

Extraordinary Circumstances Screening BEAD NEPA Reviews

BEAD-funded projects are subject to National Environmental Policy Act (NEPA) review. To streamline reviews, the NTIA established numerous Categorical Exclusions (CATEX) that cover many types of broadband installation activities. However, before a CATEX can be applied, the proposed action must be evaluated to determine whether the project may result in a significant impact to Extraordinary Circumstances (EC). This guidance document is intended to provide insight into the ECs as even a cursory understanding can help reduce uncertainty and minimize the risk of delays in the NEPA review.

The ECs

The NTIA has identified thirteen ECs that include:

EC-1: Environmentally sensitive or unique geographic areas

The proposed action occurs within an environmentally sensitive or unique geographic area of notable recreational, ecological, scientific, cultural, scenic, or aesthetic importance.

The NTIA defines “unique geographic areas” as including the following:

- Designated Wilderness Areas
- Wilderness Study Areas
- National Wildlife Refuges
- National Parks
- Areas of Critical Environmental Concern (a BLM designation)

A review of this EC should also include the following considerations:

- National Scenic Trails
- National Recreation Areas
- National Forests
- National Grasslands
- Designated Coastal Zones
- Coastal Barrier Resources
- Designated Wild & Scenic Rivers
- National Conservation Lands (a BLM designation)

Consultation Requirements: Projects that cross Federal, State, or Tribal lands typically require coordination with the administrative agency to confirm there will be no adverse impact.

Additionally, for certain units managed by the National Park Service, coordination is needed to ensure the use of the Advisory Council on Historic Preservation’s *Program Comment for Federal Communications Projects* (Program Comment) is suitable for streamlining Section 106 Reviews.

Permitting Alert: Projects crossing Federal Lands typically require right-of-way permitting with the jurisdictional agency.

EC-2: Threatened or Endangered Species

The proposed action may adversely impact species listed or proposed to be listed as Endangered or Threatened Species or have adverse effects on designated Critical Habitat for these species.

A review for this EC should consider whether the following are present in the Project Area:

- USFWS Listed Species
- NMFS Listed Species
- Designated Critical Habitats
- Coral Reefs
- Marine Mammal Haulouts
- Marine Preserves
- Important Bird Areas
- Karst Topography
- Essential Fish Habitat
- Other Suitable Habitats
- NOAA Fisheries’ Habitat Areas of Particular Concern

To fully assess the project’s impacts, your environmental consultant may also need to know if the project plan includes:

- Tree trimming or clearing
- Vegetation Removal
- Use of Pesticides/Herbicides
- In-water Work
- Extent & Location of Ground Disturbance

Consultation Requirements: If the proposed action does not meet the [limited definition for ‘No Effect’](#), coordination with the U.S. Fish and Wildlife Service and/or NOAA Fisheries will be required.

EC-3: Migratory Birds

The proposed action may adversely impact protected migratory birds or their habitats.

A review for this EC should include the following considerations:

- Flyways
- Important Bird Areas
- Known Bald & Golden Eagle Nests
- Waterbird Nesting Areas
- Other areas likely to contain high density of breeding or wintering birds

To fully assess the project's impacts, your environmental consultant may also need to know if the project plan includes:

- Tree trimming or clearing
- Vegetation Removal

EC-4: Historic or Cultural Resources

The proposed action may adversely affect historic, archaeological, or cultural sites, including Native American Traditional Cultural Properties, properties listed or eligible for listing on the National Register of Historic Places.

A review for this EC should include the following considerations:

- National Register Listed Resources
- National Register Eligible Resources
- Known Archaeological Sites
- National Historic Landmarks
- National Battlefields
- National Monuments
- National Memorials
- National Historic Trails

Additionally, a qualified archaeologist should make a formal site file request of the State's Department of Transportation and any Federal Agencies that manage lands in the Project Area. The Program Comment allows for use of previous surveys to streamline assessments and minimize field work. To support use of the Program Comment, an environmental consultant may draft an Archaeology Desktop Review that includes consideration of the following:

- Extent & depth of known archaeological sites
- Age & methodology of existing archaeology surveys
- Density of known archaeological sites
- Soil types, topography, proximity to water features

Consultation Requirements: The NTIA intends to utilize the Program Comment to streamline the Section 106 Review process. If historic or cultural resources, certain units managed by the National Park Service, or Tribal lands are present in the Project Area, additional coordination with Federal, State, or Tribal agencies will be required to ensure Program Comment suitability.

If historic resources are present, coordination with the State Historic Preservation Office will be necessary.

EC-5: Tribal Resources

The proposed action restricts access to and ceremonial use of Indian Sacred Sites by Indian practitioners or adversely affects the physical integrity of such religious sacred sites.

Consultation Requirements: The NTIA will utilize project information to initiate consultation with all interested Tribal groups. The NTIA may request additional information based on tribal responses.

Note: Tribal interest is established *based on historic factors* and not current reservation boundaries. As such, tribal consultation may involve coordination with Tribes that do not have a modern presence in the Project Area.

EC-6: Floodplains & Water Resources

The proposed action occurs in floodplains or involves significant changes to or effects on waterbodies, wetlands, floodplains, water quality, sole source aquifers, public water supply systems, or state, local, or Tribal water quality standards established under the Clean Water Act or the Safe Drinking Water Act.

A review for this EC should include the following considerations:

- FEMA Designated Flood Zones
- NWI Identified Wetlands
- Waters of the U.S.
- Waters of the State
- USACE Navigable Waters
- USACE Reservoirs
- USACE Project Areas
- Sole Source Aquifers
- Other Drinking Water Sources



Permitting Alert: Impacts to floodplain and water may require additional permitting with federal, state, or local agencies. Permitting is most frequently required for impacts to wetlands, especially those that are found to be U.S. Army Corps of Engineers (USACE) jurisdictional waters, designated navigable waterways and certain regulatory or special flood hazard zones.

EC-7: Environmental Justice

The proposed action may have a disproportionate and adverse human health or environmental effect on low-income populations, minority populations, or other communities with environmental justice concerns, as defined in Executive Order (EO) 14096.

Pursuant to Executive Order (EO) 14154 titled *Unleashing American Energy*, dated January 20, 2025, the EO relating to Environmental Justice concerns has been revoked. As such, the NTIA has removed this EC from consideration.

EC-8: Hazardous Waste or Materials

The proposed action involves construction impacts on or near an active, inactive, or abandoned contaminated or hazardous waste site, or involves non-permitted generation, transportation, treatment, storage, or disposal of substances hazardous to human health or the environment, unless NTIA determines the action is consistent with an approved remediation plan for the site.

A review for this EC should include the following considerations:

- National Priority List Sites
- Other CERCLA Properties
- RCRA Generators

EC-9: Radiofrequency Electromagnetic Energy Exposure

The proposed action would involve human exposure to ionizing or non-ionizing radiation or use of any radiation in excess of the Federal Communications Commission's established Maximum Permissible Exposure (MPE) limits for human exposure to Radiofrequency Electromagnetic Energy fields.

A review for this EC should consider the scope of work for the proposed installation. If the installation includes wireless components, additional RF Screening may be necessary to determine the installation won't exceed MPEs.

EC-10: Public Controversy

The proposed action is controversial because of the introduction or employment of unproven technology, highly scientifically uncertain or unique environmental effects, substantial disagreement over the possible size, nature, or effect on the environment, or likelihood of degrading already existing poor environmental conditions.

As broadband technology is well studied and widely utilized, this extraordinary circumstance is expected to be rare. However, if the subgrantee is aware of public controversy relating to the proposed project, they should alert their environmental consultant immediately.

EC-11: Other Federal, Tribal, State, or Local Laws

The proposed action may violate a Federal, Tribal, state, or local law, regulation, policy, or requirement imposed for the protection of the environment.

The State Broadband Office should assist in identifying other laws, regulations, or policies that may need to be considered. An example of one such law is the state of Indiana's requirement for a Cemetery Development Plan if there will be ground disturbance within 100 feet of a cemetery.

EC-12: Size & Scope

The proposed size or scope of action is greater than is normal for an action of its type.

As broadband installation methods are generally standardized across the industry, this extraordinary circumstance is expected to be rare. However, if the subgrantee is aware of non-standard scope, they should alert their environmental consultant immediately.



EC-13: Human Health or the Environment

The proposed action may cause other significant effects on human health or the environment that have not been otherwise addressed.

A review for this EC should include the following considerations:

- EPA Nonattainment Areas
- Class I Air Quality Areas
- Potential for Dust
- Nonattainment Areas Classified as Extreme or Severe

FAQ

What constitutes the “Project Area”?

Under NEPA, the Project Area is the physical extent of all potential impacts, including, but not limited to:

- The total construction footprint
- All ground-disturbing activities
- The proposed route and/or facility locations
- Required connections (i.e. to existing middle-mile points, or utilities to power cabinets)
- Temporary or permanent access roads or easements
- Laydown, staging, or preparation areas

Any action required for the BEAD-funded portion of the installation to function should be included within the Project Area and described accordingly.

Who evaluates the ECs and decides if a CATEX applies?

Each state has been directed by NTIA to establish its own procedures for carrying out NEPA reviews. As a result, the responsibility for evaluating Extraordinary Circumstances (ECs) and determining whether a Categorical Exclusion (CATEX) applies can vary by state. Subgrantees should check with their State Broadband Office (SBO) representative to understand how this process works in their state.

Regardless of the state-specific approach, EBI recommends completing an Initial EC Screen to identify potential issues early in project development. Identifying concerns early allows opportunities to adjust the project design to avoid or minimize impacts before the formal NEPA process begins. Before moving forward with this service, subgrantees should confirm with the SBO that the associated costs are reimbursable.

What happens if an EC is identified?

Identifying an EC does not automatically preclude use of a CATEX or require an Environmental Assessment (EA). In many cases, additional review, possibly including field surveys, can help clarify the issue and determine whether the project can proceed with appropriate measures in place. Coordination with federal, state, or local agencies may also be needed.

For historic and cultural resources, the presence of an EC may limit the applicability of the Program Comment, in which case a full Section 106 review may be necessary to resolve effects.

Once potential impacts are better understood, subgrantees can work with their environmental consultants and the SBO to consider avoidance or mitigation options. These often include adjusting construction methods, modifying the route, or implementing mitigation measures such as erosion and sediment controls or time of year restrictions.

An EA is only required when impacts cannot be adequately avoided or mitigated. It is not expected that broadband installation projects will require an Environmental Impact Statement (EIS).

What is the Program Comment for Federal Communications Projects?

The Advisory Council on Historic Preservation (ACHP) can issue Program Comments to help streamline compliance with Section 106 of the National Historic Preservation Act. In 2017, the ACHP issued a Program Comment covering certain Federal Communications Commission (FCC) projects on federal lands. In 2024, NTIA requested that this Program Comment



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be expanded to include broadband installation projects. The updated document is now known as the *Program Comment for Federal Communications Projects*.

A separate program comment may also be utilized to eliminate duplicative reviews for projects involving collocations on existing cell towers that have previously been reviewed by the FCC.

How does the Program Comment streamline Section 106 Review?

The 2024 Program Comment establishes Areas of Potential Effects for certain wireline and wireless projects. It also expands Section 106 exclusions for pole replacements and identifies other undertakings that may be exempt under specific conditions. Perhaps most significantly for wireline projects, it allows for the use of certain existing archaeological surveys to minimize the extent of field survey that may be required to define known archaeological sites. For projects covering miles of ground, this small provision may equate to significant time savings.

What happens if additional consultation or permitting is needed?

Just as NEPA procedures vary by state, so do approaches to coordination with SHPOs, the USFWS, and other agencies. Some SBOs manage or oversee this coordination, while others expect subgrantees to handle agency communications directly.

Permitting responsibilities may also differ by state. In some cases, the SBO will take the lead; in others, subgrantees will be responsible for securing permits themselves. Subgrantees should contact their SBO representative early in the process to understand expectations and avoid delays.