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NEPA 102: GAP GRANTS AND MORE

AGENDA

Introduction

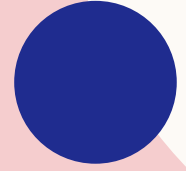
NEPA 101 Refresher

General Assistance Program (GAP)

Categorical Exclusions



NEPA 101



WHAT IS THE NATIONAL ENVIRONMENTAL POLICY ACT?

NEPA requires federal agencies to consider environmental effects of their proposed actions prior to making decisions

- Examples include: permits, construction activities, funding of some projects

NEPA 101

- Agencies must prepare detailed statements assessing the environmental impact of and alternatives to major federal actions significantly affected the environment
- Agencies are required to provide meaningful opportunities for public participation during multiple phases of the NEPA process
- Judicially reviewable under the Administrative Procedure Act under the “arbitrary and capricious” standard

NEPA 101 – LEVELS OF REVIEW

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- Categorical Exclusions
 - Federal actions may be “categorically excluded” from the detailed environmental analysis requirement if the given federal action does not “individually or cumulatively have a significant effect on the human environment”
- Environmental Assessments
 - EAs determine whether a federal action has the potential to cause significant environmental effects
 - Typically include:
 - The need for the proposal
 - Alternatives
 - Environmental impacts of the proposed action and alternatives
- Environmental Impact Statements
 - An EIS is prepared if a proposed major federal action may significantly affect the quality of the human environment

WHAT EPA ASSISTANCE PROGRAMS REQUIRE COMPLIANCE WITH NEPA?

- Actions under the Clean Air Act are statutorily exempt from complying with NEPA.
- Most activities under the Clean Water Act area also exempt.
- However, the federal cross-cutting authorities may still apply (e.g. NHPA, ESA).
- GAP is subject to NEPA.

GENERAL ASSISTANCE PROGRAM

- The Indian Environmental General Assistance Program Act was passed by Congress in 1992.
- This act authorizes the EPA to provide General Assistance Program (GAP) grants to federally recognized Tribes and Intertribal consortia for the planning, development, and establishment of environmental protection programs, as well as the development and implementation of solid and hazardous waste programs on Tribal lands.

GENERAL ASSISTANCE PROGRAM (GAP)

GAP is subject to NEPA.

What NEPA activities can be funded by GAP?

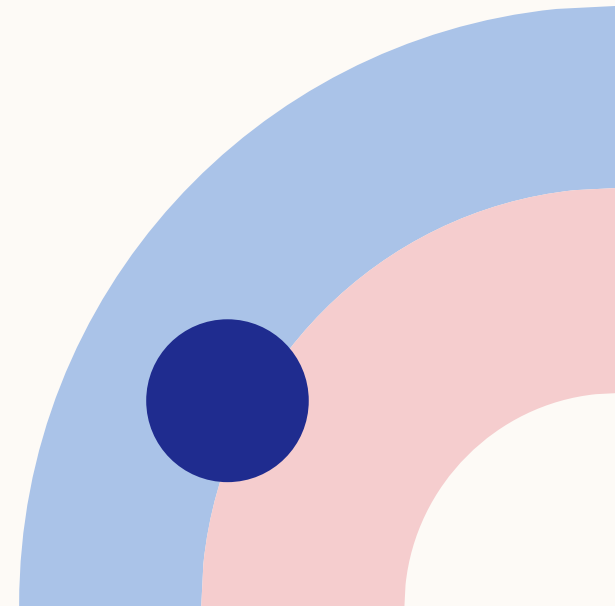
- Reviewing and commenting on NEPA documents from other government agencies for an action that may affect the Tribe or the Tribe's interests.
- Preparing Environmental Information Documentation (EID) that EPA uses to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS)
- Preparing a categorical exclusion (CATEX) evaluation form

GENERAL ASSISTANCE PROGRAM (GAP)

What NEPA activities CANNOT be funded by GAP?

- EPA funds, including GAP, cannot be used by a Tribe to prepare an EA or EIS.
 - EAs and EISs are for EPA's direct use in performing a Federal-responsibility.
 - This would violate the Federal Grants and Cooperative Agreement Act as interpreted by EPA Order 5700.1

Consult your Project Officer for additional guidance. The 2022 GAP guidance does not get into this level of detail.



CATEGORICAL EXCLUSIONS

CATEGORICAL EXCLUSIONS

Under 40 CFR 1506.3(d), a federal agency may adopt another agency's determination that a categorical exclusion applies to a proposed action if the action covered by the original categorical exclusion determination and the adopting agency's proposed action are substantially the same.

Under Section 109 of NEPA, enacted as part of the Fiscal Responsibility Act of 2023, a Federal agency may “adopt” and use another agency’s categorical exclusion (CATEX) listed in the NEPA procedures for a category of proposed agency actions.

CATEXS UNDER NEPA SECTION 109 APPLICABLE TO GAP

- 1) Drop-off, collection, and transfer facilities for recyclable materials and
- 2) Installation or relocation of machinery and equipment

If either of these CATEX is applicable to your GAP project, no further NEPA review is required. There are CATEX evaluation forms available to make this determination.

AIEO is looking to adopt other CATEXs under Section 109 of NEPA for use with GAP projects.



WHO WOULD I WORK WITH TO DETERMINE IF A CATEX WOULD APPLY, IF I CAN USE EPA FUNDING FOR A NEPA REVIEW ACTIVITY, OR WHAT ENVIRONMENTAL INFORMATION IS REQUIRED FOR A PROJECT?

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Please reach out to your Project Officer. They will work with EPA's AIEO and Office of Policy to answer your project specific question.



QUESTIONS?

TRIBAL ENVIRONMENTAL POLICY ACT (TEPA)

- Can a Tribe use GAP funds to develop a TEPA or TEPA document?
 - As long as the TEPA relates to either capacity building or developing and implementing a solid or hazardous waste program, then using GAP funds to develop a TEPA is permissible.
- Can a TEPA document be used to satisfy the NEPA review requirements?
 - TEPA environmental review documentation cannot completely replace the NEPA review required for GAP projects, but the TEPA environmental documents and the corresponding cross-cutter reviews can inform EPA's NEPA analysis.
 - TEPA is a NEPA-like process. If a TEPA environmental review document was prepared for a project and subsequently funded by an EPA grant program subject to NEPA, EPA will incorporate by reference any pertinent information from the TEPA document into EPA's own NEPA document after an independent review of the information. 40 CFR 6.200(d)(4).
 - EPA cannot adopt the TEPA document. In other words, EPA cannot treat the TEPA document as a Final EA and proceed directly to issuing a FONSI.