

FTA

FEDERAL TRANSIT ADMINISTRATION

FTA Environmental 101: Environmental Compliance and Categorical Exclusions

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Federal Transit Administration

Session Goals

- FTA and Transit Agency Roles in the Environmental Process
- Determining a National Environmental Policy Act (NEPA) Class of Action
- Understanding the Categorical Exclusion (CE) process
- Complying with other Environmental Laws (Section 106 and Section 4(f))

Project Coordination



- NEPA Lead agency
- Manages the environmental process
- Approves NEPA documents



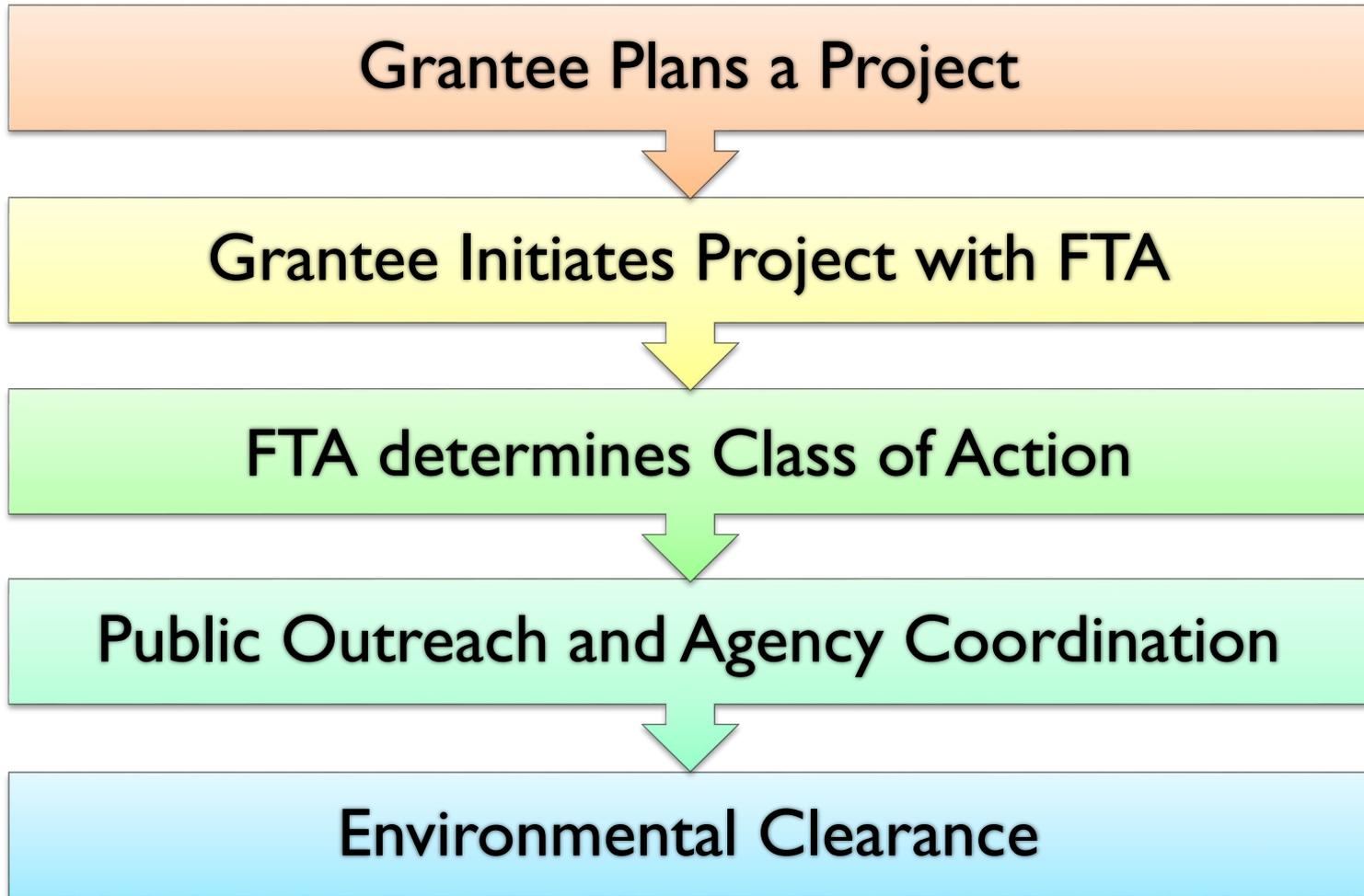
- Coordinates with grant subrecipients, local project sponsors, and stakeholders
- Prepares NEPA document for FTA review and approval
- Implements projects

FTA Involvement in Environmental Review

- Review environmental studies for compliance with statutory and regulatory requirements
- Facilitate discussion with other agencies
- Lead consultation with Federally recognized tribes
- Encourage meaningful public involvement



Steps in the Planning Process



Project Initiation Checklist

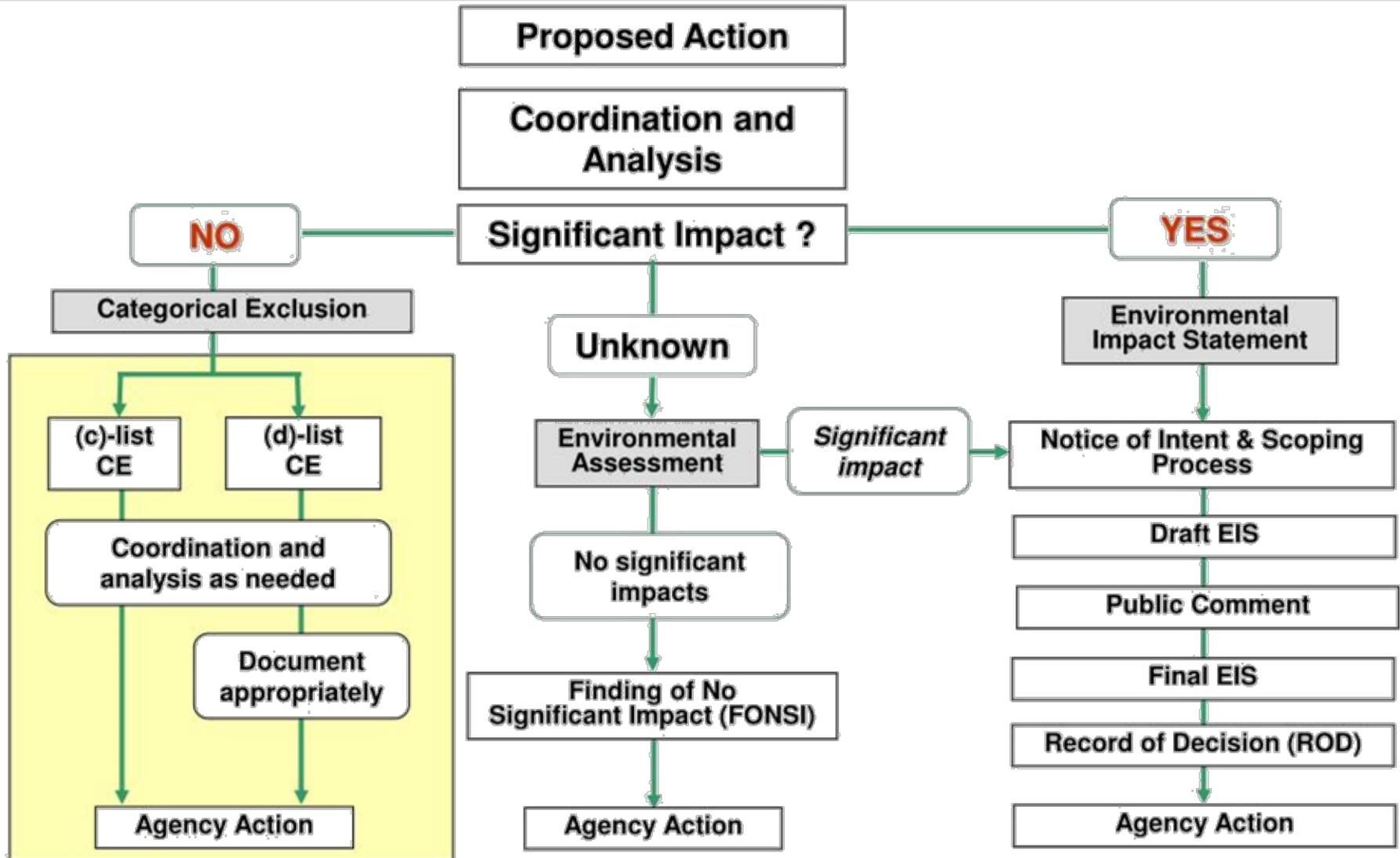
- ✓ Schedule a project initiation/project intake meeting with FTA grant representative early in the planning process
- ✓ Discuss project description and schedule
- ✓ Share project maps
- ✓ Identify right of way (ROW) needed
- ✓ Consider potential environmental impacts and anticipated technical studies
- ✓ Identify funding sources and financial plan

Consider

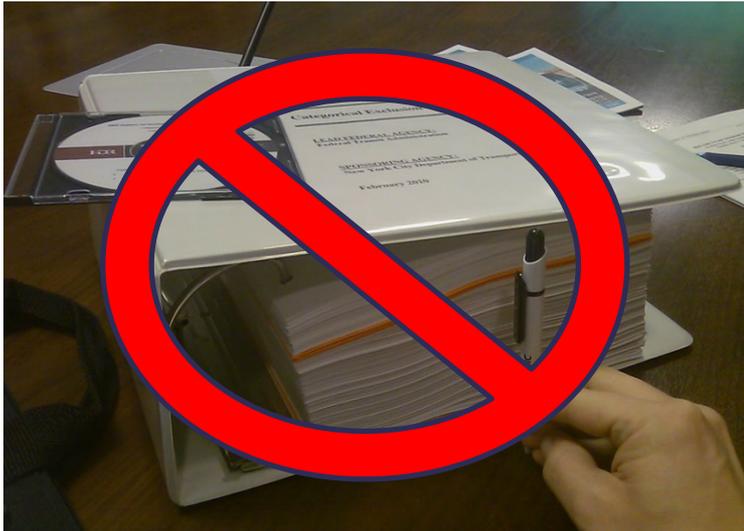
- What is the NEPA class of action? Why?
- If it is a CE, which CE does the action fall under?
- Are there potential significant impacts to environmental resources?
- Are there Tribal or community concerns?
- What documentation is required?
- When should FTA be consulted?



Deciding an Environmental Class of Action



What is a Categorical Exclusion?



References:

40 CFR § 1507.3

40 CFR § 1508.1(d)

23 CFR § 771.116-118

- A *Categorical Exclusion (or CE)* is “...a category of actions which **do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations and for which, therefore, neither an environmental assessment nor an environmental impact statement is required.**”

Does a Project Qualify for a CE?

Consider if the project has unusual circumstances:

- Significant environmental effects
- Includes controversies on environmental grounds
- Poses an adverse effect to Section 106 historic properties
- Results in a use a Section 4(f) resource with greater than *de minimis* impacts
- Is inconsistent with Federal, State, or local laws or requirements

Reference: 23 CFR 771.118

See section (b) for unusual circumstances

CE (c) List

- Installation of fencing, signs, pavement markings, bus shelters, traffic signals, and railroad warning devices
- Acquisition of scenic easements
- Bike lanes and pedestrian paths
- Noise barriers
- Landscaping
- Bus and rail car procurement
- Track and railbed maintenance
- Maintenance and equipment installation within the existing right-of-way

CE (d) List

- Bridge construction, rehabilitation, or replacement
- Grade separation to replace at-grade railroad crossings
- Approvals for disposal of excess ROW
- Approvals for early ROW acquisition
- Construction of new bus storage and maintenance facilities

Reference: 23 CFR 771.118

CE Classification Breakdown

Action

Conditions

Examples

CE(c)(8) Maintenance, rehabilitation, and reconstruction of facilities that occupy substantially the same geographic footprint and do not result in a change in functional use, such as: improvements to bridges, tunnels, storage yards, buildings, stations, and terminals; construction of platform extensions, passing track, and retaining walls; and improvements to tracks and railbeds.

What if a Federal Agency already issued a CE for the Project?



Reference:
40 CFR 1506.3(d)

An agency may adopt another agency's determination that a CE applies to a proposed action if the action covered by the original CE determination and the adopting agency's proposed action are substantially the same.

Cross Agency Categorical Exclusions



In 2018, the Cross-Agency Categorical Exclusion (CE) provision in 23 CFR 771 allows project sponsors to apply Federal Highway Administration (FHWA) and Federal Railroad Administration (FRA) CE to an FTA project when the FHWA or FRA CE better reflects the project.

Reference:

<https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/funding/grantee-resources/teamtrams/130796/cross-agency-ce-instructions-trams.pdf>

CE Review and Approval

Project Initiation

- Grantee discusses w/ FTA staff if project qualifies for CE
- Grantee prepares CE checklist and supporting info, as needed, after discussing with FTA staff
- Grantee makes a recommendation for a CE category

FTA Review

- FTA staff reviews CE checklist and supporting info
- FTA staff coordinates Resource Agency, State Historic Preservation Officer (SHPO) and Tribal consultations

Approval

- FTA staff recommends CE for approval to the Regional Administrator
- FTA Regional Administration (RA) approves the CE
- CE gets inputted into TrAMS

FTA Region 9 CE Checklist

FTA REGION 9 SUPPORTING INFORMATION FOR PROBABLE CATEGORICAL EXCLUSION

Grant applicants should provide sufficient information for FTA to make a Categorical Exclusion (CE) determination. The purpose of this worksheet is to assist grantees in gathering and organizing materials for environmental analysis required under the National Environmental Policy Act (NEPA), particularly for projects that may qualify as a CE per 23 C.F.R. 771.118.

The following information may be included in the request letter or attached to the letter from the grantee to FTA Region 9 to support the grantee's recommendation for a Categorical Exclusion (CE) determination.

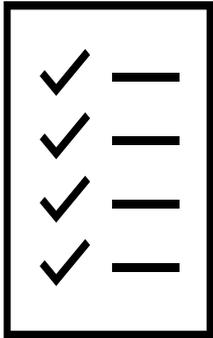
- ___ A. **DETAILED PROJECT DESCRIPTION:**
- Include project features and identify project sponsor.
 - Include funding source (e.g. CMAQ, formula funds, discretionary funds, etc.)
- ___ B. **LOCATION (INCLUDING ADDRESS):** Attach a site map or diagram, which identifies the land uses and resources on the site and the adjacent or nearby land uses and resources. This is used to determine the probability of impact on sensitive receptors (such as schools, hospitals, residences) and on protected resources.
- Site map should show a ½ mile radius and include labels for water resources and key features such as parks, designated sensitive areas, and adjacent uses.
- ___ C. **METROPOLITAN PLANNING AND AIR QUALITY CONFORMITY:** Is the proposed project "included" in the current adopted MPO plan, either explicitly or in a grouping of projects or activities? What is the conformity status of that plan? Is the proposed project, or are appropriate phases of the project included in the TIP? What is the conformity status of the TIP?
- Include the year of the adopted plan or adopted amendment and the project number.
 - Include date that the RTP was found to be conforming.
 - Is the project description consistent with what is listed in the plan?
- ___ D. **LAND USE AND ZONING:** Description of zoning, if applicable, and consistency with proposed use. Attach maps.
- Consistency with zoning also includes consideration of adjacent uses.
 - Any proposed land use zoning changes.

- Project description
- Maps, design drawings, and pictures
- Technical studies
- Environmental measures and commitments
- Permits required
- Correspondence w/ agencies and stakeholders
- Support statements of no impact

Categorical Exclusions



- CE's are NOT exempted from other requirements (Section 106, Section 4f, Endangered Species Act, etc.)



- Compliance with other environmental requirements and regulatory permits do not necessarily elevate a project from a CE to an EA

- CE's can include Best Management Practices (BMPs), avoidance and minimization measures.



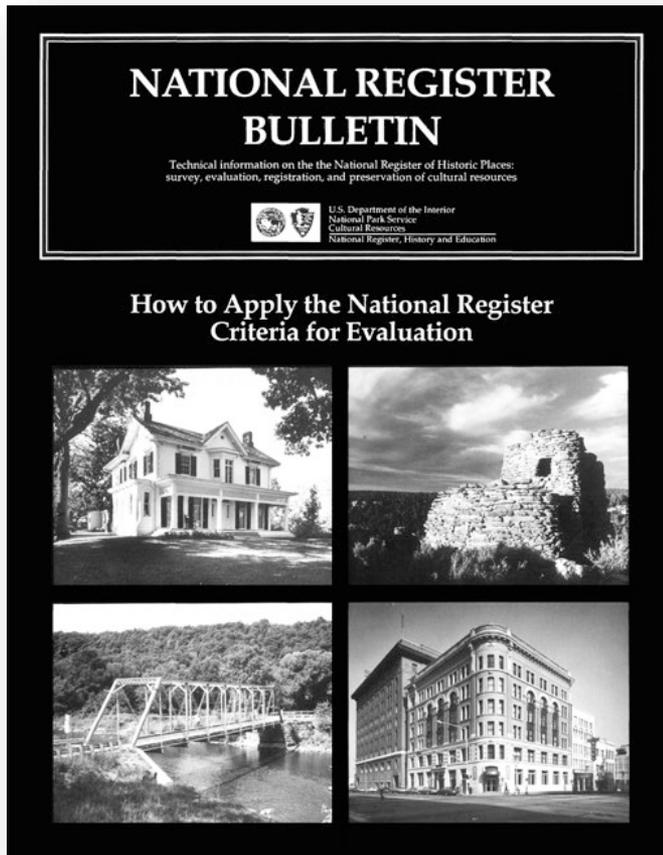
- Submission of the CE checklist does not constitute an environmental finding for your project. FTA makes the final determination whether a project qualifies for a CE.

Digging into Section 106



- What is Section 106?
- Do CE's require Section 106 consultation with SHPO and Native American Tribes?
- What documentation is needed?

What is Section 106?



- Section 106 of the [National Historic Preservation Act of 1966 \(NHPA\)](#) requires Federal agencies to take into account the effects of their undertakings on historic properties (36 CFR Part 800).
- Historic properties are properties included in or eligible for inclusion in the National Register of Historic Places (36 CFR Part 800.16(I)(1)).

Project Considerations

Does the project involve excavation, trenching, digging, (soil disturbance)?

Does the project alter, demolish, or acquire a historic property?

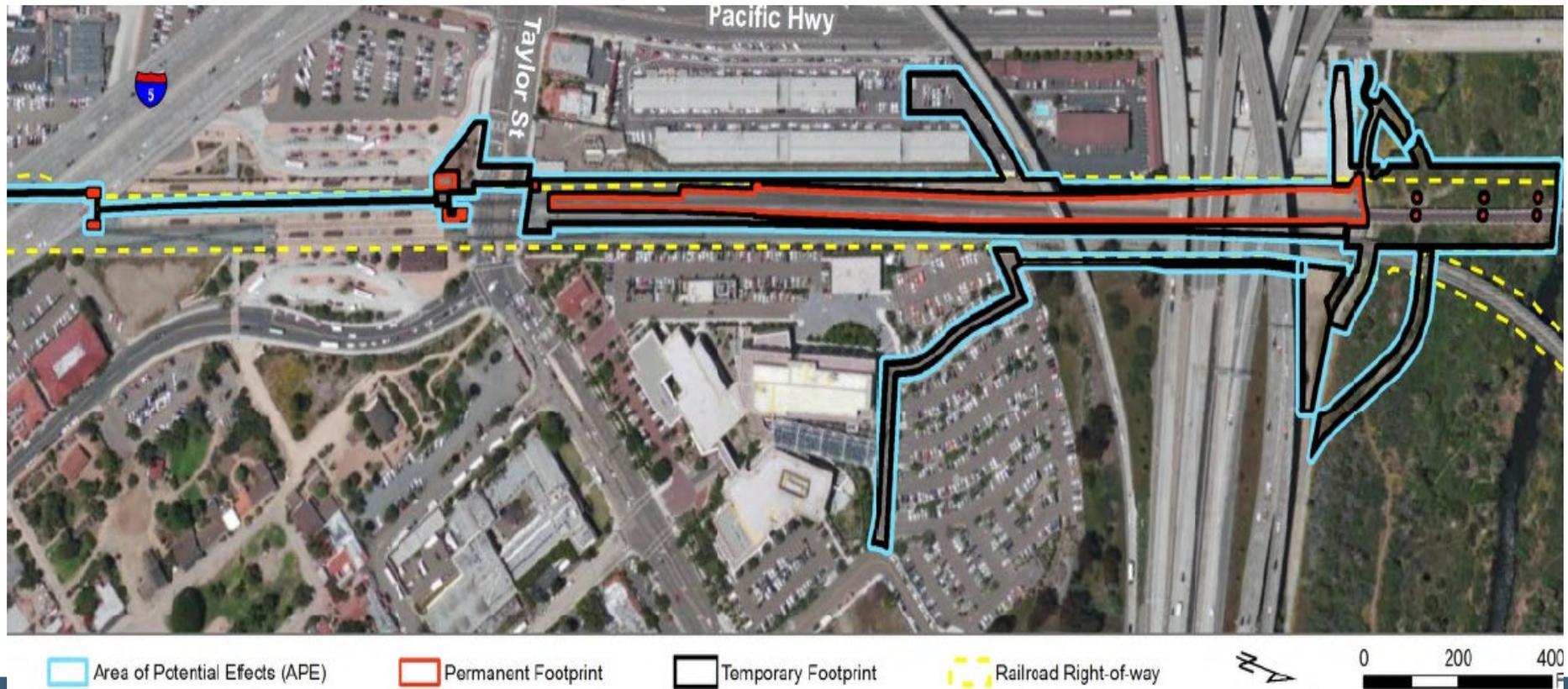
Is the project on or adjacent to historic properties or historic districts?

Is the project on or near Tribal lands or cultural resources?

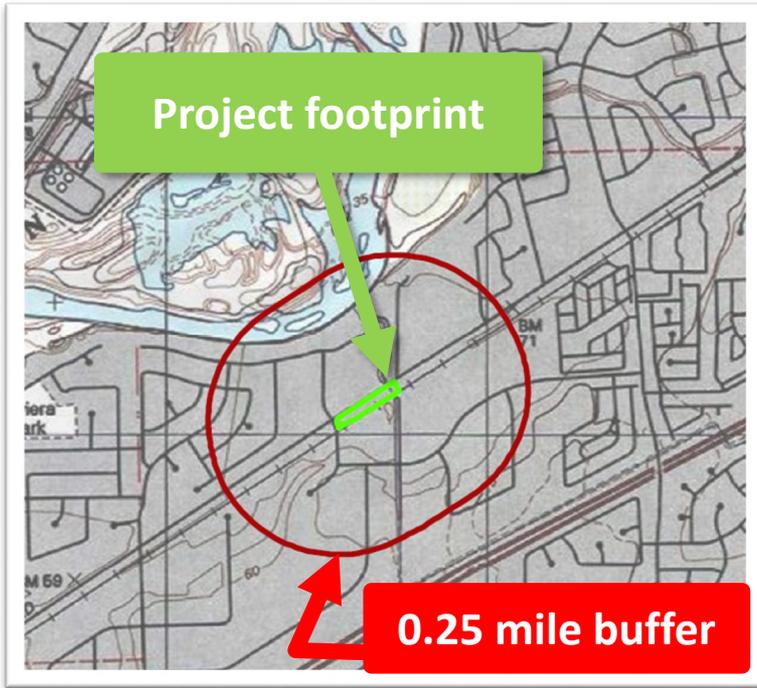
Talk with FTA

Defining the Area of Potential Effect

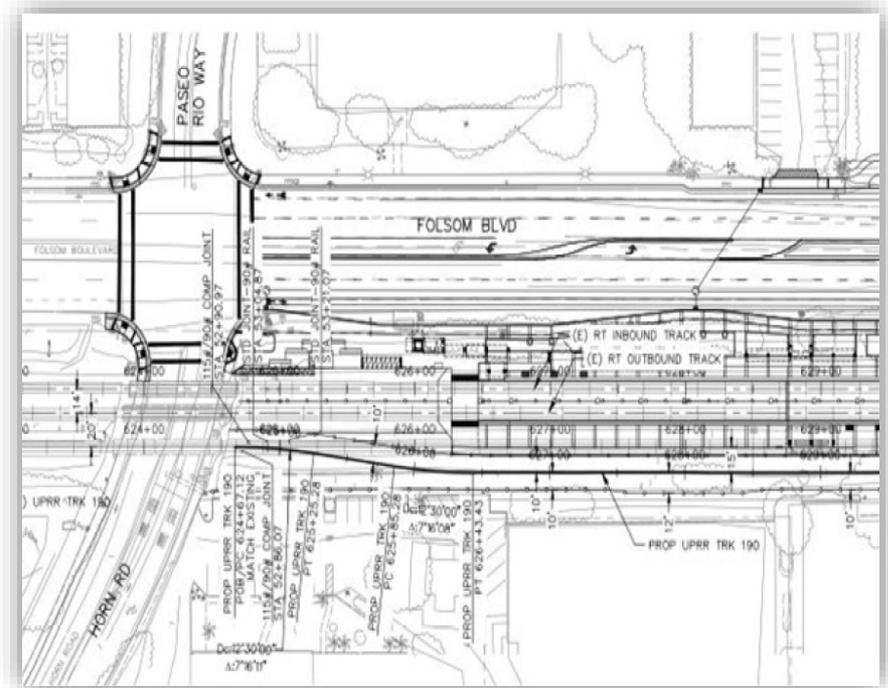
- Project footprint and areas of indirect effect
- Potential construction staging areas
- Depth of soil disturbance (trenching, digging)



These are NOT APE maps



A Study Area map is helpful for context and identifying the search area for historic properties.



A Design Layout is helpful for illustrating project description and project footprint.

Section 106 Process

Initiate Consultation

- Initiate Tribal consultation
- Identify and consult with consulting parties
- Request SHPO/THPO comments on APE

Identify Historic Properties

- Make reasonable and good faith efforts to identify historic properties
- Request SHPO/THPO concurrence on properties eligible for the National Register of Historic Places

Evaluate Effects

- No potential to affect
- No historic properties affected
- No effect to historic properties
- No adverse effect
- Adverse effect

Section 106 Consultation

36 CFR Section 800.2(c)

- Consultation with consulting parties takes place throughout the process
- Federal agency is responsible for consultation with federally recognized Tribes



Does this qualify for a CE?

- A portion of a historic building is would be converted to transit use. This would not change the resource's eligibility for listing in the NRHP.
- Landscaping will be removed from the property in order to accommodate the project but the structure would not be affected.



Section 106 and 4(f) Resources

- Section 106 Process

Historic Properties

- Section 4(f)

Historic Properties

Public parks (publicly owned,
open to the public)

Recreation areas (publicly
owned, open to the public)

Wildlife/waterfowl refuges
(publicly owned)

Section 4(f)

“Section 4(f) of the U.S. Department of Transportation Act of 1966 provides certain protections of **significant public parks, recreation areas, wildlife and waterfowl refuges, and historic sites** from “use” by a transportation project.



Section 4(f) uses: (23 CFR 774.17)

- 1) **land is permanently incorporated** into a transportation facility;
- 2) **temporary occupancy** of land that is adverse in terms of the statute's preservation purpose; or
- 3) **constructive use** (a project's proximity impacts are so severe that the protected activities, features, or attributes of a property are substantially impaired).



Reference: 49 USC 303, 23 USC 138 and 23 CFR 774

**Can a project have a Section 4(f)
use and qualify for a CE?**



Section 4(f)

FTA **may not approve the use** of Section 4(f) property unless a determination is made that:

- There is no **feasible and prudent avoidance alternative**, as defined in § 774.17, to the use of land from the property; and
- The action includes **all possible planning**, as defined in § 774.17, **to minimize harm to the property** resulting from such use; or
- FTA determines that the use of the property will have a ***de minimis* impact** on the property.

Reference: 23 CFR part 774

Section 4(f) Considerations

Identify Section 4(f)
Resources

Consult with Officials with
Jurisdiction

Is there is a Section
4(f) use?

Does the use result
in de minimis
impacts?

Does an Exception apply?
(23 CFR 774.13)

- De minimis impact is one that would not adversely affect the activities, features, or attributes of the Section 4(f) resource (23 CFR 774)

23 CFR 774.13 Exceptions

A **temporary use** for construction purposes (temporary easement) does not qualify as a Section 4(f) use if :

- ✓ Duration is temporary
- ✓ There is no change of land ownership
- ✓ Scope of work is minor and changes to the Section 4(f) property are minimal
- ✓ No permanent adverse physical impacts
- ✓ No interference with the protected activities, features, or attributes of the property;
- ✓ The land is restored to a pre-construction condition or better
- ✓ There is documented agreement with the official with jurisdiction over the Section 4(f) resource.

Other 23 CFR 774.13 Exceptions



- Bridges (Post 1945 construction) of common concrete and steel bridges and culverts that the Advisory Council on Historic Preservation exempted from individual Section 106 review.



- Improvements to certain railroad or rail transit lines that are used or were historically used for the transportation of goods or passengers, with some exceptions.

Keys to Success

- ★ Conduct **early and often** discussions with FTA
- ★ Talk to FTA if the project includes grading, digging, excavation, soil moving or ground disturbance.
- ★ Show your work and support statements of “no impact.”
- ★ Target efforts for technical studies to areas of potential impact or concern.
- ★ Document public outreach, Tribal consultation, and agency coordination.

References

- FTA Guidance Center

<https://www.transit.dot.gov/guidance>

- FTA Environmental Standard Operating Procedures

<https://www.transit.dot.gov/regulations-and-guidance/environmental-programs/environmental-standard-operating-procedures>

- FTA Guidance on CE Implementation

<https://www.transit.dot.gov/regulations-and-guidance/environmental-programs/guidance-implementation-ftas-categorical-exclusions>

Standard Operating Procedures

Environmental Review Process

Environmental Program Overview

Environmental Review Process ▾

Overview

Legislation, Regulation, and Guidance

Preparing Environmental Documents

Environmental Decision Documents

Environmental Standard Operating Procedures

Environmental Resources Information ▾

Overview

Rail ROW Program Comment

Environmental Management Systems

Environmental Training and Technical Assistance

Environmental Resources

Environmental Standard Operating Procedures

 [fta-sops-managing-environmental-review-process-dec-2019.pdf](#)

FTA's Office of Environmental Programs developed environmental standard operating procedures (SOPs) to provide additional direction and recommendations to FTA staff who manage the environmental review process. The environmental review process SOPs supplement existing resources, such as FTA environmental regulations and various guidance documents. While initially developed for FTA staff, sponsors of FTA-funded projects may also find these SOPs useful.

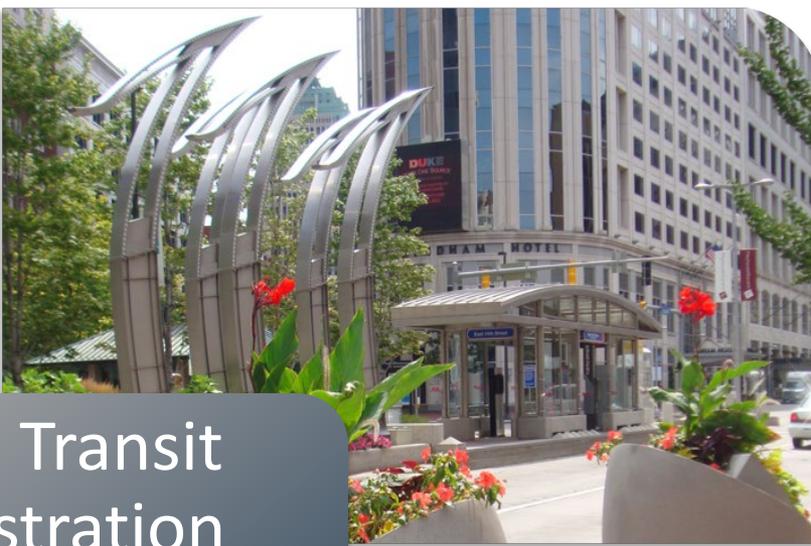
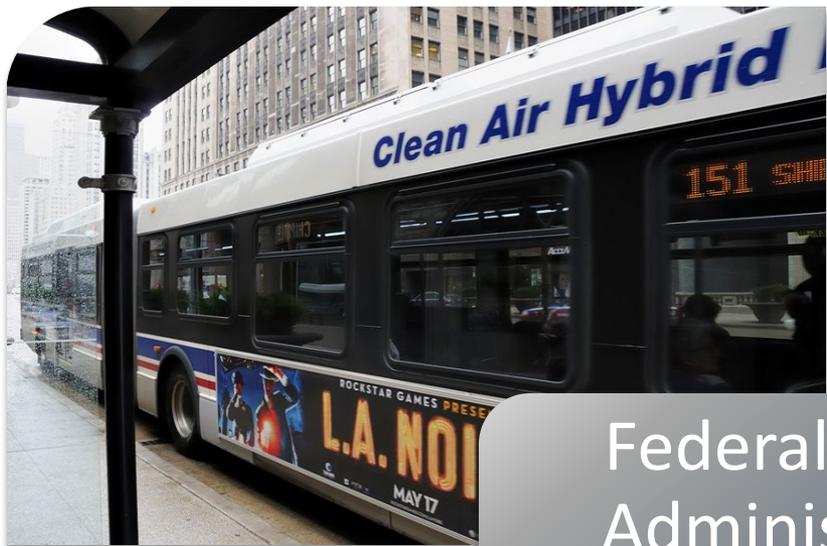
The SOPs are listed and can be accessed individually in the table below. The table also indicates each SOP's applicability to categorical exclusions (CEs), environmental assessments (EAs), and environmental impact statements (EISs).

SOP No.	SOP Name	Purpose	Applicability (CE, EA, EIS)
00	SOPs Introduction and Background	Describes the applicability/ scope of the SOPs including general responsibilities and references.	CE, EA, EIS
1	Environmental Project File and Considerations for Administrative Records	Provides guidance to ensure that FTA has records of all necessary written materials, electronic or hard copy, that pertain to FTA's environmental review process for a project.	CE, EA, EIS
2	Project Initiation and Determining NEPA Class of Action	Provides guidance for the earliest phase of the environmental review process for FTA projects.	CE, EA, EIS

Reference: <https://www.transit.dot.gov/regulations-and-guidance/environmental-programs/environmental-standard-operating-procedures>

Contacts for FTA Region 9

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