



## Legislative Council Staff

*Nonpartisan Services for Colorado's Legislature*

# Memorandum

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**TO:** Interested Persons

**FROM:** [Leena Vilonen](#), Science and Technology Policy Program Fellow

**SUBJECT:** National Environmental Policy Act and Large Transportation Projects

## Summary

The National Environmental Policy Act of 1969 (NEPA) was signed into law in 1970. It requires federal agencies to consider the environmental effects of a project and involve the public in the decision-making process before proceeding with a project. The requirements for complying with NEPA depend on many factors, including the size and scope of the project and the extent of which it may affect community resources, such as parks, water resources, and urban communities. This memorandum outlines the NEPA process for transportation-related projects in Colorado, and highlights ongoing changes to NEPA at the federal level.

## Background

The Federal-Aid Highway Act of 1956 provided revenue sources for the construction of the national interstate system, which took 35 years to complete and resulted in over 45,000 miles of highways, freeways, and bridges. Initially, interstate projects often had adverse impacts on resources, including historic sites, parks, and recreation areas. Further, land acquisition for projects in urban areas often had a disproportionate impact on marginalized communities. NEPA, along with other legislation enacted in the 1960s and 1970s, created processes to identify and mitigate adverse impacts of highway projects on communities and natural resources.



## Outline of the NEPA Process

Certain highway and bridge projects are eligible to receive funding from the U.S. Department of Transportation's Federal Highway Administration (FHWA). To receive funds, a project sponsor, such as a local or state transportation agency, must ensure the project meets FHWA standards and requirements, including a cost and schedule risk assessment, financial plans, and project management plans. NEPA is considered an "umbrella law" as its environmental review process takes into account other applicable federal laws, such as the Endangered Species Act, the Clean Water Act, and the National Historic Preservation Act, and the completion of any environmental permit, approval, review, or study required under those other federal laws.

The majority of transportation projects require only limited review under NEPA. However, major transportation projects—such as new highway projects of four or more lanes and new construction high-occupancy vehicle (HOV) lanes—require a more in-depth environmental review process. Lead agencies on major transportation projects are required to disclose environmental consequences, consider alternatives, and evaluate mitigation measures. Documentation, government agency coordination, and public involvement are the primary elements of the NEPA process. NEPA is a procedural statute, meaning it focuses largely on decision making instead of mandating certain mitigation efforts to environmental impacts.

### NEPA Document Types

The degree to which NEPA compliance needs to be documented and implemented depends on a project's size, complexity, and potential to impact the environment. The first step in the NEPA process is to determine whether the project will have significant environmental impacts, or the class of action for the project. The significance of the environmental impact, not cost or size, determines the class of action, as outlined below.

- **Class I – Environmental Impact Statements (EIS).** EISs are prepared when a proposed project is likely to cause significant environmental impacts. Examples include highway projects with four or more lanes and new construction of HOV lanes.
- **Class II – Categorical Exclusions (CE).** CEs are prepared for projects that do not have a significant impact. Examples include improving rest areas, installing noise barriers, or constructing bicycle and pedestrian lanes.
- **Class III – Environmental Assessments (EA).** EAs are prepared when the environmental impact of a project is unclear. Examples include highway lane expansions or wildlife underpasses.



## Environmental Impact Statement

While the environmental impact statement (EIS) process is the least common form of NEPA document required, it is the most intensive. Projects that typically require an EIS include new highway projects of four or more lanes and new construction of HOV lanes. When lead agencies determine that a project has significant environmental impacts, agencies publish a Notice of Intent in the Federal Register to indicate to the public and other interested parties that a project with significant impacts is being studied and planned. Along with publishing the Notice of Intent, agencies begin focusing on the scope of the project and investigating ways to lessen impacts. Agencies may conduct environmental analysis, talk to interested parties, coordinate with other governmental agencies, hold focus groups, and/or study alternative approaches. After this process, the lead agency prepares a draft EIS that is circulated for comment.

Based on the reviews and public comments on the draft EIS, the lead agency prepares a final EIS. The final EIS should contain information on the preferred project alternative, an evaluation of all reasonable alternatives considered, responses to issues raised in public comment, a summary of the public involvement in the process, and documentation of compliance with all environmental laws and requirements. Before the project can go forward, the FHWA must approve the final EIS and issue a Record of Decision noting the reasoning for the FWHA's decision and highlighting all of the project's mitigation measures. According to the U.S. Council on Environmental Quality, between January 2019 and December 2024, it took an average 2.8 years to complete an EIS. From 2019 to 2024, the average EIS completion time went from 3.6 to 2.2 years.

A recently proposed construction project on the I-270 Corridor running from Adams County to Boulder County submitted [a Notice of Intent](#) on August 20, 2024 to submit an EIS within a two-year time frame. The project proposes to improve 6.5 miles of the highway to increase safety for the highway that has more use than anticipated, reduce travel times, and improve bicycle and pedestrian accessibility. The [Notice of Intent](#) proposes 8 alternatives for the project and allowed for public comment.

## Categorical Exclusion

Most projects are defined as a categorical exclusion (CE), which are projects that, based on past experience with similar projects, do not have a significant impact on a natural, cultural, recreational, or historic resource. Projects that receive a categorical exclusion must not require the relocation of a significant number of people or have significant impacts on travel patterns. Examples of projects that would receive a categorical exclusion include non-construction activities, improving rest areas, installing noise barriers, or constructing bicycle and pedestrian lanes.



## Environmental Assessments

An environmental assessment (EA) is designed for an action that requires further investigation into the environmental impact. If a project does not clearly require an EIS, but further investigation is needed, lead agencies may use the EA process. An EA includes information on project scope, potential impacts, project alternatives, mitigation measures, and additional environmental requirements. Based on the EA documentation process, the lead agency determines if the project requires preparation of an EIS or a Finding of No Significant Impact (FONSI). The FHWA must approve EA, which then requires lead agencies to make the EA public for inspection and comment. If a FONSI is approved, it stands as the final decision on the project.

A recent example of a Colorado project requiring an EA is Colorado's I-25 South Gap, which led to the expansion of one extra highway lane each direction, wildlife underpasses, and wildlife fencing due to historically high collision rates with wildlife.

## Agency Roles and Responsibilities

A NEPA document is prepared by a lead agency, and may require input from other agencies with an interest in the project. The FHWA generally serves as the lead agency for highway projects, and the recipient of federal funds serves as a joint lead agency. The recipient of federal funds will typically be a state department of transportation, a local agency sponsor, or an American Indian tribal government. In practice, the agency seeking federal funds will prepare the NEPA document with guidance from the FHWA. However, the responsibility to ensure that a project complies with laws and regulations rests with the FHWA.

## Public Involvement

Federal regulations require agencies to provide public notice of NEPA-related hearings and public meetings. Agencies must also make environmental documents available to stakeholders. The level of public engagement varies depending on the document required for the project, with the EIS requiring the most extensive public stakeholder engagement, and categorical exclusions requiring the least.

## Ongoing Changes to NEPA

NEPA guidelines have been recently revised by the Council on Environmental Quality (CEQ)—the executive agency that implements NEPA—through the [2020](#) and [2024 rule](#), as well as by the [Fiscal Responsibility Act of 2023](#) and [the One Big Beautiful Bill Act](#). The 2020 rule modernized



and clarified NEPA. The 2024 rule and the Fiscal Responsibility Act of 2023 added time limits for NEPA processes. The 2024 rule also integrated science such as climate change and environmental justice. The Fiscal Responsibility Act of 2023 added the use of alternative analyses and clarified that NEPA is applicable only for federally funded projects.

Further changes include court cases such as [\*Marin Audubon Society v. Federal Aviation Administration\*](#) and [\*Seven County Infrastructure Coalition v. Eagle County\*](#) that ruled that NEPA can only be used as decision-making tool. More recently in 2025, the [CEQ rescinded all implementing regulations](#) based on new executive orders and amendments that recommended expediting permitting approvals. The implementation of guidelines for NEPA are currently left up to federal agencies. The FHWA specifically has removed CEQ guidelines and updated their policies to adhere to the Fiscal Responsibility Act of 2023, while streamlining the environmental review process for federal agencies by allowing agencies to adopt categorical exclusions from other agencies, setting a maximum number of pages for EAs and EISs, and setting maximum amounts of time for EAs and EISs to one and two years, respectively.

## NEPA Resources

- [Citizens Guide to NEPA](#), Council on Environmental Quality
- [Environmental Review Toolkit](#), U.S. Federal Highway Administration
- [Major Projects](#), U.S. Federal Highway Administration
- [NEPA Program](#), Colorado Department of Transportation
- [NEPA](#), U.S. Environmental Protection Agency