

PN-9330 County Road 44H Road Improvements Project
Summaries of the Project environmental review process
May 26, 2017

NEPA Compliance for FEMA:

Because this project is funded by the Federal Emergency Management Agency (FEMA), procedures outlined in the National Environmental Policy Act (NEPA) are required.

FEMA demonstrates its compliance with NEPA by internally completing many flood-related projects as Statutory Exclusions, Categorical Exclusions (Catex), Environmental Assessments (EA) and/or using the *FEMA/FHWA Programmatic Environmental Assessment (PEA) for Post-Disaster Road, Bridge and Trail Replacement, Relocation and Upgrade in the State of Colorado*. Statutory Exclusions apply primarily to emergency actions that are exempt from NEPA, pursuant to the Stafford Act. A Catex would apply for projects where there is no significant anticipated environmental impact, particularly for those projects where construction would occur within the pre-flood footprint of the facility. Additionally, linear projects will qualify under the *PEA for Post-Disaster Road, Bridge and Trail Replacement, Relocation and Upgrade in the State of Colorado*. FEMA funded projects should comply with the NEPA regulation, and other state and federal regulations and/or Executive Orders (EO).

Per meetings with FEMA Environmental Historic Preservation (EHP) staff, the roadway improvements along CR 44H is consistent with the *PEA for Post-Disaster Road, Bridge and Trail Replacement, Relocation and Upgrade in the State of Colorado* and will not require a supplemental EA. Larimer County has completed a NEPA Compliance Document, which concisely reports the project's compliance with the NEPA regulation, and other state and federal regulations and/or EO's. Larimer County retained AVI engineering firm to design the project and Pinyon Environmental, Inc. (Pinyon) to obtain the environmental clearances necessary to construct the project.

In 2014, Larimer County initiated coordination with FEMA, the lead agency, regarding the proposed repairs for CR 44H. Portions of the project occur on United States Forest Service (USFS) land; therefore, the USFS is a cooperating agency. Other cooperating agencies involved in the project include: United States Fish and Wildlife Service (USFWS), United States Army Corps of Engineers (USACE), and Colorado Parks and Wildlife (CPW).

It was determined that because the project is within Preble's meadow jumping mouse (*Zapus hudsonius preblei*) critical habitat, a Biological Assessment would be necessary for Section 7 of the Endangered Species Act consultation between FEMA and USFWS. Portions of the project occur on USFS land; therefore, the USFS requires an additional Biological Evaluation to address USFS sensitive species. Because the project will impact Waters of the U.S. (WUS), a Section 404 permit will be necessary from the USACE. Additionally, a cultural resources report will be provided for compliance with Section 106 of the National Historic Preservation Act (NHPA); Section 106 compliance is required for any project with a federal nexus.

NEPA Compliance for Forest Service:

Currently, the Forest Service is evaluating the level of NEPA review they will require. A Categorical Exclusion would be conducted internally by the Forest Service and will be a more streamlined review. If an Environmental Assessment is required, the County will be responsible for providing this document. The finalized FS NEPA documents will be made available on the County website.

Section 7 Consultation of the Endangered Species Act (ESA); Biological Assessment for US Fish and Wildlife Service:

The purpose of the Biological Assessment is to document the biological resources within the study area, including the presence or absence of federally listed species and their habitat within or adjacent to the study area. The BA includes a description of the proposed project, a description of the affected environment (i.e., existing conditions) in the study area, an analysis of potential project-related impacts to biological resources, and a description of proposed conservation and mitigation measures. The affected environment in this case is assumed to be the existing roadway and adjacent stream, wetland, riparian, and upland habitats. The BA is currently being reviewed by FEMA, the FS, and the USFWS. Once all agencies have approved the BA, the USFWS will issue a Biological Opinion, which will be published on the County website.

Biological Evaluation for US Forest Service:

The purpose of the Biological Evaluation (BE) is to document the existing conditions and determine the likely effects of the alternatives on species listed under the Endangered Species Act (1973 [as amended]), Forest Service sensitive species (Forest Service Manual [FSM] 2670.31-2670.32), and Management Indicator Species (MIS). This BE was prepared in accordance with the Forest Service Manual with direction to review all U.S. Forest Service (USFS) activities to ensure that such activities do not contribute to a downward trend in population numbers or density of sensitive species and/or a downward trend in habitat capability, either of which might ultimately result in the need for federal listing (FSM 2672.1 and 2672.4). The BE was also prepared in accordance with region-specific direction for conducting a BE (Region 2 FSM Supplement 2600-2016-1). This BE documents how this project meets National Forest Management Act (NFMA 1976) requirements to provide for diversity of animal communities and to document the effects on MIS (36 CFR 219.19(a)(1)). Furthermore, this BE document describes the measurable effects of this project on aquatic and terrestrial wildlife habitats and the species that rely upon those habitats as required under the National Environmental Policy Act (NEPA), the Revised Land & Resource Management Plan for the Arapaho & Roosevelt National Forests and Pawnee National Grassland (ARP; USDA Forest Service 1997), and relevant species-specific Conservation Agreements. The BE is currently being reviewed by the Forest Service. Once the Forest Service has approved the BE, more information can be made available on the County website.

Section 106 of the National Historic Preservation Act (NHPA):

A cultural resources review is required for compliance with Section 106 of the NHPA; Section 106 compliance is required for any projects with a federal nexus. The purpose of the Class III Inventory Report is to research, visually survey, identify, and document cultural resources within the Area of Potential (APE) that may be impacted by the proposed project. Potential resources identified within the APE were evaluated for their potential eligibility for listing on the National Register of Historic Places (NRHP), and to provide further recommendations. The results for this project are limited to the potential discovery of unknown prehistoric and/historical archaeological resources. The report evaluated Buckhorn Road (CR 44H) for potential eligibility as a historic resource, and subsequent assessment of Section 106 effects. The report will be submitted to the USFS and FEMA for Section 106 compliance. FEMA will submit this report to the Colorado State Historic Preservation Office (SHPO) for their concurrence on the proposed actions and effects to any eligible cultural resources within the APE. When FEMA receives SHPO concurrence, the County will request the letter from FEMA and make it available on the County website.

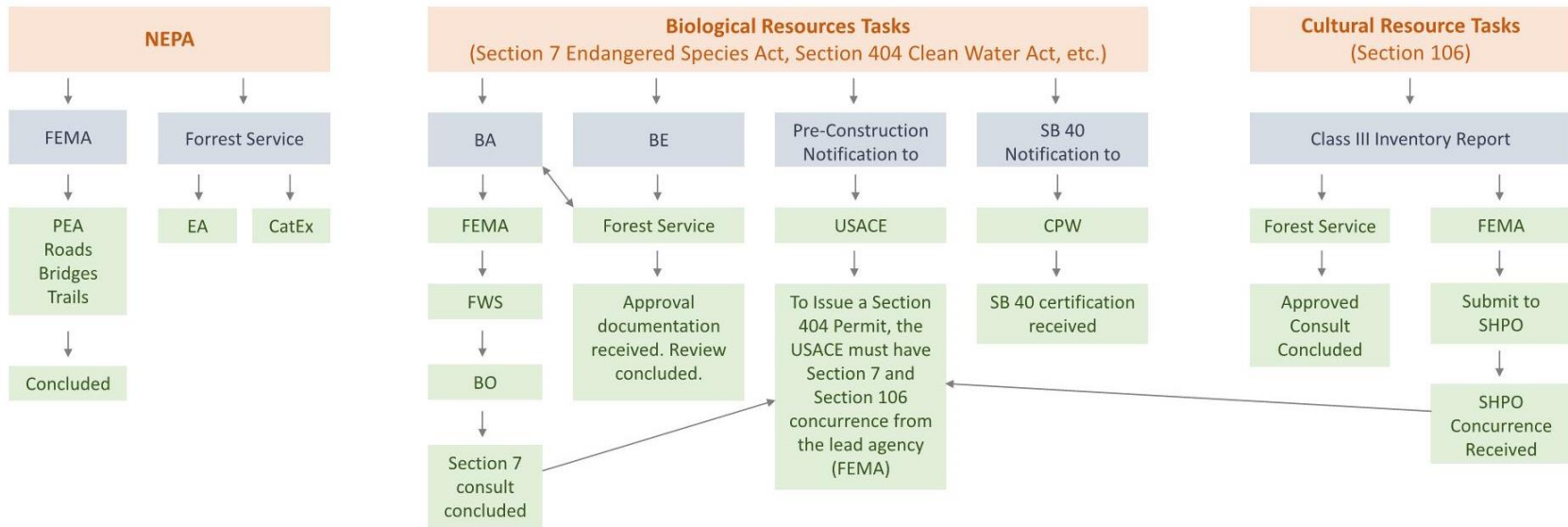
Section 404 of the Clean Water Act:

The proposed project will impact United States Army Corps of Engineers (USACE) jurisdictional waters of the US and therefore, a Section 404 permit is required. After discussion with the USACE, it is understood that this project will be permitted under nationwide permit (NWP) 14 for Linear Transportation Projects. A pre-construction notification will be sent to the USACE once impacts are finalized. The permit verification from the USACE can be made available on the County's website once it has been received.

Colorado Senate Bill (SB) 40:

Colorado SB 40 requires any agency of the state to obtain wildlife certification from CPW when the agency plans construction in "...any stream or its bank or tributaries...." Although SB 40 emphasizes the protection of fishing waters, it acknowledges the need to protect and preserve all fish and wildlife resources associated with streams in Colorado. CPW has written guidelines that clarify when SB 40 certification is required and to describe the procedures to be followed by CDOT in securing this certification; these guidelines are being used to comply with SB 40 for this project. Buckhorn Creek is a perennial stream represented by a solid blue line on the USGS 7.5-minute topographic quadrangle; therefore, it meets criteria to be considered a jurisdictional SB 40 stream. SB 40 notification is currently being prepared and submitted to CPW. CPW will review and provide comments on the project plans before issuing a SB 40 Certification. Once the SB 40 Certification is received, it will be made available on the County's website.

Larimer County Road 44H Environmental Flow Chart



Key to Acronyms

- BA – Biological Assessment
- BE – Biological Evaluation
- BO – Biological Opinion
- CatEx – Categorical Exclusion
- CPW – Colorado Parks & Wildlife
- EA – Environmental Assessment
- FEMA – Federal Emergency Management Agency
- FWS – Fish & Wildlife Service
- PEA – Programmatic Environmental Assessment
- SHPO – State Historic Preservation Office
- SB 40 – Senate Bill 40

Agency Time Lines

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NEPA	› No set agency limits
BIOLOGICAL RESOURCES	› FWS has approximately 4.5 months to issue a BO once BA is received. › FS does not have set time limits for review › USACE has 45 days to respond for nationwide permits › CPW has 60 days to respond to notification for formal SB 40 certificate
CULTURAL RESOURCES	› SHPO has 15 days to respond to FEMA's submittal and request for concurrence. However, there is no timeline for FEMA to review the Class III Inventory Report and submit to SHPO