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# Environmental Documentation Related to Requirement 14

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Draft for Public Comment

## State of West Virginia

West Virginia Division of Economic Development





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# 1. Environmental and Historic Preservation Requirements

## 1.1 Approach to Environmental and Historic Preservation and Permitting

WVDED will utilize a multi-step methodology to evaluate subgrantee projects for environmental compliance. This process includes:

1. Applicants were required to certify that they will comply with NEPA and NHPA and provide any required materials as a part of the application process.
2. Encourage subgrantees to identify and utilize qualified NEPA and EHP practitioners with relevant environmental and/or historic preservation expertise to assist in preparing and supervising environmental review, ensuring compliance with NEPA, and addressing EHP concerns.
3. Ensure subgrantees design broadband projects in a manner that prioritizes avoiding potential adverse impacts and, where avoidance is not feasible, minimize and mitigate those impacts to the greatest extent practicable. WVDED may require subgrantees to alter project routes if the WVDED determines avoidance of a particular area will significantly reduce Subgrantees' pre-construction obligations.
4. Ensure subgrantees consult the First Responder Network Authority (FirstNet) Programmatic Environmental Impact Statement (PEIS) and any incorporated updates as part of the drafting process.
5. Encourage subgrantees to consult NTIA's Permitting and Environmental Information Application and its ArcGIS Pro Permitting and Environmental Information Tool (APPEIT) project package, together with publicly available tools like NEPAassist, and the U.S. Fish and Wildlife Service's IPaC, to inform preliminary environmental and historic-preservation analyses and minimize potential adverse impacts.
6. Require subgrantees to provide WVDED with a detailed project description<sup>1</sup> and all supporting environmental documentation requested by NTIA or [BBO] to support environmental review.

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<sup>1</sup> A "detailed project description" must contain sufficient information, including (1) what is being constructed; (2) where the project is located, listing street address, local jurisdiction (county), any applicable legal land description (applicable Public Land Survey System (PLSS) township, range, and section), and geographic coordinates (latitude and longitude); (3) a physical description of the site or route and surrounding area (developed land versus open space and adjacent resources such as rivers, wetlands, forests, or protected lands); (4) a detailed explanation of how the project will be implemented, covering necessary ground disturbance, connected actions, pre-construction preparations, and follow-up activities after construction; (5) project metrics such as dimensions, areas, distances, depths, and thicknesses, as applicable; (6) any mitigation actions known or anticipated; (7) any permits the subgrantee must obtain before work begins; (8) if applicable, a decommissioning or maintenance plan; (9) a project map that clearly marks boundaries, sites, routes, and activities per required specifications; and (10) photos summarizing the site or route, key areas of interest, and the topography of the project area.

7. Require subgrantees to ensure subcontractors understand and follow all NEPA and other EHP requirements, and to prevent any construction or related fieldwork until NTIA and [BBO] final approval of all EHP documentation and issuance of final decision documents.
8. Require subgrantees to create, maintain, and share with the [BBO] a timeline that captures all NEPA, NHPA, and ESA consultations, reviews, permits and submissions, updating it as necessary to keep every milestone aligned with BEAD program requirements.
9. WVDED will review each subgrantee project and, through the Environmental Screening and Permitting Tracking Tool (ESAPTT):
  - a. At the earliest possible time, provide the NTIA-assigned Environmental Program Officer (EPO) sufficient information to initiate Tribal consultation via the Federal Communication Commission (FCC)'s Tower Construction Notification System (TCNS);
  - b. Upload the project map, project description, and supporting documentation;
  - c. Complete the categorical-exclusion and extraordinary-circumstances questionnaires;
  - d. If necessary, [BBO] will request additional information from subgrantees, such as detailed route plans and engineering specifications, or preliminary mitigation commitments to support efficient, accurate assessment.
  - e. If Extraordinary Circumstances are present and cannot be avoided through adoption of Best Management Practices (BMPs) and mitigation commitments to avoid potentially significant impacts<sup>2</sup>;
  - f. Validate the appropriate level of environmental review;
  - g. Transmit the completed draft NEPA decision memorandum to NTIA's Environmental Program Officer for approval;
  - h. Upon approval, WVDED will continue monitoring project developments to ensure compliance throughout the project lifecycle.
10. WVDED will use ESAPTT's permitting-tracking module to catalog and monitor all applicable local, state, federal permits against milestone schedules, escalate delays to the EPO and FPO, and document each permit's issuance and progress.

## 2. Joint Lead Agency Responsibility Summary

As the primary administering agency for the BEAD Program in West Virginia, WVDED serves as a joint lead agency alongside the National Telecommunications and Information Administration (NTIA) to fulfill NEPA obligations and minimize potential delays during the BEAD Program's implementation. WVDED performs its duties in alignment with 42 U.S.C. 4336a(a)(1)(B) and 42 U.S.C. 4336a(a)(2).

In this capacity, WVDED will:

- Administer the BEAD Program in strict compliance with federal environmental statutes, including but not limited to NEPA, NHPA, ESA, and the Clean Water Act.
- Utilize the Environmental Screening and Permitting Tracking Tool (ESAPTT) within the NTIA Grants Portal to identify applicable categorical exclusions and enable transmission of environmental documents as well as generation of draft and final NEPA documents. WVDED may also utilize ESAPTT's permitting tracking capacity to monitor subgrantee projects, evaluate and track subrecipient milestone schedules, and escalate any permitting issues to NTIA for resolution.

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<sup>2</sup> [https://broadbandusa.ntia.gov/sites/default/files/2025-06/ESAPTT\\_Overview.pdf](https://broadbandusa.ntia.gov/sites/default/files/2025-06/ESAPTT_Overview.pdf)

- Conduct comprehensive evaluations of the sufficiency, applicability, and accuracy of the First Responder Network Authority (FirstNet) Programmatic Environmental Impact Statement (PEIS) relevant to West Virginia's broadband deployment projects.
- Include special award conditions in all subgrantee agreements, ensuring:
  - No construction or ground-disturbing activity commences, and no funds are disbursed until environmental reviews are complete and NTIA and WVDED has approved the related decision documents.
  - Subgrantees prepare all necessary NEPA documentation, secure appropriate permits, and adhere to mandatory statutory deadlines.
  - Subgrantees must provide a milestone schedule and narrative identifying both an overall timeline and specific deadlines and describing how the subgrantee proposes to meet these requirements including: consultations, the completion of NEPA and Section 106 reviews, and the submission of CATEX, Environmental Assessments (EA) or Environmental Impact Statements (EIS), as applicable.

### 3. Evaluation of FirstNet Regional PEIS

WVDED has thoroughly reviewed the FirstNet Final Regional Programmatic Environmental Impact Statement for the Eastern United States, Volume 14, Chapter 16 and the accompanying Record of Decision for the Adoption of the First Responder Network Authority Final Programmatic Environmental Impact Statement - East Region to assess the sufficiency and applicability of the PEIS to anticipated BEAD-funded activities. The PEIS adequately addresses the deployment-related activities anticipated for West Virginia. All projects will be evaluated to ensure specific activities of the project are covered by the FirstNet Regional PEIS. If a proposed activity is not sufficiently covered by the PEIS, additional analysis will be conducted to determine whether supplemental environmental assessment is required to address identified gaps or deficiencies.

The PEIS can be used to inform environmental compliance under the BEAD Program, ensuring that construction and development activities align with established environmental regulations and best practices. Its comprehensive analysis is sufficient to support informed decision-making and regulatory compliance throughout the BEAD Program's implementation.

This proactive approach ensures WVDED's environmental review process remains comprehensive, adaptive, and aligned with federal and state requirements. WVDED's ongoing collaboration with NTIA further strengthens the state's commitment to environmental stewardship.

### 4. NEPA Screening Methodology

WVDED will utilize a multi-phase screening methodology to evaluate subgrantee projects for environmental compliance. This process includes:

**Use of Environmental Screening Tools:** WVDED utilize the Environmental Screening and Permitting Tracking Tool (ESAPTT) within the NTIA Grants Portal to identify applicable categorical exclusions (CEs), identification of extraordinary circumstances (ECs), and enable transmission of environmental documents as well as generation of draft and final NEPA documents. To the extent required, WVDED will also deploy NTIA's

Permitting and Environmental Information Application Tool, NEPAAssist, EJScreen, and IPaC to systematically screen subgrantee projects. These tools provide vital data on environmental sensitivities, protected species, and historic sites, enabling informed decision-making.

**Professional Oversight:** WVDED will encourage subgrantees to engage qualified environmental and historic preservation (EHP) consulting firms to expedite the NEPA review process and ensure compliance with environmental regulations.

**Ongoing Screening:** Post-approval, WVDED will continue screening project developments to ensure compliance throughout the project lifecycle.

**Project application phase:** During the project application review, WVDED reviewed each application's project narrative, geographic information, and logical network design (which included all Broadband Serviceable Locations (BSL) to be served, all proposed broadband infrastructure routes to be constructed, and project area boundary polygons encompassing all infrastructure routes and BSLs).

**After Final Proposal:** After submission of its Final Proposal, WVDED will screen projects for compliance with NEPA ensuring subgrantees are using available NTIA and State tools based on each project's BSLs and preliminary route maps and facility locations, including NTIA's Environmental Screening and Permitting Tracking Tool (ESAPTT), Permitting and Environmental Information Application Tool, NEPAAssist, EJScreen, and IPaC, to systematically screen subgrantee projects. These tools provide vital data on environmental sensitivities, protected species, and historic sites, enabling informed decision-making.

After subgrants are awarded, WVDED will work with subgrantees to gather detailed project information to provide NTIA with information necessary to initiate Tribal notification through the Federal Communication Commission (FCC)'s Tower Construction Notification System (TCNS) and conduct an initial NHPA Section 106 review of project areas to assess potential impact on sensitive historical and cultural structures and artifacts.

## 4.1 Categorical Exclusions

WVDED will use ESAPTT to evaluate the applicability of Categorical Exclusions prior to NTIA submission. Using the tool, WVDED's NEPA specialist will upload project maps and project descriptions into ESAPTT, complete any associated ESAPTT questionnaires, including a Categorical Exclusion (CE) Questionnaire which will involve questions regarding a comprehensive review of the project's scope and specific details, including its size, geographic location, construction methods, and proximity to environmentally or historically sensitive areas to identify potentially applicable CEs, select those CE(s) that apply, and confirm that the project qualifies. In addition, WVDED's NEPA resource(s) will complete an Extraordinary Circumstances (EC) Questionnaire which will facilitate the identification of whether there are culturally sensitive resources (e.g., endangered species or historic properties) that are present; upload documentation directly through ESAPTT, and indicate any mitigation commitments to avoid potentially significant impacts. WVDED's NEPA specialist(s) will validate whether a categorical exclusion should be applied and transmit the Draft NEPA Decision Memo to NTIA for review and approval within ESAPTT. If necessary, WVDED will request additional information from subgrantees, such as detailed route plans and engineering specifications, to support a more accurate assessment.

As part of this process, WVDED will carefully cross-reference each project against the list of Categorical Exclusions (CEs) outlined in Appendix B of NTIA’s NEPA guidance document<sup>3</sup>. Projects involving activities that typically result in minimal or no environmental impact—such as routine maintenance, minor upgrades, or non-intrusive installations—are more likely to qualify for a CE.

Additionally, WVDED will screen for any extraordinary circumstances using the criteria detailed in Appendix C of NTIA’s NEPA Guidance Document. If no extraordinary circumstances are identified, WVDED will provisionally apply a Categorical Exclusion to the project, pending NTIA’s final review and approval. This approach ensures that environmental risks are thoroughly assessed and mitigated while maintaining compliance with federal environmental regulations.

## 4.2 Environmental Assessment (EA) and Environmental Impact Statement (EIS)

If the significance of the project’s environmental impact is not clearly established or known, [BBO] will confer with NTIA’s EPO to determine if avoidance or mitigation measures can be used to circumvent EA preparation. If a subsequent required EA determines a project to have no significant impacts on the quality of the environment, a Finding of No Significant Impact (FONSI) is issued by NTIA.

An EIS will be prepared for projects when the action will likely have a significant effect on the environment. The final decision is documented in a Record of Decision (ROD), which codifies the final decision made, whether to approve the project or not, and the basis for that decision. [BBO] intends to avoid this outcome by imposing route alterations if conditions necessitating an EIS are identified.

## 5. Specific Award Conditions (SACs)

To reinforce environmental compliance, WVDED will apply Specific Award Conditions (SACs) to all subgrantee agreements, ensuring:

- Subgrantees shall not initiate or allow any grant funded implementation activities—with the exception of the limited “Uses Prior to Implementation” section below—prior to the following:
  - The completion of any review required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.) (NEPA), and issuance, as required, of a Categorical Exclusion (Cat Ex) determination, Record of Environmental Consideration (REC), Finding of No Significant Impact (FONSI), Record of Decision (ROD) (hereinafter “decision documents”) that meets the requirements of NEPA;
  - The completion of reviews required under Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470, et seq.) (NHPA), including any consultations required by Federal law, to include consultations with the State Historic Preservation Office and Federally recognized Native American tribes;
  - The completion of consultations with the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS), as applicable, under Section 7 of the Endangered

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<sup>3</sup> See *Guidance on NTIA National Environmental Policy Act Compliance*, June 2025 ([https://broadbandusa.ntia.gov/sites/default/files/2025-06/NTIA\\_NEPA\\_Procedures\\_June\\_2025.pdf](https://broadbandusa.ntia.gov/sites/default/files/2025-06/NTIA_NEPA_Procedures_June_2025.pdf)).

Species Act (16 U.S.C. 1531, et seq.), and/or consultations with the U.S. Army Corps of Engineers (USACE) under Section 404 of the Clean Water Act (33 U.S.C. 1251, et seq.), as applicable; and

- Demonstration of compliance with all other applicable Federal, state, and local environmental laws and regulations.

Additionally, as provisions of the Grant Agreement, subgrantees shall agree that they will not commence implementation activities and funds will not be disbursed until any necessary environmental review is complete and NTIA has approved any necessary decision document, except for the limited permissible activities identified below;

- Subgrantees must timely prepare any required NEPA documents and obtain any required permits, and must adhere to any applicable statutory deadlines as described in 42 U.S.C. 4336g(a); and
- Subgrantees must provide a milestone schedule identifying specific deadlines and describing how Subgrantee proposes to meet these timing requirements including, as required, the completion of consultations, the completion of NEPA and Section 106 reviews, and the submission of Environmental Assessments (EAs) or Environmental Impact Statements (EISs).

Discovery of any culturally or environmentally sensitive artifacts during construction will result in an immediate halt to work until proper protocols are followed. Regarding National Historic Preservation Act (NHPA) Compliance, the Grant Agreement also has conditions regarding the following: To ensure the timely completion of historic preservation review for all BEAD-funded activities, Subgrantees shall provide all such information as WVDED requires to:

- At the earliest possible time, provide the NTIA-assigned Environmental Program Officer sufficient information to initiate Tribal notification via the FCC's Tower Construction Notification System (TCNS) when required for grant funded activities;
- Provide notified Tribes with information regarding grant funded activities via their preferred communication means, as identified in TCNS;
- Apply the Advisory on Historic Preservation (ACHP) Program Comment to Avoid Duplicative Reviews for Wireless Communications Facilities or any other applicable program comment or program alternative developed to address the Section 106 review of communications facilities;
- Notify NTIA of any Tribal request for government-to-government consultation or any identification that a grant funded activity may impact a historic property of religious or cultural significance to a Tribe; and
- Provide all consulting parties with the statutorily required time to respond to its determination of a grant funded activity's effect on historic properties.

Subgrantees shall ensure that implementation (site preparation, demolition, construction, ground disturbance, fixed installation, or any other implementation activities) does not begin prior to the completion of the above activities.

Subgrantees must comply with all conditions placed on the grant funded activities as the result of NEPA or consultation processes—e.g., best management practices or other measures necessary to reduce environmental impacts.

Subgrantees shall provide any related information requested by WVDED or by NTIA (directly or through WVDED) to ensure both initial and ongoing compliance with all requirements described above.

## 6. Permissible Uses of Award Funds Prior to Implementation

The allowable use of Award Funds prior to beginning implementation includes, but is not limited to, activities necessary for the completion of the following:

- Pre-construction planning, including collecting information necessary to complete environmental reviews;
- Applications for environmental permits;
- Studies including, but not limited to, Environmental Assessments (EA), wetland delineations, biological assessments, archaeological surveys, and other environmental reviews and analyses;
- Administrative costs;
- Pre-award application costs;
- Activities supporting consultations required under the NHPA, the Endangered Species Act, and the Clean Water Act; and/or

Limited, preliminary procurement, including the purchase or lease of equipment, or entering into binding contracts to do so; the purchase of applicable or conditional insurance; and/or funds used to secure land or building leases (including right-of-way easements).

## 7. Penalties for Noncompliance

Grant funded activities with significant impacts to environmental or historic resources may face deobligation of funding if impacts cannot be avoided, minimized, or mitigated.

Subgrantees shall notify WVDED within 24 hours upon receipt of any Section 106 notices of foreclosure; notices requesting continuing or supplemental consultation received from the SHPO, Tribal Historic Preservation Office (THPO), or other consulting party or the USFWS; or notices of noncompliance received from consulting authorities or regulatory agencies.

## 8. Scope Changes

Subgrantees and WVDED acknowledge that any change to the approved scope of grant funded activities proposed after the completion of environmental and historic preservation review that has the potential for altering the nature or extent of environmental or historic preservation impacts must be brought to the attention of NTIA and will be re-evaluated for compliance with applicable requirements.

## 9. Archaeological Resources

Burial sites, human remains, and funerary objects are subject to the requirements of all applicable Federal, Tribal, state, and local laws and protocols, such as the Native American Graves Protection and Repatriation Act (NAGPRA), in addition to Section 106 of the NHPA. Subgrantees must notify WVDED of inadvertent discoveries and potential impacts to these resources and identify and follow all applicable laws or protocols. Subgrantees should have an archaeologist who meets the Secretary of the Interior's Professional Qualification Standards monitor ground disturbance for grant funded activities proposed in the vicinity of National Register eligible archaeological sites and suspected or known burials. If any potential archeological resources or buried human remains are discovered during construction, Subgrantees must immediately stop work in that area, secure that area, and keep information about the discovery confidential, except to notify WVDED, NTIA and the interested SHPO, THPO, and potentially affected Tribes. Such construction activities may then only continue with the written approval of WVDED and NTIA.

## 10. Encouragement of Best Management Practices

WVDED will actively encourage subgrantees to adopt proactive mitigation strategies aligned with NTIA's Best Management Practices. Examples include:

- Seasonal construction adjustments to protect sensitive wildlife habitats.
- Implementation of erosion and sediment control measures to protect water quality.
- Design adaptations to avoid disruption of culturally significant sites.


These strategies are strongly recommended to minimize or mitigate environmental impacts and expedite the environmental compliance process.

## 11. Ongoing Monitoring and Compliance Enforcement

WVDED will implement a robust compliance monitoring framework to oversee subgrantee adherence to environmental and historic preservation requirements. This framework will include:

- **Training and Guidance:** WVDED will provide resources to ensure subgrantees understand and comply with environmental regulations
- **Regular Audits:** Periodic audits and site inspections will be conducted to verify ongoing compliance
- **Consultation Encouragement:** Subgrantees will be encouraged to consult with professional EHP firms to strengthen compliance and expedite project implementation

By implementing this comprehensive Environmental Compliance Plan, WVDED will ensure responsible, efficient, and sustainable broadband deployment throughout West Virginia. WVDED's commitment to environmental stewardship, proactive monitoring, and collaborative engagement with NTIA and



subgrantees will foster a streamlined and effective BEAD Program execution that balances infrastructure development with environmental preservation.