

TRIBAL  
TRANSPORTATION  
TRAINING 2020

# NEPA 101

# What is NEPA?

- ▶ National Environmental Policy Act (NEPA): 1<sup>st</sup> major Federal legislative effort to incorporate environmental considerations into all governmental decision-making.
- ▶ Promotes the enhancement of the environment and established the President's Council on Environmental Quality (CEQ)
  - ▶ Law enacted on January 1, 1970

# Why?

- ▶ Increased public appreciation and concern for the environment in the 1960s
  - ▶ Rachel Carson's *Silent Spring*
  - ▶ Santa Barbara oil spill, 1969
  - ▶ Most famously, the Cuyahoga River fire, 1969



# 3 Sections of NEPA

1. Outlines national environmental policies and goals
2. Est. provisions for federal agencies to enforce such policies and goals
3. Est. the CEQ in the Executive Office of the President



# Purpose

- ▶ Environmental factors weighted equally when compared to others in the decision-making process by federal agencies
- ▶ CEQ to advise the President on the progress of federal agencies on implementing NEPA
- ▶ CEQ to advise the President on environmental policy and the state of the environment

Compliance  
with NEPA is  
mandatory  
if..

- ▶ It's a federal project or action
- ▶ Federal funds or assistance are used at some phase of the project
- ▶ A federal permit or license is required

# Key Elements



Determine the project's purpose and need



Determine potential environmental impacts



Coordinating with relevant agencies



Determining solutions for unavoidable impacts



Documentation of analysis and decisions through records

# NEPA Review Process

- ▶ Environmental review under NEPA can involve three different levels of analysis:
  - ▶ Categorical Exclusion determination (CATEX)
  - ▶ Environmental Assessment/Finding of No Significant Impact (EA/FONSI)
  - ▶ Environmental Impact Statement (EIS)
- ▶ Each federal agency has adopted its own NEPA procedures.



# Categorical Exclusion (CATEX)

- ▶ Federal action does NOT “individually or cumulatively have a significant effect on the human environment”
- ▶ Often, a listed CATEX action est. by the agency
  - ▶ Must make sure there are no extraordinary circumstances (ex. effects to wetlands, cultural sites, endangered species)
- ▶ Most common level of environmental review

# FHWA CATEX Examples

- ▶ Roadway resurfacing and rehabilitation projects
- ▶ Construction of bicycle and pedestrian lanes
- ▶ Landscaping
- ▶ Bridge rehabilitation
- ▶ Installation of fencing, signs, etc.



## Environmental Assessment (EA)

- ▶ Federal actions where the significance of the environmental impact is *not clearly defined*.
- ▶ Concise document with:
  - ▶ The need for proposal
  - ▶ Alternative actions
  - ▶ Environmental impacts of proposed action and alternatives
  - ▶ Documentation of agencies consulted
  - ▶ Finding of No Significant Impact (FONSI) or determination to proceed to EIS

## Environmental Impact Statements (EIS)

- ▶ A federal action significantly affecting the quality of the human environment
- ▶ Process includes:
  - ▶ Notice of Intent (NOI): informs public of upcoming analysis and how they can be involved
  - ▶ Draft EIS: published for public review and comment; minimum of 45 days
  - ▶ Final EIS: published and provides responses to comments
  - ▶ Record of Decision (ROD)

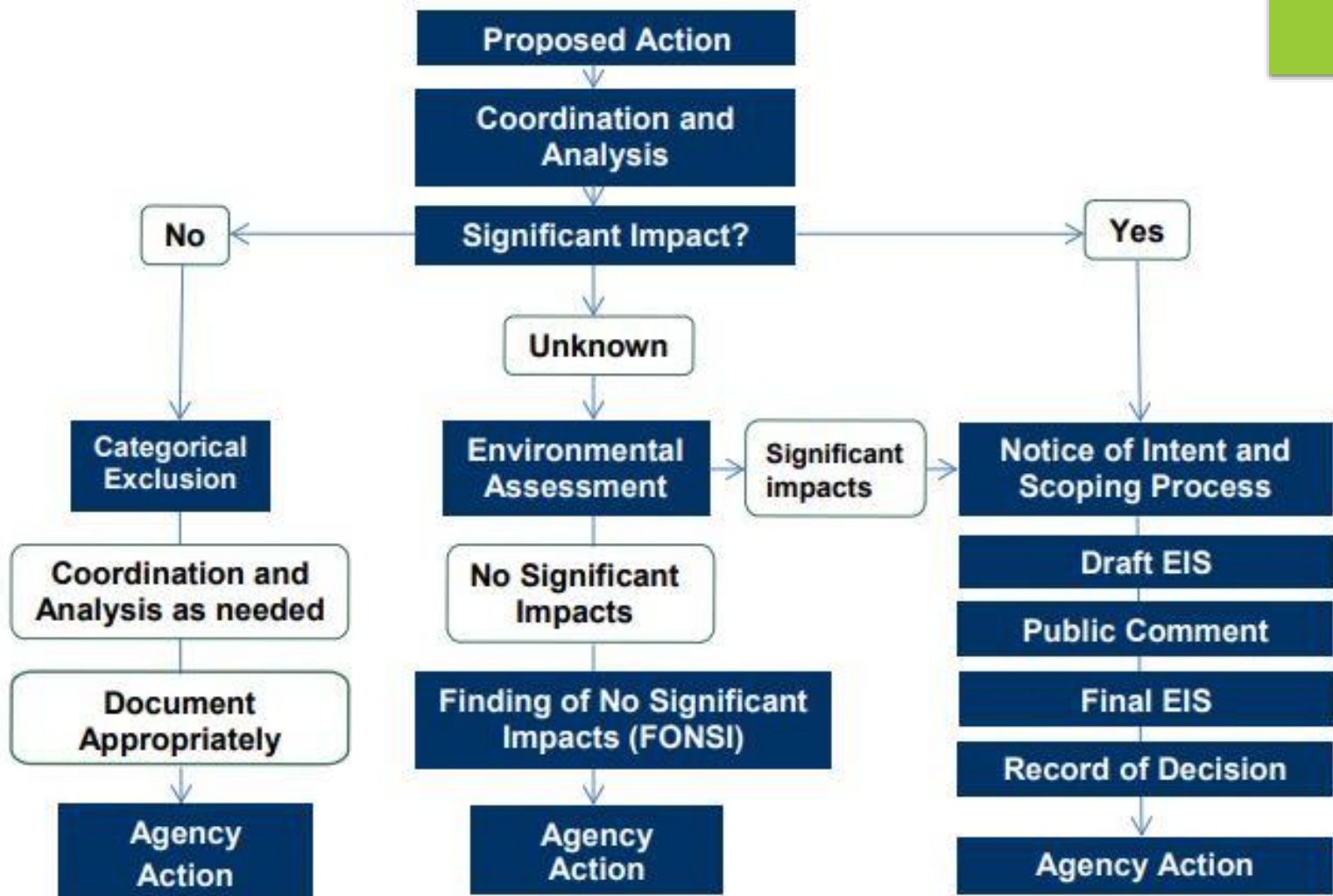


Figure 9-1: NEPA process flowchart



# Environmental Checklist

- NEPA requirements vary between federal agencies
- For FHWA → TTP Environmental Checklist
- Consult with the regulatory agency!

Revised 1-23-2019

## Exhibit 7.1 – TTP ENVIRONMENTAL CHECKLIST

Tribe Name:	Is Project on an approved TTIP?
Project Name/Number:	NTTFI Route No. and Section:
<b>SECTION 1: PROJECT DETAILS</b>	
<p><b>A. Purpose and Need:</b> Briefly describe what the transportation problems are that need to be addressed and why.</p>	
<p><b>B. Project Description:</b> Briefly describe project including location, limits, design elements, and construction activities. Describe how the proposed project will address the needs described above. Use Continuation Sheet, if necessary. Attach maps, aerials, photos, etc. to help visualize the project.</p>	
<p><b>C. Independent Utility and Logical Termini</b></p> <p><input type="checkbox"/> The project complies with NEPA requirements related to connected actions and segmentation (i.e. the project must have independent utility, connect logical termini when applicable, be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made and not restrict further consideration of alternatives for other reasonably foreseeable transportation improvements). [23 CFR 771.111(f)]</p>	

# Area of Potential Effect

- Determine the area of potential effect (APE)
  - maximum geographic area to potentially have an effect
- Not to be confused with the project area

Figure 2. Surveyed Area



Figure 1. Topographic Location Map



# NEPA Considerations

- ▶ Historical and Cultural Resources
- ▶ Biological Resources
- ▶ Water Resources
- ▶ Farmland Protection Policy Act of 1981
- ▶ Wild & Scenic Rivers
- ▶ Air Quality
- ▶ Socioeconomic & Environmental Justice
- ▶ Noise

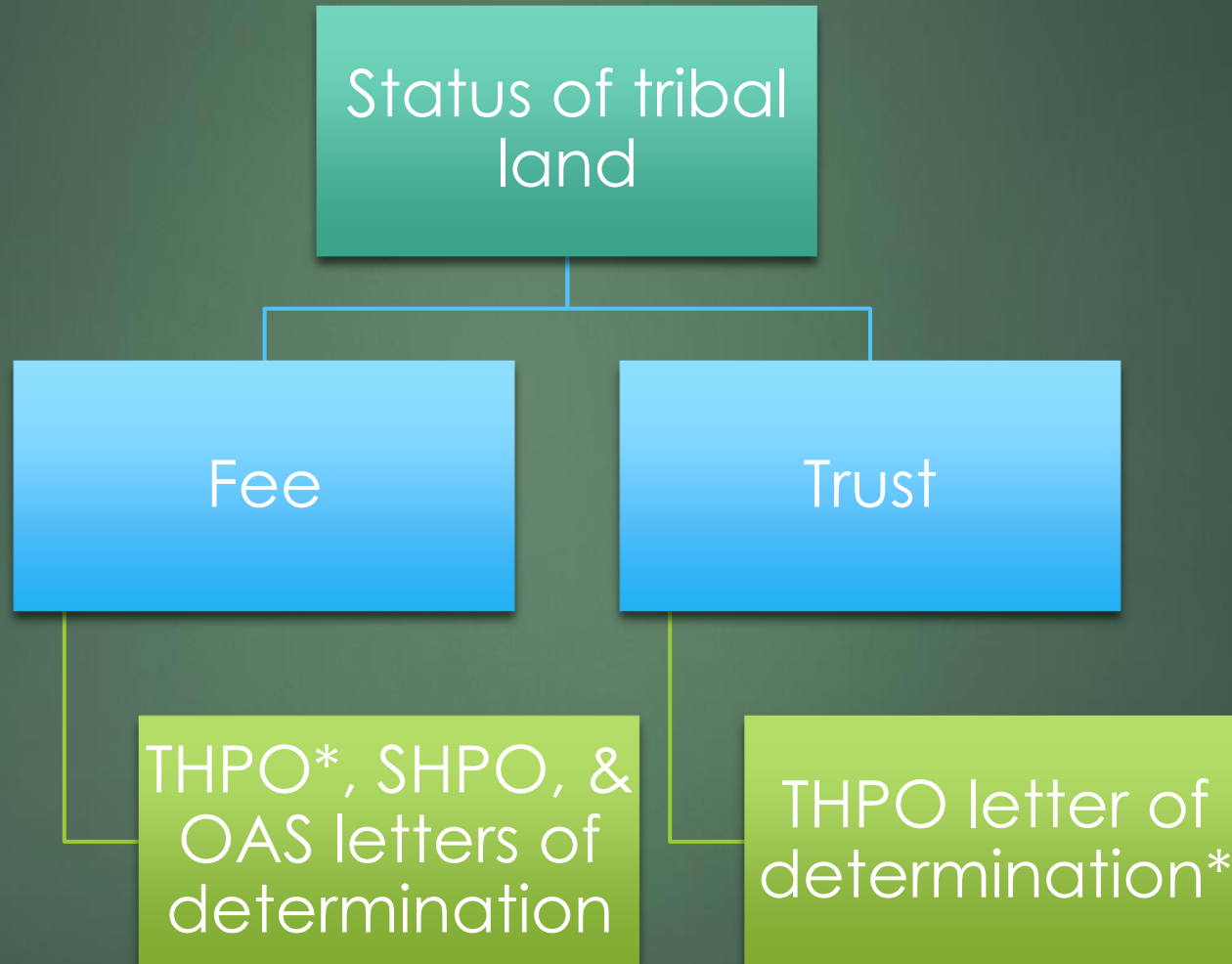


# Historical and Cultural Resources

- ▶ National Historic Preservation Act (NHPA) Section 106
- ▶ Requires federal agencies to take into account the effects of undertakings on historic or cultural properties
- ▶ Requires consult with:
  - ▶ State Historic Preservation Office (SHPO)
  - ▶ Oklahoma Archeological Survey (OAS)
  - ▶ Tribal Historic Preservation Offices (THPO) or Tribes



# NHPA Section 106



# Biological

- ▶ Endangered Species Act (ESA), Section 7
  - ▶ Ensure actions do not jeopardize the existence of any listed species
  - ▶ Information for Planning and Consultation (IPaC)
    - ▶ Threatened and endangered species
    - ▶ Wildlife Refuges and Fish Hatcheries
    - ▶ Migratory Birds
    - ▶ Wetlands

# ESA Section 7 – CPN Example

American Burying Beetle  
(*Nicrophorus americanus*)



Piping Plover  
(*Charadrius melodus*)



Least Tern  
(*Sterna antillarum*)



Whooping Crane  
(*Grus americana*)



Arkansas River Shiner  
(*Notropis girardi*)



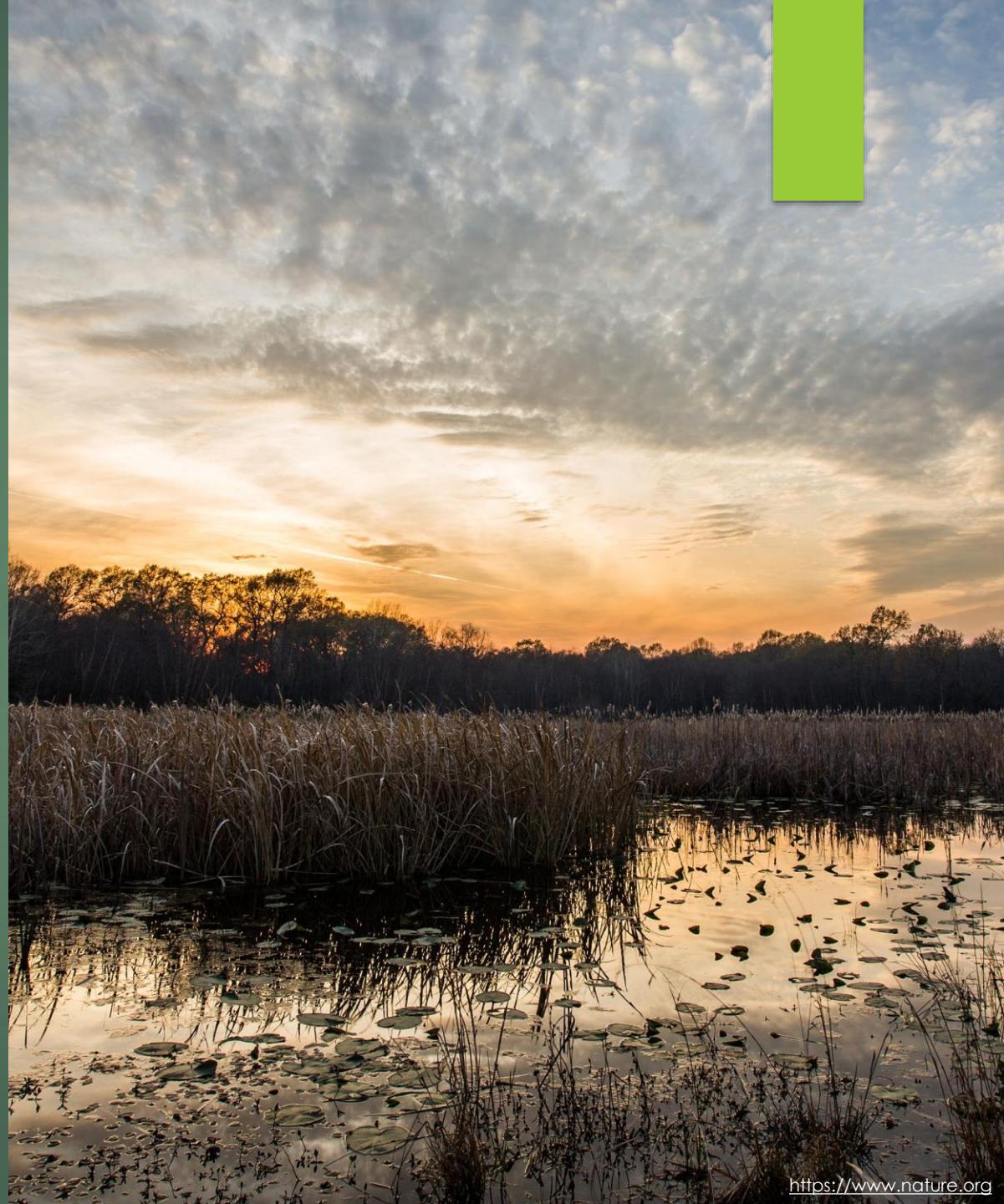
Red Knot  
(*Calidris canutus rufa*)





# Water Resources

- ▶ Wetlands  
(Executive Order #11990)
  - ▶ Natl. Wetlands Inventory
  - ▶ IPaC
- ▶ Floodplains  
(Executive Order # 11988)
  - ▶ FEMA Flood Maps



# Permits

## Section 401 of CWA

- ▶ Section 404 of CWA
  - ▶ Impacts to WOTUS
- ▶ Section 402 of CWA
  - ▶ > 1 acre of ground disturbance
  - ▶ NPDES permit
- ▶ Section 9 & 10 of Rivers and Harbors Improvement Act
  - ▶ Construction over navigable waterway

Consult with Regulatory Program

# Farmland Protection Act of 1981

- “Minimize the unnecessary and irreversible conversion of farmland to nonagricultural uses”
- Web Soil Survey, NRCS
- AD-1006 Farmland Conversion Impact Rating

U.S. Department of Agriculture <b>FARMLAND CONVERSION IMPACT RATING</b>					
<b>PART I</b> (To be completed by Federal Agency)			Date Of Land Evaluation Request		
Name of Project			Federal Agency Involved		
Proposed Land Use			County and State county and state		
<b>PART II</b> (To be completed by NRCS)			Date Request Received By NRCS		Person Completing Form:
Does the site contain Prime, Unique, Statewide or Local Important Farmland? (If no, the FPPA does not apply - do not complete additional parts of this form)			YES <input type="checkbox"/>	NO <input type="checkbox"/>	
Major Crop(s)			Farmable Land In Govt. Jurisdiction Acres: %		Amount of Farmland As Defined in FPPA Acres: %
Name of Land Evaluation System Used			Name of State or Local Site Assessment System		Date Land Evaluation Returned by NRCS
<b>PART III</b> (To be completed by Federal Agency)			Alternative Site Rating		
			Site A	Site B	Site C
A. Total Acres To Be Converted Directly					
B. Total Acres To Be Converted Indirectly					
C. Total Acres In Site					
<b>PART IV</b> (To be completed by NRCS) Land Evaluation Information					
A. Total Acres Prime And Unique Farmland					
B. Total Acres Statewide Important or Local Important Farmland					
C. Percentage Of Farmland In County Or Local Govt. Unit To Be Converted					
D. Percentage Of Farmland In Govt. Jurisdiction With Same Or Higher Relative Value					
<b>PART V</b> (To be completed by NRCS) Land Evaluation Criterion Relative Value of Farmland To Be Converted (Scale of 0 to 100 Points)					
<b>PART VI</b> (To be completed by Federal Agency) Site Assessment Criteria (Criteria are explained in 7 CFR 558.5 b. For Corridor project use form NRCS-CPA-105)			Maximum Points	Site A	Site B
1. Area In Non-urban Use			(15)		
2. Perimeter In Non-urban Use			(10)		
3. Percent Of Site Being Farmed			(20)		
4. Protection Provided By State and Local Government			(20)		
5. Distance From Urban Built-up Area			(15)		
6. Distance To Urban Support Services			(15)		
7. Size Of Present Farm Unit Compared To Average			(10)		
8. Creation Of Non-farmable Farmland			(10)		
9. Availability Of Farm Support Services			(5)		
10. On-Farm Investments			(20)		
11. Effects Of Conversion On Farm Support Services			(10)		
12. Compatibility With Existing Agricultural Use			(10)		
TOTAL SITE ASSESSMENT POINTS			160	0	0
<b>PART VII</b> (To be completed by Federal Agency)					
Relative Value Of Farmland (From Part V)			100	0	0
Total Site Assessment (From Part VI above or local site assessment)			160	0	0
<b>TOTAL POINTS (Total of above 2 lines)</b>			260	0	0
Site Selected:			Date Of Selection		Was A Local Site Assessment Used? YES <input type="checkbox"/> NO <input type="checkbox"/>
Reason For Selection:					
Name of Federal agency representative completing this form:					
Date:					

(See Instructions on reverse side)

Form AD-1006 (03-02)



# Wild and Scenic Rivers Act

- ▶ Nationwide Rivers Inventory (NRI) is a listing of river segments believed to possess “outstanding remarkable” natural or cultural values
- ▶ Federal agencies must seek to avoid or mitigate actions that would adversely affect NRI segments





# Air Quality

- ▶ Is the project in an “nonattainment” or “maintenance” area?
  - ▶ EPA SIP Reports
- ▶ Regardless, air quality concerns related to the project need to be addressed



# Socioeconomic and Environmental Justice

- ▶ Concern over environmental impacts in minority and low-income populations
- ▶ Will the project result in disproportionately high and adverse human health or environmental effects?
  - ▶ Traffic patterns
  - ▶ Job creation



<https://ensia.com>

# Noise

- ▶ Must consider project-generated noise
- ▶ What is the current land use and noise sensitivity?
- ▶ Mitigation or minimization



<https://www.metro.net>



# CPN: Historic Bridge Preservation Project

- Built 1917, the only rainbow bridge in Oklahoma
- Posted on the Natl. Register of Historic Places in September, 2010
- Rainbow Arch Bridge rehabilitation in 2017 in honor of its 100<sup>th</sup> birthday
  - \$300,000 provided by FHWA
- What level of NEPA?



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