The National Environmental Policy Act (NEPA)

Local Public Agency guide to getting through NEPA.

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Quick and Dirty Overview of NEPA

- Congress enacted the National Environmental Policy Act (NEPA) in December of 1969
- First Major Environmental Law in the United States
- Requires Federal Agencies to evaluate the environmental effects of their proposed actions PRIOR to making final decisions.
- Two Major Purposes of NEPA
  - Assist in making informed decisions
  - Increase citizen involvement in decision making
More Information on NEPA

WYDOT Environmental Services webpage
http://www.dot.state.wy.us/home/engineering_technical_programs/environmental_services.html

FHWA Environmental Review Toolkit
https://www.environment.fhwa.dot.gov/

Code of Federal Regulations (23 CFR 771)
https://www.ecfr.gov

How Does NEPA Affect Local Agencies?

- NEPA is required on all projects that have a Federal Action.
  - Federal Actions can include
    - Federal Money - Any federal money used on the project, including pass through funding like the Transportation Alternative Program and High Risk Rural Roads.
    - Federal Permit - Section 404 permits (Waters of the U.S.), federal land special use permits, take permits for endangered species, etc.
    - Federal Land - Use of federal land, crossing federal land, federal land use changes, etc.
  - The Federal Highways Administration (FHWA) is the lead agency on most WYDOT projects, including pass through funding projects.
FHWA / WYDOT MOA

- FHWA and WYDOT have developed a Memorandum of Agreement (MOA) for Approval of Categorical Exclusions (CEs) for transportation projects.
  - Outlines the procedures for the processing of CEs for federal-aid actions.
  - MOA covers three types of CEs
    - Programmatic CE
    - General CE
    - Comprehensive CE

FHWA / WYDOT MOA and LPA Projects

- LPA projects should have minimal environmental impacts.
- Categorical Exclusions are projects that have no significant environmental impacts.
- LPA projects fall under the MOA for Categorical Exclusions with FHWA
  - WYDOT/FHWA have agreed to a modified CE template for local agencies to follow in order to comply with federal regulations.
  - The template is modified version of a General CE and a Comprehensive CE.
Before You Begin the CE

- **Make sure you are using the most current form.** Can get it from the WYDOT LPA page on the website.
  
  [http://www.dot.state.wy.us/home/engineering_technical_programs/environmental_s_99services/LPA.html](http://www.dot.state.wy.us/home/engineering_technical_programs/environmental_s_99services/LPA.html)
- **DO NOT** modify the CE form and do not send in any other format.
- **DO NOT** send the State Historic Preservation Office (SHPO) a scoping letter.
- Contact WYDOT Environmental Services a to determine the level of Cultural Investigation needed for your project.

Agency Scoping Letters

Must Send scoping letters to:

- U.S. Army Corps of Engineers (USACE)
- U.S. Fish and Wildlife Service (USFWS)
- Wyoming Game and Fish (WGFD)
- WYDOT Environmental Services - for cultural determination
  
  - WYDOT will make a determination of impacts and consult with SHPO for you.
  - Expect a couple weeks for WYDOT to make a determination or inform you a investigation is needed.
  - Expect a minimum of 30 days to get a response from SHPO.
Optional Agency Scoping Letters

Additional agencies you may have to scope depending on project location/type.

- Local Floodplain Coordinator - Local Municipality, County, Homeland Security
- U.S. Bureau of Land Management
- U.S. Forest Service
- Natural Resources Conservation Service (NRCS)
- Tribal Coordination
- Local landowners

What to Include in Scoping Letters

The intent of the scoping letter is to get resource information from the agencies that oversee those resources.

- Project City, State, County
- Description of work
- Location of work
- Maps or Plans showing location and proposed improvements

The LGC office has example scoping letters you can use.
LPA Categorical Exclusion Template

The CE template covers the following areas

- Project Location
- Purpose and Need
- Proposed Improvements
- Affected Environment and Impacts
- Public Participation
- Environmental Commitments
- Preparer
- Determination

Project Location
(The Where)

Describe the location of the project including roads, town/city, county and Section Township and Range. Include project location map as Figure 1 in the CE.

- Be detailed enough that anyone can find your project on Google Earth
- Detailed maps showing where the work will be located is appreciated
Purpose and Need
(The Why)

Most critical part of the NEPA process.

Describe what issue or problem you are intending to resolve with this project and why does the issue/problem need to be resolved. Do not state the solution or scope of work.

- Improve safety for pedestrians
- Building to meet Planning or Transportation Planning documents
- Increase in traffic has lead to unsafe pedestrian crossing
- DO NOT add a bunch of fluffy grant language here.

Proposed Improvements
(The What)

Describe all proposed improvements, including their locations. If applicable include width and surfacing material for any pathways or sidewalks. Include as Figure 2.

- This is the part where you can describe what are you building
- Discuss all improvements and locations.
Affected Environment  
(The Evaluation)

- Summary of all environmental impacts and project related concerns.
- Broken into four major areas
  - Social/Socioeconomic
  - Archaeological and Historical
  - Natural Environment
  - Physical

Make sure you consider in your evaluation impacts needed to construct your project, like construction permits, access routes, haul roads, temporary impacts, etc.

Social Impacts

- Land Use
- Community Cohesion
- Relocation Potential
- Churches and Schools
- Controversy Potential
- Energy Production
- Utility Lines
- Emergency Services
- Environmental Justice
- Public Transportation
- Right-of-Way
- Construction Permits
- Pedestrian and Bicycle
Archaeological and Historical

Send your scoping letter to WYDOT Environmental Services for a determination of effect or if additional cultural or historical studies are needed. Will take approximately 14 business days.

DO NOT SEND SHPO A SCOPING LETTER

Determinations of the Area of Potential Effect, level of cultural investigation and determinations of eligibility are all made by the lead federal agency per 36 CFR 800. FHWA is the lead federal agency and has designated WYDOT to make these determinations.

Archaeological and Historical

WYDOT will review the project based on the information provided in the scoping letter.

OR

No Potential to Affect Historic properties

Potential to Affect Historic properties

14 days

WYDOT will send language to put in the CE and include both letters in the CE.

14 days

WYDOT will respond that a consultant will be required to produce a report.

14 days
Archaeological and Historical Potential to Affect Historic Properties

A consultant will be required to perform a Cultural or Historical survey and prepare a draft report.

Consultant/LPA will SEND A DRAFT report of their findings to WYDOT for review and comment.

LPA/Consultant needs to send three (3) copies of the report to WYDOT Environmental Services.

WYDOT will make a determination and will consult with SHPO.

Once the SHPO concurrence letter is received WYDOT will send language to put in the CE. Include letters in the CE.

WYDOT will make a determination and will consult with SHPO.

14 days

14 days

30 days

75 days review time

Section 4(f) of the DOT Act

Section 4(f) - of the 1966 DOT Act establishes the requirement for consideration of park and recreational lands, wildlife and waterfowl refuges and historic sites in transportation project development.

Projects involving work on, or even adjacent to, fairgrounds, public open spaces, public parks, state game lands, or other recreational facilities fully open to the public will require compliance with Section 4(f).

Contact WYDOT Environmental Services for guidance before submitting the final CE.
Natural Resources

- Wetlands and Waters of the U.S.
- Water Quality
- Wild and Scenic Rivers
- Floodplains
- Farmlands
- Wildlife and Habitat
- Threatened and Endangered Species
- Vegetation
- Ecosystem

Physical Impacts

- Noise
- Air Quality
- Hazardous Waste Sites and Contamination
- Visual
- Plant sites, material sources, haul roads
- Temporary Impacts
Public Participation

Describe any opportunities that the public has had to provide comments on the project. Include any public meetings, council meetings or direct landowner contact.

WYDOT’s current Public Involvement Handbook can be found on the WYDOT website. [http://www.dot.state.wy.us/home/news_info/public_involvement.html](http://www.dot.state.wy.us/home/news_info/public_involvement.html)

Environmental Commitments

- There is some standard language in this section regarding stopping the work if something is discovered that is not covered in this document.
- There is also a section where you can put in commitments that you will be implementing.
Preparer and Determination

Preparer - is the person who completed the CE. Include their title and organization they work for.

Determination - The CE needs to be signed by the "Individual with Signatory Authority" identified in the grant application. Also his/her title.

Final Steps

- Send the following to your Local Government Coordinator
  - Completed CE form
  - Figures
  - Agency letters and their responses
  - At least 35% design plans.
- WYDOT Environmental Services will review a draft of the CE before it is signed and finalized by the preparer, if requested.
- We are here to help, ASK QUESTIONS

DO NOT SEND YOUR CE TO FHWA. Send it to WYDOT Local Government Office
Common Mistakes

- If you identify wetlands on the project, we need to see the Aquatic Resources Inventory Report (wetland delineation).
- Cultural Reports are NEVER included in the CE. They contain confidential information.
- Do not identify T&E habitat and then later say no impacts without a survey or supporting documentation.
- The Information Planning and Conservation System (IPAC) on the USFWS website does not replace a response from USFWS.
- CE should match cultural and historical language that was in letter from WYDOT.
- Do not complete Final Design Plans until the CE has been approved.

How to Wreck Your Project

- Use the wrong CE template
- Change the CE template
- Not attaching all agency letters to and from outside agencies
- Not having figures describing your project
- Not including plans
- Being misleading in your CE or not being consistent
- Not having a clear project description
- CE and agency response letters do not match
- Sending your CE to FHWA and not WYDOT
WYDOT Environmental Contacts

**General Questions**
Nick Hines - NEPA Management and Project Delivery Supervisor
(307) 777-4156 or nick.hines@wyo.gov

**Cultural Questions**
Jason Bogstie - Senior Cultural Resources Specialist
(307) 777-4220 or jason.bogstie@wyo.gov

*Contact Nick first and copy Nick on emails to Jason.*