

Environmental and Historic Preservation (EHP) Documentation

(Requirement 14)

Purpose

The purpose of this document is to provide information on how Kansas Office of Broadband will ensure subgrantees will comply with environmental and historic preservation requirements including but not limited to the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*) (NEPA), Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*) (NHPA), Section 7 of the Endangered Species Act (16 U.S.C. 1521, *et seq.*), Section 404 of the Clean Water Act (33 U.S.C. 1251, *et seq.*), and all other applicable Federal, state, and local environmental laws and regulations.

Environmental and Historic Preservation (EHP) Requirements

KOBD will ensure full compliance with all applicable environmental and historic preservation requirements including but not limited to the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*) (NEPA), Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*) (NHPA), Section 7 of the Endangered Species Act (16 U.S.C. 1521, *et seq.*), Section 404 of the Clean Water Act (33 U.S.C. 1251, *et seq.*), and all other applicable Federal, state, and local environmental laws and regulations. This compliance is part of the project review process, and all subrecipient projects will undergo a detailed evaluation to ensure minimal environmental and historic impacts.

NEPA Compliance

KOBD will serve as a joint lead agency for NEPA and will design and implement a program to ensure compliance by subrecipients. As a joint lead agency, KOBD will fulfill the role of lead agency, as defined in 42 U.S. Code § 4336a, with respect to proposed deployment activities undertaken. KOBD shall supervise the preparation of required EHP compliance documents, and may, in its discretion, assist in the preparation of such documents where such assistance is warranted based on the complexity of the project, the capabilities of the subrecipient, and other considerations. KOBD shall review and concur with the findings and recommendations of all EHP compliance documentation prior to approval. KOBD is in the process of engaging appropriate subject matter experts (SMEs) and GIS specialists to coordinate review activities, participate in required site visits, and prepare environmental review documents, as necessary.

KOBD will also advise applicants to review NTIA's Environmental Screening and Permitting Tracking Tool (ESAPTT) to understand environmental, historic preservation, and permitting requirements and then consider NTIA best practices for mitigation in engineering and route designs if they are awarded.

KOBD will use its online reporting and compliance platform to receive project implementation plans from the subrecipients detailing the description and location of deployment activities. KOBD's SMEs will review the information provided in the subrecipient's submittal and determine the appropriate level of review required based on NTIA's programmatic and general NEPA guidance. KOBD expects it is likely that the majority of these subrecipient projects will be subject to the NEPA

Categorical Exclusion (CATEX) level of scrutiny. NTIA previously acknowledged, when it expanded the list of activities/projects that only warrant CATEX review, that: “[b]roadband deployment projects generally have limited potential for significant environmental impacts, and NTIA’s substantial record of related NEPA reviews supports expanding the list of actions categorically excluded from detailed environmental review.” See [National Environmental Policy Act Procedures and Categorical Exclusions | National Telecommunications and Information Administration](#) (published April 2, 2024).

KOBD anticipates the nature of the deployment activities under evaluation for each subrecipient, along with the technical environmental capabilities of the submitting subrecipient, will factor in to whether the environmental review shall be performed by the subrecipient and supervised by KOBD or, in certain circumstances and at the discretion of KOBD performed by, or with the assistance of, KOBD. As such, the following compliance responsibility scenarios are expected:

1. In some instances where the deployment activities qualify for one of NTIA’s CATEX exclusions, the review may be completed by or assisted by KOBD using GIS mapping and report-generating software to which KOBD already has access. This approach will allow for more timely preparation of this level of review and reports and better facilitate a more uniform appearance of reports based on centrally sourced data inputs.
2. For complex deployment activities to be undertaken by subrecipients or in the rare situation where an environmental assessment (EA) is required, KOBD will supervise the preparation of environmental review documents by the subrecipient and shall retain the right of final approval prior to implementation of the deployment activities in question. KOBD does not expect to encounter situations where a full Environmental Impact Statement (EIS) level of review is required, given the fact that NTIA has previously observed (and KOBD agrees) that broadband deployment projects generally have limited potential for significant environmental impacts.
3. If in KOBD’s judgement, the subrecipient lacks the technical EHP expertise to produce a compliant review document, KOBD may support the subrecipient in preparation of the required document package. In this scenario, the subrecipient will be required to provide the supporting documentation used in the preparation of the environmental review.

KOBD shall conduct ongoing discussions with the subrecipients prior to project implementation to determine the appropriate course of action to ensure EHP compliance, taking into consideration the volume and complexity of projects assigned to each subrecipient and the technical EHP capability of each subrecipient.

NHPA Compliance

KOBD will not allow to be initiated, as enforceable by the Subrecipient Subaward Agreement, any grant-funded implementation activities prior to the completion of reviews required under § 106 of the NHPA, including any consultations required by Federal law, to include consultations with the State Historic Preservation Office and Federally recognized Native American tribes.

To ensure the timely completion of historic preservation review for all BEAD-funded activities, KOBD will require that subrecipients provide all information required to:

- Timely 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 Council 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.

Joint Lead Agency Responsibility Summary

KOBD understands it shall serve as a joint lead agency to implement EHP requirements under 42 U.S.C. § 4336a. As such, KOBD will either directly prepare, assist with, or supervise the preparation of the required analyses and review documents as described in the scenarios in the above section. KOBD is in the process of retaining subject matter experts to direct and coordinate this compliance program.

Description of FirstNet Regional PEIS Evaluation

KOBD has reviewed the FirstNet Regional Programmatic Environmental Impact Statement (PEIS). At this time the exact scope and location of subrecipient projects is to be determined. Currently, it is anticipated that deployment related activities for projects within Kansas are covered by the actions described in Volume 5, Chapter 7 of the PEIS covering Kansas. In all cases, project scopes will be reviewed, once proposed, to evaluate whether the activities are covered by the FirstNet Regional PEIS. If subrecipient proposed projects are not sufficiently covered by the FirstNet Regional PEIS, additional analysis will be conducted by subject matter experts to determine whether supplemental environmental assessment is required to address identified gaps or deficiencies. Although final project scopes and locations are not known, the following activities described in the PEIS may be implemented:

- **Wired Projects**
 - Use of Existing Conduit – New Buried Fiber Optic Plant: Disturbance associated with the installation of fiber optic cable in existing conduit would be limited to entry and exit points of the existing conduit in previously disturbed areas.
 - Use of Existing Buried or Aerial Fiber Optic Plant or Existing Submarine Cable: Lighting up of dark fiber.
 - Installation of Optical Transmission or Centralized Transmission Equipment requiring no ground disturbance.

- New Build – Buried Fiber Optic Plant: Plowing (including vibratory plowing), trenching, or directional boring and the construction of points of presence (POPs), huts, or other associated facilities or hand-holes to access fiber.
- New Build – Submarine Fiber Optic Plant: The installation of cables in limited nearshore and inland bodies of water.
- New Build – Aerial Fiber Optic Plant: Potential impacts would be similar to Buried Fiber Optic Plant, especially where ground disturbance is expected when connecting aerial cable to new ground locations or installation of new or replacement of existing telecommunications poles.
- Collocation on Existing Aerial Fiber Optic Plant: Any ground disturbance could cause direct and indirect impacts to wetlands from increased suspended solids and runoff from activities, depending on the proximity to wetlands and type of wetlands that could be affected.
- Installation of Optical Transmission or Centralized Transmission Equipment: installation of transmission equipment that would require grading or other ground disturbance to install small boxes or huts, access roads, or similar.
- Wireless Projects
 - New Wireless Communication Towers: Installation of new wireless towers and associated structures (generators, equipment sheds, fencing, security and aviation lighting, electrical feeds, and concrete foundations and pads) or access roads.
 - Collocation on Existing Wireless Tower, Structure, or Building: Collocation would involve mounting or installing equipment (such as antennas or microwave dishes) on an existing tower
- Satellite and Other Technologies
 - Satellite-Enabled Devices and Equipment: including permanent equipment on existing structures.

KOBD also reviewed the PEIS with regard to the following:

- Regulatory Changes: No known changes to the environmental or historic preservation laws and regulations in the State of Kansas would have a material impact on the analysis presented in the PEIS.
- Affected Environment: The PEIS, with an addendum below to account for changes to the Fish and Wildlife Service's Endangered and Threatened Species List and to account for changes to the National Registry of Historical Places subsequent to the publication of Chapter 7 in 2017, adequately described the potentially affected environment in Kansas, including infrastructure and biological resources.
- Compared with Chapter 7 as published in 2017, USFWS has made the following changes to its listing of endangered and threatened species for Kansas:
 - Least Tern (*Sterna antillarum*) (bird) has been removed from the list
 - Lesser Prairie Chicken (*Tympanuchus pallidicinctus*) (bird) has been removed from the list
 - Indiana Bat (*Myotis Sodalis*) (mammal) has been added to the list as endangered

- Ozark Cavefish – (*Amblyopsis rosae*) (fish) has been added to the list as threatened
- Topeka Shiner – (*Notropis Topeka*) (fish) has been removed from the list
- Compared with Chapter 7 as published in 2017, The National Park Service (NPS) has made the following changes to its listing of National Historic Landmarks for Kansas:
 - Wyandotte National Burying Ground (Eliza Burton Conley Burial Site) has been added to the list

NTIA CE Screening Description

KOBD will utilize the following process to identify, confirm, and categorize projects that likely qualify for Categorical Exclusions (CATEX) under NTIA’s NEPA guidance as opposed to those that may require further environmental review:

1. Project Screening Process
 - a. **Initial Review of Project Scope:** KOBD will begin with a preliminary screening of proposed subrecipient projects, once submitted, to evaluate their potential environmental impacts. This screening process will rely on the NEPA guidance provided by NTIA, particularly Appendix B, which outlines activities that typically qualify for Categorical Exclusions. The process involves the following steps: KOBD’s SMEs will review the project scope and details, including project size, location, construction methods, and proximity to sensitive environmental or historical areas. This review helps in determining whether the project falls under a CATEX or requires further analysis.
 - b. **Cross-Referencing with NTIA’s Categorical Exclusions:** Each project will be cross-referenced with the list of Categorical Exclusions provided in Appendix B of NTIA’s NEPA guidance. Projects that involve activities with minimal or no environmental impact, such as minor upgrades, maintenance, or non-intrusive installations, are more likely to qualify for a CATEX. In addition, as noted, NTIA has observed that broadband deployment projects generally have limited potential for significant environmental impacts.
 - c. **Review for Extraordinary Circumstances:** Each project that would normally be considered categorically excluded will be evaluated to determine if extraordinary circumstances (Appendix C of NTIA NEPA Guidance Document) are present. If any of the extraordinary circumstances are involved with the proposed project, KOBD, supervising the subrecipient, will conduct and document the appropriate environmental analysis to determine if the action warrants a categorical exclusion or if the preparation of an environmental assessment or EIS is required.

Specific Award Conditions (SACs) Description

The Subrecipient Subaward Agreement KOBD will use for deployment activities includes provisions prohibiting subrecipients from initiating or allowing any grant funded implementation activities prior to the following:

- The completion of any review required under NEPA, and issuance, as required, of a Categorical Exclusion determination, Record of Environmental Consideration (REC), Finding of No Significant Impact (FONSI), and Record of Decision (ROD) (hereinafter “decision documents”) that meet the requirements of NEPA;

- The completion of reviews required under Section 106 of 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 any required consultations with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, as applicable, under Section 7 of the Endangered Species Act (16 U.S.C. 1531, et seq.), and/or consultations with the U.S. Army Corps of Engineers 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, the KOBD Subrecipient Subaward Agreement will require that the subrecipient:

- to not commence implementation (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 in the Subrecipient Subaward Agreement, and set forth below;
- 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. 4336(a); and
- must provide a milestone schedule identifying specific deadlines and describing how subrecipient proposes to meet these timing requirements including, as required, the completion of consultations, the completion of NEPA and NHPA Section 106 reviews, and the submission of Environmental Assessments or Environmental Impact Statements, if required.

Aligned with the BEAD NOFO and NTIA guidance, KOBD will allow limited permissible pre implementation activities under NEPA to proceed using award funds prior to the completion of the EHP review process, noting that subrecipients that undertake unauthorized project activities in contravention of these activities proceed at their own risk and may face de-obligation of funding. These permissible pre-implementation activities could include:

- Pre-construction planning, including collecting information necessary to complete environmental reviews
- Applications for environmental permits
- Studies, including, but not limited to:
 - Environmental Assessments
 - Wetland delineations
 - Biological assessments
 - Archaeological surveys
 - Other environmental reviews and analyses
- Administrative and pre-award application costs
- Activities supporting consultations required under the NHPA, the Endangered Species Act, and the Clean Water Act
- 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).

Other Relevant Information

Archaeological Resources

KOBD's Subrecipient Subaward Agreement will also provide for the protection of 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. Subrecipients must notify the KOBD of inadvertent discoveries and potential impacts to these resources. The Subrecipient Subaward Agreement will require that if any potential archeological resources or buried human remains are discovered during construction, the subrecipient must immediately stop work in that area, secure that area, and keep information about the discovery confidential, except to notify KOBD, NTIA and the interested SHPO, THPO, and potentially affected Tribes. Such construction activities may then only continue with the written approval of KOBD and NTIA.