant Impact (FONSI), Record of Decision (ROD) (hereinafter “decision documents”) that meets the requirements of NEPA;
- The completion of reviews required under Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470, et seq.) (NHPA), including any consultations required by Federal law, to include consultations with the State Historic Preservation Office and Federally recognized Native American tribes;
- The completion of consultations with the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS), as applicable, under Section 7 of the Endangered Species Act (16 U.S.C. 1531, et seq.), and/or consultations with the U.S. Army Corps of Engineers (USACE) under Section 404 of the Clean Water Act (33 U.S.C. 1251, et seq.), as applicable; and
- Demonstration of compliance with all other applicable Federal, state, and local environmental laws and regulations.

Additionally, the Subgrant Agreement requires that the subgrantee:

- will not commence implementation and funds will not be disbursed until any necessary environmental review is complete and NTIA has approved any necessary decision document, except for the limited permissible activities identified in the Subgrant Agreement;
- must timely prepare any required NEPA documents and obtain any required permits, and must adhere to any applicable statutory deadlines as described in 42 U.S.C. 4336g(a); and
- must provide a milestone schedule identifying specific deadlines and describing how Subgrantee proposes to meet these timing requirements including, as required, the completion of consultations, the completion of NEPA and Section 106 reviews, and the submission of Environmental Assessments (EAs) or Environmental Impact Statements (EISs).

## Other Relevant Information

The IBO's Subgrant Agreement also provides for the protection of archaeological resources. Burial sites, human remains, and funerary objects are subject to the requirements of all applicable Federal, Tribal, state, and local laws and protocols, such as the Native American Graves Protection and Repatriation Act (NAGPRA), in addition to Section 106 of the NHPA. Subgrantees must provide notification of inadvertent discoveries and potential impacts to these resources. The Subgrant Agreement requires that if any potential archeological resources or buried human remains are discovered during construction, the subgrantee must immediately stop work in that area, secure that area, and keep information about the discovery confidential, except to notify the IBO, the interested SHPO, and potentially affected Tribes. Such construction activities may then only continue with the written approval of the IBO.