

Environmental and Historic Preservation Compliance

Overview

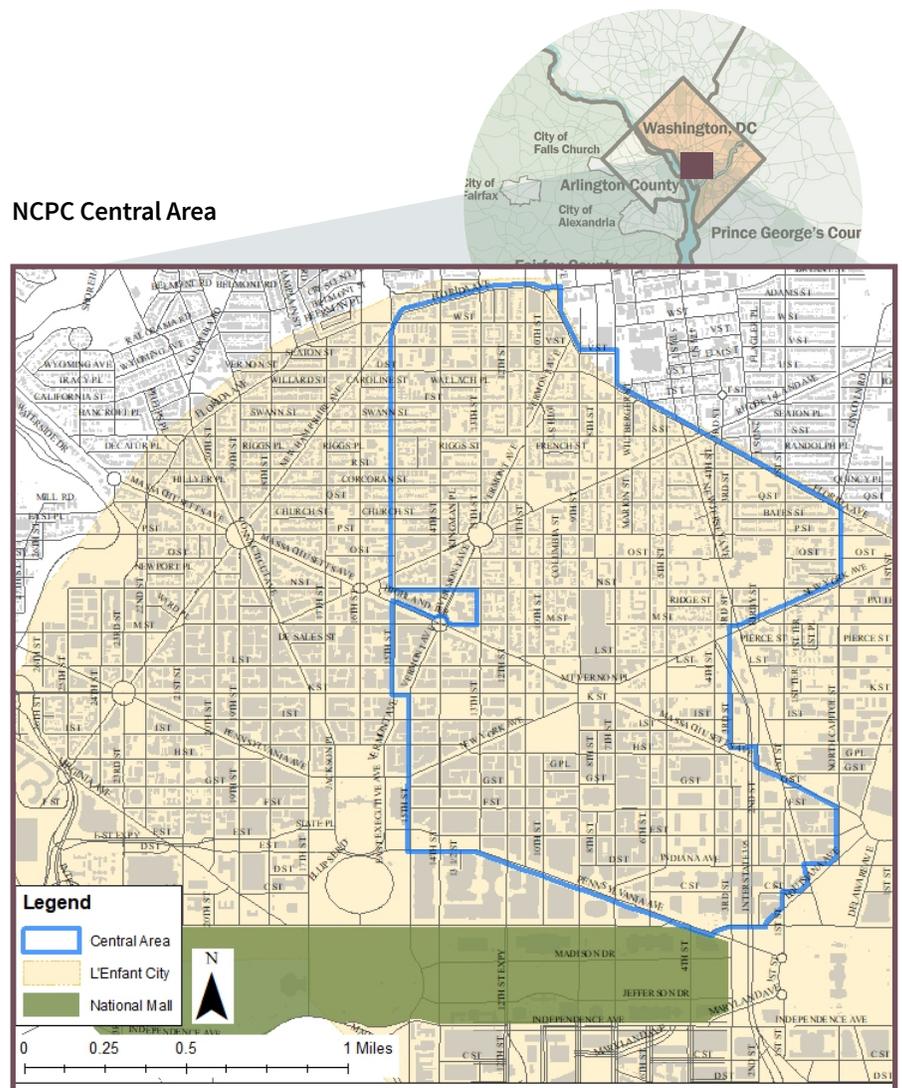
As a federal agency, the National Capital Planning Commission (NCPC) and many of its federal agency applicants are subject to a series of laws and policies that regulate federal development actions. Paramount among these are the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA). These two laws are intended to protect environmental and historic resources and form the cornerstone of responsible planning in the federal government. Any action or undertaking by a federal agency conducted with federal funding, or requiring a federal permit, license, or approval, is required to undergo analysis and assessment under these laws. Accordingly, NCPC has an independent responsibility to fulfill the requirements of NEPA and NHPA for any project where the Commission has approval authority, regardless of whether the applicant has a NEPA or NHPA responsibility. This guide is not a regulatory document.

When does NCPC have a NEPA or NHPA responsibility?

NCPC has a NEPA/NHPA responsibility when the Commission exercises its approval authority. NCPC has approval authority for, among others:

1. Projects on federal land in Washington, DC, regardless of the applicant;
2. Projects on District land within the Central Area (right);
3. Projects on land in Maryland and Virginia purchased with Capper-Cramton funds;
4. Commemorative works on land administered by the National Park Service or the General Services Administration in Washington, DC and the environs; and
5. Transfers of jurisdiction in Washington, DC between federal agencies, and between federal agencies and the District government.

NCPC Central Area



NEPA and NHPA do not apply when the Commission exercises its advisory authority. NCPC has advisory authority, among others, for master plans on federal land in the National Capital Region (NCR); projects on federal land in the portions of Maryland and Virginia within the NCR; and projects on District-owned land outside the Central Area. It is important to note, however, that there are benefits to performing a NEPA analysis when developing a master plan:

1. NCPC requires an environmental, historic resource, and transportation management analysis for master plan submissions, which would typically be prepared as part of NEPA compliance.
2. NCPC will allow the NEPA analysis for an approved master plan to apply to future individual master plan projects, as long as it contains adequate details regarding the projects and circumstances have not changed significantly since the master plan was approved.

National Environmental Policy Act

NEPA requires federal agencies to consider the potential environmental impacts of their projects prior to taking an action, which can be done in one of three ways.

1. **Environmental Assessment:** The first is an environmental assessment (EA). An EA is a tool to help determine if an action would result in either positive or negative consequences across a range of project-specific environmental impact topics, such as vegetation, hydrology, and viewsheds. It is the appropriate NEPA pathway for projects that would result in no significant impact to the environment, which means either negligible adverse impacts that could be mitigated through certain actions, or no adverse impacts at all. A finding of no significant impact (FONSI) document is completed to closeout an EA process, which outlines the findings of the EA.
2. **Environmental Impact Statement:** If it is determined that more significant impacts may exist, an environmental impact statement (EIS) is the appropriate NEPA analysis tool. An EIS includes a more in-depth analysis that outlines the extent and magnitude of any likely adverse impacts. Like an EA, an EIS is also organized around project-specific environmental impact topics. Major federal actions typically fall into this category and require a full disclosure of potential impacts. Upon the completion of an EIS, a record of decision (ROD) must be prepared, which documents the findings of the EIS, identifies the preferred alternative, and provides an overview of measures being taken to avoid, minimize, and/or mitigate environmental impacts.
3. **Categorical Exclusion:** The third NEPA pathway is a categorical exclusion (CATEX). Certain categories of actions are eligible for an exclusion from analysis under NEPA because it has been determined that this type of action does not have a significant effect on the human environment. Each federal agency maintains its own list of categorical exclusions, which are developed in coordination with the federal Council on Environmental Quality (CEQ). If an action would typically qualify for a CATEX, but involves extraordinary circumstances as defined by the federal agency, further environmental studies may be needed to determine the appropriate NEPA pathway. Extraordinary circumstances may include environmentally controversial actions, actions with an extensive scope of magnitude, etc.



NCPC's Role in the NEPA Process

NCPC will act as a cooperating agency in the NEPA process for projects on federal land where NCPC has an approval authority and the applicant is a federal agency. In these situations, the federal applicant, which also has a NEPA responsibility, will serve as the lead agency. A cooperating agency serves to support a lead agency in the completion of NEPA (technical expertise), and is a signatory on a FONSI or ROD.

If the applicant is a non-federal agency (e.g., a District agency, the Smithsonian Institution, the Kennedy Center, the National Gallery of Art, or the U.S. Institute of Peace), it will not have an individual NEPA responsibility and NCPC will serve as the lead agency. If NCPC does not have a CATEX for the type of project submitted, an EA or EIS must be completed. In such a case, NCPC will serve as the lead agency and will manage the NEPA process in coordination with the applicant. A memorandum of understanding (MOU) may be prepared to outline the terms of such an arrangement—either at the project level or to provide a larger framework for interagency cooperation on NEPA. The MOU at a minimum should specify project information; roles and responsibilities; project timelines and schedules; principle contacts and contact information; and a mechanism for solving disputes. For example, NCPC and the Smithsonian Institution entered into an agreement in December 2018 that outlines a joint approach to NEPA for all Smithsonian projects.

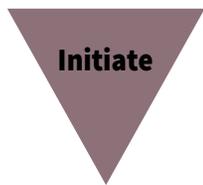
Public Involvement in NEPA

Public involvement is a cornerstone of NEPA, and therefore, the compliance process typically includes several opportunities to engage the public. Per CEQ guidance on the implementation of NEPA, agencies are required to provide meaningful opportunities for public participation, but the extent of public involvement depends on the specific NEPA regulations developed by the lead agency. In general, the public has an opportunity to engage during the early scoping process, and with the release of draft documents. NCPC's environmental policies and procedures requires a public comment period for both an EA and an EIS. The length of the public comment period for an EA is at NCPC's discretion and the length of the public comment period for an EIS is 45 days.

National Historic Preservation Act

The NHPA is legislation intended to preserve historical and archaeological sites in the United States. The act created the National Register of Historic Places, the list of National Historic Landmarks, and the State Historic Preservation Offices. Under Section 106 of the NHPA, federal agencies are required to consult with State or Tribal Historic Preservation Offices (SHPO[s]/THPO[s]) and other affected agencies, parties, and individuals for projects, activities, or programs that qualify as an “undertaking.” Regulations published by the Advisory Council on Historic Preservation define an undertaking as a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency including “...those requiring a federal permit, license or approval.” Based on this definition, similar to NEPA, NCPC has a NHPA responsibility when it exercises approval authority.

The Section 106 process includes four steps, depending on the extent of the impacts.



1. **Initiate:** The first step is initiating the process, which is required of all subject projects. In this step, the agency must determine whether its project could affect historic properties, which include any properties listed in the National Register of Historic Places (NRHP) or that meet the criteria for the NRHP. The agency must include SHPOs, THPOs, the public, and any other potential consulting parties in this effort. If it is determined that the undertaking would not affect historic properties, the agency has no further Section 106 obligations. If the undertaking may affect historic properties, it moves to the second step.



2. **Identify:** The second step is identification of historic properties within a defined area known as the area of potential effect. During this step, the agency must work with all knowledgeable parties (including the SHPO/THPO) and/or conduct studies to determine any properties that are listed in the NRHP and evaluate any unlisted properties for historic significance. If the agency finds that no historic properties are present or affected and provides documentation to the SHPO/THPO, the federal agency may proceed with the undertaking. It is important to note that the SHPO/THPO has 30 days to object to a finding that no historic properties are affected. If properties would be affected, or the SHPO/THPO objects, the agency must move on to step three.



3. **Assess:** Step three requires that the agency works with the SHPO/THPO to assess the extent of adverse effects on historic properties. If parties agree that there would be no adverse effect, the agency may proceed with the undertaking. If there is an adverse effect, a larger consultation process is required, which seeks to avoid, minimize, or mitigate the effect.



4. **Resolve:** In step four of the Section 106 process, the federal agency must work to resolve any adverse effects. This is conducted in close coordination with the SHPO/THPO, as well as any other consulting parties, who typically conduct a series of meetings to come to agreed-upon terms for the avoidance, minimization, or mitigation of any adverse effects. A programmatic agreement or memorandum of agreement is prepared at the conclusion of this process, which formally defines the measures the agency must take to proceed with the undertaking.

NCPC'S role in the NHPA Process

For federal projects that require NCPC review, NCPC will serve as a consulting party in the Section 106 process. NCPC is able to designate the applicant federal agency as the lead for Section 106 compliance and will generally serve as a signatory to the process if the Commission has approval authority on the project. If the applicant is not a federal agency, NCPC will serve as the lead agency for Section 106. The Smithsonian Institution is an exception to this rule, as federal law requires the Smithsonian to comply with NHPA for all of its projects that require NCPC approval.

It is important to note that these are general guidelines that govern the application of NHPA for NCPC, and exceptions may exist. For example, NCPC may determine that it should be the lead in the Section 106 process if it has a separate and distinct obligation from that of the applicant. Consultation with NCPC staff is important to determine the appropriate approach to Section 106, and to help streamline the application process for Commission review.

Local Historic Districts and Landmarks

In addition to Section 106 reviews, some projects submitted to NCPC may require additional historic preservation related reviews if the project is located within a locally designated historic district or is individually designated as a local historic landmark. The applicant should work with local historic preservation staff, usually housed in the locality’s planning office, to determine if their project requires local historic preservation reviews. In the District of Columbia, the DC State Historic Preservation Office also provides professional staff assistance to the District’s Historic Preservation Review Board, which reviews projects listed on the District’s Inventory of Historic Places.



NEPA and NHPA alignment with project submission stages

When projects that require NCPC approval are submitted for review, the NEPA/NHPA process must at a minimum have been initiated. The NEPA/NHPA requirement differs based on submission stage, which is outlined in the table below.

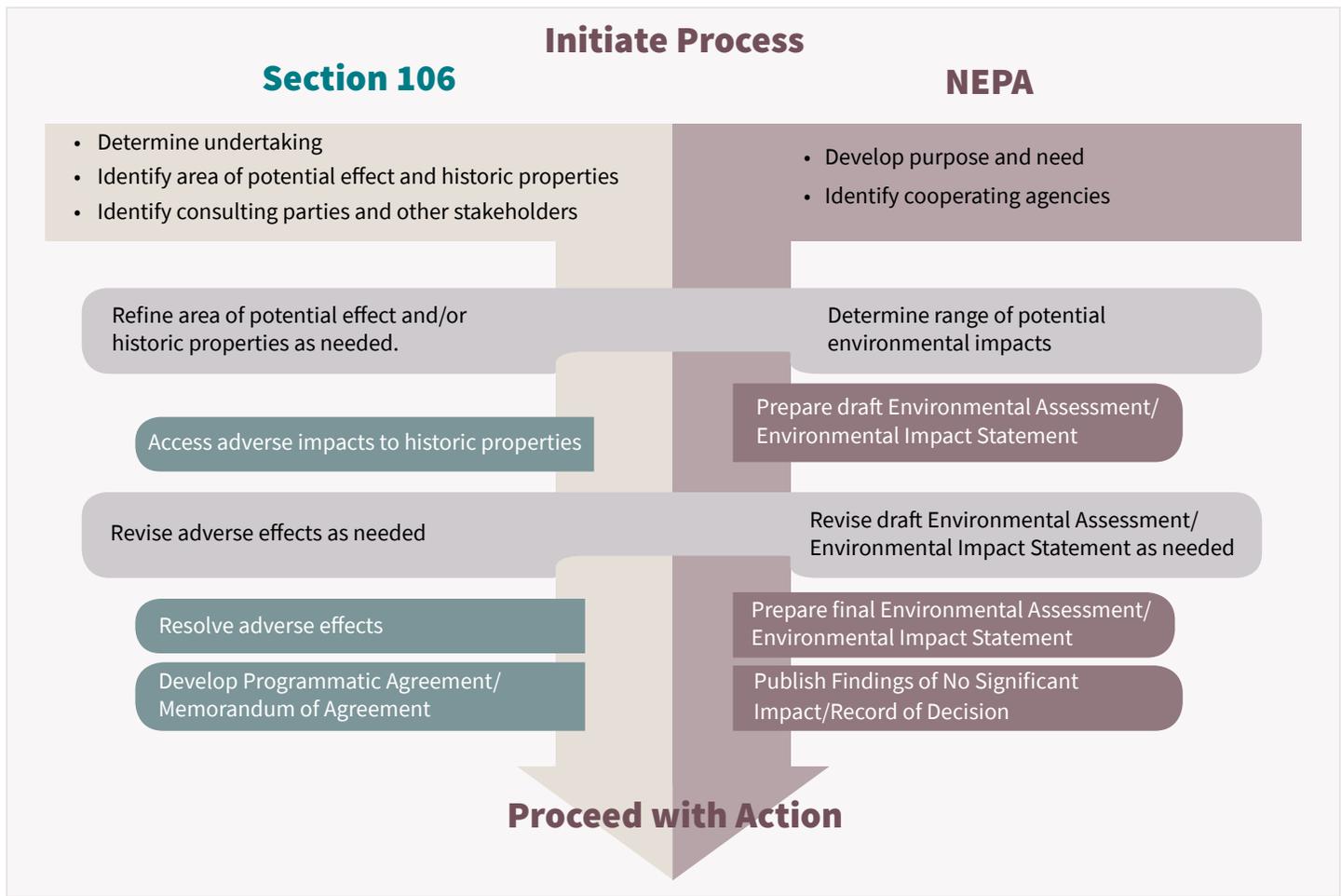
NEPA and NHPA Requirements for NCPC Project Submissions

Submission Stage	NEPA and NHPA Requirements
Concept	At the time of concept review, the applicant (or NCPC if NCPC is the lead agency) must have initiated both the NEPA scoping process and the Section 106 consultation process for the project. For commemorative works, this includes two distinct NEPA scoping processes—for site and design. The NEPA and NHPA information available at the time of submission, including a decision to apply a categorical exclusion, must be provided to the Commission to facilitate the Commission’s Concept Review and provide for meaningful Commission comments and direction.
Preliminary	Applicants (or NCPC if NCPC is the lead agency) must have issued or published its draft environmental document (i.e., Environmental Assessment or Environmental Impact Statement) and initiated the requisite public comment period. The applicant (or NCPC if NCPC is the lead agency) also must have issued its Assessment of Effects for the Section 106 consultation process. The NEPA and NHPA information must be provided to the Commission to facilitate the Commission’s Preliminary Review and the provision of meaningful Commission comments and direction.
Final	The final NEPA document (EA or EIS) and determination (Finding of No Significant Impact or Record of Decision) resulting from the environmental document must be completed. The Section 106 consultation process must be complete and final documentation for the process executed.

Integration of NEPA and NHPA

NEPA and Section 106 of NHPA share some common elements, and coordination among similar steps can help streamline the compliance process. NHPA regulations encourage federal agencies to consider their “Section 106 responsibilities as early as possible in the NEPA process, and plan their public participation, analysis, and review in such a way that can meet the purposes and requirements of both statutes in a timely and effective manner.”

NCPC has generally followed the process outlined in the following diagram where applicable. It is, however, important to note that a streamlined process may not be appropriate for projects with complicated environmental or historic preservation issues. For more information, see *A Handbook for Integrating NEPA and Section 106*, which is a joint publication from the CEQ and the Advisory Council on Historic Preservation.



Applicant Resources

NCPC’s Legislative Authorities:

National Environmental Policy Act: <https://www.ncpc.gov/about/authorities/nepa/>

National Historic Preservation Act: <https://www.ncpc.gov/about/authorities/nhpa/>

Council on Environmental Quality and Advisory Council on Historic Preservation:

NEPA and NHPA – A Handbook for Integrating NEPA and Section 106: https://www.achp.gov/sites/default/files/2017-02/NEPA_NHPA_Section_106_Handbook_Mar2013_0.pdf

DC Historic Preservation Office: <https://planning.dc.gov/page/historic-preservation-office>.

National Capital Region Jurisdictions:

Arlington County: <https://projects.arlingtonva.us/plans-studies/historic-preservation/>

City of Alexandria: <https://www.alexandriava.gov/Preservation>

Fairfax County: <https://www.fairfaxcounty.gov/planning-zoning/historic>

Loudon County: <https://www.loudoun.gov/heritagecommission>

Prince William County: <http://www.pwcgov.org/government/dept/publicworks/hp/Pages/default.aspx>

Montgomery County: <http://montgomeryplanning.org/planning/historic/>

Prince Georges County: <http://www.pgparcs.com/469/Historic-Preservation-Commission>