

The NEPA Outlook Beyond 2020:

Plan. Adapt. Maintain.



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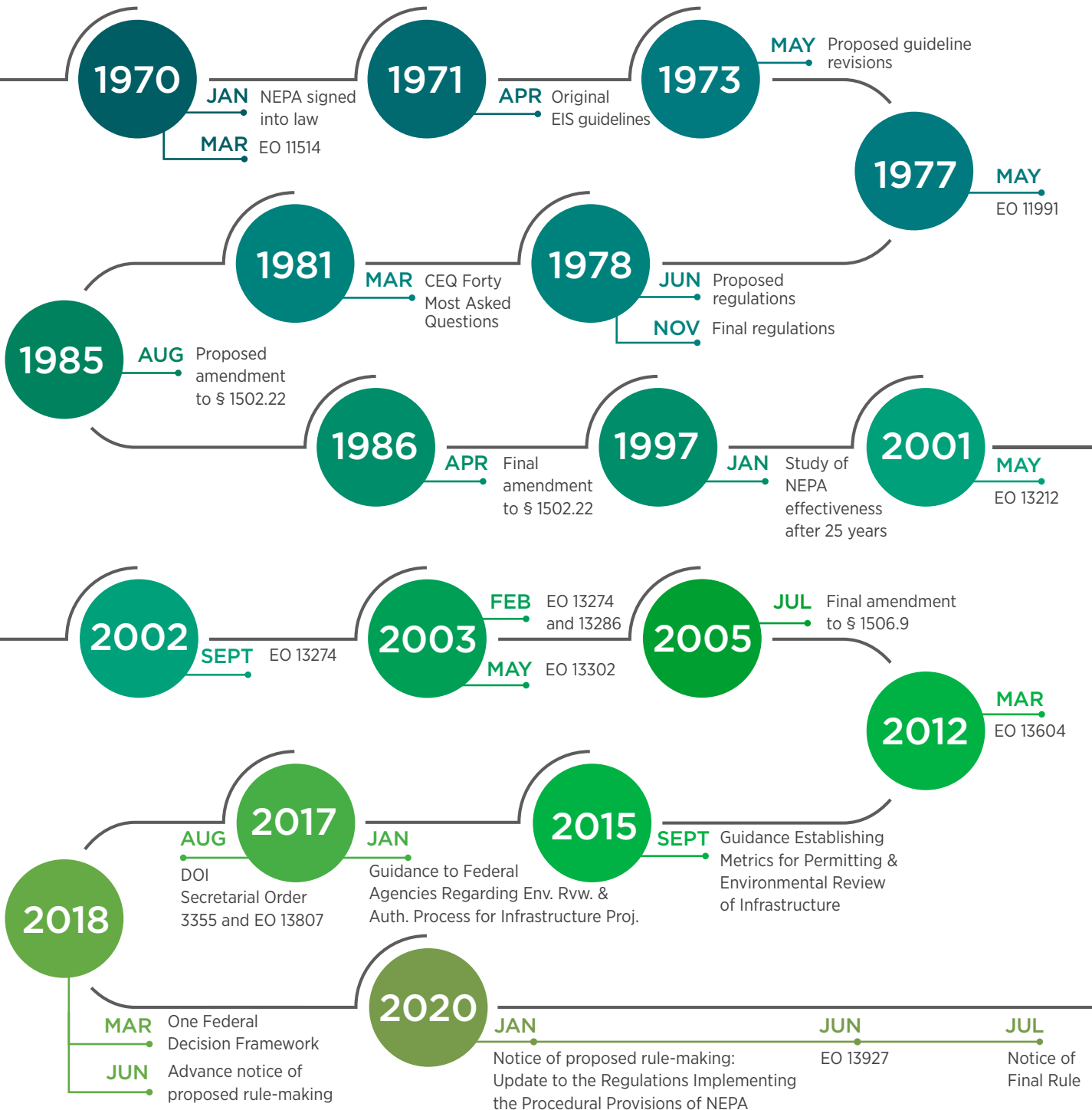
Transiting the environmental review process can be the most difficult and lengthy part of any infrastructure project, but it was never intended to be. Signed into law in 1970, the National Environmental Policy Act (NEPA) requires federal agencies to evaluate and consider the environmental impacts of actions during the decision-making process.

The past five decades have seen continued attempts to achieve the original goals of a timely process with concise documents, and in July 2020 the NEPA regulations were officially revised for the first time in nearly 40 years. The new regulations set timelines and page restrictions for completing environmental assessments (EAs) and environmental impact statements (EIS). Proponents argue that new rules will result in more efficiency and will no longer pose a hindrance to infrastructure investments, while those who oppose the regulations fear the process will cut corners and, ultimately, prove detrimental to the environment.

How do we strike the balance between providing the decision-makers and public with an appropriate analysis of impacts in readable, approachable documents while maintaining a timely process that does not leave the public, property owners, applicants, financiers, investors, and others wondering for years about the outcome? **As practitioners, we need to take more responsibility for striking that balance and for being good stewards of the process.**

NEPA Timeline

Throughout the past 50 years, Executive Orders (EO), legislation, regulations, task forces, and guidance have made continued attempts to achieve the original goals of a timely process with concise documents, as shown in the below timeline.



Navigating NEPA During Uncertain Times

The new regulations, which take effect September 2020 barring any injunctions, streamline or eliminate components that have been part of the NEPA process since its inception. **Even without these new rules, there will still be pressure to complete reviews in a reasonable amount of time and to keep projects moving—especially at a time when economic development and employment opportunities are critical for the country.** Timely, readable reviews are good public policy, but there remains some uncertainty around what exactly the NEPA process will look like over the next six to twelve months. Questions include:

- » Will recent litigation by environmental groups and states change or eliminate the new regulations?
- » Will the next Congress use the Congressional Review Act to eliminate the new regulations?
- » How might a new Administration revise the regulations if they were to survive judicial review and the Congressional Review Act?
- » How will new projects be affected in the meantime?
- » If the new rules go into effect, how often will senior agency officials grant waivers for page and time limits? (Agencies avoided applying One Federal Decision to many infrastructure projects.)
- » Will agencies use baseline trends to address indirect and cumulative impacts, including climate adaptation and greenhouse gas emissions, under the new regulations and if so, how?
- » What constitutes minimal federal funding or involvement such that the projects would be exempt from NEPA reviews?

Despite differing interpretations of the new regulations and an ongoing need for clarity, NEPA intent has not changed: produce timely and concise environmental reviews that are useful to decision-makers and the public.



VHB partnered with FRA, District of Columbia DOT, and Virginia Department of Rail and Public Transportation to produce the Long Bridge EIS, NEPA, and conceptual engineering. Strong communication and transparency with all stakeholders successfully drove the NEPA process. This project addresses capacity needs and resiliency on Long Bridge—the only railroad crossing between Washington, DC and the Commonwealth of Virginia.

Continuity Amidst Change

While future sessions of Congress and new Administrations will continue to try to implement new measures, there remain parts of the NEPA process that have not and likely will not be altered.

- » **Agency consultation** will still be required to promote coordination
- » **Public involvement** will still be necessary to gather input
- » Development of a **purpose and need and reasonable range of alternatives** will still be critical for advancing projects
- » The **appropriate analysis of impacts** will still be important to make informed decisions

There will still also be a need to integrate authorizations like Section 106 of the National Historic Preservation Act and permits like Section 404 of the Clean Water Act. Regardless of what happens with the Final NEPA Rule, Executive Orders, or legislation, the purpose behind NEPA will endure. The EIS process was not meant to take several years, nor were EISs meant to run for hundreds of pages. **To avoid another 50 years of modifications, NEPA practitioners must take more responsibility and demonstrate leadership to achieve NEPA objectives.**



VHB assisted the City of Norfolk, acting through the Virginia Department of Housing and Community Development (DHCD), to prepare an EIS for a layered resilience project in compliance with the Department of Housing and Urban Development (HUD) NEPA regulations. The EIS went from Notice of Intent to Record of Decision in 1.5 years and VHB supported the issuance of the Section 404 Permit within three months from the issuance of the ROD.

Keys to Achieving NEPA Intent

Changing the regulations won't alter the underlying need to have a clear approach to NEPA, as well as to obtaining authorizations and permits. **It's important to remember that NEPA is a process to manage, not simply a document to produce.** To best navigate evolving regulations and Executive Orders, that approach must plan for, adapt, and maintain the integrity and goals of the NEPA process over the long term.

- » **Plan.** Be proactive and start with the end in mind. Determine the goal and how it will be achieved. Develop an approach that addresses and integrates the major steps in the process and make certain that it dovetails with authorizations and permits. Focus on the important issues and, in addition, manage unfounded fears of litigation.
- » **Adapt.** Change is certain. Anticipating these changes, understanding them, and adapting to meet evolving regulations and guidance is key. Even with the best approach, there are numerous parts of the process that may not go as planned. Agency staff sometimes turn over, analytical approaches sometimes warrant alterations, and cooperating agencies sometimes have trouble agreeing on consensus points and meeting deadlines. A flexible approach is key to managing change.
- » **Maintain.** It is important to revisit and follow the approach to avoid causing delays and generating an encyclopedic document. While it is appropriate to adjust the approach as the process unfolds, it is important to not dismiss the approach altogether. While the approach may be refined, it should never be abandoned.

New regulations—and any forthcoming adjustments—should not hinder the environmental review process on existing or future projects. **NEPA experience, perspective, and depth of knowledge will be critical to continue forging ahead and developing strategies to adjust to any uncertainty.**



VHB is supporting FHWA and Georgia DOT in the preparation of the I-285 Top End Express Lanes project, including developing the EIS on an accelerated timeline. Our innovative approach to Section 106 of the National Historic Preservation Act involved building sufficient flexibility into the process and documentation so that adjustments and revisions required by new data or the progressive refinement of alternatives could be performed without major reworks or delays. This was achieved by establishing a GIS-based dashboard accessible to all relevant parties, allowing for the quick incorporation, assessment, and review of new data on historic properties.

HOW VHB CAN HELP

At VHB, environmental stewardship and quality are embedded in our culture, and our team members have been practicing NEPA since its inception. We've remained flexible and agile in our response to changes throughout the past 50 years, including efforts like the 1988 Red Book, NEPA-404 merger agreements, the FAST Act, FAST-41, and One Federal Decision. **VHB has developed an approach to NEPA, incorporating a path to gaining authorizations and permits that guides projects efficiently through the environmental review process and facilitates timely agency decisions. The focus is on right-sizing analyses, capturing the truly significant issues, creating a defensible process, and anticipating next steps and potential challenges.** The VHB Approach provides our public- and private-sector clients with the ability to navigate complex environmental reviews—even during times of disruption. Contact [Alan Summerville](#) to learn how we can help you traverse the NEPA process and keep your projects moving.