National Environmental Policy Act (NEPA)Training

AUGUST 2024

OVERVIEW

Community Grants Program Basics	National Environmental Policy Act (NEPA)	Categorical Exclusions (CATEX)
Environmental Information Documents (EID)	Environmental Assessments (EAs)	SERPS and Other Federal Agency Reviews
Environmental Cross-cutters	Conclusions	Resources
	Questions	

COMMUNITY GRANTS PROGRAM BASICS

EPA Region / State	# of Projects	Funding Amount
R1 (CT, ME, MA, NH, RI, VT)	253	$348,228,834
R2 (NY, NJ, PR)	255	$394,743,906
R3 (DE, DC, MA, PA, VA, WV)	253	$413,836,668
R4 (AL, FL, GA, KY, MS, NC, SC, TN)	311	$589,259,397
R5 (IL, IN, MI, MN, OH, WI)	395	$576,679,190
R6 (AR, LA, NM, OK, TX)	169	$345,682,205
R7 (IA, KS, MO, NE)	60	$139,190,915
R8 (CO, MT, ND, SD, UT, WY)	62	$114,657,097
R9 (AZ, CA, HI, NV, Pacific Islands)	292	$467,431,947
R10 (AK, ID, OR, WA)	170	$343,371,649
Total	**2,220**	**$3,733,081,808**

Congressionally Directed Spending / Community Project Funding (Community Grants Program)

FY 2022 , FY 2023, and FY 2024 Appropriations Acts: $3.7B for 2,220 specific water infrastructure projects
- drinking water, wastewater, stormwater infrastructure
- water quality protection
- EPA Community Grants Program
- Final Implementation Guidance
- Frequently Asked Questions
- Regional Points of Contact

Community Grant recipients are required to follow all applicable federal requirements and must apply to receive grant funding.

COMMUNITY GRANTS PROGRAM BASICS, CONT'D

Appropriations Acts, Guidance

Congressionally identified specific projects, recipients and funding amounts.

Requirements

NEPA, BABA, AIS, Davis Bacon, Procurement, Cost Share…

Grant Applications

Recipients must apply for funding.

Grant Awards

Regional offices issue and administer direct grants to recipients.

Project Implementation

Recipients implement infrastructure projects, adhere to grant terms and conditions, submit payment requests and reporting.

EPA Community Grants Program

https://www.epa.gov/sustainable-water-infrastructure/epa-community-grants

NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) - THE UMBRELLA LAW

- Signed into law on January 1, 1970

- Congress recognized that federal actions have significant potential to impact the environment

- Requires agencies to evaluate environmental effects of proposed actions, including grant funded actions, prior to making decisions.

NEPA

Factors Considered
- ❖ Natural
- ❖ Cultural
- ❖ Physical
- ❖ Socioeconomic

- National Historical Preservation Act
- Endangered Species Act
- Floodplain Management and Wetlands
- Environmental Justice
- Clean Air Act
- Coastal Barriers
- Archeological & Historical Preservation Act

*list not exhaustive

NEPA, CONT'D

Evaluation of how federal grant actions may affect the quality of the environment. Environmental impacts must be considered before EPA can award the grant.

NEPA: KEY INFORMATION

EPA, in coordination with the recipient, concludes the NEPA process through completion of one of the following:
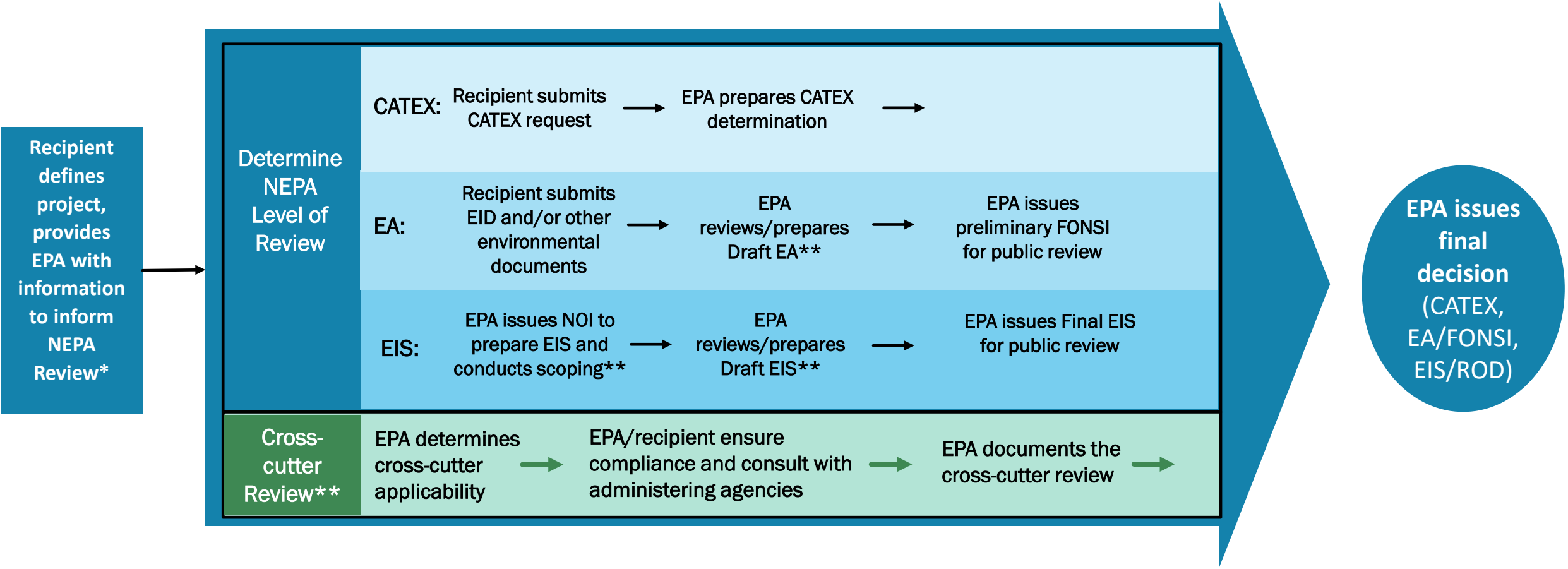- A Categorical Exclusions (CATEX) determination
- An Environmental Assessment (EA) and Finding of No Significant Impact (FONSI)
- An Environmental Impact Statement (EIS) and Record of Decision (ROD)
- EPA issues a determination document even if project has undergone State Environmental Review Process (SERP) or other federal agency review

Compliance with certain federal cross-cutter authorities (i.e., Endangered Species Act, National Historic Preservation Act) must be fully completed before concluding the NEPA process.

The level of review and amount of time the environmental review takes depends on the project's level of impact to resources (minor/significant, beneficial/adverse environmental impacts)

✓ EPA grant may fund Environmental Information Document (EID) development, other analysis for cross cutting authorities or executive orders in order to provide supporting information

✗ EPA grant may not fund federal document development (e.g., EA or EIS)

NEPA, CONT'D

Recipient defines project, provides EPA with information to inform NEPA Review*

Determine NEPA Level of Review

CATEX: Recipient submits CATEX request → EPA prepares CATEX determination →

EA: Recipient submits EID and/or other environmental documents → EPA reviews/prepares Draft EA** → EPA issues preliminary FONSI for public review

EIS: EPA issues NOI to prepare EIS and conducts scoping** → EPA reviews/prepares Draft EIS** → EPA issues Final EIS for public review

Cross-cutter Review**

EPA determines cross-cutter applicability → EPA/recipient ensure compliance and consult with administering agencies → EPA documents the cross-cutter review →

EPA issues final decision (CATEX, EA/FONSI, EIS/ROD)

*May include EID, SERP, Draft CATEX/EA, or another Federal Agency NEPA Docs
**Cross-cutter coordination and compliance is mandatory for all Community Grants projects, regardless of the level of NEPA review (CATEXs, EAs, EISs).

CATEX - OVERVIEW

When: The action is consistent with EPA's list of CATEXs and does not involve any extraordinary circumstances (40 CFR 6.204(a)).

- Three options for preparing a CATEX determination:

    1. EPA initiated. EPA Regional Project Officer (PO) makes preliminary determination that project may be CATEX eligible, using the Categorical Exclusion Instructions and Checklist to determine and document CATEX eligibility, then obtains EPA Responsible Official signature.

    2. Recipient initiated. Recipient drafts and submits the Categorical Exclusion Instructions and Checklist to EPA PO, who reviews and finalizes the checklist to determine and document CATEX eligibility, then obtains EPA Responsible Official signature.

    3. Adoption. Existing CATEX has already been prepared by other federal agency and the proposed action is substantially the same as EPA's.

- Recipients are not required to prepare an Environmental Information Document (EID) for categorically excluded actions.

- There are no public involvement requirements for CATEXs.

CATEX, CONT'D

EPA's [list of actions that can be categorically excluded](#) includes actions relating to **existing infrastructure systems** (such as sewer systems; drinking water supply systems; and stormwater systems, including combined sewer overflow systems) that involve:

❖ Minor upgrading.
❖ Minor expansion of system capacity.
❖ Rehabilitation (including functional replacement) of the existing system and system components (such as the sewer collection network and treatment system; the system to collect, treat, store and distribute drinking water; and storm water systems, including combined sewer overflow systems).
❖ Construction of new minor ancillary facilities adjacent to or on the same property as existing facilities.

A CATEX may not be issued for actions that:

✖ Involve new or relocated discharges to surface or ground water.

✖ Will likely result in the substantial increase in the volume or the loading of pollutant to the receiving water.

✖ Will provide capacity to serve a population 30% greater than the existing population.

✖ Are not supported by the state, or other regional growth plan or strategy; or directly or indirectly involve or relate to upgrading or extending infrastructure systems primarily for the purposes of future development.
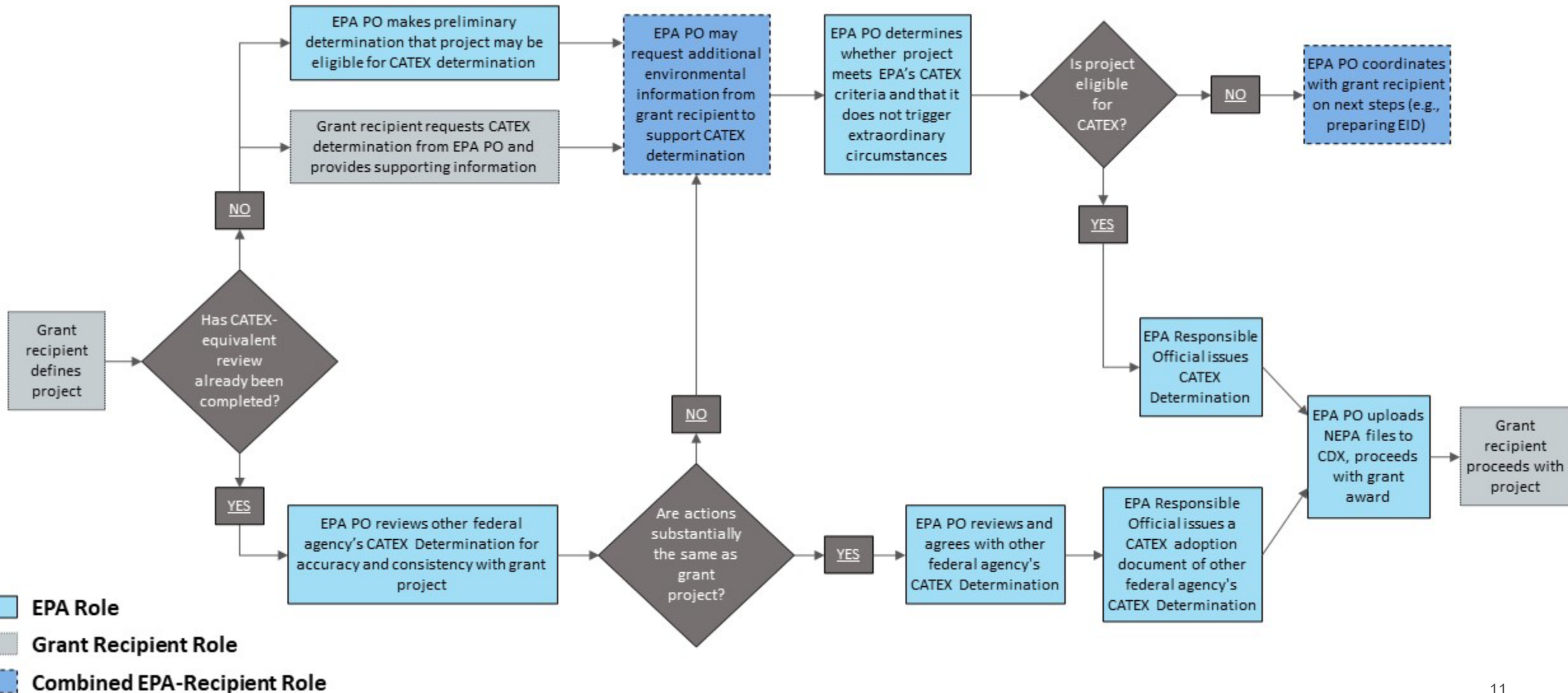
CATEX, CONT'D

EXTRAORDINARY CIRCUMSTANCES

A proposed action may be categorically excluded if the action fits within a category of action that is eligible for exclusion <u>and</u> the proposed action does not involve any extraordinary circumstances (40 CFR 6.204(a))

Extraordinary Circumstances: When is a Project <u>Not</u> Eligible for a CATEX?		
Significant individual or cumulative effects	Significant adverse air quality effects	Significant controversy about a potential environmental effect
Disproportionately high and adverse effects on minority, low income, or federally-recognized tribal communities	Significant effects on environmentally important natural resource areas - e.g., wetlands, floodplains, environmentally significant agricultural lands, aquifer recharge areas, and wild and scenic rivers	Significant effect on the pattern and type of land use, population growth and distribution, or inconsistent with approved land use plans or federal land management plans
Significant effects on listed species or critical habitat	Significant effects on historic resources	Conflict with federal/state/local government or federally-recognized Indian tribe environmental, resource protection, or land use laws

CATEX FLOWCHART

EPA PO makes preliminary determination that project may be eligible for CATEX determination

Grant recipient requests CATEX determination from EPA PO and provides supporting information

EPA PO may request additional environmental information from grant recipient to support CATEX determination

EPA PO determines whether project meets EPA's CATEX criteria and that it does not trigger extraordinary circumstances

Is project eligible for CATEX?

NO → **EPA PO coordinates with grant recipient on next steps (e.g., preparing EID)**

YES

Grant recipient defines project

Has CATEX-equivalent review already been completed?

NO

YES

EPA PO reviews other federal agency's CATEX Determination for accuracy and consistency with grant project

Are actions substantially the same as grant project?

NO

YES → **EPA PO reviews and agrees with other federal agency's CATEX Determination**

EPA Responsible Official issues CATEX Determination

EPA Responsible Official issues a CATEX adoption document of other federal agency's CATEX Determination

EPA PO uploads NEPA files to CDX, proceeds with grant award

Grant recipient proceeds with project

Legend:
- **EPA Role**
- **Grant Recipient Role**
- **Combined EPA-Recipient Role**

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ENVIRONMENTAL INFORMATION DOCUMENT (EID)

An *Environmental Information Document (EID)* document is prepared by the grant applicant to provide environmental information about the proposed project. The EID can be a precursor to an EA and is one way the grant recipient can provide information to EPA for the environmental review.

- The grant recipient can use the "Suggested Environmental Information Document Outline" to prepare the EID. Grant funds may be used to prepare the EID. The EPA PO may use this resource to review the recipient's EID for accuracy and completeness. The PO will incorporate the EID content into its EA, as appropriate.

- The main components of an EID include:

Project Description and Funding	Existing Infrastructure	Interagency Coordination and Consultation Activities
Purpose and Need	Existing/Affected Environment	Summary of Public Participation Process
Alternatives Analysis	Environmental Consequences and Mitigation Measures	List of Preparers and List of References

The grant recipient does not have to prepare an EID if:
EPA has already determined that the action is covered by a CATEX.
EPA has already determined that the action will require an EIS.

EA AND FONSI

- ❑ **EA incorporates appropriate documents (including the EID) by reference and discusses:**
  - ▪ the need for the proposed action; alternatives, including no action;
  - ▪ the affected environment, including baseline conditions that may be impacted by the proposed action and alternatives;
  - ▪ the environmental impacts of the proposed action and alternatives, including unresolved conflicts concerning alternative uses of available resources;
  - ▪ coordination or consultation regarding compliance with environmental cross-cutters and identifies and describes mitigation considered, including mitigation needed to ensure the action will not cause significant impacts.
- ❑ **Finding of No Significant Impact (FONSI) is a decision document supporting a determination made by EPA that an action will not result in significant impacts.**
  - ▪ Supported by an EA and includes enforceable mitigation measures to reduce impacts below significance thresholds.
- ❑ **EPA EA and preliminary FONSI must be made available for public review for 30 days prior to taking the action. Action can proceed after responding to any substantive comments received on the preliminary FONSI, and issuance of a final FONSI, if necessary. If no substantive comments are received, the preliminary FONSI (if signed) may be considered final, and the action may proceed.**

PREPARING AN EA

When: Action does not qualify for CATEX but has no (or unknown) potential for significant impacts.

Four options for preparing an EA (see [40 CFR 6.205(e)](#) for content requirements):

1. <u>EPA prepares EA w/ EID input.</u> EA and Preliminary FONSI will be prepared by EPA, incorporating information from EID prepared by grant recipient.

2. <u>EPA prepares EA w/ SERP input.</u> EA and Preliminary FONSI will be prepared by EPA, incorporating information from existing SERP document.

3. <u>Recipient prepares draft EA.</u> EA will be prepared by grant recipient or third-party contractor* and will be used by EPA PO to develop the Preliminary FONSI.

4. <u>Adoption.</u> Existing Final EA has already been prepared by other federal agency and may be used by EPA PO to prepare and publish FONSI adopting other agency's Final EA.

*If enter into a third-party agreement, grant funds cannot be used to prepare NEPA documents.

PUBLIC INVOLVEMENT REQUIREMENTS FOR AN EA

- Before preparing the EA, opportunities for public engagement may be considered, which:

  - Ensures meaningful public participation throughout the NEPA process by involving the potentially affected communities where the proposed action may have environmental impacts, including EJ communities and/or tribal communities.

  - Allows EPA to collaborate with the public to define the range of issues and alternatives to be examined in the EA.

- After preparing the EA, the EPA PO should:

  - Make the EA and preliminary FONSI available for 30-day public review. There is no requirement to publish the EA and preliminary FONSI in the *Federal Register*. Public notice can occur through local newspapers, community organizations, newsletters, direct mailing, posting public notice on and off site in the area where the action is located, through electronic media (website, email, or social media), etc.

  - Action can proceed after responding to any substantive comments received on the preliminary FONSI, and issuance of a Final FONSI, if necessary. If no substantive comments are received, the preliminary FONSI (if signed) may be considered final, and the action may proceed.

EA FLOWCHART

EPA Role (EPA Role)

Grant Recipient Role (Grant Recipient Role)

Combined EPA-Recipient Role (Combined EPA-Recipient Role)
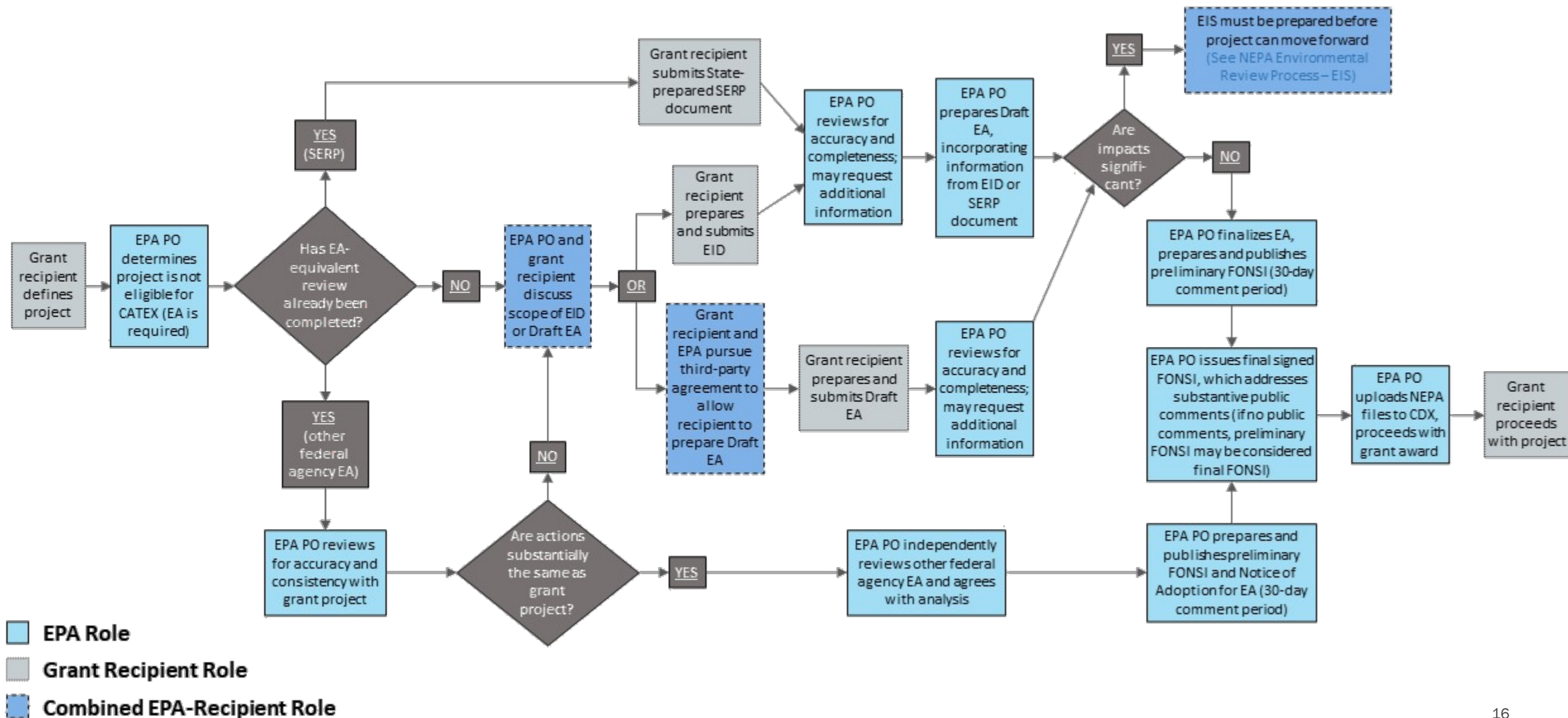
STATE ENVIRONMENTAL REVIEW PROCESSES

A *State Environmental Review Process (SERP)* is an environmental review process administered by a state that is functionally equivalent to EPA's NEPA review.

Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) programs mandate the existence of SERPs. Some Community Grants Program projects are co-funded by CWSRFs or DWSRFs and may already have completed environmental review documentation as part of their SERP.

- EPA will review the SERP document and incorporate by reference any pertinent part of that SERP document into EPA's own environmental document (CATEX, EA, EIS).

  - SERP reviews and documentation cannot completely replace the NEPA review required for Community Grants projects, but the SERP environmental documents and the corresponding cross-cutter reviews can inform EPA's NEPA analysis.

  - *EPA cannot adopt the SERP document*. In other words, EPA cannot treat the SERP document as a Final EA and proceed directly to issuing a FONSI.

- Procedures for compliance with cross-cutters are integrated into the SERP process so that cross-cutter compliance can be achieved through the SERPs.

ADOPTING ANOTHER FEDERAL AGENCY'S CATEX, EA, OR EIS

Unlike for SERP documents, EPA may adopt another federal agency's NEPA document and use it as a basis for its decision, provided EPA has independently reviewed and confirmed the accuracy and completeness of the analysis.

- Potential triggers for NEPA documents prepared by other federal agencies:

  - U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant funds.

  - U.S. Department of Agriculture (USDA) Rural Development funds.

The other federal agency's NEPA document must evaluate an action that is substantially the same as the action funded under the Community Grants program and must contain up-to-date information regarding the affected environment and impacts.

INTRODUCTION TO FEDERAL CROSS-CUTTERS

Cross-cutters are federal statutes, EOs, or implementing regulations that address the federal responsibility for protecting and conserving specific environmental and other resources.

- Depending on the action and the specific cross-cutter, steps that may be required for cross-cutter compliance include:

  - Determining if a resource is present in the project area or would be affected by the project.

    - If yes, documenting the consideration of alternatives, impacts, and mitigation measures.

  - Consulting with administering agencies.

- Before awarding a grant, EPA must:

  - Identify and document cross-cutter applicability.

  - Fulfill cross-cutter requirements as part of environmental review.

  - Identify outstanding cross-cutter requirements for the recipient to fulfill prior to and during project implementation.

    - Example: Obtaining Clean Water Act Section 404 permit (33 U.S.C. § 1344).

ENVIRONMENTAL CROSSCUTTERS

Environmental Cross-Cutters
- Wetlands – E.O. 11990/12608 and CWA Section 404   **Threatened and Endangered Species – ESA**   **Historic Properties – National Historic Preservation Act (NHPA)**   - Environmental Justice – E.O. 12898   - Floodplains – E.O. 11988/12148   - Coastal Zones – Coastal Zone Management Act   - Wild and Scenic Rivers   - Essential Fish Habitat   - Clean Air Act   - Safe Drinking Water Act   - Coastal Barrier Resources Act   - Farmland Protection Policy Act   …others

INTRODUCTION TO FEDERAL CROSS-CUTTERS (CONT.)

- Example cross-cutters that often require consultation during environmental review process:

Endangered Species Act (ESA)	National Historic Preservation Act (NHPA)	Coastal Zone Management Act (CZMA)

- Although EPA is responsible for ensuring compliance with cross-cutters before issuing the grant, the grant applicant may begin the coordination and consultation processes with administering agencies.

For example, as part of consultation under the Endangered Species Act, a grant recipient may contact the United States Fish and Wildlife Service (USFWS) to request a list of threatened and endangered species that may occur in the project location.

- The recipient can often undertake aspects of the documentation, coordination, and/or consultation.

  - For cross-cutters that require consultations with a lead federal agency, EPA may authorize a grant recipient to initiate consultation, but remains legally responsible for all findings and determinations.

  - Cross-cutter coordination and compliance is mandatory for *all* Community Grants projects, regardless of the level of NEPA review (CATEXs, EAs, EISs).

COMPLETING THE CROSS-CUTTER REVIEW PROCESS DETAILED

To complete the cross-cutter review process:

1. Determines cross-cutter applicability by determining whether a resource is in the project area and whether that resource would be affected by the action. Data sources can include:

Publicly Available Tools and Databases	Materials Provided by Recipients	Information obtained via coordination with State, Tribal, or local agencies and/or governments
• Some cross-cutters may be easily eliminated due to geographic location (e.g., when considering coastal zone, coastal barrier resources, wild and scenic rivers, prime farmland, etc.).	• EIDS, resource surveys, SERP documents, other Federal Agency NEPA documents • The EPA PO must review these materials and can potentially incorporate into the review	

COMPLETING THE CROSS-CUTTER REVIEW PROCESS (CONT.)

2. Ensures compliance with applicable cross-cutters:

> Examples include evaluating impacts to cross-cutter resources, documenting consideration of alternatives, developing mitigation measures, ensuring the grant recipient will comply with permitting requirements, and consulting with administering agencies.

3. Coordinates/consults with administering agencies, if required:

> To initiate coordination/consultation, an email and/or letter with detailed project information is sent to the administering agency to request information or request concurrence with EPA's determination of effects to a resource.

> The administering agency may request additional information (e.g., results of field investigations or surveys, timing and duration of projects, etc.) or may request changes to the proposed project to avoid/minimize impacts to a resource.

> EPA recommends that consultations required pursuant to NHPA and ESA be started early in the environmental review process since these consultations can take time and potentially delay the project.

> Typically, EPA takes the lead on consulting with administering agencies. However, in some cases, the grant recipient may lead consultations. (ex. NHPA/ESA, EPA can designate a recipient to undertake consultation, reducing EPA processing time.

4. Documentation of the applicability and compliance with the cross-cutter review.

ENVIRONMENTAL CROSSCUTTERS: NHPA

EPA **must comply with NHPA Section 106** for any "undertaking," which is defined as a "project, activity or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including… those carried out with Federal financial assistance…"

NHPA 106 determination is required (CATEX, EA-FONSI, and EIS).
Determination: will the action affect historic properties?

NO POTENTIAL TO CAUSE EFFECTS on historic properties, assuming such properties were present → No further Sec. 106 obligations. → Finalize NEPA determination. (Ex: Projects involving no construction activities)	**_NO HISTORIC PROPERTIES AFFECTED_ or _NO ADVERSE EFFECT_** → Submit letter **requesting concurrence** from SHPO/THPO, wait 30 days for review or objection → Finalize NEPA determination.	**_ADVERSE EFFECT_** → **Consult** further to resolve the adverse effect. Resolution of adverse effects often takes the form of a Memorandum of Agreement between the consulting parties. → Finalize NEPA determination.

Recipients can initiate NHPA Section 106 consultation.

ENVIRONMENTAL CROSSCUTTERS: ESA

EPA must comply with ESA Section 7 to ensure "any action it authorizes, funds, or carries out…is not likely to jeopardize the continued existence of any listed species or results in the destruction or adverse modification of critical habitat."

ESA compliance is required (CATEX, EA-FONSI, and EIS).
Determination: will the action affect listed species or designated critical habitat?

NO EFFECTS	MAY AFFECT, NOT LIKELY TO ADVERSELY AFFECT	MAY AFFECT, IS LIKELY TO ADVERSELY AFFECT
FWS Consultation: not required. **FWS Notification/Correspondence:** not required **Documentation:** EPA must document the "no effect" determination to reflect why the action will have no impacts to federally listed threatened or endangered species or their critical habitat.	**FWS Informal Consultation:** EPA shall submit a letter requesting concurrence on the finding from the FWS/NMFS and must wait 60 days for FWS/NMFS review. Concurrence from FWS/NMFS concludes **informal** consultation.	**FWS/NMFS Formal Consultation:** EPA shall submit a letter requesting initiation of formal consultation with FWS/NMFS. The letter must contain specific information in accordance with the regulation and for "major construction activities," must be accompanied by a **Biological Assessment (BA)**.

- ❑ EPA shall prepare (or request the recipient to provide) a **BA** if the action is a "major construction activity." The BA determines whether any listed/proposed species or designated / proposed critical habitat are likely to be adversely affected by the action and is used in determining whether formal consultation is necessary.
- ❑ Recipients can initiate ESA Section 7 consultation.

CONCLUDING THE NEPA REVIEW

- EPA must issue a NEPA determination (CATEX, EA/FONSI/EIS) before releasing grant funds. EPA makes its NEPA determinations publicly available on EPA's [NEPA Compliance Database](#).

- If project activities are ongoing and there are changes or modification to the project, the recipient must notify EPA to ensure that the environmental review does not require a supplement.

- Project specific terms and conditions may be included to document any mitigation measures and/or best management practices identified which are required to be implemented by the recipient for the project.

RESOURCES

- **EPA Community Grants Program Website**: The EPA Community Grants web page is updated as new information becomes available, including Frequently Asked Questions.

- **Grants Management Training for Applicants and Recipients:** EPA's online training courses are free and are designed to introduce potential EPA grant recipients to key aspects of the entire grant lifecycle, from preparation of an application through grant closeout. Additional information on developing grant budgets is also available.

- **Grants Policies:** EPA grant policies affect how recipients manage and administer EPA assistance agreements.

- **Where do I start?** See How To Prepare for Funding for key steps toward recipient readiness.

- **Where do I apply?** Prior to applying in Grants.gov, recipients should register with SAM.gov, ensure the SAM.gov registration is not expired, obtain a UEI number through the SAM.gov registration process, and establish an EBiz Contact. See Accessing the Application Package for steps to navigate Grants.gov.

- **NEPA Implementing Regulations:** Both the CEQ NEPA Implementing Regulations (40 CFR Parts 1500-1508) and EPA's NEPA Implementing Regulations (40 CFR Part 6) provide the framework for the environmental review process.

Bookmark These Sites!

Questions

EPA Community Grants Program
https://www.epa.gov/sustainable-water-infrastructure/epa-community-grants