

## **BEAD Environmental and Historic Preservation (EHP) Documentation (Requirement 14)**

### **Environmental and Historic Preservation Requirements**

The Minnesota Office of Broadband Development (OBD) is committed to ensuring full compliance with Broadband Equity Access, and Deployment (BEAD) programs Environmental and Historic Preservation (EHP) requirements. This will be achieved by adhering to the requirements and regulations of the National Environmental Policy Act (NEPA), Section 106 of the National Historic Preservation Act (NHPA), Section 7 of the Endangered Species Act (ESA), and Section 404 of the Clean Water Act (CWA), and all other applicable federal, state, and local environmental laws and regulations. OBD will also closely follow the National Telecommunications and Information Administration's (NTIA) programmatic guidance on fulfilling the NEPA process for telecommunications projects and activities.

### **Joint Lead Agency Responsibility Summary**

The OBD is serving as a joint lead agency to the NTIA to administer the Minnesota BEAD program. The OBD will conduct this activity in accordance with 42 United States Code (U.S.C) 4336a and carry out the obligations of a joint lead agency specified in 42 U.S.C 4336a(a)(2).

As a joint lead agency, the OBD will comply with the EHP requirements set forth in the NTIA regulations and guidance including but not limited to NEPA, Section 106 of the NHPA, Section 7 of the ESA, Section 404 of the CWA, and all other federal, state, and local environmental laws and regulations that may be applicable to individual projects. To accomplish this, the OBD will directly supervise and assist in the preparation of all required NEPA research and documentation. As a "joint lead agency" for NEPA, OBD will: prepare, supervise, or review project specific environmental documentation for each BEAD deployment; develop schedule for environmental review and permitting; ensure that project implementation does not begin prior to NEPA completion; and monitor subgrantees to ensure they understand and comply with relevant environmental laws.

To fulfill joint lead agency responsibilities, OBD also hired a Broadband Environmental and Land-Use Coordinator (BELC), who is a qualified professional to certify the sufficiency of NEPA documents for BEAD. This professional is also a Secretary of the Interior qualified archaeologist who will assist with Section 106 determinations for NHPA reviews of the areas of potential effect.

### **Compliance with NEPA**

The OBD, after submission of its Final Proposal for the BEAD program to NTIA, will work with the selected subgrantee applicants to prepare for full NEPA, NHPA, and ESA reviews. Utilizing available tools provided by state and federal agencies, OBD will provide recommendations and request additional information from the selected subgrantee as needed. OBD intends to have additional NEPA project areas within some BEAD Project IDs, we anticipate that there may be twice as many NEPA project areas as BEAD Project IDs, but that is only an estimate. OBD will work with the subgrantees who have discontinuous subgrant project areas to define additional NEPA Project Areas (NPA) that have independent utility.

It will be communicated to the selected subgrantee applicant that all requirements of the Minnesota BEAD program and NTIA requirements, including the EHP requirements must be met in full, and approved, prior to the release of funding and any construction and/or ground disturbing activities commence. This is also a component of the State of Minnesota BEAD Grant Contract Agreement.

OBDs designated officials will use NTIA's Environmental Screening and Permitting Tracking Tool (ESAPTT) to identify NPAs that can be categorically excluded, upload supporting documents, and obtain a final NEPA decision. Once NTIA receives the final proposal and creates NEPA Records for Minnesota, OBD will initiate environmental screening for NPAs in ESAPTT. The BELC will use ESAPTT to create NEPA project records, evaluate the applicability of categorical exclusions, consider and document the presence (or absence) of Extraordinary Circumstances, and transmit information and draft NEPA documents to NTIA for review and approval.

When all EHP requirements (including NEPA, Section 106 of the NHPA, Section 7 of the ESA, and other applicable federal or state regulations) have been completed, OBD will provide the subgrantee with a Notice to Proceed for construction. The Notice to Proceed will also outline any mitigation, best management practices, or avoidance conditions that the subgrantee must abide by to proceed.

## Endangered Species Act Compliance

Under Section 7(a)(2) of the Endangered Species Act (ESA), NTIA is required to ensure that activities funded by broadband awards are not likely to jeopardize species listed on the Federal Lists of Endangered and Threatened Wildlife and Plants or result in the destruction or adverse modification of designated critical habitat.

On October 28, 2024, NTIA released a memorandum for Internet for all Grant Recipients and U.S. Fish and Wildlife Service Field Offices, titled *Authorization of Internet for All (IFA) Grant Recipients to Serve as Non-Federal Representatives for Section 7 Consultation*. Pursuant to 50 C.F.R § 402.08 and in accordance with the General Terms and Conditions for the BEAD Program, NTIA formally designated all recipients of NTIA broadband funding as non-federal representatives for purposes of informal Section 7 consultation. Thus, OBD will act as the non-federal representative to evaluate its project (identified at an appropriate scale) to determine whether it will have any effect on ESA-listed species or their designated critical habitats. OBD will follow the process laid out in the October 2024 Memo.

## Cultural Resource Compliance

NTIA has determined that IFA projects receiving financial assistance for infrastructure deployment may be undertakings subject to review under Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. 470f, and its implementing regulations under 36 CFR part 800 (Section 106).

On January 17<sup>th</sup>, 2024, NTIA released a memorandum for State Historic Preservation Officers (SHPO) and Tribal Historic Preservation Officers (THPO), IFA Grant Recipients titled: *Authorization of IFA Grant Recipients to Initiate Section 106 Consultation for NTIA Funded Projects*. NTIA has determined that it is consistent with 36 CFR § 800.2(c)(4) for OBD to initiate consultation with State Historic Preservation Officers (SHPO), Tribal Historic Preservation Officers (THPO), and other consulting parties. Thus, OBD will act on behalf of NTIA to consult with SHPOs and other consulting parties, except for Tribes, to initiate the Section review process, identify and evaluate historic properties, and assess effects. NTIA remains legally responsible for Section 106 findings and determinations and for government-to-government consultation with Tribes.

BEAD Section 106 reviews will follow the [Advisory Council on Historic Preservation \(ACHP\) Amendment to the Program Comment for Communications Projects on Federal Lands and Property](#) (ACHP Program Comment) and the [NTIA Flow Chart based on the Advisory Council on Historic Preservation Program Comment for Federal Communications Projects](#) (NTIA Program Comment Flow Chart). As NTIA releases additional guidance on NHPA and related laws, OBD will implement them in their Section 106 reviews. To assist with cultural resource reviews of broadband deployment undertakings, OBD has employed a BELC who meets the Secretary of the Interior's (SOI) Professional Qualification Standards for Archaeology. The BELC will have administrative oversight over all Section 106 reviews for each individual undertaking for the BEAD program and will complete Section 106 reviews of undertakings that are not anticipated to adversely affect historic properties. The BELC will work with the subgrantees to review BEAD project areas and define APEs in accordance with 36 CFR 800.16(d).

## Specific Award Conditions (SACs) Description

OBD has outlined specific award conditions for subgrantees in a Contract Agreement for the timely preparation of NEPA, NHPA, ESA, and other applicable federal and state regulation documents and completion of permitting. The specific conditions can be found in Exhibit C of the *DRAFT State of Minnesota BEAD Grant Contract Agreement* which is posted on <https://mn.gov/deed/programs-services/broadband/bead/>. The grant project timetable and milestones can also be found in Exhibit H of the contract.

The OBD will provide ongoing monitoring with subgrantees to ensure that all terms of project agreements are being followed. Additionally, OBD will provide guidance, training, and monitoring to subgrantees within their NPA to assist with compliance with all EHP requirements, including NEPA, Section 106 of the NHPA, Section 7 of the ESA, and other applicable federal or state regulations.

## Description of FirstNet Regional PEIS Evaluation

On September 1, 2017, the First Responder Network Authority (FirstNet) published the Final Regional Programmatic Environmental Impact Statement (PEIS) and Record of Decision (ROD) for the FirstNet Central Region. The National Telecommunications and Information Administration (NTIA) was a cooperating Agency on the analysis and is conducting this revalidation of the original analysis performed in accordance with requirements for reevaluation of programmatic documents older than five years in Section 108 of the National Environmental Policy Act (NEPA).

Minnesota OBD, as joint lead agency, has assisted with revalidation, particularly focusing on Chapter 9, Minnesota of the PEIS. The OBD's revalidation of the FirstNet Regional PEIS can be found on <https://mn.gov/deed/programs-services/broadband/bead/>. Based on a thorough review of the Central Region's Final Programmatic Environmental Impact Statement, Minnesota Office of Broadband Development has determined that the analysis remains valid for use in subsequent environmental documents. OBD has also determined that deployment related activities anticipated for project in Minnesota are covered by the actions described in the Minnesota FirstNet Regional PEIS. If a categorical exclusion does not apply and an environmental document is required, the subgrantee will be responsible for hiring a consultant to prepare the environmental review documents. OBD will supervise the preparation of the document and shall give final approval before submission to the NTIA and prior to implementation of the deployment activities in question.