



Michigan Department of Transportation Real Estate Top Ten Risk RE24-3 Implementation Plan

July 1, 2026

BACKGROUND

The Michigan Department of Transportation (MDOT) Local Agency Program (LAP) Section works with Local Public Agencies (LPA's) that receive federal funding. LAP Project Engineers oversee the development of local agency projects while coordinating with other areas within MDOT, including the Environmental Services Section and Real Estate Services Section to ensure that state and federal requirements are met for each project.

The Program Services Unit within MDOT's Real Estate Services Section assists, monitors, reviews, manages and approves the acquisition of all local public agency Right-of-Way (ROW) to ensure compliance with state and federal laws and regulations. The Local Agency Environmental Unit within MDOT's Environmental Services Section reviews LPA project environmental documents and approves Programmatic Categorical Exclusions (CEs) in compliance with the National Environmental Policy Act (NEPA), Federal Highway Administration (FHWA)'s environmental regulations ([23 CFR 771](#)), the 2024 CE Programmatic Agreement between MDOT and FHWA, and other environmental requirements, as applicable.

MDOT recently identified several local agency projects that proceeded with property acquisition activities prior to NEPA approval. This resulted in Local Agency Realty Procedures being identified as a Top 10 Risk as part of the MDOT/FHWA Program Risk – *"if acquisition and Uniform Act Procedures are not followed for local agency projects, then the project risks Federal funding participation in any phase of the project"*. [23 CFR 710.501 - Early acquisition](#) and [23 CFR 710.503 - Protective buying and hardship acquisition \(Advanced Acquisition\)](#) allows for property acquisition alternatives through Early Acquisition or Advanced Acquisition and MDOT developed Early and Advance Acquisition procedures for LPA projects.

NEPA AND FHWA/MDOT PROGRAMMATIC AGREEMENT

NEPA is a U.S. law requiring federal agencies to assess the environmental impacts of major actions before they happen, ensuring environmental factors are considered alongside economic ones, and involving public input through the NEPA processes to promote

sustainable environments. NEPA is a procedural law, meaning it sets the framework for *how* agencies must consider impacts, rather than dictating specific outcomes. There are three classes of actions that prescribe the level of documentation required in the NEPA process which are defined as:

Classes of Actions per [23 CFR 771.115 - Classes of actions](#)

Environmental Impact Statement (EIS) – Actions that significantly affect the environment require an EIS.

Environmental Assessment (EA) – Actions for which the significance of the environmental impact is not clearly established. All actions in this class require the preparation of an EA to determine the appropriate environmental document required.

Categorical Exclusions (CE) – Actions that do not individually or cumulatively have a significant effect are excluded from the requirements to prepare an EA or EIS.

FHWA and MDOT entered into a Programmatic Agreement on September 16, 2024, allowing MDOT to determine on behalf of FHWA whether a trunkline or local agency project qualifies as a Programmatic CE or an Individual CE as listed in [23 CFR 771.117 - FHWA categorical exclusions](#). Under the Programmatic Agreement, FHWA and MDOT agreed that responsibilities are defined as:

Programmatic CE – MDOT has approval and oversight

MDOT will use the Local Agency Environmental Clearance Form – [Form 5323](#) for LPA projects to demonstrate that a project is appropriately categorized as either a Programmatic or Individual CE. The Programmatic CE determination and NEPA approval will occur prior to making a Good Faith Just Compensation offer to a property owner ([23 CFR 771.113 - Timing of Administration activities when NEPA applies](#)).

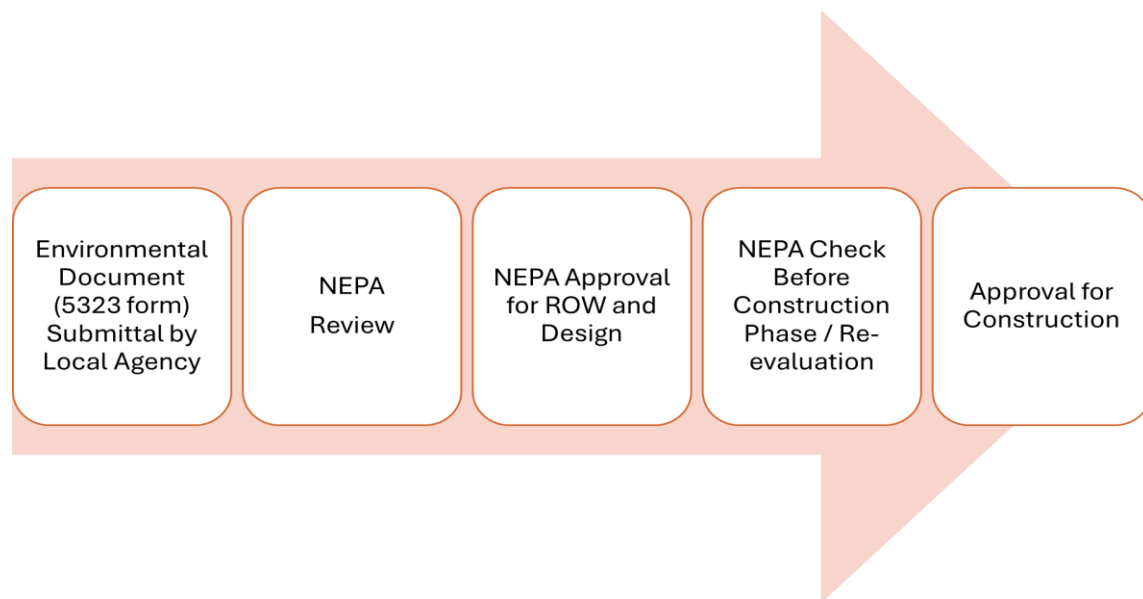
Individual CE – FHWA has approval and oversight

MDOT will review the Local Agency Environmental Clearance Form - [Form 5323](#) and email the signed form to FHWA requesting NEPA approval. FHWA approval must occur prior to making a Good Faith Just Compensation offer to a property owner ([23 CFR 771.113 - Timing of Administration activities when NEPA applies](#)).

MDOT ENVIRONMENTAL PROCEDURE MANUAL

Based on the Programmatic Agreement, MDOT's CE review process includes the below steps as outlined in Section 4.2 – Environmental Categorical Exclusion (CE) in the

[Environmental Procedures Manual \(EPM\)](#). The manual describes the process for trunkline projects that LPA projects will mirror utilizing the 5323 form to provide sufficient documentation to support a CE determination in compliance with NEPA, FHWA's environmental regulations ([23 CFR 771](#)), the Programmatic Agreement between MDOT and FHWA, and other environmental requirements, as applicable. MDOT ESS plans to update the EPM to include the LAP project environmental review process as part of Phase 2 of the implementation plan.



NEPA Review for CEs

MDOT LAP Environmental Specialists review the project limits and scope of work to determine if there may be environmental impacts and if and what mitigation items are required. If/Then statements may be used to outline restricted work activities and identify location(s) that should be avoided. Mitigation items are included in the Local Agency Environmental Clearance Form – [Form 5323](#).

NEPA Approval for CEs

Once MDOT LAP Environmental Specialists complete the environmental review, the NEPA document is approved for the ROW activities and the Final Design phase, and MDOT signs the NEPA document (Local Agency Environmental Clearance Form – [Form 5323](#)) for programmatic CEs or FHWA signs the NEPA document for Individual CEs. CE projects cannot proceed with final design until NEPA is approved. ROW acquisitions cannot proceed without NEPA approval unless Early or Advanced Acquisition is approved prior to acquisition. MDOT developed Early and Advanced Acquisition procedures for LPA projects.

Final Design NEPA Check Prior to Construction Phase/ Re-evaluations for CEs

Once final design is complete, MDOT LAP Environmental Specialists will review the final plans to ensure that the NEPA document is still accurate prior to the Construction phase. Any project scope changes after NEPA approval require a re-evaluation of the project following the [NEPA re-evaluation directions](#). The project scope change may require additional review from MDOT LAP Environmental Specialists to ensure the NEPA approval is still valid. Project limit and/or changes that violate work restrictions or mitigation items nullify the NEPA approval and require a re-evaluation.

Approval for Construction Phase for CEs

If all the environmental requirements, commitments and mitigation items listed in the NEPA document (5323 form) are met at the end of the design process, MDOT Environmental approves the project for the construction phase.

NEPA and ROW Timing for EAs and EISs

Per [23 CFR 771.113 \(a\)\(1\)](#), property acquisition beyond the preliminary acquisition activities allowed under [23 CFR 710.203 \(a\)\(3\)](#) may not occur until a Finding of No Significant Impact (FONSI) has been issued for an EA, or until a combined final EIS/Record of Decision (ROD) or a final EIS and ROD has been issued for an EIS.

GOAL

Assure LPA's projects follow Federal realty requirements utilizing the proposed implementation plan and in accordance with the Programmatic Agreement, and MDOT's Real Estate and Environmental Procedure Manuals.

MANAGEMENT OVERSIGHT

Implementation of this plan will be overseen by the MDOT Real Estate Services Section, in conjunction with involvement from the LAP and ESS.

IMPLEMENTATION PLAN

MDOT is using a phased approach to achieve this goal and address this risk.

Phase I – Immediate to 1-year Implementation

- 1) MDOT updates and revises its websites, applications, and pertinent forms to add the following information from the current LAP website:

Announcements

Local Agencies and their consultants must not start acquisition activities, except those preliminary acquisition activities allowed under 23 CFR 710.203 (a)(3), until they receive notification from MDOT that NEPA has been approved to proceed with acquisition. Proceeding without such notification may jeopardize all of that agency's federal funding for that project. Contact MDOT-LAP-NEPA-Reviews@Michigan.gov with questions or for additional information.

[Email LAP NEPA Reviews >](#)

The following MDOT forms will be updated to include the language - *Local Agencies and their consultants must not start acquisition activities, except those preliminary acquisition activities allowed under 23 CFR 710.203 (a)(3), until they receive notification from MDOT that **NEPA has been approved to proceed with acquisition.***:

- [Local Agency Environmental Clearance \(Form 5323\)](#)
- [MDOT LAP Section 106 Application form](#)
- Attachment A – Property Acquisition Information

The following MDOT guidance documents will be updated/created to clarify NEPA requirements:

- [FY 2026 Project Planning Guide](#)
- Create List of Preliminary Acquisition Activities per [23 CFR 710.203\(a\)\(3\) - Title 23 funding and reimbursement](#)

2) MDOT issues a notice to those groups identified under Training and Guidance. The notice will provide the Implementation Plan, clarification on NEPA requirements for Right-of-Way acquisition, and the information below:

- A Good Faith Just Compensation offer to a property owner cannot be made until the requirements under the Programmatic Agreement are met.
- Only preliminary acquisition activities identified under [23 CFR 710.203\(a\)\(3\) - Title 23 funding and reimbursement](#) can be performed prior to NEPA approval for ROW.
- MDOT Implementation Plan
- Link to [Uniform Act - 49 CFR Part 24](#)
- Link to [23 CFR 771.115 - Classes of actions](#)
- Link to [23 CFR 771.117 - FHWA categorical exclusions](#)

3) MDOT submitted an article prepared by the LAP Environmental Unit titled “Federal Environmental Review Requirement Before Property Acquisition” for the County Road Association (CRA) Newsletter for inclusion in CRA’s December 2025 newsletter.

- 4) MDOT reiterates the environmental review requirements prior to property acquisition during scheduled County Road Association (CRA), American Council of Engineering Companies (ACEC) and LPA trainings.
- 5) MDOT communicates updated procedures to use Early and Advanced Acquisition alternatives for LPA projects.
- 6) MDOT LAP Environmental Unit reviews all LPA projects with the process outlined in the NEPA Review section of this implementation plan.

EA or EIS - LPA is notified that no ROW activities beyond the preliminary acquisition activities allowed under [23 CFR 710.203 \(a\)\(3\)](#) may occur until after the FONSI, or a combined final EIS/ROD or a final EIS and ROD is issued.

Individual and Programmatic CE's - LPA is notified that no ROW acquisition activities beyond the preliminary acquisition activities allowed under [23 CFR 710.203 \(a\)\(3\)](#) may occur until NEPA is approved for ROW activities.

The environmental review is performed by MDOT's Environmental Coordinator and Subject Matter Experts using the Local Agency Environmental Clearance Form - [Form 5323](#).

- 7) Phase I of MDOT's updated Environmental software (ECOMOD) is expected to launch late summer/early fall 2026. This software will include LPA projects to assist the Environmental Section with the environmental review process to ensure that NEPA is approved prior to property acquisition.
- 8) MDOT Environmental Section utilizes additional resources such as consultant support to assist MDOT staff with environmental reviews.
- 9) MDOT Real Estate updates the Real Estate Procedure Manual to include Early and Advanced Acquisition procedures for LPA's.

Phase II – 1 to 1.5-year Implementation

- 1) MDOT revises Attachment A – Property Acquisition Information from the Program Application, requiring LPAs to provide additional information to assist in identifying projects with property acquisition.
- 2) MDOT Environmental Section updates EPM to include information on NEPA submittal timelines and procedures for LPA projects.
- 3) MDOT requires LPAs to submit the revised Attachment A when the project is programmed in JobNet.

- 4) MDOT LAP Section notifies LPAs as changes are implemented and continues to reiterate the environmental requirements prior to property acquisition.

Phase III - 3-year Implementation

- 1) When implemented, MDOT's new Local Agency Programs Software (L-PAMS) transforms the static Project Program Application into a computer software application with integration to MDOT's JobNet, ECOMOD and Phase Initiator programs to better coordinate project initiation and tracking of ROW and environmental reviews.
- 2) MDOT Real Estate Procedure Manual, Environmental Procedure Manual, and LAP Process Manual are updated to reflect the NEPA submittal timeline changes for NEPA/ROW implementation with ECOMOD and L-PAMS integration.

TRAINING, GUIDANCE AND COMMUNICATION

MDOT will provide yearly training, guidance, and communication to the following impacted agencies:

- LPA's
- Rural Task Forces
- Rural Planning Agencies
- Metropolitan Planning Organizations
- MDOT Office of Economic Development
- Other agencies impacted by this Top Risk

If you require assistance accessing this information or require it in an alternative format, contact the Michigan Department of Transportation's (MDOT) Americans with Disabilities Act (ADA) coordinator at [Michigan.gov/MDOT-ADA](https://www.michigan.gov/MDOT-ADA).