

# NTIA BEAD Permitting Summit

July 23 - 24, 2024

## Agencies Represented:

- [Bureau of Indian Affairs \(BIA\)](#)
- [Bureau of Land Management \(BLM\)](#)
- [Bureau of Reclamation \(Reclamation\)](#)
- [Department of the Interior Appraisal and Valuation Services Office \(AVSO\)](#)
- [National Parks Service \(NPS\) Land Resources Division](#)
- [National Telecommunications and Information Administration \(NTIA\)](#)
- [U.S. Army Core of Engineers \(USACE\)](#)
- [U.S. Fish and Wildlife Service \(USFWS\)](#)
- [U.S. Forest Service \(USFS\)](#)

## Internet for All Program Overview

- Background
  - NTIA has seven broadband programs, with BEAD's funding total of \$42.45 billion being the largest
  - NTIA's main goal is to streamline the permitting processes by proactive interagency coordination
  - NTIA expects the highest influx of permit review activity to occur between late 2026 – 2028
- There are three main types of permitting/approval workstreams that Eligible Entities and applicants must consider:
  1. [National Environmental Policy Act](#) (NEPA) approvals (required for all federally funded projects)
  2. Other Federal approvals ([Section 106](#), [Endangered Species Act](#), etc. that may or may not apply to project areas)
  3. State, Local, and Private approvals
- NTIA has already taken the following steps to make the permitting process more efficient and effective:
  - Held regional interagency meetings with eight agencies to promote coordination
  - Has produced/is producing supplemental permitting guidance
  - Worked with the [Advisory Council on Historic Preservation](#) (ACHP) to expand the Program Comment process to BEAD activities
  - Expanded the [list of Categorical Exclusions](#) (CEs) within NEPA to cover more broadband related activities
- Q&A
  - Q: With the House having discussions about maximum rates and affordability for BEAD, does NTIA expect there be delays to moving forward?
    - A: NTIA does not expect any delays caused by this discourse
  - Q: With many Federal agencies struggling to hire additional resources, how does NTIA plan on ensuring they (and others) are appropriately staffed to handle the large influx of work related to permitting?

- A: NTIA believes that the key is significantly streamlining the permitting processes. With more efficient processes and interagency coordination, there will be less time/resources needed per permit. NTIA is also releasing guidance on how Eligible Entities can proactively strengthen their teams to handle permitting actions they may own.
- Q: What is NTIA's plan in case an [Environmental Impact Statement](#) (EIS) process is necessary? They are incredibly time consuming (12-24 months).
  - A: NTIA has never had a project that requires an EIS. They are confident that by leveraging the existing regional [Programmatic Environmental Impact Statements](#) (PEISs) the risk of needing project specific EISs is significantly lowered. NTIA details how to “tier off” of PEISs in a later session.

#### **Fast-41 Federal Permitting Council:**

- Background
  - The [Fast-41 Federal Permitting Council](#) was created in 2014
  - It consists of 13 Federal agencies, chaired by the Executive Director of the Permitting Council (a position that is appointed by the president)
  - [Fast-41](#) is a voluntary program that allows qualified projects to receive a tailored project management process and services (including publicly available timetables and schedules) that help shepherd the project through the permitting process
  - Projects must fit certain parameters for inclusion in the program
  - Most broadband projects do not fit the requirements because of the \$200 million threshold
  - The Fast-41 program has projects span across 19 industries, with 25 active projects totaling \$75 billion
  - The largest industry is renewable energy production (at 65% of the total), with broadband projects at 11% of the program total
  - NTIA is proposing a Memorandum of Agreement (MOA) to build a process/tool that integrates the existing permitting tool with the Fast-41 dashboard
- Fast-41 process breakdown:
  - [Fast-41 Initiation Notice](#) (FIN) (14 days)
  - Coverage determination (21 days)
  - Invite cooperating agencies (60 days)
  - [Coordinated Project Plan](#) (CPP) established = initiation into Fast-41 program begins
- Each year, the Council has to report best practices reported to Congress from experience with the Fast-41 program. The main themes are:
  - Early stakeholder engagement
  - Timely decisions
  - Improving coordination
  - Transparency
  - Use of the CPP
    - Agencies should develop a Coordinated Project Plan, which includes roles and responsibilities, interim and final milestones, risk mitigation strategies, outreach plans. The CPP is very similar to a well-structured project plan.

- Detailed tracking and reporting of review status
  - Agencies should track and report the status of permitting reviews using internal PM systems or public facing dashboards such as the Federal permitting dashboard. Also, agencies should focus on establishing clear roles/responsibilities, detailing staffing requirements, creating timelines for action items/steps, tracking progress on steps, and reporting funds expended
- Examples of Fast-41 project success stories:
  - Santa Fe Indian School broadband project
  - Alaska FiberOptic project
  - Winnebago Tribe Broadband Connectivity project
  - California Middle Mile Broadband project
- Q&A
  - Q: Who is the project sponsor for these projects; does it have to be any specific entity or individual?
    - A: It can be anyone, even two different state agencies can collaborate as project sponsors.
  - Q: What is the quantifiable improvement in mitigating risk or schedule slip for projects engaged with the Fast-41 program?
    - A: The Council recently reached the point where they have enough data to analyze. That said, there currently isn't a perfect answer to the question. It's additionally complicated by trying to determine the benchmark. Since most outside projects don't capture/track the detailed data points that Fast-41 does (or would need for that type of analysis), the team is currently working on developing performance metrics that would allow tracking of such improvement statistics moving forward.
  - Q: Has there been any consideration given to lowering the \$200M threshold? Especially with BEAD coming up, and the threshold effectively pricing out broadband projects.
    - A: The Congressional committee that oversees the Council passed a bill last week that was drafted with an amendment to the dollar threshold. However, the presenter is unsure if that portion of the bill made it through to the final version.
  - Q: How does a company or sponsor get onto the permitting council?
    - A: There is an application link/email on [permitting.gov](https://permitting.gov) to schedule a preliminary meeting before the FIN.

### **Army Corps of Engineers Real Estate Division**

- Background
  - Comprised of nine divisions with 43 districts (18 divisions work exclusively in Civil Works, 25 work on Military as well as Civil Works)
  - USACE is the real estate agent for the Department of the Army
  - USACE land is either acquired, withdrawn from public domain, or transferred from other agencies
  - In 2020, the USACE adopted the use of the [SF-299](#) application for telecommunications sector grants
- Phases of application processing:

- Initial contact (site selection and specific info gathering until SF-299 application is complete)
- Local approval (begin Report of Availability (ROA) and Determination of Availability (DOA), estimate admin fees)
- Analysis (complete ROA/DOA, receive admin fees, phase I environmental site assessment performed by USACE specialists)
- Final determination (provide out-grant to applicant for signature)
- Q&A
  - Q: In the NEPA process, will USACE allow the applicant to do the process and hand it off for review or will USACE prefer to conduct the review themselves?
    - A: It can vary depending on the quality of the review, history of the district, etc.; There is no set preference.
  - Q: What are the general timeframes?
    - A: The review process typically takes around six months, but it can vary based on complexity.

### **U.S. Army Corps of Engineers Regulatory**

- Background
  - USACE regulatory program has issued 43,000 permitting actions thus far
  - Permit decision making is done at the district level and determining which district office to work with can be found here: <https://regulatory.ops.usace.army.mil/offices>
- Two prominent regulations USACE frequently deals with:
  - [Section 404 of the Clean Water Act](#) (discharge or dredged materials)
  - [Section 10 of the Rivers and Harbors Act of 1899](#) (in, over, or under a Section 10 waterway, includes directional boring and aerial cables)
  - Waters can fall under Section 404 and 10 regulations, but the two have varying boundaries, with Section 10 usually encompassing less of the width of a waterway
- Types of USACE permits:
  - Standard permits
  - Letter of Permission (abbreviated version of standard)
  - General permits (94% of USACE permits, can be regional or nationwide, characterized by minimal adverse effects)
- Processing time statistics:
  - General permits - 85% are completed in 60 days or less
  - Individual Permits - 70% in 120 days
- Nationwide Permits (NWP)
  - Authorize categories of activities that are similar in nature and have minimal adverse effects
  - There are currently 57 different NWPs
  - Example: NWP-57 Electric Utility Line and Telecom Activities, required for the construction maintenance and repair of telecom lines or facilities in WOTUS.
- Section 408
  - [Section 408 allows entities to make alterations to USACE civil works projects under 33 USC 408](#)

- Alterations cannot be injurious to public interest or impair the project's usefulness
  - Section 408 program requires NEPA regulations be met
  - Best practices for Section 408 permitting:
    - Contact district Section 408 coordinator before the process
    - Request a pre-application meeting
  - Section 408 timeline:
    - Completeness Determination After Submission – 30 days
    - Review and decision – 90 days
  - In FY23, USACE received 1031 Section 408 requests and issued 912 decisions
- Q&A
  - Q: Is there a map to check Section 408 sites in your project area?
    - A: Not currently; USACE is working on it, but entities can reach out to their USACE coordinator with Google earth screenshots/coordinates and ask if there are any within the boundary.
  - Q: How many of the 1031 requests were from broadband?
    - A: Presenter is unsure and will send to the group afterwards.

### **U.S. Forest Service Proposal Submission Process for Broadband**

- Background
  - Permitting proposals must be submitted via online portal with a complete [SF-299](#) and maps/GIS data
  - Timeline:
    - First and second screening are completed within 60 days
    - If the proposal is accepted as an application, the 270-day decision window opens
  - Co-locating on existing infrastructure has the quickest processing time, but a letter of consent with the facility owner is required, and the action still needs NFS approval
- Q&A
  - Q: Major category projects seem faster and more efficient than the process needed for sub-major projects, do you agree?
    - A: Yes, the USFS is looking at all options to improve efficiency.
  - Q: Alaska is requiring GIS mapping for BEAD program. Is there a standardized GIS shapefile that Alaska can adopt to increase efficiency?
    - A: Yes, there is a standardized template and requirements.

### **Bureau of Reclamation**

- Background
  - Only operates in 17 westerly states
  - [43 CFR 429](#) lays out the permitting process
  - Reclamation falls under [Mobile NOW Act of 2018](#) and [Executive Order 13821](#)
  - Resource: <https://www.usbr.gov/lands/>
  - [SF-299](#) is the main document for application
- Permitting process:

- Fill out the SF-299 after contacting the local reclamation office and send with \$100 fee
- Reclamation will then acknowledge receipt of fee and application within 30 days
- Reclamation then begins the review process
- [43 CFR 429.14](#) lays out the criteria that Reclamation considers when reviewing applications. The main consideration is compatibility with authorized project purposes, project operations, safety, and security. Luckily, this isn't frequently an issue with broadband permits
  - There are ten situations where [43 CFR 429 Subpart F](#) allows for reductions or waivers of application fees, admin costs, and use fees
- Q&A
  - Q: When a tribe creates an ISP for their area/people, does situation 3 of general benefit to the public allow for a waive of fees?
    - A: Potentially but more details would need to be provided.
  - Q: If there is a fee increase (land use) will an explanation be provided?
    - A: Yes.

## **US Fish & Wildlife Service**

- Background
  - To be safe when working around National Wildlife Refuges, contact both the [National Wildlife Refuge System \(NWRS\)](#) and [Ecological Service Office](#)
  - With NWRS permits, applicants should first ask for a pre-application meeting and come prepared with a clear intention and draft plan
  - Main question with NWRS is "is it truly critical to cross/affect the NWRS or is there any alternative?"
- Right of Way (ROW): long term accessibility, up to 50 years and is a harder process to obtain
  - These are typically a two-year process
  - Special Use Permit (SUP): short term or temporary access, is a shorter process to obtain
  - Regulatory documentation for ROW: [50 CFR 29.21 Subpart B](#)
  - USFWS is currently redoing the process for ROWs in an effort to streamline and reduce wait time
  - To obtain a ROW, the refuge manager performs a [Finding of Appropriateness](#) (FOA) and [Compatibility Determination](#) (CD) in [603 FW 1 and 2](#) respectively
  - ROW coordinator: [tony\\_arampatzis@fws.gov](mailto:tony_arampatzis@fws.gov)
- [Endangered Species Act](#) (ESA) responsibilities: [Section 7 Interagency Cooperation](#) (consultation) analyzes the jeopardy placed on a species and the chances of adverse modification.
  - Each justification and decision needs a scientific and legal component – the advice is to "show your work"
- Section 7
  - Effects determinations:
    - No effect (legal liability on Action Agency, no consultation with USFWS needed)
    - May Affect, but not likely adverse (discountable and insignificant effect, USFWS has 60 days to provide a concurrence letter)
    - May Affect, likely adverse (the effect is not discountable or insignificant, take is reasonably certain to occur, and USFWS has 135 days to issue a biological opinion)

- Legal liability falls on Service and Action Agency in latter two determinations
- Section 7 – [Incidental Take Statement](#): authorizes legal take between certain parameters
- Two main types of Section 7 consultations:
  - Individual (project by project)
  - Programmatic Consultation (a bigger immediate lift but it reduces further site-specific consultation needs, can also be built off of)
- NEPA and ESA/Section 7 are different; they can inform each other, but the process is different because they're focused on the effects to different groups
  - NEPA deals with the human environment and is a public process
  - ESA species/individual level and is an agency to agency process
- It takes 60 days for the USFWS to conduct the informal consultation process

### **National Park Service ROW Permitting Process**

- Background
  - NPS has 7 regional offices, and each has a ROW coordinator
  - Each park has a ROW coordinator and/or a realty specialist
  - General permitting authority found at 54 USC 100192, with more regulations at [36 CFR Part 14](#)
    - There is a proposed rule to update regulations currently in the works
  - [Reference Manual 53B](#) contains the best process guidance including a flow chart in Exhibit A
  - Prior to engaging the process, it is advised to hold a pre-application meeting by contacting the park superintendent
  - Permit documentation needed:
    - A complete [SF-299](#) application
    - An appropriate survey or map
    - Any other materials discussed with the park in the pre-application meeting
  - Applications are sent to the park superintendent
- Q&A
  - Q: With the best practice for subgrantees being to reach out for an early meeting, especially with the sheer number of subgrantees, how can states help to not overload the NPS with meetings on similar subjects?
    - A: Ideally, one coordinated meeting about the subject matter can be organized with all affected subgrantees attending, but this can be very difficult to pull off.

### **Bureau of Indian Affairs – ROW on Indian Lands for Broadband Projects**

- Background
  - 2016 ROW revisions to prior regulations added a 60-day deadline of issuing decision after receiving the application
  - The BIA has limited authority to deny a ROW grant application but the authority to approve now definitively rests with the BIA (with a deference to tribes)
- [25 CFR Section 169.4](#) outlines conditions for when a BIA ROW permit is necessary
  - Permits are almost always necessary, barring these two exemptions:
    - Indian landowners owning 100% of the land

- Crossing tribal lands with a tribal authorization agreement
- The application form is [OMB Control Number 1076-0181 ROW](#), found on BIA website
- [NPM-TRUS-44 A2](#) streamlines ROW processes
- If the tribe or tribal utility is the applicant and owns 100% of the tract, BIA approval is not needed
- ROWs crossing multiple tracts: applicant must obtain tribal consent from each tribe in form of tribal authorization and written agreement
- All documentation (authorizations, lease documents, grants, etc) must be filed with the BIA in [Trust Asset and Accounting Management System](#) (TAAMS) within 30 days of approval or grant

#### **Bureau of Indian Affairs – Environmental Compliance**

- Background
  - Regional BIA offices process, review, and approve NEPA requests and outreach should be to the Regional Environmental Scientist (RES) at the regional BIA office
  - Tribes have THPOs similar to SHPOs for NHPA compliance
  - The BIA Office of Indigenous Connectivity can help with the process as well
- Q&A
  - Q: What is the process or standard for using fiber (how deep in the ground, other specifics, etc.)?
    - A: RES's look into these specifics and consider the implications of those specifics.

#### **Overview of NEPA, Categorical Exclusions, and Extraordinary Circumstances**

- Background
  - NEPA determines whether a proposed action has the potential of significant environmental impact by reviewing environmental documentation
  - NEPA allows federal agencies to appoint state, tribal, or local agencies as “joint-lead agencies”. (more guidance coming on the joint lead agency role and process)
  - The joint lead agency and NTIA have certain responsibilities (evaluating review levels, determining documentation, providing support), while the applicant is responsible for the development of NEPA analyses/review and timely submission of materials
- There are 3 levels of NEPA review:
  - [Categorical Exclusion](#) (CE or CatEx): typically takes 6-8months, with 97% of all proposed actions resulting in CatEx
  - [Environmental Assessment](#) (EA): typically takes 6-12 months, around 5-7% of the Catexs get to this level)
  - [Environmental Impact Statements](#) (EIS): typically takes 12-24 months and is very rare, NTIA has never had a project that reaches point
- Categorical Exclusions
  - [30 new CatExs were added with an additional 6 adopted from FirstNet](#) in April
  - The total number of CatExs now sits at 47, up from 11 before the aforementioned updates
  - [Extraordinary Circumstances](#) (ECs) must be screened for before the use of a CatEx is confirmed, there are 13 total ECs



- If ECs are present, a proposed action may still move forward if NTIA agrees that the circumstances lessen the impacts or other conditions sufficiently avoid significant effects, or if the applicant prepares an EA or EIS
- When a proposed action is being put together, it's important to summarize it for NEPA/NTIA with the following elements:
  - Description of the project with details
  - Description of the location
  - Description of the area surrounding the project area with maps/photographs
  - Description of how the project will be implemented
  - Ground level and aerial photographs of the area
  - Floodplain map from FEMA with project area overlay
  - Wetlands map from USFWS with project area overlay
  - Results of consultation with SHPO/THPO listing historic or archaeological sites
  - Endangered Species Act considerations after consultation with USFWS
  - Analysis of climate risks
- Environmental Assessment
  - If the project does not qualify for a CatEx or if potential adverse impact is found, an environmental assessment (EA) will occur
  - Main difference in an EA is that it includes a description of the analysis of alternative options and why the option was chosen over alternatives. Another difference is that NEPA looks deeper into the cumulative impacts to see if the action will create cumulative effects, eventually leading to adverse effects
  - If the EA is deemed good to go, a [Finding of No Significant Impact](#) (FONSI) is issued
- Consultations
  - Grantees and subgrantees may initiate the Section 106 (NHPA) consultations with SHPOs, whereas NTIA will usually initiate with THPO
  - NTIA will lead the formal consultation efforts with USFWS if the informal consultation is not sufficient
  - NTIA will lead consultations with USACE to determine which type of USACE permit is appropriate
- Q&A
  - Q: Does NTIA take over the formal consultations from the hands of other agencies?
    - A: NTIA will determine when it's appropriate for them to initiate consultations, reviews, etc.

### **Permitting and Environmental Information Application Demonstration**

- Background
  - The [NTIA's Permitting and Environmental Information Application map](#) should be used as an initial screening tool where you can search by area and see which permits/consultations are necessary (wetlands, ESA, floodplains, historic, etc.) for your project
  - Mapping tool demo, applicants should use this map to determine who to engage with
  - Current layers include Federal/Tribal lands, State lands, Infrastructure/ROWs, EPA programs, floodplains/wetlands, critical habitats, and historic places

- NTIA is open to hearing out opportunities for making the [National Broadband Availability Map](#) (NBAM) and mapping tools more accessible and efficient
- Q&A
  - Q: Is the data downloadable in shape file format?
    - A: Yes, for most of it.
  - Q: Is data always up to date?
    - A: Not necessarily, because NTIA doesn't update it – if the agency NTIA pulls data from has outdated data then NTIA's data reflects that.
  - Q: Where is rail crossing information being pulled from?
    - A: See the data sources tab for info like this, but the Federal Railroad Administration's data is being used in this instance.
  - Q: Has there been any discussion about automating the process for reviewing layers, filtering appropriate data, etc.? Having to do the labor-intensive filtering and visual analysis is time consuming and has the possibility for human error.
    - A: NTIA is looking into this

#### **Programmatic NEPA Reviews: Validating and Tiering off the First Responder Authority Network PEISs**

- Background
  - [Programmatic Review](#) is a process engaged when there is a large-scale action being taken, can be Programmatic Environmental Assessments (PEAs) or Programmatic Environmental Impact Statements (PEISs)
  - Pros of programmatic reviews:
    - Increased transparency
    - Avoid duplication
    - Streamline processes
    - Improvement EAs
  - NEPA reviews can be tiered to first consider the broad, general impacts of a large-scale program plan, policy, or project and then look to project or site-specific analysis
  - FirstNet prepared five regional PEISs to support NEPA compliance across the entire country
  - Eligible Entity must reference the regional PEISs they sit in to use as a benchmark for their permitting/consultation processes
    - EEs should review the document for any regulatory changes, affected environments, infrastructure, biological resources, and environmental consequences to assess the sufficiency of the current PEIS
  - PEISs should be referenced in Environmental Assessments
- Q&A
  - Q: Will there be more Categorical Exclusions incoming during the BEAD timeline?
    - A: The newly updated list of CEs is very comprehensive, NTIA doesn't anticipate any additional CEs.
  - Q: Who is responsible for preparing environmental documentation?
    - A: Because of the role of State Broadband Offices/Eligible Entities as joint-lead agencies, the responsibilities may be assigned by the SBO. Some states will have more responsibilities than subgrantees while others may not. Some states may

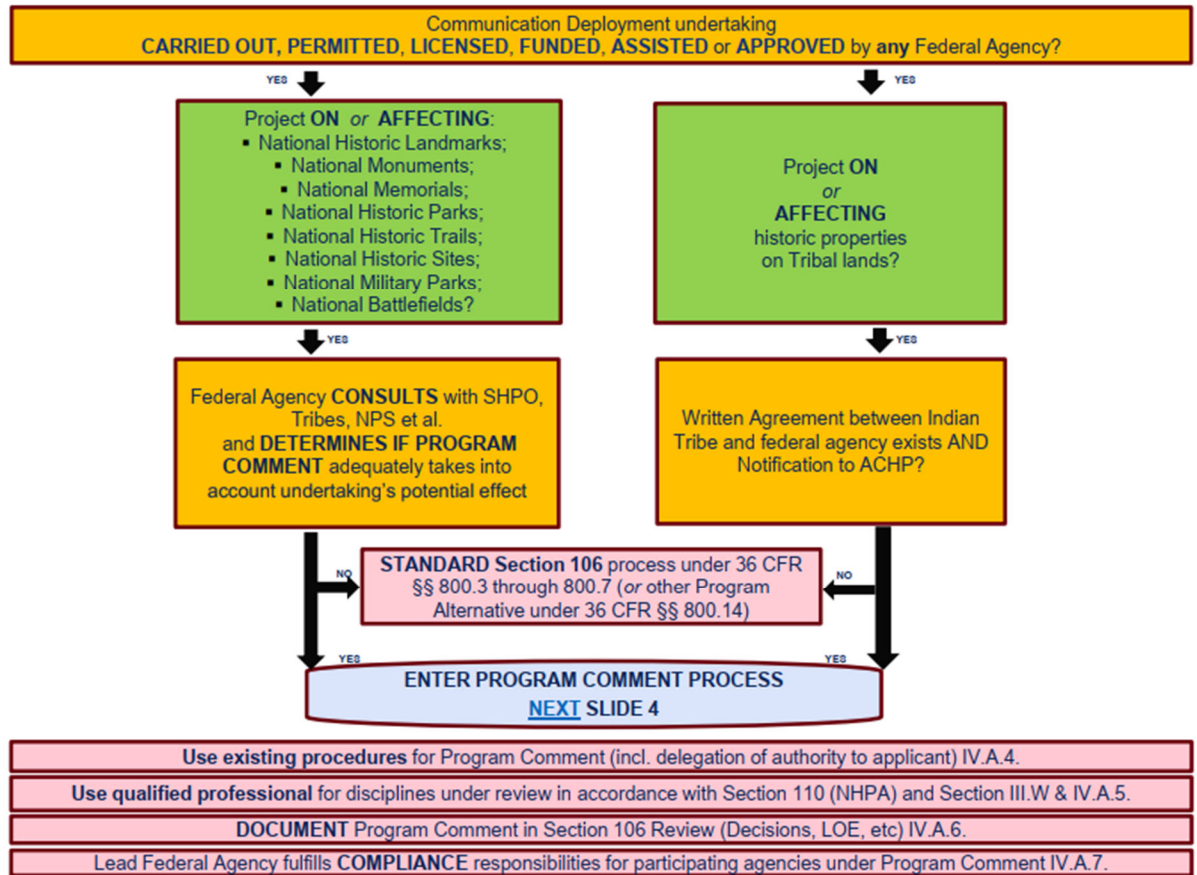
hire NEPA coordinators while others may give more responsibility to subgrantees or keep the processes within their current team. Joint-lead agencies have flexibility in determining the process or structure that works best for them.

- Q: For SBOs that take more responsibility, is there additional liability?
  - A: Not necessarily because NTIA is ultimately in charge of the NEPA reviews and approvals.
- Q: Is this a correct summary of the process? Subgrantees will submit documentation, SBO will review for completeness and forward the information to NTIA for review?
  - A: Yes. Per NTIA's experience, it takes the subgrantee 3-6months (without having to do long CEs, consultations, etc. with different agencies, which can take much longer) to prepare adequate documentation but only 30-45 days for NTIA to issue a decision once the complete documentation is received.
- Q: Taking into account the large number of projects that will need NTIA approval, will that influx change the timeline?
  - A: Depends on how well NTIA can leverage their new processes and tools. The overall goal is to provide more predictability and improve efficiency.
- Q: When should SBOs hire their NEPA coordinator?
  - A: ASAP
- Q: Which agency is responsible for filing Section 106 for BEAD?
  - A: Depends how the Eligible Entity chooses to structure the process and assign role responsibility. Some SBOs may handle this while others may have the applicant initiate the process.

### **Section 106, Applying the Program Comment for Federal Communications Projects**

- Background
  - The [National Historic Preservation Act](#) (NHPA) was passed by Congress in 1966, the [Advisory Council on Historic Preservation](#) (ACHP) is an independent Federal agency established by the NHPA
- [Section 106 process overview](#):
  - Begin the process (consider: does the proposed action have the potential to affect historic properties?)
  - Identify the Historic Properties
  - Assess Adverse Effects
  - Resolve Adverse Effects (by notifying ACHP, continued consultations, and ACHP developing MOA or programmatic agreement if necessary)
- Types of historic properties:
  - National historic landmarks
  - Properties with religious/cultural significant
  - Battlefields
  - Historic districts/landmarks
- SHPO responsibilities:
  - Survey and preservation planning
  - Collaboration with local govts
  - Advisory

- Public engagement
- Fiber installation techniques and their ground disturbance rates:
  - Trenching – high ground disturbance
  - Vibratory plowing – low to moderate ground disturbance
  - Directional boring – low ground disturbance (a good way to avoid adverse effects)
  - Aerial on new poles (low to none)
  - Aerial on existing poles (none)
- Program comment
  - In 2017, the ACHP issued the program comment on Federal lands and property to streamline broadband projects' Section 106 processes
  - In 2024, the [program comment process](#) was amended to expand availability to all Federal agencies with communications undertakings on or off federal lands, making it applicable for BEAD projects
  - The 2024 amendment:
    - Establishes presumed Areas of Potential Effect (APEs)
    - Establishes the process for initial historic property identification via the records check
    - Creates survey and monitoring program guidelines that may be used in place of full Section 106 review
    - Identifies certain actions that may be exempt from Section 106 review under specified conditions
    - Expanded exclusions for pole replacements
    - Clarifies when compensation for consulting parties is appropriate
  - Around 2% of proposed tower projects are found to have potentially adverse effects
  - The program comment process is not presumed to apply on tribal lands, but tribes may adopt the processes if they find it beneficial
  - Program comment flow chart review (see below)



## Applying the Program Comment Process

