



**U.S. Department  
of Transportation**

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# Introduction to NEPA

For RRIF/TIFIA Transit-Oriented Development Loans

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# Housekeeping

## Session Details:

Today's session is being recorded

All participants automatically join on mute, with cameras off

## Questions for Presenters:

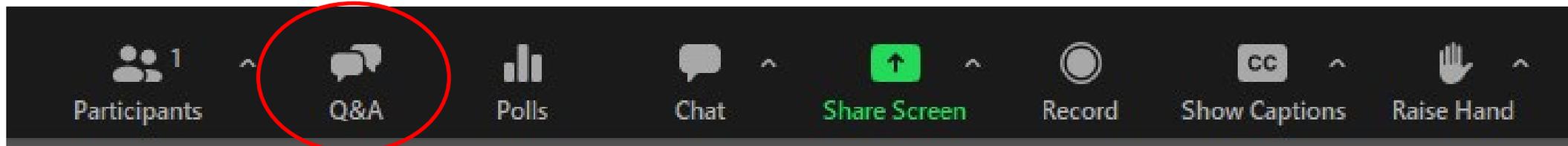
Type questions in the Q&A box

## Technical Support:

Email: [Webconferencing@dot.gov](mailto:Webconferencing@dot.gov)

## More Information:

A copy of the presentation and recording will be posted to the Bureau's TOD resources page: <https://www.transportation.gov/buildamerica/TOD>



Submit questions for panelists using Q&A tool. Questions will be answered in Q&A tool or during Q&A session following presentations

# Disclaimer

*This document/presentation does not have the force and effect of law and is not meant to bind the public in any way. This document/presentation is intended only to provide clarity to the public regarding existing requirements under the law or agency policies. Sponsors should refer Build America Bureau and FTA statutes and regulations for applicable requirements.*



# Overview

**Objective:** This webinar serves as an introduction to NEPA requirements and compliance for private developers, public agencies, and other stakeholders considering TIFIA/RRIF financing for a TOD project.

## Agenda

- **Build America Bureau**
  - Credit Programs
  - TIFIA/RRIF TOD Eligibility
- **National Environmental Policy Act (NEPA)**
  - Section 106 of the National Historic Preservation Act (NHPA)
  - Real Property Acquisition and NEPA
- **TIFIA/RRIF Application Process**
  - NEPA and TIFIA/RRIF Application Process
  - Letter of Interest and Environmental Screening
- **Questions**



# About the Build America Bureau

Improving American communities and infrastructure  
by providing financial & technical assistance

## Financial Assistance

Credit assistance for a wide range  
of eligible projects >\$100 B available.

Tax-exempt bonds for public-private  
partnerships <\$5 B available.

## Technical Assistance

Grants for project planning and  
development, and community solutions.

Education on innovative project planning,  
financing tools, and delivery models.



# Bureau Credit Programs

## Key Features of TIFIA and RRIF

- Long-term repayment options, up to 35+ years
  - Potential 5-year repayment deferral following construction completion
  - Customizable to meet borrower cash flows / needs
- Interest accrues as funds are drawn
- No penalty/fee for pre-payment
- Non-federal match for grants

**LOW INTEREST RATES**

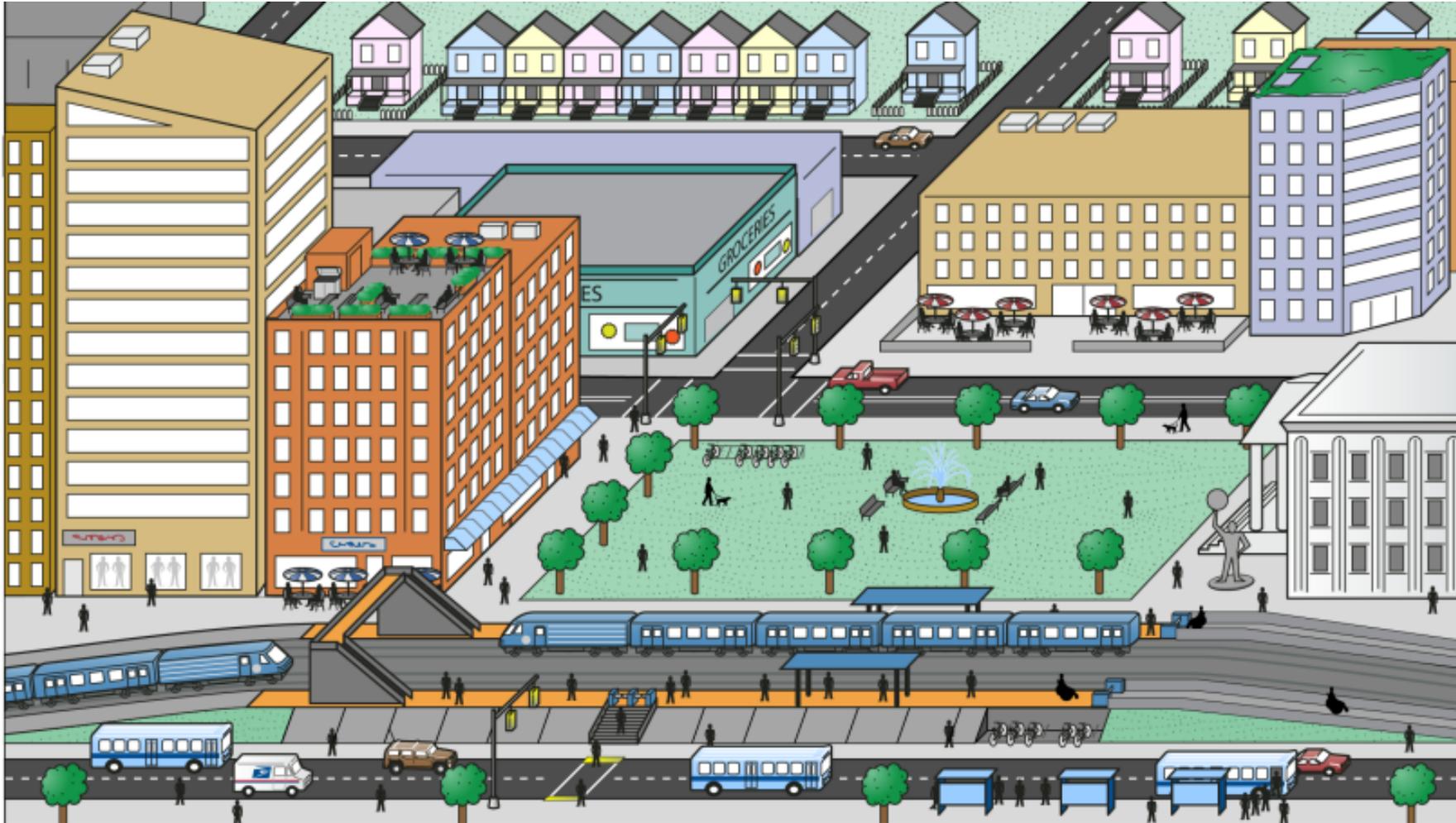
**4.40%**

for 35-year loan as of 7/11/24

**Note:** TIFIA & RRIF cannot finance operations



# Eligible Projects: Transit-Oriented Development



*Transit (TIFIA) and  
Railroad (RRIF)*

*Joint Development  
(TIFIA)*

*Public Infrastructure  
(TIFIA)*

*Economic  
Development (RRIF)*

# Requirements

- 1. Fulfill program requirements (e.g., eligibility)**
- 2. Demonstrate project's creditworthiness**
- 3. Comply with federal requirements**
  - NEPA
  - Davis-Bacon
  - Buy America

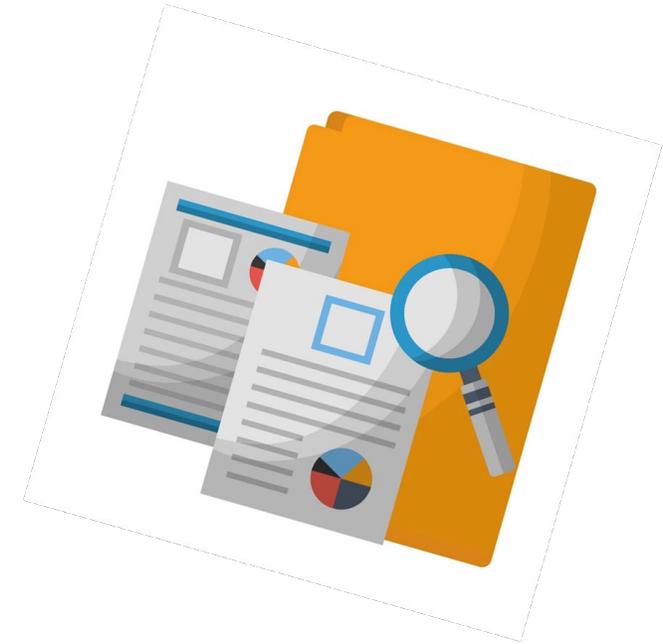
## Key Submittals

- Letter of Interest, Application
- Working financial model
- Rating(s) – TIFIA
- Market study



# National Environmental Policy Act (NEPA)

- Primary law governing the environmental review process for all federal agencies
- Requires a process to consider reasonably foreseeable environmental, social, and economic impacts before carrying out a major federal action
- Requires agencies to document major federal actions likely to have significant environmental effects



# NEPA Applicability

- **NEPA applies to *all* Federal Actions**
  - Federal financial assistance (loan) for a project (partial or whole); or
  - Federal permit, license, or approval for a project (may be privately funded)
- **Bureau/FTA cannot commit Federal financial assistance for a project until NEPA has been completed**
  - While a project may have other Federal, State or Local approvals, DOT must issue a NEPA decision.
  - Environmental review, documentation, and public involvement requirements for complying with NEPA vary depending on the type of project and the significance of the project's potential impacts.



# Roles and Responsibilities in NEPA Review

## FTA

Manages environmental review process

Determines project's NEPA class of action

Reviews and approves environmental document

Issues decision document

## Project Sponsor

Serves as co-lead\*

Conducts technical studies

Conducts public involvement process

Prepares, signs and submits environmental document to FTA

## Build America Bureau

Provides training and technical expertise, as needed

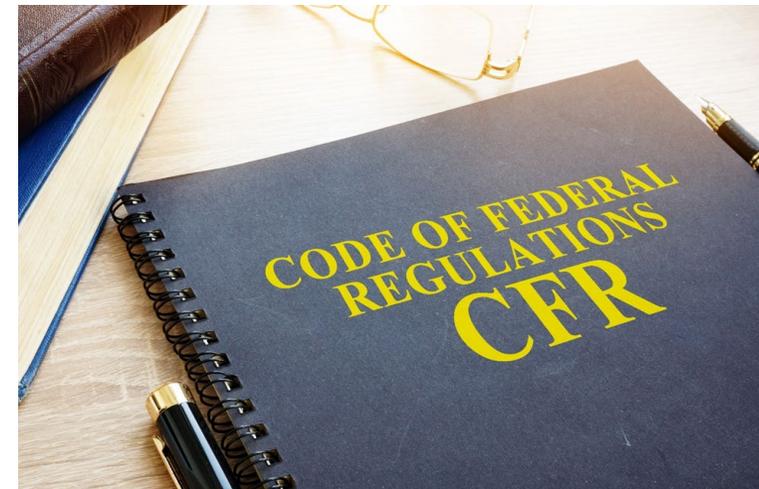
Provide Best Practices and Strategies to streamline environmental practices

Serves a facilitator to the NEPA process and informs DOT Policy



# NEPA Implementation

- [40 CFR parts 1500-1508](#) - CEQ Regulations for Implementing NEPA
- [23 CFR part 771](#) – Environmental Impact and Related Procedures
- FTA's [Environmental SOPs](#) provide additional direction
- [DOT NEPA Order 5610.1C](#) : Procedures for Considering Environmental Impacts

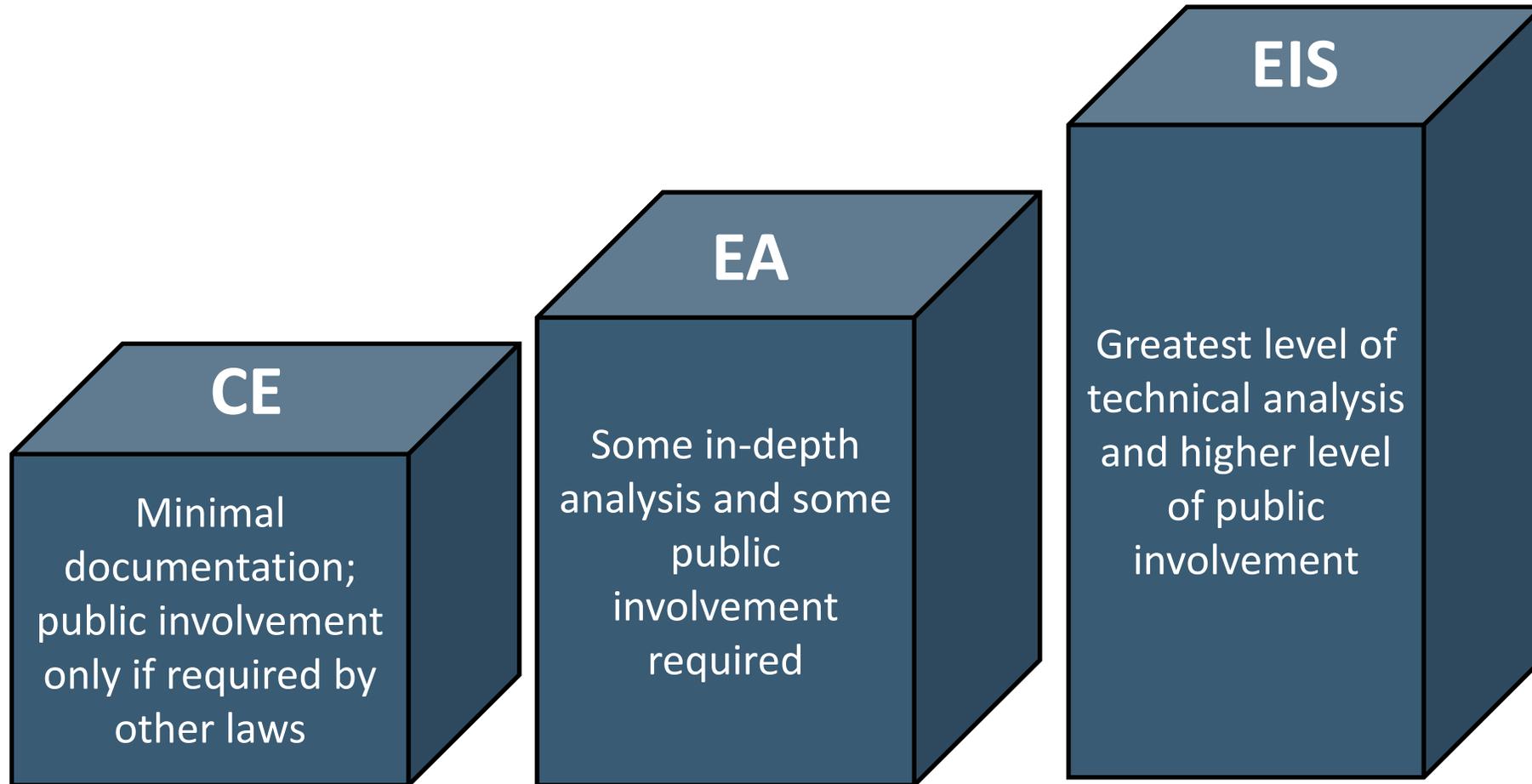


# NEPA Classes of Action

- **Environmental Impact Statement (EIS)**
  - Significant Environmental Impacts
  - Combined Final EIS/Record of Decision (FEIS/ROD) OR ROD
- **Environmental Assessment (EA)**
  - Potential for Significant Environmental Impacts
  - Finding of No Significant Impact (FONSI) OR EIS
- **Categorical Exclusion (CE)**
  - No Potential for Significant Impacts
  - CE Determination
    - C-List versus D-List



# NEPA Classes of Action

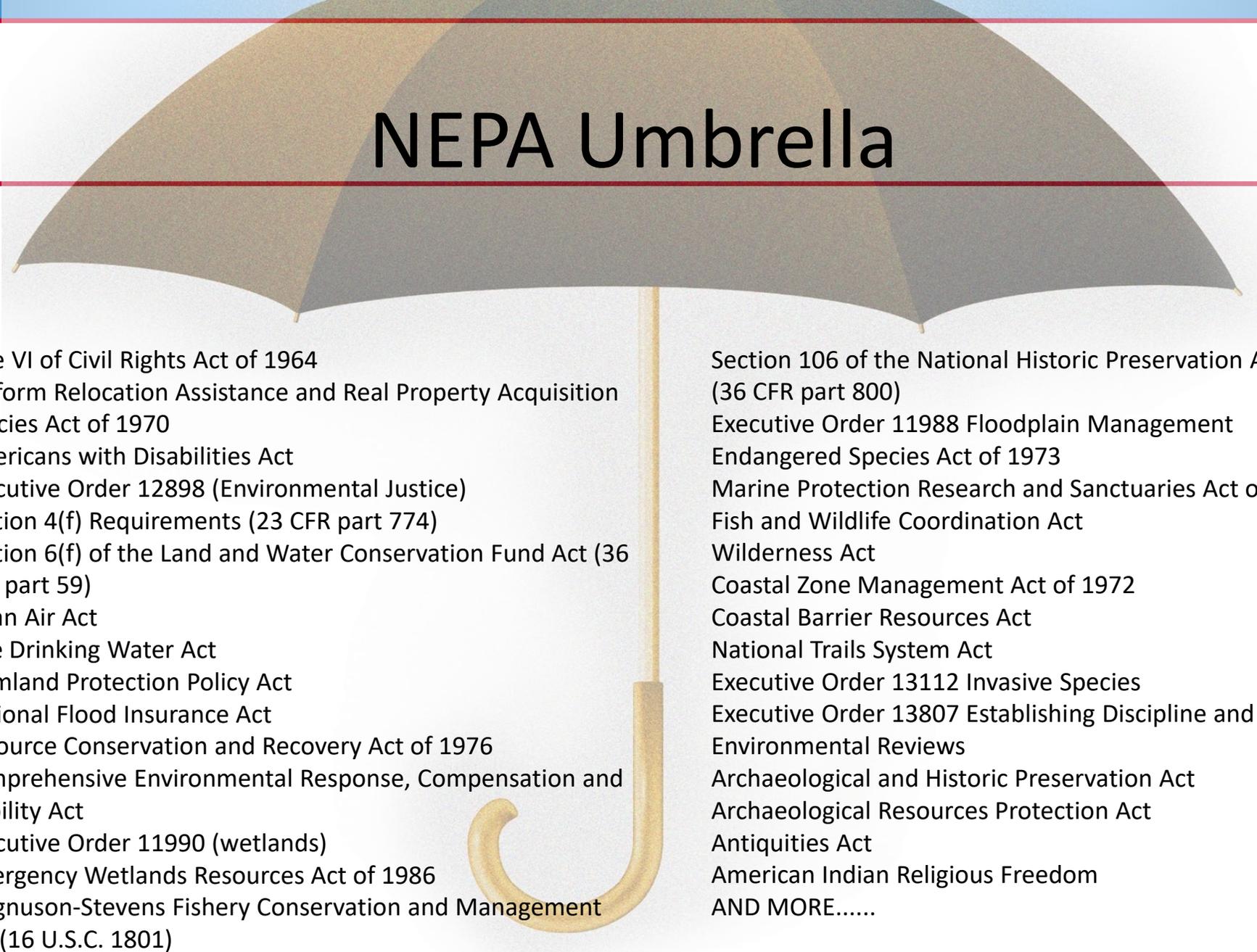


# Considerations for Significance of Effects

- Potentially affected environment and degree of effects
  - Affected area and its resources (e.g., historic resources, parkland, listed species)
  - Short- and long-term effects, beneficial or adverse effects, effects on public health and safety, and effects related to other Federal, State, Tribal, or local laws
- Types of effects (reasonably foreseeable)
  - Direct - caused by the action and occur at same time and place
  - Indirect - caused by the action but are farther removed in distance
  - Cumulative - incremental effects of combined actions



# NEPA Umbrella



Title VI of Civil Rights Act of 1964  
Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970  
Americans with Disabilities Act  
Executive Order 12898 (Environmental Justice)  
Section 4(f) Requirements (23 CFR part 774)  
Section 6(f) of the Land and Water Conservation Fund Act (36 CFR part 59)  
Clean Air Act  
Safe Drinking Water Act  
Farmland Protection Policy Act  
National Flood Insurance Act  
Resource Conservation and Recovery Act of 1976  
Comprehensive Environmental Response, Compensation and Liability Act  
Executive Order 11990 (wetlands)  
Emergency Wetlands Resources Act of 1986  
Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801)

Section 106 of the National Historic Preservation Act (36 CFR part 800)  
Executive Order 11988 Floodplain Management  
Endangered Species Act of 1973  
Marine Protection Research and Sanctuaries Act of 1972  
Fish and Wildlife Coordination Act  
Wilderness Act  
Coastal Zone Management Act of 1972  
Coastal Barrier Resources Act  
National Trails System Act  
Executive Order 13112 Invasive Species  
Executive Order 13807 Establishing Discipline and Accountability in Environmental Reviews  
Archaeological and Historic Preservation Act  
Archaeological Resources Protection Act  
Antiquities Act  
American Indian Religious Freedom  
AND MORE.....



# The National Historic Preservation Act

## Section 106 of the NHPA

- *Requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the [ACHP] a reasonable opportunity to comment on such undertakings.*
- Regulations promulgated by Advisory Council on Historic Preservation (ACHP) at 36 CFR part 800
- Requires consultation with SHPO, Tribes, the public



# Section 106 Process



*King Street Station Renovation Project  
Seattle, Washington*

See [FTA SOP 21](#) and [Historic Preservation Checklist](#) for more information on the Section 106 Process

- FTA establishes an undertaking (potential to cause effects on historic properties)
- Identify area of potential effects (APE)
- Identify consulting parties
- Public involvement plan
- Identify National Register of Historic Places (NRHP) eligible or listed properties within APE
- Assess effects on historic properties by applying criteria of adverse effects
- Resolve adverse effects

# FTA's Policies on Property Acquisition

Property acquisition may not occur until after NEPA review is complete (23 CFR 771.113(a)).

- FTA NEPA regulations: Final design activities, **property acquisition**, purchase of construction materials or rolling stock, or project construction must not proceed until FTA has:
  - ✓ classified the project as a Categorical Exclusion; *or*
  - ✓ issued a Finding of No Significant Impact; *or*
  - ✓ issued a combined final Environmental Impact Statement (EIS)/Record of Decision (ROD) or a final EIS and ROD





# Exceptions for Advance Property Acquisition

- Available exceptions:
  - Hardship acquisition
  - Protective acquisition
  - Corridor preservation (49 U.S.C. § 5323(q))
- NEPA and Uniform Act (49 CFR part 24) compliance are still **required** for the acquisition



# NEPA and Real Property Acquisition Timing

## Acquisition-Related Activities Allowed During NEPA Review

- Conduct land surveys
- Perform title searches
- *Preliminary* appraisals
- Environmental site assessments
- *Preliminary* displace relocation assistance interviews and planning



## Acquisition Activities Upon NEPA Completion

- Appraisals\*
- Offers to Purchase
- Negotiations
- Displacements



# FTA's Categorical Exclusions

## C-list CEs- 23 CFR 771.118(c)

- (1) Utility and Similar Appurtenance Action
- (2) Pedestrian or Bicycle Action
- (3) Environmental Mitigation or Stewardship Activity
- (4) Planning and Administrative Activity
- (5) Action Promoting Safety, Security, Accessibility
- (6) Acquisition, Transfer of Real Property Interest
- (7) Acquisition, Maintenance of Vehicles / Equipment
- (8) Maintenance, Rehab, Reconstruction of Facilities
- (9) Assembly or Construction of Facilities
- (10) Joint Development of Facilities
- (11) Emergency Recovery Actions
- (12) Action Within Existing Operational Right-of-Way
- (13) Action With Limited Federal Financial Assistance
- (14) Bridge Removal and Related Activities
- (15) Preventative Maintenance of Culverts/Channels
- (16) Geotechnical and Other Similar Investigations

## D-list CEs- 23 CFR 771.118(d)

- (1) Highway Modernization
  - (2) Bridge Replacement or Rail Grade Separation
  - (3) **Hardship or Protective Property Acquisition**
  - (4) **Acquisition of Right-of-Way**
  - (5) [Reserved]
  - (6) Facility Modernization
  - (7) Minor Facility Realignment for Rail Safety Purposes
  - (8) Facility Modernization/Expansion Outside Existing ROW
- Other** – General Exclusion (not listed explicitly in regulation)



## FTA Property Acquisition CE: Hardship or Protective Acquisition (23 CFR 771.118(d)(3))

*(3) Acquisition of land for hardship or protective purposes. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. These types of land acquisition qualify for a CE only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the NEPA process. No project development on such land may proceed until the NEPA process has been completed.*



## Hardship or Protective CE(d)(3), cont'd

*(i) Hardship acquisition is early acquisition of property by the applicant at the property owner's request to alleviate particular hardship to the owner, in contrast to others, because of an inability to sell his property. This is justified when **the property owner can document on the basis of health, safety or financial reasons** that remaining in the property poses an undue hardship compared to others.*

*(ii) Protective acquisition is done to prevent imminent development of a parcel which may be needed for a proposed transportation corridor or site. Documentation must clearly demonstrate that development of the land would preclude future transportation use and that such development is imminent. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project.*



# Documentation for CEs

- Project Description
- CE activity category
- Unusual circumstances
- Project commitments
  - Uniform Act
- Supporting documentation
  - Justification
  - Phase 1 ESA



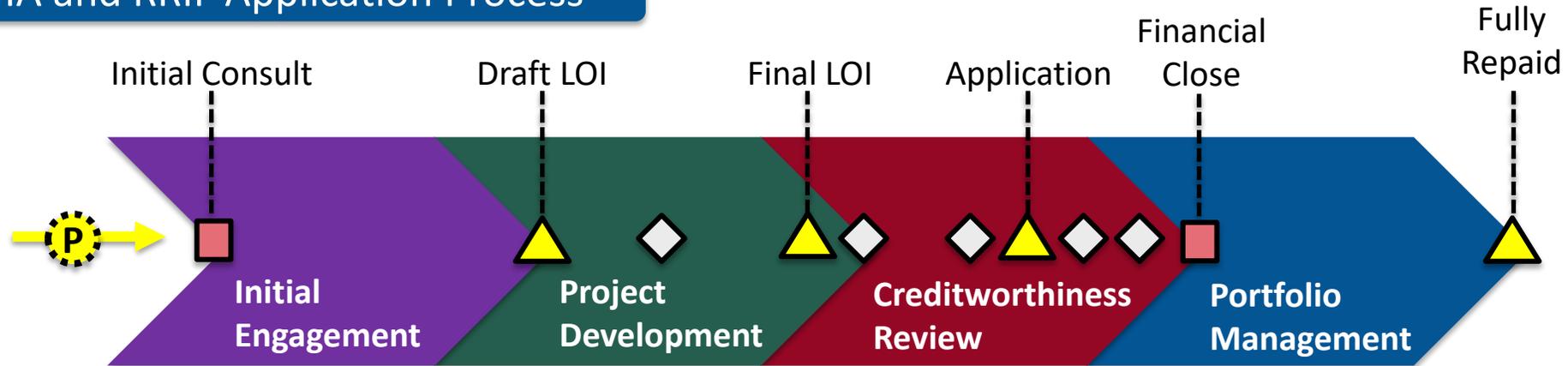
# NEPA Resources

- TOD Project [Federal Requirements](#) Guidance
- U.S. DOT [Environmental checklist](#)
- FTA's [Environmental Resources](#) Information
- NEPA 101 Online Course [National Transit Institute](#)
- FTA CE [Guidance](#)
- FTA Real Property Acquisition and NEPA [FAQs](#) (2021)
- FTA Final Guidance on the Application of 49 U.S.C. 5323(q) to [Corridor Preservation](#) for a Transit Project (2014)
- Real Property Acquisition [Information and Resources](#)
- Uniform Act Courses [National Transit Institute](#)



# Working with the Bureau

## TIFIA and RRIF Application Process\*



- Bureau provides information about credit programs
- Sponsor describes project and address key gating questions:

- Project + borrower
- Schedule + readiness
- Federal requirements
- Plan of finance

- **Submit Draft LOI**
- Bureau assigns a Project Development Lead
  - Initial eligibility analysis
  - Identify lead oversight agency (e.g., FTA) and begin coordination
- **Submit Final LOI**
  - Financial model
  - Indicative rating (TIFIA)
- Bureau assigns a Lead Underwriter
  - Initial risk assessment

- Underwriting
  - Advisor procurement
  - Financial due diligence
  - Negotiate terms and conditions
- **Submit Application**
- Loan approval process
  - OMB and congressional notification
  - Secretarial approval
- Financial close
- Bureau assigns a Lead Portfolio Manager

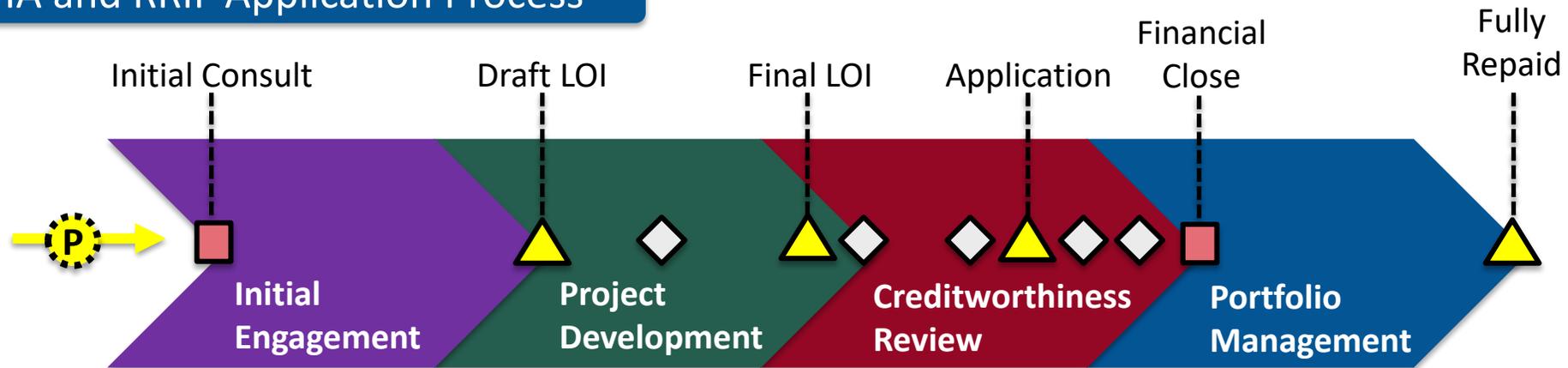
- Financial oversight
  - Disbursements
  - Repayment
  - Reporting
  - Field visits

- ◊ DOT action
- Joint action
- ▲ Sponsor action

\*Does not represent a complete list of submissions, steps, or requirements\*

# NEPA and the Application Process

## TIFIA and RRIF Application Process\*



## NEPA Coordination\*

- Bureau provides overview of NEPA process and provides technical assistance as needed.
- Bureau provides preliminary assessment.
- Sponsor provides environmental screening documentation
  - Project Description
  - Purpose and Need
  - Alternative Selections
  - Potential Impact Analysis
  - Project Schedule
- **Submit Draft LOI**
- Bureau assigns an Environmental Protection Specialist
  - DOT Mode formally begins the NEPA process
  - NEPA Class of Action
  - Schedule/Permitting Plan
- **Submit Final LOI**
  - Environmental decision (CE approval, FONSI, ROD)
- **Submit Application**
  - NEPA Complete
- Environmental Monitoring
  - Field Visits
  - Environmental Commitments, Mitigation, etc.
  - Reporting

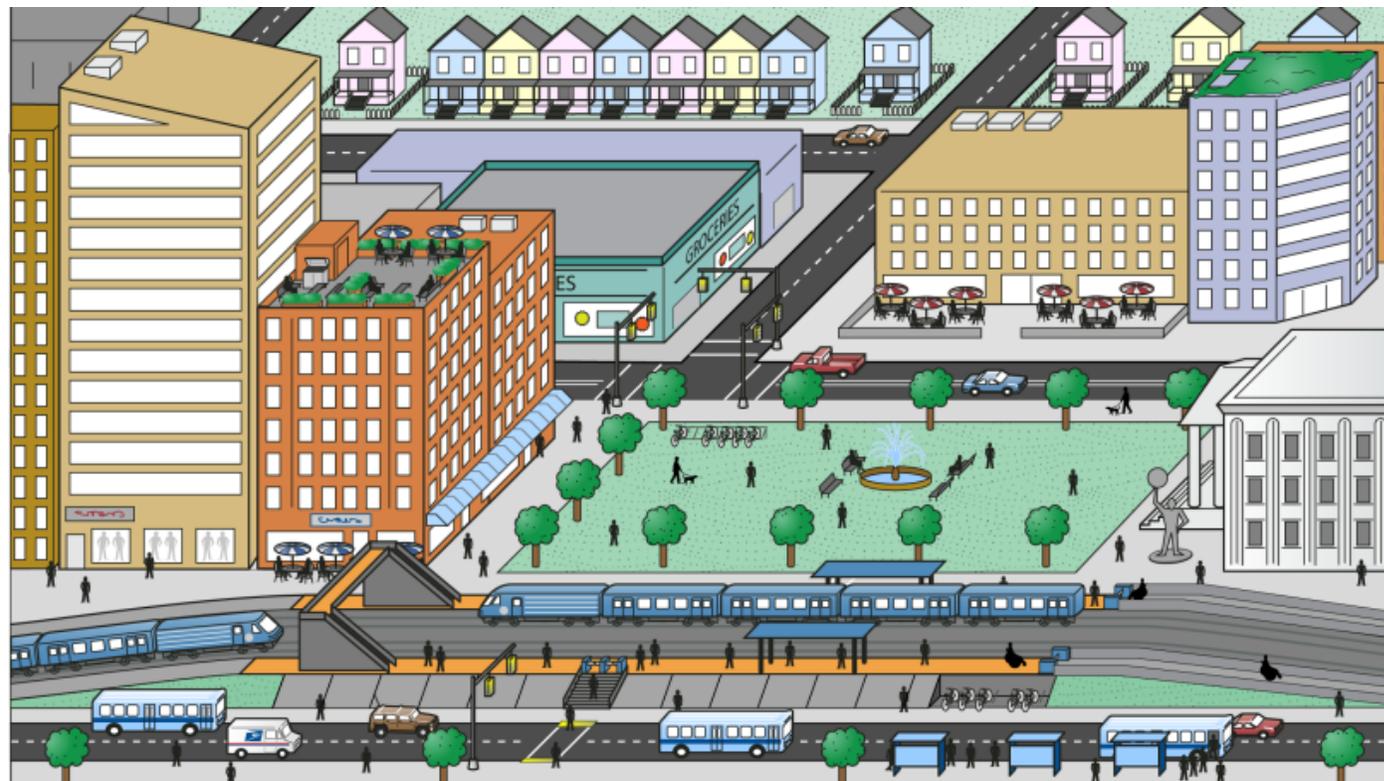
- ◇ DOT action
- Joint action
- ▲ Sponsor action

\*Does not represent a complete list of submissions, steps, or requirements\*



# Recap of NEPA and the Application Process

- **Initial Engagement**
  - Project Intake/Readiness
  - Pre-liminary Assessments
    - NEPA Class of Action
    - Schedule
    - Level of Effort
  - Technical Assistance as Needed
- **Project Development**
  - Formal NEPA Class of Action
    - EIS, EA, CE
  - Formal NEPA Process Begins
  - NEPA Complete
    - CE Approval, FONSI, ROD
- **Credit Worthiness**
  - NEPA complete
  - Environmental Monitoring



\* The Bureau does not have NEPA oversight authority, so preliminary assessments would not be official and would not constitute the formal NEPA process.



# LOI and Screening Environmental Checklist

- **Letter of Interest**
  - Project Description: Describe the project, including its location, purpose, and estimated cost.
  - Financial Plan: Outline the proposed financial plan, specifying the requested credit assistance and the proposed obligor.
  - Environmental Review Status: Provide an update on the environmental review process.
  - Eligibility Requirements: Include information demonstrating satisfaction of other eligibility requirements for the TIFIA and/or RRIF credit program.
- **Screening Environmental Checklist**
  - Status of Environmental Approvals
  - Evaluations of Potential Impacts
  - Status of Acquisitions
  - Coordination at Local and State Level
  - Previously approved Federal, State and/or Local Environmental Decision

Note: Please do not contact FTA Regional Offices pertaining to TIFIA/RRIF TOD projects, please relay all questions through the Bureau.



# Timing of NEPA

## Considerations during your project scheduling:

- Timing of the NEPA process will depend on the size and complexity of the project.
- Timing can change due to analysis and coordination needed during the NEPA process.
- Thorough scoping and impact analysis can streamline the NEPA process.
- Comment Periods and Agency Coordination within the NEPA process can impact schedules.
- **Estimated Timeframe by NEPA Class of Action, upon COA determination:**
  - Categorical Exclusions: 3-9 Months <
  - Environmental Assessments: 1 Year <
  - Environmental Impact Statement: 2 Year <
- **Project Schedule Changes:**
  - Project Sponsor or Agency can request extensions to complete NEPA process
  - Projects can be paused due to change scope or other factors like delays in coordination.

\* The timing of NEPA based on NEPA Class of Actions above are estimates. Each project is unique and the lead agency for NEPA will provide timing during the formal NEPA process based on the scope and size of a project.



# Helpful Tips

- Review FTA's Environmental Webpage for further insights into the NEPA process.
- Before proceeding with any form of acquisition (fee simple and/or leasing), please review FTA's (other modes as appropriate) regulations and guidance on Advance Acquisition.
  - If you have questions, please consult the Bureau.
- Provide all previously completed information related to environmental coordination.
- Consider hiring qualified environmental consultants that have experience in meeting DOT-specific NEPA requirements.



# Announcements

- **NEPA Introductory Webinars for RRIF/TIFIA TOD Loans**

- Recording will be posted to Bureau Website

- **TOD Project Federal Requirements**

Updated guidance on federal requirements for TIFIA and RRIF TOD Projects:

- <https://www.transportation.gov/buildamerica/about/resources-mode/tod-project-federal-requirements-guidance>



# Additional TOD Resources

## TOD Landing Page

<https://www.transportation.gov/buildamerica/TOD>

## Resources

- [Project Eligibility FAQs](#)
- [Project Federal Requirements Guidance](#)
- [TOD Eligibility App](#)
- [TIFIA/RRIF TOD Introductory Webinar](#) (passcode: ?3cbgx^3)

The screenshot displays the Build America Bureau website. The top navigation bar includes links for FINANCING, TECHNICAL ASSISTANCE, PROJECTS, and ABOUT THE BUREAU, along with a search bar and a 'TODAY'S INTEREST RATE 4.64%' badge. A sidebar on the left lists navigation options such as Home, About the Build America Bureau, Join Our Team, Team, History, Build America Center, Resources by Mode, Videos, Newsletters, News Releases, and Federal Reports & Notices. The main content area features a 'Transit-Oriented Development' section with a large image of Denver Union Station and a caption: 'Denver Union Station \$355 million RRIF loan & \$240 million TIFIA loan'. Below this, there are links for 'Interested in TOD financing?' leading to 'TOD Policy Statement', 'TOD Federal Requirements', 'TOD Project Eligibility FAQs (Printable version FAQs)', and 'TOD Eligibility Map: TIFIA and RRIF'. A 'Related Links' section includes 'Credit Programs Guide' and 'FTA TOD Homepage'. 'Most Requested Pages' includes 'New TOD Guidance FAQs' and 'TOD Fact Sheet'. A contact box for the Build America Bureau provides the address (1200 New Jersey Ave SE, Room W12-426, Washington, DC 20590), email (BuildAmerica@dot.gov), phone (202-268-2300), and business hours (9:00am - 5:00pm ET, M-F). A note mentions telecommunication relay services for the deaf or hard of hearing. At the bottom, there is a 'TOD Eligibility App: TIFIA & RRIF' section showing a map of Washington, D.C. with various station locations marked by red and blue dots.

# QUESTIONS?

## CONTACT US



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