The Environmental Review Process for Federally Funded LPA Projects

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Bureau of Environment

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Presentation Overview

- What is NEPA?
- Laws, Rules & Regulations
- A NEPA Process
- What is Section 4(f)?
- Environmental Review Timeline
Federal Laws
- National Historic Preservation Act
- Endangered Species Act
- Clean Water Act
- US DOT Act
- Land & Water Conservation Fund
- Coastal Zone Management Act
- Others

State Laws
- Native Plan Protection Act
- Dredge & Fill in Wetlands
- Endangered Species Conservation Act
- Shoreland Water Quality Protection Act
- Others
What is NEPA?

- Environmental review does not supercede the need to obtain other permits, etc. (i.e. Wetlands Bureau, Corps of Engineers, Coast Guard, etc.), which are the responsibility of the project sponsor.
- SRTS Non-Infrastructure Projects do NOT require individual review since they do not lead to construction or require construction
A NEPA Process...

- Interdisciplinary approach
- Stepwise process
  - Identify the Purpose and Need
  - Contacting affected groups
  - Identifying the resources
  - Involving the public and other stakeholders
  - Environmental documentation
    - Purpose and Need
    - Alternatives
    - Expected impacts after minimization
    - Mitigation, if needed
Identify the Purpose and Need

- What are the major conditions that need to be changed.
- List major objectives (purpose) for each identified need
- Link your analysis (documentation) and the final decision (FHWA classification) to achievement of objectives and resolution of environmental issues
Identify the Purpose and Need

- Project Purpose and Need
  - The purpose of this project is…
  - The need for this project is demonstrated by…
  - The purpose is NOT the proposed action
  - The purpose of this project is to **replace the bridge**… *(WRONG)*
  - The purpose of this project is to correct structural deficiencies associated with a red list bridge… *(RIGHT)*
Tying Purpose & Need to Proposed Action

- The **purpose** of this project is to remove a structurally deficient bridge from the NHDOT Red List and increase safety of the traveling public.

- The **need** for this project is demonstrated by the structurally deteriorated condition of the bridge deck and structural steel (FSR 18/100), poor site distance, high frequency of flooding at the bridge, and substandard approach guardrail.

- The **proposed action** consists of the replacement of the bridge that carries NH Route X over the Y River, with associated approach work.
Contacting Affected Groups

- Send letters to:
  - Local Officials
  - State and Federal Officials responsible for resources
  - Others as appropriate

Start coordination EARLY
Identifying (known) resources

- On-line Tools
  - Natural Heritage Bureau
  - US Fish & Wildlife Service
  - GRANIT
  - NHDES OneStop
  - FIRMETTE
    - Local ordinances

- May require coordination with other resource agencies
Identifying (known) resources

- Environmental Justice
  - Minority Populations
  - Low Income Populations
  - US Census Block Data
  - Consult with NHDOT in most cases
- Section 6(f) Properties
  - Land & Water Conservation Fund
  - DRED (State liaison)
Identifying (potential) resources

- Wetlands
  - CWS
- Rivers/streams
- Shoreland
- Invasive species
- Stream crossings
Identifying (potential) resources

- Cultural resources
  - Archaeology/History
  - NHDHR (SHPO)
  - RPR Form
  - Section 106 NHPA
  - Forms
    - Project Area
    - District Area
    - Individual

NEW Transportation RPR
Identifying (potential) resources

- **Air Quality Considerations (qualitative)**
  - All projects
  - Sidewalks and crosswalks typically exempt (unless they involve signal installation/alteration)

- **Air Quality Analysis (quantitative)**
  - Installation/adjustment of traffic signals
  - Intersection reconfiguration

- **Contact BOE prior to:**
  - Any project in Manchester or Nashua
  - Any project listed as “Regionally Significant in the STIP.

Projects must be included in the STIP
Identifying (potential) resources

- Noise Considerations (qualitative)
  - All projects
  - Sidewalks and crosswalks typically exempt

- Noise Analysis (quantitative)
  - Construction of a new highway
  - Substantial alteration to vertical or horizontal alignment
  - Addition of through lanes
Special Contamination Issues

- Sources of contamination for all projects
  - Adjacent sites listed with DES – UIC, LUST, GMP, AUR, Landfills, Laundromats, Spills/releases (OneStop)
  - Visual evidence of contamination
    - Stained soils
    - Stressed vegetation
    - Monitoring wells
  - Suspected sources of contamination
    - Manufactured gas plants
    - Urban fill
    - Railroads
    - People in hazmat suits
Special Contamination Issues

- Sources of contamination for all projects (cont.)
  - Asbestos Containing Materials (ACM)
    - Bridges constructed between 1958 and 1978
      - Mastic
      - Pavement
      - Membrane
    - Transite pipe
  - Any project in Nashua or Hudson
  - Lead Paint
    - Manifests
    - Handling, Transportation, Disposal
Evaluating Alternatives

- Proposed Action
- Alternatives Considered
  - No Build
  - Reduce/avoid impacts
  - Rehabilitation (bridges)
- All alternatives should relate back to Purpose and Need
Involving the public

- Public Officials Meetings
- Public Informational Meetings
- Public Hearings
- Resource Agency Meetings
NHDOT Monthly Resource Agency Meetings

- NHDOT Natural Resource Agency Meeting
  - 3rd Wednesday of Each Month
  - Contact Christine Perron

- NHDOT Cultural Resource Agency Meeting
  - 1st & 2nd Thursday of Each Month
  - Contact Jill Edelmann
Natural Resource Agency Meetings

Schedule when:
- Initial Review
- Alternatives Analysis
- Environmental impacts
  - Wetlands
  - Floodplains
  - Other resource impacts
- May not be necessary if natural resource impacts are not anticipated

A review at this meeting streamlines wetlands permitting also.
Cultural Resource Agency Meetings

- Agencies Represented
  - NHDHR
  - FHWA (Lead Agency)
  - Consulting Parties
- Laws/rules
  - RSA 227-C
  - Section 106 NHPA
  - Section 4(f)

"Everyone here? Good. Meeting topic: Setting world record for shortest meeting. All in favor say aye. Ayes have it. Meeting over."
Cultural Resource Agency Meetings

- **Process**
  - Request for Project Review (RPR) Form
  - Determine Area of Potential Effect (APE)
  - Project Effects
    - No Historic Properties Affected
    - No Adverse Affect
    - Adverse Affect
  - May require historic/archaeological surveys
  - Adverse effects require mitigation
  - FHWA decision w/SHPO concurrence
Cultural Resource Agency Meetings

- LPA Effects Memo
  - Discuss project effect
  - Detail mitigation
  - Represents approval
  - Required

RPR form is not sufficient to satisfy Section 106
NEPA Documentation Options

- Environmental Impact Statement (EIS) (Class I)
- Environmental Assessment (EA) (Class III)
- Categorical Exclusion (CE) (Class II)
  - Individual CE (25%)
  - CE Programmatic Determination Checklist (*The Checklist*) (75%)
Programmatic Categorical Exclusions (Programmatic CE)

- Projects with demonstrated history of **not** having **significant** environmental impact
- Stepwise Process – applies to all categories of NEPA action!
Programmatic CE

Project Description

State of New Hampshire – Department of Transportation

CATEGORICAL EXCLUSION
PROGRAMMATIC DETERMINATION CHECKLIST

Action/Project Name: CITY
Federal Project Number: X-A001(###)
State Project Number: ######
CE Action Number: #

Description of Project (Attach Location Map, As Appropriate):

DETAILED DESCRIPTION SHOULD INCLUDE:
1) PROJECT LIMITS,
2) PROJECT LOCATION,
3) PURPOSE AND NEED,
4) DESIGN PARAMETERS,
5) ANY OTHER SPECIAL CONSIDERATIONS.
<table>
<thead>
<tr>
<th>PROGRAMMATIC CATEGORICAL EXCLUSION CRITERIA</th>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>1a. Air Quality - Is the proposed action a non-CWAC project requiring a conformity determination?</td>
<td>[ ]</td>
<td>[ ]</td>
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<tr>
<td>1b. Air Quality - Does the proposed action require a 3-hour CO2?</td>
<td>[ ]</td>
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<td>2. Cultural Resources - Does the proposed action have an adverse effect on properties eligible for or listed in the National Register of Historic Places?</td>
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<td>3. Endangered Species - Does the proposed action affect species and critical habitat of species listed in the Endangered Species Act?</td>
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<td>4. Floodways - Does the proposed action approach the regulatory floodway of river courses or water bodies?</td>
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<tr>
<td>5. Noise - Is the proposed action a Type I/II Highway project?</td>
<td>[ ]</td>
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<tr>
<td>6a. Right-of-Way - Does the proposed action require the acquisition of residences or businesses?</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>6b. Right-of-Way - Does the proposed action arrive on fee simple acquisition of public easements to any extent that impair the functions of the affected property?</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>7. Sections 404 - Does the proposed action require the use of any property protected by Section 404 of the 1968 CECOT Act, other than that for which a discharge permit has been issued?</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>8. Sections 404 - Does the proposed action require the use of any property protected by Section 404 of the CERCLA Act?</td>
<td>[ ]</td>
<td>[ ]</td>
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<tr>
<td>9. Water Quality - Does the proposed action have more than a negligible impact on surface waters?</td>
<td>[ ]</td>
<td>[ ]</td>
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<tr>
<td>10. Waterways - Does the proposed action require an Army Corps of Engineers Individual Permit?</td>
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<td>[ ]</td>
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<tr>
<td>11. Other - Do any of the above conclusions benefit from more detailed explanation or are there other factors of concern?</td>
<td>[ ]</td>
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</table>

If the answer to any of the above questions is YES, the proposed action does not qualify for a Programmatic Exclusion. The Checklist should be completed page 2, and page 3 while appropriate forms must be submitted as required. If the answer to any of the above questions is NO, the proposed action does not qualify for a Programmatic Exclusion. The Checklist should be completed page 2, and page 3 while appropriate forms must be submitted as required.

Note: Post-hearing findings, evaluation, and their dispositions, are indicated on the next page.

<table>
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<th>ENVIRONMENTAL COMPLIANCE</th>
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<td>[ ] The proposed action qualifies for a Programmatic Exclusion.</td>
</tr>
<tr>
<td>[ ] The proposed action does not qualify for a Programmatic Exclusion.</td>
</tr>
</tbody>
</table>

Prepared by: [Name]
Date: [Date]

Approved by: [Name]
Date: [Date]

Note: Post-hearing findings, evaluation, and their dispositions, are indicated on the next page.
Programmatic CE

- Environmental Commitments
- Items needing follow up after approval of NEPA
- Successful implementation
- Applies to all categories of action
Programmatic CE

- Detailed Discussion
- Additional information
- Demonstrates understanding of issues
- Allows NHDOT/FHWA to complete approval process

DETAILED DISCUSSION OF PROGRAMMATIC CE CRITERIA

1a & 1b. Air Quality – Is the proposed action a non-CMAQ project requiring a conformity determination? A conformity determination is not required as this project is consistent with the projects listed in Table 2 of 40 CFR 93.125.

2. Cultural Resources – Does the proposed project action have an adverse effect on properties eligible for or listed in the National Register of Historic Places? No. The project was determined to have [effect] on historic resources. Detal any stipulations conditioning the effect memo from SHPO.

3. Endangered Species – Does the proposed action affect species and critical habitat of species protected by the Endangered Species Act as determined through consultation with USFWS, NHP, and for N.H.R.H.S., as appropriate. The work will not affect species and/or critical habitat of species protected by the Endangered Species Act, as no work will be completed within waterways, wetlands or require removal of vegetation.

4. Floodways – Does the proposed action approach the regulatory floodway of water courses or water bodies? No. No work will be completed within wetlands or waterways.

5. Noise – Is the proposed action a Type I highway project? No.

6a & 6b. Right-of-Way – Does the proposed action require the acquisition of residences or businesses? No.

7. Section 6(f) – Does the proposed action require the use of any property protected by Section 6(f) of the 1966 US DOT Act, other than that for which a de minimis impact finding has been made? No. There will be no easements or acquisitions from property considered historic, publicly-owned public parks, or fish and wildlife refuges.

8. Section 6(f) – Does the proposed action require the use of any property protected by Section 6(f) of the L&WC Act? No. Based on coordination with the Department of Resources and Economic Development there will be no Section 6(f) properties impacted, either permanently or temporarily, during construction.

9. Water Quality – Does the proposed action have more than a negligible impact on surface waters? No. There are no water bodies within 1 mile of the project area listed on the 303(d) list as available through the Department of Environmental Services website. OR

   The project area is within 1 mile of an impaired water as listed with the Department of Environmental Services. However, the proposed project will not further impair the area for the listed pollutants.

10. Wetlands – Does the proposed action require an Army Corps of Engineers Individual Permit? No. There will be no surface waters or wetlands impacted by the construction of this project.

11. Other – Do any of the above conclusions benefit from more detailed explanation or are there other issues of concern? No.
Programmatic CE

- Attachments/ Back up
  - Location map
  - Section 106 memo
  - NHNHB memo
  - USF&WS memo
  - FIRMETTE and/or NHOEP memo
  - Section 6(f) memo
  - Contamination review
  - Photographs
  - Plans
Projects that cannot be a Programmatic CE

- Modernization of a highway by reconstruction, adding shoulders or adding auxiliary lanes (e.g. parking, weaving, turning, climbing)
- Bridge reconstruction, replacement or the construction of grade separated rail crossings
- Transportation corridor fringe parking facilities
- Construction of new truck weigh stations or rest areas
- **MAP-21 WILL EVENTUALLY CHANGE THIS**
Individual/Non-Programmatic CE

- Proposed Action
- Purpose and Need
- Alternatives
- Affected Resources
  - Description
  - Impacts
- Mitigation
- Environmental Commitments

Information you already know
Categorical Exclusion

- Impact Analysis
  - Avoidance – Alternative selection
  - Minimization – Variations on selected alternative
  - Mitigation – Additional actions to offset unavoidable impacts
Categorical Exclusion

- Environmental Commitments
  - Successful implementation is a requirement.
  - Tracking
  - “SHALL,” not “should” or “will”
  - Made by resource agencies or NHDOT

“Prior to the commencement of construction related activities, the contractor responsible for the work shall implement a Storm Water Pollution Prevention Plan (SWPPP).”

“All work in front of the cemetery, exclusive of work within the footprint of the existing roadway shall be monitored by an archaeologist with experience recovering historic burials.”
Section 4(f) Evaluations

- Work with NHDOT Bureau of Environment
Section 4(f) Evaluations

- < 5% of LPA Projects
- Resources
  - Publicly Owned Public Parks and Recreation Areas
  - Fish & Waterfowl/wildlife Refuges
  - National Register Listed/eligible Historic Properties
Section 4(f) Evaluations

- Feasible and Prudent
- Avoidance Alternative
- Least Overall Harm
- Officials with Jurisdiction
Types of Section 4(f) Evaluations

- *De minimis* impact finding
- Programmatic 4(f) Evaluation
- Full Section 4(f) Evaluation
NEPA/Section 4(f) Processing

- Initial draft review (PDF) (1-2 weeks)
- Final to Ronald Crickard (c.c. DOT PM)
  - 4 Copies
  - Full 4(f):
    - Draft: 17 Copies (1 hard copy, 16 electronic (CD))
    - Final: 12 Copies (1 hard copy, 11 electronic (CD))
Classification and NEPA Completion

- **Classification**
  - In house (Prog. CE)
  - By FHWA (CE)

- Environmental Commitments Memo

STATE OF NEW HAMPSHIRE
INTER-DPARTMENT COMMUNICATION

FROM: Charles M. Hood
Acting Administrator
Department of Transportation

SUBJECT: Portsmouth
K-0003 (MSM)
4403 Market Street Extension/Bike-Fed Route

TO: Kim Maddal, P.E.,
Project Manager
Bureau of Planning and Community Assistance

Enclosed is a copy of the environmental document prepared for the subject project by the City of Portsmouth.

In accordance with the Agreement executed by the Department and the Federal Highway Administration (FHWA), the subject project has been determined to meet the criteria for proceeding as a Programmed Categorical Exclusion (PCE/PE). This determination represents the final approval. The project does not require a public hearing; therefore, it concludes the NEPA process.

The project is exempt from FHWA oversight.

A NHI Wetlands Bureau (NWWB) permit is required for this project. An application has been submitted to the NWWB. This project will not require a US Army Corps of Engineers permit.

Environmental commitments have been made, as noted on page 2 of the environmental document. It is the responsibility of the City to assure that environmental commitments are implemented as intended. It is expected that appropriate alternative public transportation measures will be implemented if needed, as necessary. This is particularly important where wetlands or other natural resources are adjacent to construction areas.

Please be advised, if project changes occur the bureau should be consulted to determine if a follow-up review of environmental impacts is required.

Charles M. Hood

Kim Maddal, P.E.
City of Portsmouth through R. Maddal (Email)
Bureau of Planning and Community Assistance
FHWA (Kim Maddal)

Enclosed is a copy of the environmental document.
Classification Timetable

- Programmatic CE: 1-2 Weeks
- Non-Programmatic CE: 2-3 Weeks (Requires review and approval by FHWA)
  - Programmatic 4(f): 3-4 Weeks
  - Full 4(f): 14-16 Weeks (DOI review)
Take Home Messages

- Early Coordination
- Bureau of Environment is available to assist you
- Understand your project before setting scope and fee
  - Consider alternatives – don’t pre-decide
  - Consider the issues/constraints
  - Is it likely a Programmatic CE or Individual CE?
Take Home Messages

- NEPA is conducted as part of PRELIMINARY DESIGN
  - Cannot move to final design until NEPA is approved by FHWA
  - For Programmatic CEs, NHDOT has FHWA authority to approve NEPA
- NEPA process takes time
Take Home Messages

- NHDES Stream Crossing Rules
  - Bridge and culvert projects
  - “Compliant” designs ($(1.2 \times \text{Bfw}) + 2’$)
  - Alternative designs
Take Home Messages

- Special Contamination Issues
  - The presence of contamination does not typically change project classification
  - Requires provisions in the contract documents, if impacted
  - Bureau of Environment can provide guidance
Take Home Messages

- Environmental Commitments
  - Successful implementation is required
  - Track them before and during construction
Take Home Messages

- Plan for potential expenses
  - Archaeological surveys
  - Historic surveys
  - Endangered Species/Habitat surveys
  - Air/Noise analyses
  - Stream crossing rules
  - Contamination surveys
Take Home Messages

- MAP-21
  - New Categorical Exclusions for:
    - Emergencies – roads, highways, bridges (same location)
    - Projects w/in the ROW
    - Projects with limited Federal assistance
      - > $5M
      - Project > $30M, and Fed funds comprise less than 15%
Questions?