



Permitting

Access to State and Local Rights-of-Way and Infrastructure

Following a subgrant award and prior to deploying infrastructure, subgrantees will need to secure permits from State and local governments for access to public rights-of-way and infrastructure, as well as, complete reviews required by the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA). Obtaining these permits will be critical to expeditious deployment, meeting BEAD timelines. NTIA's Initial Proposal Guidance (at 72) requires that Eligible Entities provide a solution for permitting issues in their Initial Proposals:

The Eligible Entity must identify steps to reduce costs and barriers to deployment, including through the following: promoting the use of existing infrastructure and/or promoting and adopting dig-once policies, streamlined permitting processes, and cost-effective access to poles, conduits, easements, and rights of way, including the imposition of reasonable access requirements. The Eligible Entity is not required to address each of these; rather, the Eligible Entity may indicate which barriers it intends to address.

Thus, Eligible Entities have an opportunity to address an issue that has been long identified as a key gating factor in getting broadband service delivered, ensuring that eligible locations promptly receive connectivity. This will allow for ambitious deployment objectives of the BEAD program to be met.

To that end, Eligible Entities should take action on the recommendations found below (and encourage, if not mandate, local governments to do the same) in the context of processing State and local permit applications:

1. Establish a single point of contact in the State/Territory for subgrantees to interact with that will support and facilitate all necessary permitting approvals by State/Territory and local government agencies.
2. Provide transparency on their permitting processes and standards for approval, including by –
 - a. Posting on government agency websites the forms and underlying documentation or other requirements (such as environmental or engineering studies) necessary to obtain permits (and include links to such materials on the state broadband office website).
 - b. Posting on government agency websites the fee schedules and tutorials/FAQs explaining permitting processes applicable to that agency (and include links to such materials on the state broadband office website).



3. Provide sufficient resources to process permit applications in a timely and cost-effective manner, attempting in particular to identify any questions or concerns as early in the process as possible and to minimize the need for multiple rounds of requests for supplemental information from applicants.
4. Create “common forms” that all government agencies should use to review and issue a permit allow subgrantees to file all forms electronically, and enable providers to check the status of applications via the online portal.
5. Review and approve applications within a reasonable time.
6. Adopt “cost-based” fees for applications and access to public rights-of-way (whether one-time or recurring); these should be tied directly and only to the costs incurred by government agencies in the acts of issuing permits and restoring disturbed areas to their pre-construction status.
7. Utilize the guidance provided by NTIA that includes various resources such as permitting “best practices,” references to State/Territory statutes that include application approval timeframes and cost-based fees, and tips on implementing many of the recommendations made here, as well as detailed tutorials on federally required NEPA/NHPA processes.¹
8. Look to the “State Model Code” created by the Federal Communications Commission’s Broadband Deployment Advisory Committee² for ideas and even draft legislation that, if adopted, can streamline state and local permitting processes.

In addition to securing permits from State/Territory and local government agencies, subgrantees will coordinate with State/Territory broadband offices as well as NTIA to complete the NEPA/NHPA processes. These federal review processes have historically been time-consuming and costly for broadband providers. Eligible Entities should work with NTIA and other federal agencies to obtain the expertise necessary to advise subgrantees on how to successfully navigate NEPA and NHPA requirements. Eligible Entities also should hire or otherwise retain experts versed in NEPA and NHPA processes to assist subgrantees in their efforts to complete these requirements.

¹ BroadbandUSA, National Telecommunications and Information Administration, Permitting Resources, available at: <https://broadbandusa.ntia.doc.gov/assistance/permitting>.

² Broadband Deployment Advisory Committee, State Model Code for Accelerating Broadband, Infrastructure Deployment and Investment (Dec. 16, 2018), available at: <https://www.fcc.gov/sites/default/files/bdac-12-06-2018-model-code-for-states-approved-rec.pdf>.