

FREQUENTLY ASKED QUESTIONS

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FREQUENTLY ASKED QUESTIONS

2.1 Do All DDOT Projects Have to Comply with Environmental Laws?

Yes, all District of Columbia Department of Transportation (DDOT) projects have to comply with federal and local environmental laws.

2.2 Which Federal Environmental Laws Apply to DDOT Projects?

There are many federal environmental laws that apply to DDOT projects, depending upon the type of project and its complexity. Some of the major federal environmental laws are:

- National Environmental Policy Act (NEPA)
- National Historic Preservation Act (NHPA)- Section 106
- Clean Water Act (CWA) – Sections 404, 402, and 401
- Clean Air Act (CAA)
- Department of Transportation Act of 1966, Section 4(f)
- Endangered Species Act (ESA)

- Executive Order (EO) 12898: Environmental Justice
- Resource Conservation and Recovery Act (RCRA)

2.3 Which District of Columbia Environmental Laws Apply to DDOT Projects?

Many District of Columbia environmental laws apply to DDOT projects, depending on the type of project and its complexity. Some of the major District environmental laws are:

- District of Columbia Environmental Policy Act (DCEPA)
- District of Columbia Hazardous Waste Management Act of 1977
- Water Pollution Control Act
- Air Pollution Control Act

2.4 What Is NEPA?

NEPA is the National Environmental Policy Act of 1969. NEPA is a federal law requiring the federal government to

consider the effects of its actions upon the environment. NEPA established a framework within which these considerations are coordinated, documented, and communicated to the public and agencies with jurisdiction. Depending on the type of the project, NEPA action can be a Categorical Exclusion (CE), an Environmental Assessment (EA), or an Environmental Impact Statement (EIS).

2.5 Does NEPA Apply to All DDOT Projects?

NEPA applies to all DDOT projects that use federal funding or require a federal action (permit or approval). DDOT projects that require National Park Service (NPS) or any other federal agency approvals or permits also have to follow NEPA, even though the project is using only local funds.

2.6 What Is a NEPA Action Type?

NEPA action type means the class of action taken by the federal agency in approving a project to comply with NEPA. There are three NEPA classes (types) of action:

- Categorical Exclusion (Cat Ex, also called CE)
- Environmental Assessment (EA)
- Environmental Impact Statement (EIS)

2.7 What Is a Cat Ex?

Cat Ex means “Categorical Exclusion” under NEPA. It is sometimes also referred to as a “CE.” CEs are those types of actions or projects that do not cause significant impacts to the environment. Some CEs do not require documentation. 23 CFR 771.117 provides a list of projects for the Federal Highway Administration (FHWA) that qualify for a CE. See Chapter 10, The Categorical Exclusion, for details.

Typical DDOT projects within DDOT right-of-way, such as reconstruction, repaving, bridge rehab projects, and signal

installation projects, qualify for a CE. However, if another federal agency (such as NPS) is involved, then a CE may not be used.

2.8 What Is an Environmental Assessment?

To comply with NEPA, an EA is prepared when it is not clear whether a project (or action) has significant impacts or not. Typically, an EA is prepared when a project does not qualify for a CE, and it is not clear what types of impacts it might have on the environment.

An EA is a document that includes the proposed action and an analysis of the impacts of this action on the environment. If the EA concludes that the project will not have any significant impacts, then a Finding of No Significant Impact (FONSI) is prepared and approved by the lead federal agency. However, if the EA concludes that there are significant impacts, then an EIS has to be started. See Chapter 9, The Environmental Assessment and Finding of No Significant Impact, for details.

2.9 What Is a FONSI?

FONSI stands for “Finding of No Significant Impact.” A FONSI is prepared when an EA concludes that the project will not have any significant impacts on the environment. FONSI approval is the final step in the preparation of an EA.

2.10 What Is an Environmental Impact Statement?

An EIS is an environmental document prepared to comply with NEPA when a project is likely to have significant impacts to the environment. An EIS is a full-disclosure document describing the potential effects of a project on the environment. An EIS includes the impacts of a proposed project on land, water, air, structures, living organisms, and

environmental values at the site, as well as social, cultural, and economic aspects. An EIS describes impacts, as well as ways to mitigate (lessen, remove, and similar measures) these impacts. An EIS is released to the public for review and comments as a Draft EIS and as a Final EIS.

An EIS is the most thorough and comprehensive level of NEPA documentation. Projects such as new bridge construction projects and new highway projects may require an EIS. The final step in the preparation of an EIS is the Record of Decision (ROD), which documents the alternative selected for the project. See Chapter 8, The Environmental Impact Statement and Record of Decision, for details.

2.11 What Is a ROD?

ROD stands for “Record of Decision.” The ROD is the final step in the preparation of an EIS. It documents the alternative selected for the project. See Chapter 8, The Environmental Impact Statement and Record of Decision, for details.

2.12 What Is DCEPA?

DCEPA is an acronym for the District of Columbia Environmental Policy Act (DCEPA) of 1989. DCEPA applies to all DDOT projects. DCEPA is the District of Columbia law that requires the District government to consider the effects of its actions upon the environment. See Chapter 6, The DCEPA Process, for details.

2.13 Does DCEPA Apply to All DDOT Projects?

Yes, DCEPA applies to all DDOT projects, even if they use federal funds. However, most DDOT projects use federal funds and have to comply with NEPA. DCEPA provides an exemption for projects that comply with NEPA and considers NEPA action to be equivalent to preparing a

DCEPA action. Therefore DDOT projects that comply with NEPA (CE, EA, or EIS) do not need to take any additional action to comply with DCEPA. However, an Environmental Intake Form (EIF) should be completed for construction projects.

DDOT projects that use local funds and do not require any federal agency action must comply with DCEPA. After DDOT determines the appropriate action type for its proposed project, the development of the subsequent environmental document— Exemption, Environmental Impact Screening Form (EISF), or EIS takes place.

2.14 What Are Different DCEPA Action Types?

There are three DCEPA action types:

- Exemption
- Environmental Impact Screening Form
- Environmental Impact Statement

2.15 What Is an Exemption?

In the DCEPA process, an Exemption means the types of actions that do not require any further documentation for DCEPA compliance (that is, do not require the preparation of an EISF or EIS). See Chapter 6, The DCEPA Process, for details.

2.16 What Is an EISF?

Under DCEPA, an EISF means “Environmental Impact Screening Form.” An EISF is prepared for projects that are not covered by the exemption of DCEPA. This form is completed to determine whether an EIS is required or not. The EISF form is available in Appendix C. The EISF form has to be completed by the applicant and submitted to the

Department of Consumer and Regulatory Affairs (DCRA) for approval. See Chapter 6, The DCEPA Process, for details.

2.17 What Is an EIS in DCEPA?

In DCEPA, an EIS means “Environmental Impact Statement.” The EIS for DCEPA compliance is similar to a NEPA EIS document. An EIS is prepared for projects that are not covered in the exemptions or are not covered in the EISF or for projects where the lead agency has made a determination that an EIS is required. See Chapter 6, The DCEPA Process, for details.

2.18 Who at DDOT Determines What Type of an Environmental Action/Document Is Needed?

The PDE Division (or designee) determines the type of environmental action/document required for a proposed project, based on the information provided by the project manager.

2.19 Who at DDOT Approves Environmental Actions/Documents?

The PDE Division approves all environmental actions/documents, based on the information provided by the project manager.

2.20 What Is Section 106?

The term Section 106 usually refers to Section 106 of the National Historic Preservation Act. Section 106 protects historic or cultural resources (such as historic properties, historic sites, historic districts, and archeological sites) by providing the ground rules and processes that must be followed before an eligible resource can be affected by federal agency action. See Chapter 21, Archaeological, Historical, and Paleontological Resources, for details.

2.21 Does Section 106 Apply to All DDOT Projects?

Section 106 applies only to those DDOT projects that use federal funds or require a federal agency action and are near a historic resource (historic properties, historic sites, historic districts, and archeological sites). For projects using only local funds, the District of Columbia Historic Preservation Act must be followed.

2.22 What Is SHPO?

SHPO stands for State Historic Preservation Office(r). SHPO is the agency responsible for the preservation of historic resources in a state. In the District of Columbia, the SHPO function is part of the District of Columbia Office of Planning and is called the District of Columbia Historic Preservation Office (DCHPO). For DDOT projects, SHPO is also referred to as DCHPO.

2.23 What Is Section 4(f)?

The term Section 4(f) usually refers to Section 4(f) of the United States Department of Transportation (USDOT) Act of 1966. This law protects the following property types from being converted to transportation use.

- Publicly owned parks and recreation areas
- Historic sites (regardless of ownership) of national, state, or local significance
- Wildlife or waterfowl refuges

See Chapter 22, Section 4(f) – Parks, Recreation Areas, Historic Sites, Wildlife and Waterfowl Refuges, for details.

2.24 Does Section 4(f) Apply to All DDOT Projects?

Section 4(f) applies only to those DDOT projects that use USDOT (FHWA, Federal Transit Administration [FTA])

funds. Section 4(f) applies when a project using such funds will impact a historic site, a public park, a recreational area, or a wildlife refuge. Section 4(f) does not apply on projects using only District funds.

2.25 Which Agencies Are Usually Involved in the Section 4(f) Process?

Section 4(f) is a part of a law governing USDOT activity; therefore, a USDOT agency (such as FHWA or FTA) is the lead agency in the Section 4(f) process, responsible for Section 4(f) approval. Depending on the project, different agencies may have to be involved in the Section 4(f) process. In DDOT projects, typically, if parks owned by NPS are involved, then NPS has to be involved. If historic properties are involved, then DCHPO has to be involved. If District-owned parks are involved, then the District of Columbia Department of Parks and Recreation (DPR) has to be involved.

2.26 What Is Section 404?

The term Section 404 usually refers to Section 404 of the Clean Water Act (CWA). Section 404 describes a permit that is required whenever debris or fill materials are discharged into the waters of the United States. For DDOT, it means that any time a DDOT project needs construction inside the Anacostia or Potomac River (or any of the creeks that feed into these rivers) or any wetlands, then DDOT needs to obtain a Section 404 permit. The United States Army Corps of Engineers (USACE) is the granting authority for Section 404 permits. There are two major types of Section 404 permits.

- Nationwide permits
- Individual permits

See Chapter 19, Wetlands and Waters of the United States, for details.

2.27 What Is Section 402?

The term Section 402 usually refers to Section 402 of the CWA. Section 402 of the CWA provides for the National Pollutant Discharge Elimination System (NPDES) permit. Under NPDES, all facilities that discharge pollutants from any point source into waters of the United States are required to obtain a permit. The permitting authority for the District of Columbia is the United States Environmental Protection Agency (USEPA) Region 3 Office Water Protection Division.

There are two basic types of NPDES permits.

- Individual Permits
- General Permits

See Chapter 17, Water Quality Policy and Regulations, for details.

2.28 What Is the District of Columbia Department of Environment Role in Section 404 and 402 Permits?

Section 401 of the CWA requires all Section 404 and 402 permits to be certified (approved) by the State Department of Environment (which is also called Water Quality Certification, or WQC). In the District, the District of Columbia Department of Environment (DDOE) is the state department of environment, hence is required to certify these permits before they can become effective.

2.29 What Is FHWA's Role in the Environmental Process?

FHWA is the lead agency for DDOT projects that use Federal Aid Highway funds, which means that FHWA is

responsible for compliance with all federal environmental laws for DDOT projects. FHWA has to approve all NEPA actions for DDOT (such as CE, EA before it is released, FONSI, Draft EIS before release, Final EIS before release, and ROD). FHWA makes Section 4(f) determinations and approves Section 4(f) documents. Section 106 determinations are also made by FHWA before DCHPO Concurrence.

2.30 What Is DDOT’s Role in the Environmental Process?

DDOT is responsible for preparing all the documents and collecting all necessary information for environmental compliance. For NEPA projects, DDOT manages and prepares the NEPA documents (CE, EA, EIS) and submits them to FHWA for approval. DDOT also prepares all the documents and information needed for the Section 106 and Section 4(f) processes and assists FHWA in its consultation process with DCHPO, Advisory Council on Historic Preservation (ACHP), NPS, and other agencies.

2.31 What Is the DDOT Environmental Process?

The environmental process at DDOT begins when a project is included in the Transportation Improvement Plan (TIP). The necessary level of NEPA approval is identified at this stage. When the project is included in the yearly budget, the project manager submits the project information to the PDE staff. Based on the information from the project manager, PDE staff identify whether the project will need to comply with NEPA, DCEPA, or any other environmental laws. If the project manager submits the necessary information to the PDE staff, the project is approved by the PDE staff (or designee) as a CE. If the project does not qualify for a CE, then the PDE staff informs the project manager that an EA or EIS is required. The PDE staff assists in preparing

these documents. If Section 106, Section 4(f), or any other environmental law also applies, then the documentation needed for compliance is also prepared along with the NEPA document (CE, EA, or EIS). Once the NEPA document is approved by FHWA, the project can proceed to final design. PDE staff monitors and assists this process. The PDE staff (or designee) approves all NEPA and other environmental documents before they are submitted to FHWA. PDE staff also monitor each project as it proceeds from NEPA approval to design and construction to ensure that environmental evaluations and commitments are carried out in all phases of the project.

2.32 What Is CSS?

Context-Sensitive Solutions (CSS), also called Context-Sensitive Design (CSD), is a collaborative, interdisciplinary approach that involves all stakeholders in developing a transportation facility that fits its physical setting and preserves scenic, aesthetic, historic, and environmental resources, while maintaining safety and mobility. It is a process used by departments of transportation to ensure that transportation projects fit with the needs of the community and the surrounding environment. See Chapter 13, Context-Sensitive Solutions, for details.

2.33 Does DDOT Have an Environmental Policy?

Yes, DDOT does have an environmental policy. DDOT’s environmental policy is:

DDOT is committed to practicing environmental excellence as it fulfills its mission to enhance the quality of life for the District of Columbia residents, businesses, and visitors by ensuring that people and goods move efficiently and safely, with minimal adverse impacts on the environment.

Chapter 1, DDOT Environmental Policy, NEPA, and DCEPA, includes the DDOT Environmental Policy in detail.

2.34 What is Sustainability?

Sustainability means meeting the needs of the present without compromising the ability of future generations to meet their own needs. It consists of three elements: Environment, Social Structure, and Economy. DDOT recognizes the relationship between transportation and sustainability. A key priority for DDOT is providing a sustainable transportation system that allows various mode choices in a balanced manner without compromising safety, accessibility, and mobility, but still enhancing the economy, promoting livability, and protecting the environment.

DDOT has developed a Sustainability Plan to ensure that sustainable practices are incorporated in all DDOT activities. This plan identifies priority areas, which include: Promoting Transportation and Land Use Linkage; Improving Mode Choices, Accessibility, and Mobility; Effective Cost Assessments in Decision Making; Supporting Economy; Improving DDOT Operations and Project Development Process; Protecting the Environment and Conserving Resources; Climate Change Adaptation; and Promoting Livability and Safety. The DDOT Sustainability Plan is available in a separate document.

2.35 What is EMS?

An Environmental Management System (EMS) is a management system that focuses on incorporating environmental considerations in business practices. In simple terms, an EMS is a way of incorporating environmental thinking into an organization's daily activities. The EMS developed by DDOT ensures that environmental considerations are part of all DDOT activities. This

EMS primarily focuses on (1) Project Development and Environmental Review and (2) Office Operations. More details on DDOT EMS are available in the DDOT EMS Manual.

2.36 What is Climate Change?

The continuous human development and the use of natural resources are contributing towards increased impacts to the environment and are resulting in global warming. Global temperatures have already risen 1.4 degrees Fahrenheit since the start of the twentieth century and continue to increase. More recently, the term “climate change” is being used instead of “global warming” because it helps convey that there are changes in addition to rising temperatures (The National Academies, 2008).

Most scientists and researchers think that the recent increase in global warming has resulted mainly because of human activities that cause the emission of gases like carbon dioxide (CO₂), methane (CH₄), nitrous oxides (N₂O), and hydrofluorocarbons (HFCs). These gases, collectively called greenhouse gases (GHG), are primarily emitted by combustion processes. The greenhouse effect is a function of the concentration of water vapor, CO₂, and other trace gases in the atmosphere that absorb terrestrial radiation leaving the surface of the earth (Intergovernmental Panel on Climate Change, 2001). Changes in the atmospheric concentrations of these GHGs can alter the balance of energy transfers between the atmosphere, space, land, and the oceans.

DDOT has worked closely with the District Department of Environment in developing the DC Climate Change Action Plan, which covers all public and private operations and developments in the district. DDOT is currently working on developing a Climate Change Adaptation Plan just for DDOT and its activities.

