

NPM-TRUS-44 A2

Streamlining the Rights-of-Way and Business Lease Application Processes for Federal Funded Tribal Broadband Infrastructure Projects

Housekeeping

- **The session will be recorded; recordings will be available on Division of Real Estate Services SharePoint and website after the training.**
- **This training is not for media coverage, if you are a member of the press, please drop off this training now.**
- **If you have a question, please put it in the chat and we will address all questions at the end of the session.**
- **A copy of the NPM is available at the following website:** https://www.bia.gov/sites/default/files/dup/assets/public/raca/national_policy_memoranda/pdf/NPM-TRUS-44_IJA%28BIL%29-Right-of-Way_FINAL_Signed_508.pdf



Agenda

- **NPM-TRUS-44 A2**
https://www.bia.gov/sites/default/files/dup/assets/public/raca/national_policy_memoranda/pdf/npm-trus-44-a2_streamlining_rows_and_business_lease_applications_final_508.pdf
- **Summary of Policy and Procedures**
- **Federal Broadband Funding**
- **Office of Indigenous Connectivity and Technology**
- **Basics of NEPA – Branch of Environmental Services**

Presenters

BIA Office of Trust Services, Division of Real Estate Services (DRES)

- Carla Clark, Acting Division Chief, DRES
- Susan Brave, Senior Realty Specialist

BIA OTS Office of Indigenous Connectivity & Technology (OICT)

- Danae Wilson, Director

BIA OTS Division of Environmental, Cultural, and Resource Management (DECRM)

- Justine A. Vaivai, Environmental Protection Specialist/NEPA Coordinator

Division of Indian Affairs, Office of the Solicitor (SOL)

- Stephen Simpson, Senior Attorney Advisor
- Lauren Difilippo, Senior Attorney Advisor

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BIA – Office of Trust Services - Division of Real Estate Services (DRES) Central Office



Purpose and Goals of the NPM

- **Updated BIA policy for efficient and effective processing of ROWs and Business Lease applications for federally funded Tribal broadband infrastructure projects.**
- **Consistent ROW and Business Lease application processes across BIA's Regions/Agencies and Compact and Contract Tribes.**

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Purpose:

- Comprehensive policy framework on ROWs and Business Leases for broadband infrastructure
- Provides guidance related to typical O&M activity(ies) of an infrastructure project
- Collaboration and partnerships by increased coordination, fostering working relationships
- Changes to existing ROW grants, amendments, or needing a new ROW
- Projects crossing 100% Tribal trust lands see 25 CFR Section 169.4

Scope:

- Applies to all BIA programs offices, Regions, involved in the ROW or Business Lease processes.
- If an application is received by BIA, a review must be made within 5 business days as to whether the application is complete.
- Many Tribes have entered contract and compact agreements with BIA under ISDEAA to carry out BIA's Realty and LTRO functions.

Summary of NPM-TRUS-44 A 2 (cont)

- A. ROW and Business Leases Applications where Tribe owns 100% of the tract-**
No BIA approval is needed if the Tribe or Tribal entity is the applicant, see 169.4(b)(1), 169.4(b)(3)(iii) and 162.005(a)(1). A ROW or Lease is not needed if the applicant has entered into a **contract** that encumbers Tribal land under 25 U.S.C. 81. No ROW is needed for a Service Line Agreement (specifically defined in the regulations).

For leases, an independent legal entity owned and operated by a Tribe may have to obtain a lease from owners before taking possession of the land (25 CFR Section 162.005(a)(1)). A lease is not needed to possess Indian land if the applicant is a 25 U.S.C. 5124 corporation that manages the Tribal land directly under a **federal charter** or Tribal authorization.

If the applicant is a third party, including but not limited to a Tribal consortium or a Federal agency the Tribe may exercise all the regulatory permissions, including negotiating for any payment amount and asking the Secretary to waive the valuation and bond and insurance requirements.

For a ROW crossing multiple Tribal lands, **the applicant must obtain Tribal consent from each Tribe whose land the ROW will be crossing in the form of Tribal authorization or written agreement with the Tribe.** The consent document may impose restrictions or conditions that may become conditions and restrictions in the grant. The ROW grant could be utilized as one grant for all tracts traversed by the ROW (25 CFR 169.124(d)).

Summary of NPM-TRUS-44 A 2 (cont)

A decision on a lease or ROW application must occur 60 days after making the determination that the application is complete. The ROW Tribal authorization, grant or lease, map of definite location and any Tribal use agreement(s) connected to Tribal infrastructure must be filed with LTRO in 30 days.

B. ROW and Business Lease Applications for Allotted Lands-

If the applicant is a third party, including but not limited to a Tribe, Tribal utility, Tribal consortium or Federal agency-needs BIA approval. The individual Indian owners may negotiate for any payment amount and may waive the valuation requirement.

The ROW may be approved for the negotiated amount per 25 CFR 169.112 and Business Leases per 25 CFR 162.421. BIA will determine the number of owners of undivided interests in the land, for the purposes of calculating requisite consent based on BIA records on the date the application is submitted to the BIA (25 CFR 169.107(c) and 25 CFR 162.012(a)(5)).

If the Tribe already owns the majority of the interest, consent of the other fractional owners is not required, but the Tribe must notify the co-owners.

Because of the regulatory timelines for approval, review of the application will occur immediately upon making the determination that the application is complete.

Summary of NPM-TRUS-44 A 2 (cont)

C. ROW Applications Crossing over Multiple Tracts-The applicant can submit one ROW application for multiple contiguous tracts if applicable. BIA will issue one grant for all of the tracts traversed by the ROW for the infrastructure project if applicable.

D. Maintenance-The ROW use includes the right to access the ROW to manage vegetation; inspect, maintain, and repair equipment; and conduct other activities that are necessary to maintain the ROW use.

Applicant may refer to a request to change technology from underground copper telephone line to underground fiber optic line as a maintenance activity. However, 25 CFR 169.127(c) identifies this as an example of a new use of a ROW that is within the same scope as the original ROW and not a maintenance activity.

E. New ROW Use Within or Overlapping an Existing ROW-Grantee may use all or a portion of an existing ROW for a use not specified in the original grant only if it is within the same scope of the use in the original grant of the existing ROW.

Summary of NPM-TRUS-44 A 2 (cont)

If a grantee proposes to use all or a portion of an existing ROW for a use not specified and not within the same scope of the original ROW and the new use will not require ground disturbance, the grantee must request an amendment to the existing ROW.

If a grantee proposed to use all or a portion of an existing ROW for a use not specified and not within the same scope of the original ROW and the new use will require ground disturbance, the grantee must request a new ROW.

Applicants that are not the grantee of the ROW may need an assignment of an existing ROW or a new ROW.

In accordance with 25 CFR 169.128, BIA may grant a new ROW within or overlapping an existing ROW if:

- a) The applicant follows the procedures and requirement to obtain a new ROW; and
- b) The ROW does not interfere with the use or purpose of the existing ROW and the applicant has obtained the consent of the existing ROW grantee. The existing ROW grantee may not unreasonably withhold consent.

Summary of NPM-TRUS-44 A 2 (cont)

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Summary of NPM-TRUS-44 A 2 (cont)

- F. Amendments**-If the amendment changes the scope of the original ROW and the new use requires ground disturbance, the grantee will need to submit a new ROW application. If the amendment changes the scope of the original ROW and the new use will not require any ground disturbance it can be reviewed and processed. Review and verify any amendment requiring compliance with consent requirements in 25 CFR 169.107.
- G. Assignments**-If the assignment is a result of a corporate merger, acquisition, or transfer by operation of law, then the assignee is excluded from these requirements, except that the assignee needs to provide an original copy of the assignment for recording (25 CFR 169.207(c)), and it must be recorded within 30 days.
- a)**The grant of easement or Tribal Resolution should be reviewed to identify if the assignment still requires consent even if it meets the corporate merger, acquisition, or transfer by operation of law regulatory criteria.

Summary of NPM-TRUS-44 A 2 (cont)

G. Assignments (cont)

Review the original ROW for express assignment language and applicability. Identify if the existing ROW language “expressly states” (direct and distinctly stated) that the grantee can assign the grant and under what conditions. If the existing language does not contain such language, the approval of the assignment must follow the regulations.

Verify that the grantee/assignee has: complied with the conditions of the grant; provided the BIA with a notice of any violations, if any; submitted a new bond; obtained landowners’ consent; and complied with any possible compensation requirements, prior to BIA approval and recording.

Summary of NPM-TRUS-44 A 2 (cont)

H. Partial Assignments-

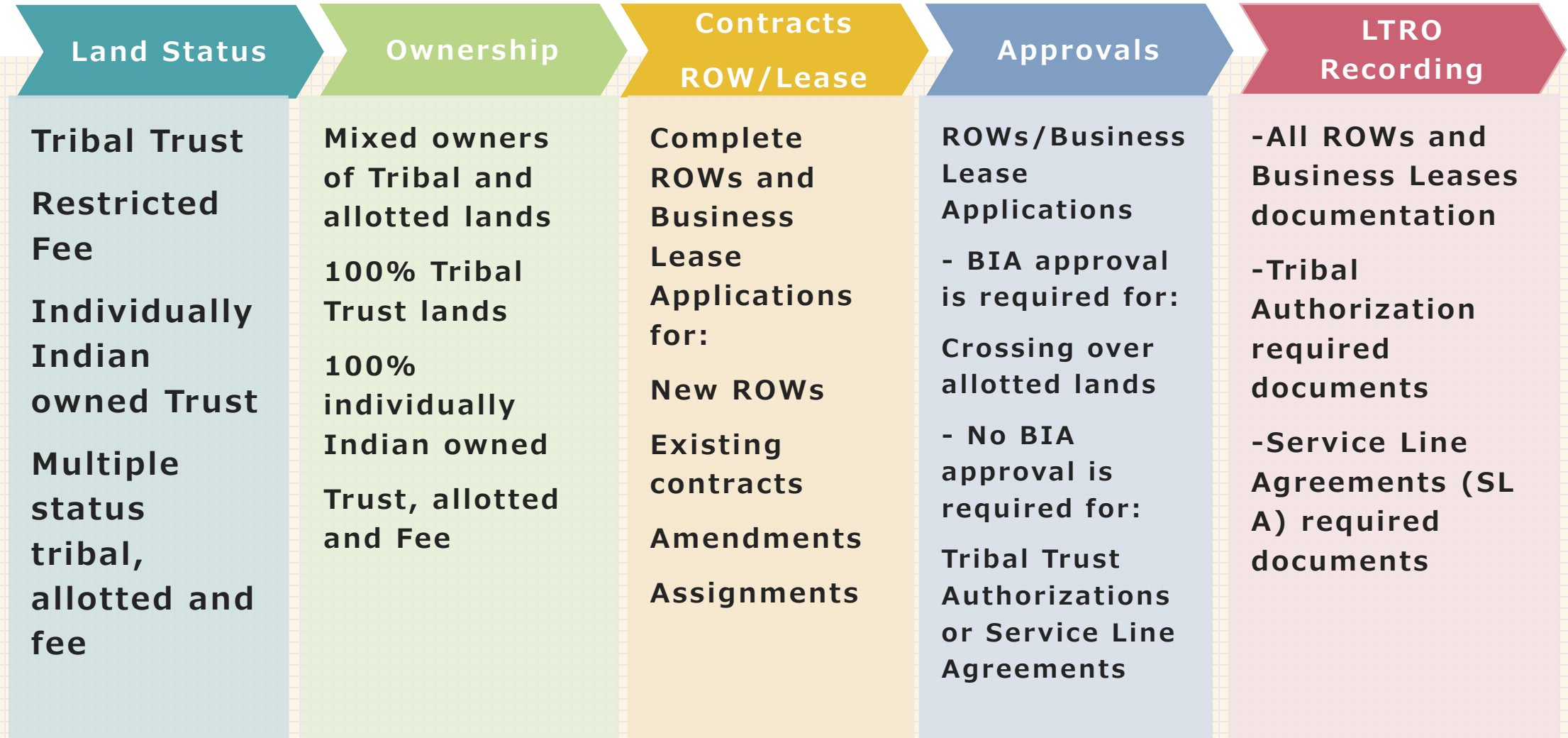
- 1) Realty staff will review the purpose of the partial assignment and/or determine if a ROW application should be submitted. A partial assignment may be used to authorize another third party to utilize an existing, approved grant of easement under certain conditions (25 CFR § 169.127(a)). A partial assignment of ROWs will be reviewed and processed using the same standard assignment procedures discussed above.
- 2) Review if the partial assignment's purpose/use is consistent with the original grant of easement's purpose/use. If it is identified that the partial assignment purpose is different and requires any ground disturbance, Realty staff will notify the assignee to obtain a new ROW.
- 3) Review the grant of easement to identify any conditions and/or obligations that are reoccurring such as payment, and if applicable, ensure the partial assignment addresses if the assignor (grantee) or assignee is the responsible party.
- 4) Confirm that the partial assignment of a ROW adequately identifies the segment of the ROW that is being assigned for recordation purposes.

Summary of NPM-TRUS-44 A 2 (cont)

I. Providing Copies of ROW and Lease Documents-

- 1) It is very important to verify the purpose of the original grant through examination of the original documents to confirm existing grant stipulations regarding amendments or assignments.
- 2) Grants for ROWs approved under 25 CFR Part 169 are provided to applicants. Therefore, applicants who operate and maintain ROWs should have original grants of ROWs. However, agencies may discover that current holders of ROWs may have difficulty referencing approved ROWs for the BIA to identify and to provide guidance upon.
- 3) If BIA's reasonable search of existing ROWs yields no records and the applicant is unable to also provide proof of an existing ROW approved under 25 CFR 169, the applicant may need to make a new application for ROWs
- 4) Tribes and Individual landowners may request copies of ROWs or leases that cross the lands they have an ownership interest in.
- 5) Companies or third parties requesting copies of ROWs or leases may need to be directed to make a request under the Freedom of Information Act (FOIA) where appropriate.

Key Elements of ROWs and Business Lease Applications



Major Federal Funding Resources for Tribal Infrastructure

	Category 1	Category 2	Category 3	Funding
NTIA-TBCP	Tribal Broadband Adoption & Use	Feasibility	Deployment	\$2 Billion
NTIA-BEAD	State Broadband Infrastructure		Middle Mile FO	\$42 Billion
IIJA	Tribal Broadband Infrastructure			\$13 Billion
IRA-from other federal agencies	Renewable Energy/Air & Water Infrastructure	Loans/Grants/Contracts/Coop Agreements		\$720 Million

BIA Regional Offices

<https://www.bia.gov/regional-offices>



Office of Indigenous Connectivity and Technology (OICT)

Danae Wilson, Director OICT

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OICT was created to support Tribal efforts to increase broadband access, including support to Tribes in acquiring licenses for broadband spectrum frequencies, and to advance other critical infrastructure investments. Implementing infrastructure investments requires a mix of finance, construction, and realty expertise. This new office will integrate expertise in these areas to directly engage with Tribes through technical assistance to help Tribes meeting their broadband and other infrastructure goals. The placement of OICT within the Office of Trust Services ensures strategic alignment with the realty processes managed by BIA that are critical to infrastructure development. The OICT will support Tribal Nations and interagency coordination of issues related to the oversight, development, management, deployment, maintenance, planning, and general modernization of wireless communications, infrastructure resources, technological economic development initiatives, and digital connectivity expansion on Tribal lands.



Basics of National Environmental Policy Act (NEPA)

DIVISION OF ENVIRONMENTAL AND CULTURAL
RESOURCES MANAGEMENT

BUREAU OF INDIAN AFFAIRS – OFFICE OF TRUST
SERVICES

Branch of Environmental Services

Our office is with the BIA
Office of Trust Services,
Central Office.

We work with Regional
offices across the country
with NEPA related issues and
offer technical assistance on
projects across the country.

The Regional BIA offices
process, review and approve
NEPA requests.

What is the National Environmental Policy Act?

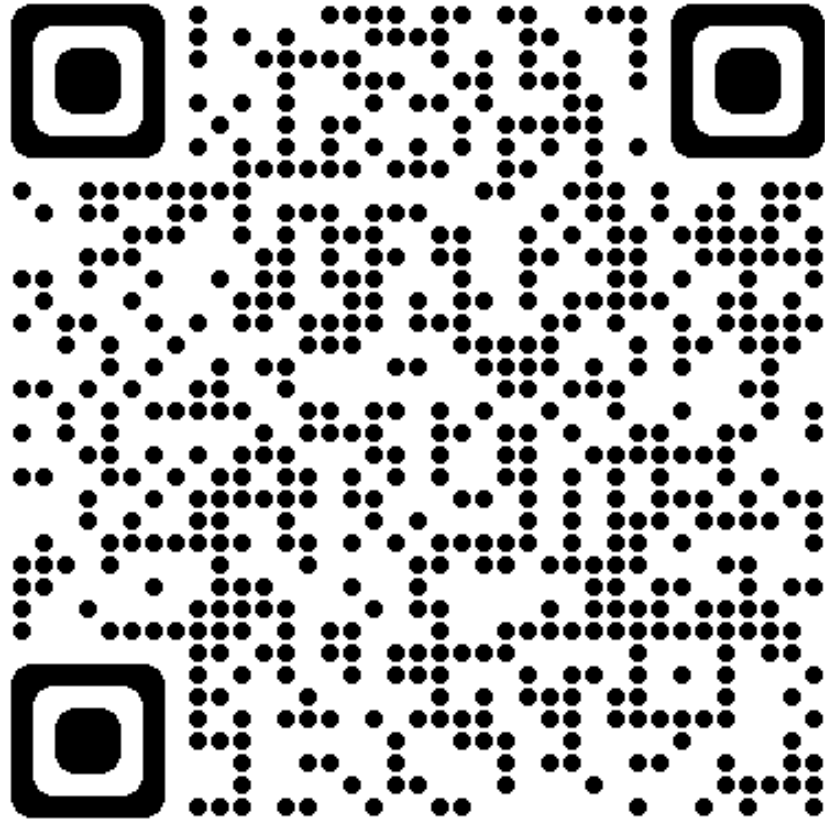
NEPA requires federal agencies to assess the environmental effects of their proposed actions prior to making decisions. The range of actions covered by NEPA is broad.

Using the NEPA process, agencies evaluate the environmental and related social and economic effects of their proposed actions. Agencies also provide opportunities for public review and comment on those evaluations.

Reach out to
your RES!

Please reach out to your Regional Environmental Scientist (RES) at your local BIA Regional Office and/or Regional NEPA coordinator for a consultation before beginning your project.

They will help you determine the level of NEPA analysis that is needed for your project and will also help guide you through the process.



Reach out to
your Regional
Environmental
Scientist!

When Does NEPA Apply?

NEPA applies whenever a federal agency proposes to take a “major federal action” that may significantly affect the quality of the human environment.

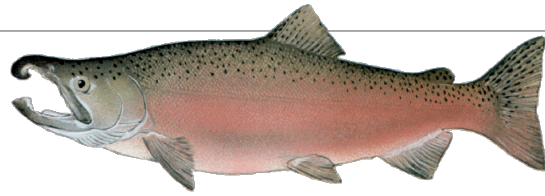
Major Action = “Significant”, therefore, an action must be analyzed in several contexts with respect to the intensity or severity of its impact.

Federal Actions that Trigger NEPA

Federal Actions = Federal Control and/or Responsibility

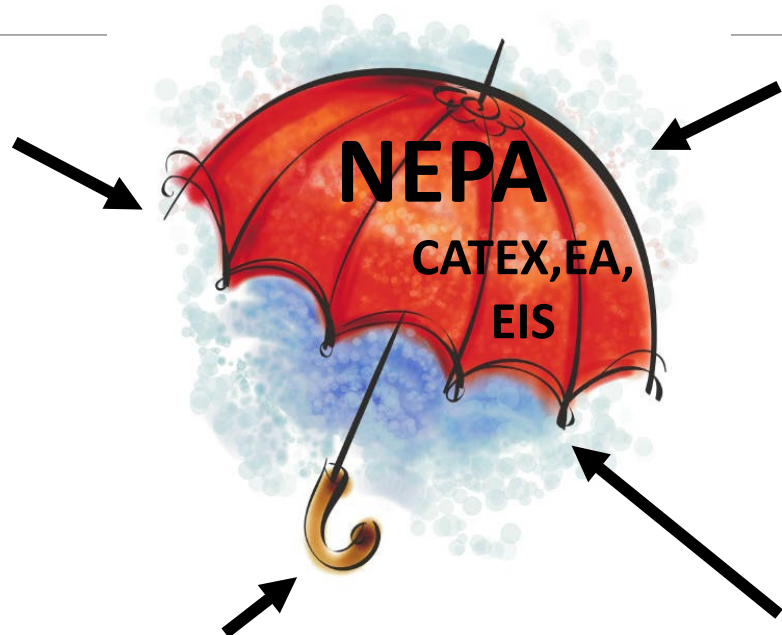
Examples include:

- Financed/Funded by BIA
- Approved/Authorized by BIA
 - Rights-of-ways, leases, residential leases etc.
- Assisted/Co-Lead
 - Resource Management Plan Amendment with BLM
- Regulated



Endangered Species Act

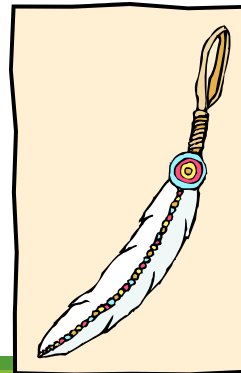
These laws have their own requirements that need to be met.



Clean Air Act



Clean Water Act



National Historic Preservation Act

Lit. Rev/Site Visit/Consultation

Producer Permits,
TMDLs

Historic Preservation Law



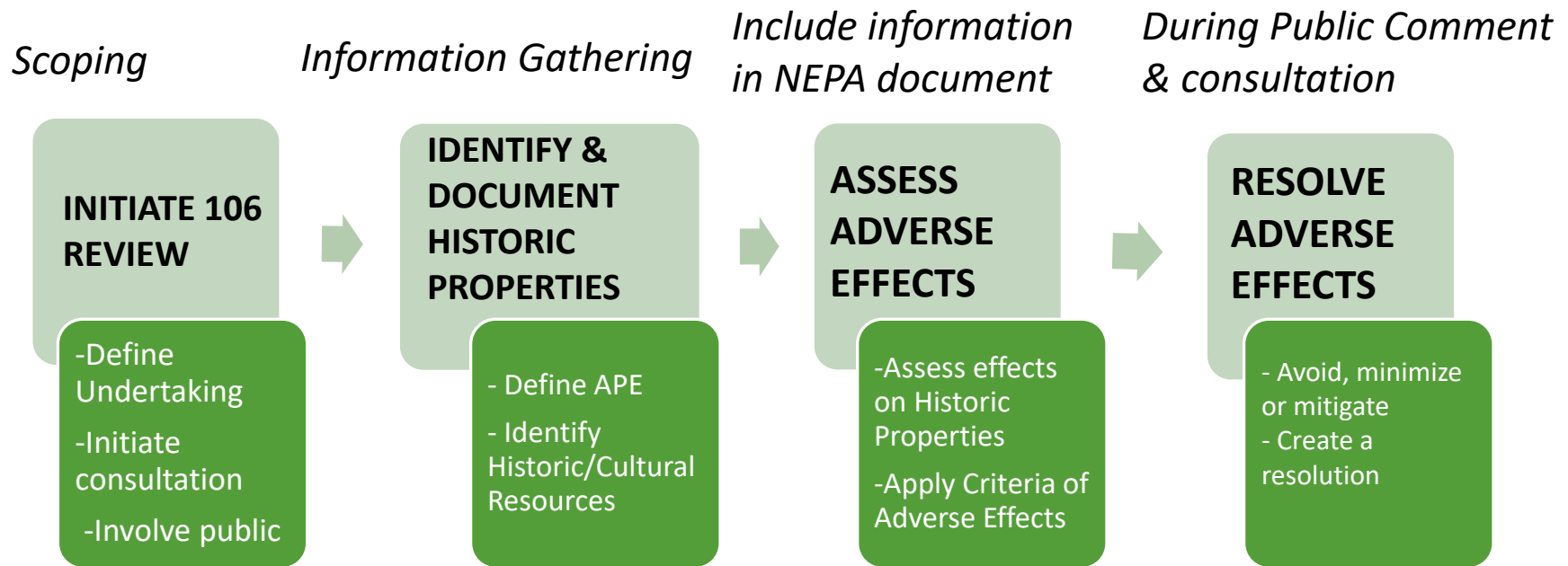
- Construction/infrastructure development can harm cultural resources & cause irreplaceable damage
- Federal law requires that sites must be documented before “clearance” can be granted
- Historic Preservation laws protect the past for the benefit of future generations
- Ensure Tribal heritage
- Ensures the connection to our ancestors continue



The National Historic Preservation Act (NHPA)



- Passed in 1966
- Most significant preservation law
- Mandates Section 106 Review
- Assure agencies take into account the effects on historic properties of the projects they are proposing
- Historic properties in this instance include both standing structures, archaeological resources, traditional cultural properties, and sacred sites, which are deemed eligible for the National Register of Historic Places



NEPA and Section 106 of the National Historic Preservation Act

Early coordination. Federal agencies are encouraged to coordinate compliance with Section 106 and the procedures in this part with any steps taken to meet the requirements of NEPA.

Inclusion of historic preservation issues. Agency Officials should ensure that the preparation of an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) and an EIS and Record of Decision (ROD) includes appropriate scoping, identification of historic properties, assessment of effects upon them, and consultation leading to resolution of any adverse effects.

According to the NEPA regulations, in considering whether an action may "significantly affect the quality of the human environment," an agency must consider, among other things:

- Unique characteristics of the geographic area such as proximity to historic or cultural resources
- The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places

We are here to help!

If you have any questions about NEPA, and/or any NEPA projects you currently have, you can always contact one of us and we will be happy to help you.



BIA Office of
Trust Service
NEPA/Section
106 Contacts

Justine Vaivai, Environmental Protection
Specialist

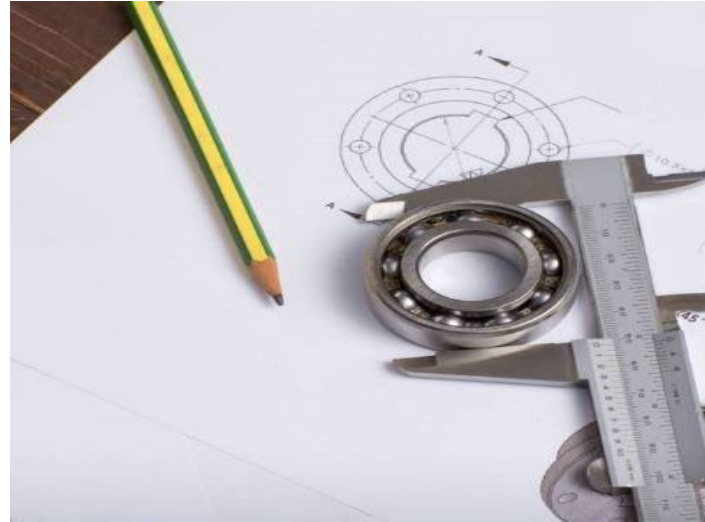
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Question and Answer Session