

**MATERIALS AND
CONSTRUCTION
CONFERENCE 2026-
NEPA OVERVIEW**



LIST OF TOPICS

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A landscape photograph showing rolling hills. In the foreground, there is a field of tall, green grass. A path or road winds through the middle ground, leading towards a golden field. The sky is overcast with grey clouds. The text "WHAT IS NEPA?" is overlaid in the center of the image.

WHAT IS NEPA?

NEPA

A topographic map showing contour lines in shades of brown and green, representing elevation and terrain. The map is partially obscured by a dark blue vertical bar on the left side.

- **The National Environmental Policy Act (enacted in 1970) was one of the first laws ever written that establishes the broad national framework for protecting our environment. NEPA's basic policy is to assure that ALL branches of government consider the environment prior to undertaking any major federal action that significantly affects the environment.**

In other words...

Basically, the federal government's mandatory "look before you leap" rule to make agencies stop, think, and write a report about how their project might accidentally break nature, historical structures, or potential archeological sites. It is the "Magna carta" of eco law, forcing them to consider if there is a less messy way to do things before they commit.

NEPA DOCUMENT TYPES

NEPA Document Types and Approximate Clearance Schedules

01

Programmatic Categorical Exclusion

- Type 1 (PCE Type 1)- (1-2 Weeks)
- Type 2 (PCE Type 2)- (4 to 6 months)
- FHWA Approved (CE) – (6 to 9 months)

02

Environmental Assessment (EA)

Finding of No Significant Impact (FONSI)

(18 to 36 months)

03

Environmental Impact Statement (EIS)

Record of Decision (ROD)

(2 – 5 years)

The main step of the initial screening is to determine what type of clearance document is going to be required. This is a big part of how long the project will take to get it's NEPA clearance document completed.

An Environmental Impact Statement (EIS) is prepared for projects where it is known that the action will have a significant effect on the environment.

An Environmental Assessment (EA) is prepared for actions in which the significance of the environmental impact is not clearly established. 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.

Categorical Exclusions (CEs) are issued for actions that do not individually or cumulatively have a significant effect on the environment.

COMPONENTS OF NEPA

NEPA Umbrella



- ◆ **Section 7- Endangered Species Act**
- ◆ **Section 404- Clean Water Act**
- ◆ **Section 106- National Historic Preservation Act**
- ◆ **Section 4(f)- Parks, recreation areas, refuges, historic properties**
- ◆ **Section 6(f)- use of land and water conservation funds**

- ◆ **Other federal and state regulations**

Slide stolen from Sondra Mullins-former assistant director of the NEPA Compliance and Permitting Section...

SECTION 7 ESA

Section 7 of the Endangered Species Act (ESA) is a mandatory process that requires federal agencies to ensure that any action they authorize, fund, or carry out—such as building a bridge, issuing a permit, or managing land—does not jeopardize the existence of endangered or threatened species or destroy their critical habitat.

(<https://www.fws.gov/service/esa-section-7-consultation>)

It can also be described as...

A high-stakes, legally mandated game of “mother may I?” played between federal agencies and wildlife experts. If a creature is actually in danger, it requires formal consultation, which is basically a 135 day (or shorter) interrogation where experts say “no” a lot.

The WVDOH currently has two liaison positions at the USFWS. These liaisons complete small project reviews, review biological assessments for larger projects, and are available for meetings or a phone call to answer questions. With their help, we move through the section 7 process easier.

T&E OR THREATENED AND ENDANGERED SPECIES IN WV

THERE ARE ALMOST 30 FEDERALLY LISTED SPECIES (EITHER THREATENED OR ENDANGERED) PROTECTED BY THE ESA IN WEST VIRGINIA:

-MAMMALS: 4 BAT SPECIES (INDIANA BAT, VIRGINIA BIG-EARED BAT, NORTHERN LONG-EARED BAT, AND GRAY BAT). THE TRICOLORED BAT IS PROPOSED FOR LISTING.

-AMPHIBIAN: CHEAT MOUNTAIN SALAMANDER

-FISH SPECIES: CANDY DARTER AND DIAMOND DARTER

-ISOPOD: MADISON CAVE ISOPOD

-CRAYFISH: GUYANDOTTE RIVER CRAYFISH AND THE BIG SANDY CRAYFISH

-FRESHWATER MUSSELS: SEVERAL SPECIES (BOTH LISTED AND PROPOSED)

-GASTROPOD: FLAT SPIRED THREE TOOTHED LAND SNAIL

-CRITICAL HABITAT/PROPOSED CRITICAL HABITAT EXISTS FOR SOME SPECIES IN WEST VIRGINIA





SECTION 106

-Section 106 is a federal law requiring agencies to consider how their projects (like highways, bridges, or cell towers) affect historic, archaeological, or cultural sites. It mandates that federal agencies consult with state officials, tribes, and the public to identify historic properties and find ways to avoid or minimize damage to them.

-It can also be described as...

A federal paperwork scavenger hunt-originating from the National Historic Preservation Act of 1966- that forces government agencies to stop, look around, and ask, “Wait, is this project going to smash something old and cool?”

(https://www.environment.fhwa.dot.gov/env_topics/section_106_tutorial)



Property Types

Buildings • Structures • Objects • Sites • Districts

Eligibility = Significance + Integrity

**36 CFR § 60.4
Criteria for Evaluation
(Significance)**

A. Event

Associated with events that have made a significant contribution to the broad patterns of our history.

B. Person

Associated with the lives of significant persons in our past.

C. Design/Construction

Embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction.

D. Information Potential

Has yielded or may be likely to yield information important in history or prehistory.

Aspects of Integrity

setting **MATERIALS**
LOCATION
Workmanship **design**
feeling **Association**

Measure Change from Present Condition

**36 CFR § 800.5(a)(1)
Criteria of Adverse Effect**

An ADVERSE EFFECT is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the property's integrity.

ADVERSE EFFECTS may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance, or be cumulative.

**36 CFR § 800.5(a)(2)
Examples of Adverse Effects**

- Destruction or Damage of all or part of historic property
- Alteration not consistent with SOI Standards
 - Removal from its Location
 - Change in Use or Setting
- Addition of Visual, Audible, or Atmospheric Elements out of Character
 - Neglect (when not an expected characteristic)
 - Transfer, Sale, or Lease out of Federal Control

4(F)



SECTION 4(F) IS A FEDERAL LAW PROTECTING PUBLIC PARKS, RECREATION AREAS, WILDLIFE REFUGES, AND HISTORIC SITES FROM BEING TAKEN FOR TRANSPORTATION PROJECTS (HIGHWAYS, TRANSIT) UNLESS THERE IS NO "FEASIBLE AND PRUDENT" ALTERNATIVE. IT FORCES PLANNERS TO AVOID THESE SPOTS OR MINIMIZE HARM IF THEY MUST BE USED.

([HTTPS://WWW.ENVIRONMENT.FHWA.DOT.GOV/ENV_TOPICS/4F_TUTORIAL](https://www.environment.fhwa.dot.gov/env_topics/4f_tutorial))

IT CAN ALSO BE DESCRIBED AS...

THE FEDERAL TRANSPORTATION WORLD'S VERSION OF A "DON'T TOUCH MY STUFF" LAW. IF A DOT WANTS TO BUILD A PROJECT THEY MUST FIRST CHECK IT DOESN'T REQUIRE BULLDOZING A PARK, HISTORIC BRIDGE, OR DUCK SANCTUARY. ENSURES THAT THE GOVERNMENT CAN'T JUST PAVE OVER PARADISE WITHOUT A REALLY GOOD REASON AND A LOT OF PAPERWORK.

6(F)



Section 6(f) of the Land and Water Conservation Fund (LWCF) Act ensures that parks or recreational land bought or developed with federal funds remain public outdoor recreation spots forever. If a project (like a highway) needs to convert this land to another use, the agency must replace it with land of equal value, location, and usefulness.

([https://www.fdot.gov/environment/oem-divisions/env/cultural-resources/section-4\(f\)-and-6\(f\)#:~:text=FUND%20\(LWCF\)%20ACT-,Section%206\(f\)%20of%20the%20Federal%20Land%20and%20Water%20Conservation,as%20conditions%20of%20such%20conversions.](https://www.fdot.gov/environment/oem-divisions/env/cultural-resources/section-4(f)-and-6(f)#:~:text=FUND%20(LWCF)%20ACT-,Section%206(f)%20of%20the%20Federal%20Land%20and%20Water%20Conservation,as%20conditions%20of%20such%20conversions.))

4(F) VS 6(F)

SECTION 4(F) REFERS TO THE U.S. DEPARTMENT OF TRANSPORTATION (USDOT) ACT OF 1966 (49 USC § 303), WHICH PROTECTS PUBLIC PARKS, RECREATION AREAS, WILDLIFE/WATERFOWL REFUGES, AND HISTORIC SITES FROM BEING USED FOR FEDERAL TRANSPORTATION PROJECTS.

SECTION 6(F) REFERS TO THE LAND AND WATER CONSERVATION FUND (LWCF) ACT OF 1965, WHICH PROTECTS ANY PROPERTY ACQUIRED OR DEVELOPED WITH LWCF GRANT

4(F): PROTECTS PARKS, REFUGES, AND **HISTORIC SITES** (PUBLICLY OWNED).

6(F): PROTECTS ONLY AREAS FUNDED BY THE LWCF.

**WHAT IS NEEDED FOR A
NEPA CLEARANCE?**

Requirements for Project Clearance Requests to DSN

v. 3/13/2025

- Level 1 Maintenance Activity Checklist
- Location Map
- Topo Map
- Floodplain Map
- Plan Sheets
- Environmental Clearance Zone (should cover all potential alternatives and be submitted as a KMZ)

ROW Impacts

Temporary NO Approximately how many acres?

Permanent NO Approximately how many acres?

Any residential or business takes? NO If yes, how many and where?

Photos

- 1. From structure looking Upstream (US)
- 2. From structure looking Downstream (DS)
- 3. From US of structure looking DS
- 4. From DS of structure looking US
- 5. 360 degree overall view of the project area
- 6. Any structures (houses, buildings, barns, etc) that can be seen from the project

Northeastern Determination Key

IPaC Species List

NO If applicable, has a bat bridge form been requested?

NO Will there be any tree removal over 3" DBH ?
If so, approximate acreage or number of trees

NO Will a 404 permit be required? Regional Individual

Memo that has description of work to be completed, and how traffic will be maintained.

Environmental submittal package:

1. ECZ-environmental clearance zone
2. Maps and plans
3. Level 1 maintenance activities checklist
4. ROW impacts (approximate acreages)
5. Will there be any residential or commercial building takes?
6. Photos
7. USFWS IPAC species list and Northeast determination key
8. Bat bridge form (completed by a biologist in the Environmental section)
9. Tree removal info (approximate number of trees or acreage)
10. Work below OHW
11. A memo with a project description: A good one! Doesn't have to be super detailed but enough to know what the current conditions are and what work will be done.

**WHAT IS INCLUDED IN A
FINAL CE DOCUMENT?**

CE COMPONENTS



- 1. CE memo
- 2. PCE Type 2 form
- 3. SP 107.27 form (if applicable)
- 4. Maps, Plans, Photos
- 5. ArcPro Screening Map
- 6. Section 7 ESA packet
- 7. Bat Bridge form (if applicable)
- 8. WVDNR correspondence
- 9. Cultural Resources



ENVIRONMENTAL COMMITMENTS (SP 107.27 FORM)



-BASED ON A PROJECT'S LOCATION AND IMPACTS YOU MAY SEE SOME SPECIAL PROVISIONS IN A SP 107.27 FORM

-SPECIAL PROVISIONS ARE INCLUDED TO REDUCE THE POTENTIAL IMPACTS TO A HISTORICAL, ARCHEOLOGICAL, OR BIOLOGICAL RESOURCE. SOME EXAMPLES INCLUDE:

-TIME OF YEAR RESTRICTIONS (I.E. TREE CLEARING RESTRICTIONS)

-ENHANCED BMPS

-SAVING A HISTORICAL BRIDGE PLAQUE

-THESE SHOULD BE BROKEN OUT INTO CONTRACTOR'S RESPONSIBILITY AND ENVIRONMENTAL SECTION RESPONSIBILITY.

Special Provision 107.27- Construction Access and Environmental Permits

May 11, 2021

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS
SPECIAL PROVISION
FOR

STATE PROJECT NUMBER: U313-9-19.89
FEDERAL PROJECT NUMBER: PROT-0009(267)D

SECTION 107
LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

107.27-CONSTRUCTION ACCESS AND ENVIRONMENTAL PERMITS:

ADD THE FOLLOWING SUBSECTION:

107.27.3-Environmental Commitment and Mitigation: The Contractor is advised that this project is located within an area for which the Division has made previous environmental commitments. These commitments were outcomes of the environmental process and are contained in the project's NEPA document, in which the Division has pledged and/or has an agreement to perform an activity at a future time, in effort to avoid, minimize or mitigate impacts.

The fulfillment of these commitments and the associated mitigation are essential requirements that must be incorporated into the construction of the project. The Division has translated the mitigation items so that they are clearly understandable to Contractors and inspectors. The project's Environmental Mitigation Requirements are listed below:

This project is within a known-use area for T&E bats, therefore seasonal tree cutting restrictions apply here. Trees can only be cut from November 15 - March 31 ONLY.

Hampshire County

The West Virginia Division of Highways is submitting for your review and approval the Programmatic Categorical Exclusion (PCE Type 2) Classification c(28) Bridge Rehabilitation for the Capon Bridge project. A mussel relocation is required before any in-stream work is performed.

This project has environmental commitments, please ensure that the Special Provision 107.27 included in this CE document, is inserted into the project plans. A mussel relocation is required before any in-stream work is performed. This PCE expires 2/17/2025.

IV. Action(s) Required

A. Mussel survey/relocation for STATE listed streams YES

B. Mussel relocation for FEDERALLY listed streams YES

C. WVDOH Special Provision 107.27, Construction Access and Environmental Permits YES

If a Special Provision 107.27 is associated with your project it will be on the memo, as well as marked on your PCE form.

WHO IS INVOLVED IN NEPA CLEARANCES?

- Archeologists
- Biologists
- Historians
- Combined we are known as the Environmental Section (formerly NEPA Compliance and Permitting Section)

THE ENVIRONMENTAL SECTION HAS SEVERAL EMPLOYEES RANGING FROM 2 YEARS TO 30 + YEARS EXPERIENCE WITH THE WVDOH. THIS GROUP CLEARS APPROXIMATELY 600+ PROJECTS A YEAR, FROM THE SIMPLE CULVERT REPLACEMENT TO A LARGE-SCALE CORRIDOR PROJECT.

Slide stolen from Sondra Mullins-former assistant director of the NEPA Compliance and Permitting Section...

Archaeology Unit

- Rod Demott
- Ben Stewart
- Carl DeMuth
- Wesley Nelson
- Catherine Roberts

Historical Unit

- Randy Epperly
- Tracy Bakic
- Ahleah Boise
- Tyler Wilson
- Whitney Hughes

Natural Resources Unit

- Ashley Gauntt
- Nathan Mullins
- Mikayla Yuchniuk
- Tyler Meador
- Hannah Kasson
- Austin Handley

Engineering Support Unit

- Tracie Moles
- Sara Cremeans
- Sienna Brown

**Note-Permitting is a separate section



**ENVIRONMENTAL
UPDATES-COMING SOON**

**ENVIRONMENTAL
UPDATES-
COMING SOON**



Aquatic Programmatic Agreement with USFWS

- Intends to streamline some of our projects that have impacts below the OHWM (ordinary high water mark) and may affect an aquatic listed species (Candy Darter, Diamond Darter, Freshwater Mussels, and Crayfish).

Statewide Crayfish Agreement with West Liberty University (WLU)

- Working with Zach Loughman and the students in his lab to fund project crawdad, a book dedicated to the crayfishes of West Virginia, and a system for our biologists to shadow experts so they can become certified for crayfish surveys.

One of our newer biologists recently got certified for state listed mussel streams

- This puts two mussel surveyors at our disposal this field season.

**THANK YOU!
QUESTIONS?**

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