

NEPA Requirements for Federally Funded Transit Projects

The requirements of the National Environmental Policy Act (NEPA) apply to all projects that receive Federal Transit Administration funds (directly or through the state). The process of addressing compliance with NEPA and all other applicable federal environmental laws (e.g., the Endangered Species Act, the Clean Water Act, the National Historic Preservation Act) is referred to as the environmental review process. For projects receiving FTA funds through ODOT, subrecipients are responsible for coordinating with ODOT and FTA prior to incurring any costs or conducting any project-related activities to confirm requirements for complying with the environmental review process. The subrecipient is responsible for submitting all documentation required to comply with the environmental review process to ODOT for approval by the FTA.

Most projects meet the criteria to be classified as a Categorical Exclusion (CE) under NEPA. For CE projects, the NEPA process is not complete until FTA confirms the CE classification and gives concurrence that adequate environmental review has been performed. FTA's NEPA regulations prohibit certain activities from proceeding until FTA has completed the environmental review process. For these activities, FTA must provide written concurrence of the CE classification (i.e., NEPA concurrence or CE concurrence) before the following activities can proceed:

- Final design activities – any design beyond 30%.
- Property acquisition – includes, but is not limited to, purchase discussions with property owners that imply or are explicitly binding.
- Purchase of rolling stock – "purchase" occurs when any funds are spent or when a commitment to purchase is made such that funds must be expended should the purchase be cancelled/modified.
- Purchase of construction materials – includes, but is not limited to, purchase of any materials used for the activities listed under the definition of project construction below.
- Project construction – FTA definition includes construction, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other real property; excludes the assembly, alteration, or repair of vessels or other kinds of personal property.

Conducting any of these activities (even with state or local funds) prior to receiving written NEPA concurrence will prevent FTA from being able to participate in the project.

Completing the environmental review process for a CE that requires written NEPA concurrence from FTA can take anywhere from 6 months to over a year and documentation requirements vary depending on project scope, location, and other factors.

For activities not prohibited prior to the completion of the environmental review process, FTA makes the CE classification as part of the grant review process in TrAMS using the

information in the grant application itself. These activities do not require written concurrence from FTA of the CE classification. These activities include:

- Operating assistance.
- Planning activities.
- Engineering, design, drafting environmental documents and completing environmental studies that do not require ground disturbance.
- Preventative maintenance that involves NO physical changes and/or alterations.
- Purchase of equipment that is not an interdependent part of a larger project and can be accommodated in existing building(s) or facility(-ies) with NO physical changes, alterations, or installation required.

Recipients should coordinate with ODOT prior to incurring any costs or conducting any project-related activities to confirm whether written NEPA concurrence is required.

Project Scope for NEPA Review

NEPA prohibits segmentation, which is dividing a project into smaller or separate projects to avoid the appearance of having significant impacts or to avoid NEPA requirements. Therefore, projects evaluated under NEPA must be usable and a reasonable expenditure even if no additional transportation improvements in the area are made. This often means that the full scope of a project for NEPA review may need to include local- or state-funded activities and/or activities from multiple different grants. For example, if a subrecipient wants to purchase a property with local or state funds and later develop that property using FTA funds, the subrecipient must obtain NEPA concurrence for a project that includes both the property purchase and the future development prior to purchasing the property. When discussing an FTA-funded project with ODOT, subrecipients should reference all activities on the same site and/or those related to the FTA project, regardless of funding source, to ensure NEPA scope requirements are being met.

For more information or questions about a specific project, please reach out to your [Regional Transit Coordinator](#).