Agenda

- Timeliness of Environmental Review
- NEPA Efficiencies in Project Delivery
- Section 106 Efficiencies in Project Delivery
- Resources
- Questions

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What We Hear...

- Why does NEPA take so long?
- Why is the environmental review process such a mystery?
- What can I do to speed up the process?
- But it's so much easier with FHWA or FTA!
- Why can't a state level environmental document be used for NEPA clearance?
- My project is in the existing railroad ROW. Why is environmental review required?

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Timeframes

- No set timeframes for Categorical Exclusions (CE)

- 1 year for Environmental Assessments (EA)

- 2 years for Environmental Impact Statements (EIS)

- Elements of Section 106 process have timeframes but not the overall process

Factors That Determine Level and Timing of Review?

DEPENDS on Project Type
- Does the project involve construction/ground disturbance or is it a research or other non-construction type project?

DEPENDS on what Project Lifecycle Phase we are funding
- Planning
- Project Development (aka PE/NEPA)
- Final Design (FD)
- Construction (C)
- Some combination of the above

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Factors That Affect Timeliness

Depends or relies upon:

- Well defined scope and project description

- Type and number of resources impacted

- Whether project has Section 106 <u>Adverse Effect</u>

- Need to consult with resources agencies

- Level of public/agency interest, or controversy

- **FRA receiving accurate and complete documentation needed to initiate Section 106 and NEPA processes**

Help Us,
Help You

Environmental Process Considerations Post NEPA Decision

- Evaluates if agency's decision is still valid or if supplemental NEPA analysis is needed

- Re-evaluation process may be needed following agency's NEPA decision (CE, FONSI, or ROD) to examine:
  - Changed environmental circumstances
  - Design changes
  - New information

- Timeliness of re-evaluation dependent on degree of changes

NEPA Efficiencies

Modernize FRA's NEPA Processes

FRA is exploring ways to work smarter including:

- Expand capacity of grantees
- Minimize duplication of efforts
- Explore programmatic approaches
- Improve policies and procedures
- Investigate opportunities to delegate
- Support requests to assume NEPA responsibilities
- Leverage technology and tools
- Improve environmental mitigation commitment tracking

Reduce Duplication Of Effort

✓ Streamlining NEPA compliance for obligation of grants

✓ Adopting other mode's NEPA documents

✓ Fully leveraging planning and Pre-NEPA work

✓ Build upon existing information (State environmental reviews)

✓ Add FRA projects into existing programmatic agreements that expedite permitting (Clean Water Act, ESA, etc.)

Improving policies and procedures

- ✓ Improving predictability for grantees

- ✓ Streamlining grant agreement templates

- ✓ Working on revisions to the CE Guidebook

- ✓ Developing example CEs

- ✓ Developing templates for other types of environmental review documents and consultation letters

Support NEPA Assignment for Rail Projects

- NEPA Assignment is NOT the same as Delegation
- Available to States with FHWA NEPA Assignment
- FRA assigns all responsibilities under NEPA
- State assumes Federal lead role with two key exceptions
- **State assumes all legal risk for challenges**
- Approved through MOU
- CHSRA only entity with FRA NEPA Assignment for railroad projects (2019, 2024) & Ohio request is in process

What Can Our Partners Do?

Grantees can provide...

- ❑ **A clear, accurate scope of work**
  - ○ Helps FRA environmental and cultural resources staff focus on potential project impacts earlier.

- ❑ **Minimize project changes**

- ❑ **List of known cultural, natural, and social resources, and a discussion of the project's potential impacts**
  - ○ Use a tool like NEPAssist

- ❑ **A comprehensively completed draft FRA Categorial Exclusion (CE) Worksheet**

- ❑ **A knowledgeable project team**
  - ○ Projects involving environmental and/or cultural resources field work or surveys may benefit from services of professional consultant.

- ❑ **schedules** that should reasonably reflect adequate time to assess and resolve adverse impacts, plus time necessary for resource agency consultations

Section 106 Efficiencies

Improve FRA's Section 106 Processes

✓ Develop templates

✓ Expand capacity of grantees

✓ Encourage expansion of existing Section 106 Programmatic Agreements, generally State DOTS, to include FRAs

✓ Investigate opportunities to delegate certain steps in the process

✓ Maximize use of Rail ROW Program Comment

❑ Encouraging Property Based Approach

What is the Rail ROW Program Comment?

The Advisory Council on Historic Preservation's **Program Comment for Rail Rights-of-Way** is available for use by <u>any federal agency</u> with an undertaking affecting rail properties.

- **Exempted Activities List** approach applies to maintenance, repair, and upgrade activities that:
  - Are federal undertakings
  - Affect rail properties:
    - Listed or eligible for listing in the National Register of Historic Places
    - Treated as eligible based on factors, such as age and integrity
  - Are located within existing and disturbed portions of rail right-of-way

- **Property-Based** approach has not used by FRA or FTA to date (stay tuned...)

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Federal Transit Administration

How Does the Rail Program Comment Work?

Projects where **all** activities fall under one or more activity are **exempt** from Section 106.

- FRA works with grantees/sponsors to validate the applicability

- Use is documented in the NEPA decision document.

Projects where **some** activities fall under one or more exemption are **only partially exempt** from Section 106.

- Examine coverage under other Section 106 Program alternatives

- Section 106 review/consultation may be required.

Examples of Program Exempted Activities Categories (A-F)

A. Track Repair and Replacement
B. Bridge and Tunnel Repairs*
C. Railroad and Rail Transit Buildings (e.g., Passenger Stations and Depots, Maintenance and Equipment Buildings, Interlocking Towers) and Boarding Platforms*
D. Signals, Communications, and Power Generation
E. Railroad and Rail Transit/Roadway At-Grade Crossings and Grade Separations
F. Safety and Security

Indicates activities where an SOI-Qualified Professional may need to oversee the work.

What *Doesn't* Fit in the Rail Program Comment?

The following **projects/activities do NOT qualify for the Rail Program Comment** and are reviewed under the Section 106 process.

- Demolition/replacement of railroad bridges

- Repair/rehabilitation of railroad bridges that do not follow the specified criteria in the Exempted Activities List (e.g., change in super-or sub-structure material from timber to concrete)

- Projects located outside of existing rail ROW (e.g., rail line relocations)

- Projects on Tribal land

What *Doesn't* Fit in the Rail Program Comment?

The following **cultural resources do NOT qualify for exemption under the Rail Program Comment** and are reviewed under the Section 106 process.

- Archaeological resources
- Tribal resources
- Non-rail cultural resources

What Can Our Partners Do?

1. Include an **in-depth discussion of environmental impacts** in applications
2. Provide a **clear, complete, and accurate scope of work** in applications
3. Determine if your potential project includes in-depth environmental work that may benefit from the **support of a qualified consultant**
4. Proactively identify the need for **in-depth cultural resources work** and plan project schedules accordingly if you think you may adversely impact historic properties
5. Take advantage of **FRA webinars**
6. Understand and plan to **meet** any S106 agreement **requirements**

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Resources

Section 106 and NEPA Resources

➢ https://railroads.dot.gov/rail-network-development/environment/historic-preservation/historic-preservation

➢ https://www.achp.gov/sites/default/files/regulations/2017-02/regs-rev04.pdf

➢ A Citizen's Guide to Section 106 Review: https://www.achp.gov/sites/default/files/documents/2019-04/CitizenGuide2015v4-spreads%20layout.pdf

➢ Section 106 and Infrastructure Projects: https://www.achp.gov/section-106-and-Infrastructure-Projects

➢ https://nepassistool.epa.gov/nepassist/nepamap.aspx

➢ https://ceq.doe.gov/get-involved/citizens_guide_to_nepa.html

➢ https://railroads.dot.gov/rail-network-development/environment/environment

➢ https://www.permits.performance.gov

Questions?
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Questions