Post-Obligation Completion of NEPA & Section 106
USDA RUS ReConnect Program
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Agenda

• 1970 Section 11.B
• NPA
• Common Closing Conditions

- Must comply with NEPA, associated laws and authorities, prior to taking an action with adverse effects on the environment or limit the choice of reasonable alternatives
  - Defined as “obligation” in 2016 adoption of 7 CFR 1970
  - Regulatory change adopted in September 2019 to allows RD administrators to approve post-obligation completion of environmental reviews on a case by case basis
- Requires compliance with 46 laws and authorities (§ 1970.3)
- National Historic Preservation Act is the primary focus of the environmental review process, due to the nature of Rural Development’s projects
  - Nationwide Programmatic Section 106 Agreement allows for post-obligation completion of the Section 106 process
## Status of Environmental Reviews for ReConnect Round 1

<table>
<thead>
<tr>
<th>Status</th>
<th># of Projects</th>
</tr>
</thead>
<tbody>
<tr>
<td>Environmental Review Complete</td>
<td>23</td>
</tr>
<tr>
<td>Incomplete Reviews Obligated with 1970.11(b)(1) Authority</td>
<td>55</td>
</tr>
<tr>
<td>Incomplete Environmental Reviews Obligated Using NPA</td>
<td>8</td>
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</tbody>
</table>
Exercising the 1970 Section 11.B Provision

- 1970 Section 11.B allowed USDA to award applications that were still undergoing environmental review.

- Construction of project is **not** permissible for applicants awarded under 1970 Section 11.B with a pending NEPA/Section 106 completion status.

- Applications initially cleared, environmentally, can still be held to conditions requested at a later point in time:
  - **EX:** The applicant must comply with yearly surveys for species identified in the project area, if requested to do so by the USFWS.
Applying the NPA

• The Nationwide Programmatic Agreement (NPA) is a Section 106 agreement that allows RD agencies to obligate funds prior to completing Section 106
• Applicants that utilized the NPA to submit an application must complete Section 106 prior to construction
• All awardees who applied the NPA, received notice that they must initiate Section 106 within 90 calendar days of the announcement of obligation
Common Closing Conditions

• Examples of environmental conditions:
  • Cabinets need to be installed on existing aerial poles, buried vault or handhold small in size, or located outside of wetland
  • Applicant must elevate the proposed building structure to be above the 500-year floodplain elevation
  • Applicant must use directional boring or plowing installation methods in order to avoid impacts to wetlands resources
  • Applicant cannot construct on Army Corps of Engineers, BLM, or any formally classified lands that were identified as not be crossing, despite what the ReConnect construction mapping tool indicated.

• If any condition/mitigant has been levied against you that you would like to contend, you must submit a request for an amendment