

**Nationally Significant Federal Lands
and Tribal Projects Program
(NSFLTP)**

Questions and Answers (Q&A)

Section 1123 of the Fixing America’s Surface Transportation (FAST) Act (Pub. L. 114-94) established the Nationally Significant Federal Lands and Tribal Projects (NSFLTP) Program to provide funding for major projects accessing Federal and Tribal Lands.

These frequently ask Q&As provide supplementary guidance for preparing applications under the NSFLTP Program and reflect the changes from the Infrastructure Investment and Jobs Act (Pub. L. 117-58, also known as the “Bipartisan Infrastructure Law” (BIL)). FHWA has issued a Notice of Funding Opportunity (NOFO) with application instructions and deadlines.

The following Q&As are intended to assist applicants in the development of their applications. The descriptions and considerations offered for each selection criteria are provided as examples. For more information, visit: <https://highways.dot.gov/federal-lands/programs/significant>

1. Eligible Applicants

Q1.1 Are non-profit organizations or other non-governmental entities eligible to apply?

No. Non-governmental entities, including non-profit organizations, are not eligible to apply for NSFLTP Program funds.

Q1.2 Are FLMAs, or Tribes required to sponsor an application on behalf of a State, county, or unit of local government?

No

Q1.3 Are Alaska Native Corporations that were formed by the Alaska Native Claims Settlement Act eligible to apply?

Alaska Native Corporations are not eligible to receive funds under sections 201, 202, 203, or 204 of title 23, and therefore, pursuant to FAST Act § 1123(b)(1), are not eligible recipients under the NSFLTP Program.

2. Eligible Project Activities

Q2.1 What does “a single continuous project” means?

Per FAST Act, Section 1123(c), eligible projects must be “a single continuous project.” A single continuous project means that there are no gaps or disconnects along the centerline of the proposed project. The applicant should make the case in their application that the project meets this eligibility criterion.

Q2.2 What types of activities qualify as “construction” costs?

The FHWA interprets the intent of the term “construction” in Section 1123 of the FAST Act to mean the supervising, inspecting, actual building, and incurrence of all costs incidental to the construction, reconstruction, or rehabilitation of an eligible transportation facility, including bond costs, but excluding costs related to project design.

Q2.3 Are archaeological surveys eligible activities under the NSFLTP Program?

Yes, if the survey is conducted incidentally to construction.

Q2.4 Are operations and maintenance of transit facilities eligible activities under the NSFLTP Program?

No. Per FAST Act, Section 1123(d)(1), NSFLTP Program funds can only be used for construction, reconstruction, or rehabilitation activities. Operations and maintenance activities do not fall under these categories.

Q2.5 Does a transportation facility need to be included in the national Federal Lands transportation or Tribal transportation facility inventory to be eligible under the NSFLTP Program?

No. Section 1123(c)(1) of the FAST Act specifically states that a transportation facility has to be on a Federal Lands transportation facility, Federal Lands access transportation facility, or Tribal transportation facility, but that the transportation facility is not required to be included in the Federal Lands transportation or Tribal transportation facility inventory.

Q2.6 Is the construction of a bus or transit maintenance building eligible under the NSFLTP Program?

No. Section 1123(c)(1) and 1123(d)(1) of the FAST Act makes clear that funds can only be used for construction, reconstruction, or rehabilitation of a Federal land transportation facility, Federal Lands access transportation facility, or a Tribal transportation facility. Maintenance buildings are not considered within the definition of these facilities because Congress made a distinction between construction of transit systems, e.g., Title 23, United States Code (U.S.C.), Section 203(a)(1)(A), and the operations and maintenance of a transit facility, e.g., 23 U.S.C. 203(a)(1)(B). This distinction means, for example, the construction of a bus maintenance facility would not be eligible.

Q2.7 Are corridor projects eligible?

Per FAST Act, Section 1123(c), only a single continuous project is eligible. A series of unconnected projects along a corridor generally would not be eligible for NSFLTP

Program funds unless the applicant is able to make a convincing case that the project is continuous.

Q2.8 Is the construction, reconstruction, or rehabilitation of visitor centers eligible under the NSFLTP Program?

No. Under FAST Act, Section 1123(c)(1), an eligible project must be on a Federal Lands transportation facility, Federal Lands access transportation facility, or Tribal transportation facility. Facilities such as visitor centers, contact stations, campgrounds, and other visitor amenities are not listed under the definitions for Federal Lands transportation facility, a Federal Lands access transportation facility, or a Tribal transportation facility, and, therefore, are not eligible.

Q2.9 Are rail projects eligible?

Under FAST Act, Section 1123(c)(1), an eligible project must be on a Federal Lands transportation facility, Federal Lands access transportation facility, or Tribal transportation facility. The definitions for these term in 23 U.S.C. 101(a)(7), (a)(8), and (a)(33) include only public highways, roads, bridges, trails, or transit systems. A rail project is therefore eligible only if it fits the definition of a transit system.

Q2.10 Are boat ramps eligible?

Under FAST Act, Section 1123(c)(1), an eligible project must be on a Federal Lands transportation facility, Federal Lands access transportation facility, or Tribal transportation facility. The definitions for these term in 23 U.S.C. 101(a)(7), (a)(8), and (a)(33) include only public highways, roads, bridges, trails, or transit systems. Boat ramps are therefore eligible only if it fits the definition of a transit system.

Q2.11 Does the NSFLTP Program cover improvements to connecting roads used to manage traffic during construction? Are there limits as to the length of these upgrades?

Per FAST Act, Section 1123(c), eligible projects must be a single continuous project. All work required to complete the project, including necessary detours, would be eligible. The project application should describe the scope of work and justify necessary improvements to connecting roads.

3. Eligible Project Expenses

Q3.1 Are easements and other land acquisitions eligible to be included in the cost of the project?

Per FAST Act, Section 1123(d)(1), NSFLTP Program funds can be used on construction, and construction and acquisition of rights-of-way are a part of construction (see 23 U.S.C. 101(a)(4)). Pursuant to 2 CFR 200.458, the cost of acquisition of real property prior to the effective date of the grant award is eligible

to be included in the project cost if the cost was incurred after notice of selection and:

- the costs are directly pursuant to the negotiation and in anticipation of the NSFLTP Program grant award;
- the costs are necessary for efficient and timely performance of the scope of work;
- the costs would have been allowable if incurred after the date of award; and
- FHWA provides written approval.

Real property acquired prior to notice of selection is not eligible to be included in the reimbursable project cost, but the value of such property donated to be incorporated into the awarded project may count towards the non-Federal entity's matching requirement. Real property acquired on or after the effective date of the grant award is eligible to be included in the project cost for reimbursement at the applicable Federal share. [See question Q6.3 for additional information.]

Q3.2 Are activities to meet environmental commitments eligible?

Environmental commitments, including mitigation activities, are often part of project construction or they coincide with the timing of project construction. Activities to meet environmental commitments and accelerate project delivery are therefore eligible. Environmental studies are not eligible unless they relate to fulfilling environmental commitments that the lead Federal agency made during the NEPA process.

Q3.3 Are contract management costs eligible?

Contract management costs are eligible for contracts related to construction, reconstruction, and rehabilitation.

Q3.4 Does the NSFLTP Program supports safety improvements via wildlife crossings infrastructure development?

Construction, reconstruction, and rehabilitation of wildlife crossings may be eligible as long the project is a single continuous project on a Federal Lands transportation facility, a Federal Lands access transportation facility, or a Tribal transportation facility (as defined in 23 U.S.C. 101) (FAST Act, Section 1123(c)(1), (d)).

4. Application Development

Q4.1 Does a project need to meet all the Primary Merit Criteria listed in Section 1123(f) of the FAST Act?

No. A project could be eligible if it does not meet all nine selection criteria listed in section 1123(f). However, applicants should try to address each of the criteria to the greatest extent possible in their applications. If a project does not meet one or more

of the criteria, the application should clearly state this.

Q4.2 If activities required under NEPA for a project are almost complete, is the project eligible?

Per FAST Act, Section 1123(c)(2), an eligible project must have activities required under NEPA be completed and demonstrated through a record of decision, finding that the project has no significant impact, or a categorical exclusion. FHWA interprets this statutory requirement for demonstration to mean that NEPA has been completed at the time of application, and the applicant should provide documentation of such completion as part of their application.

Q4.3 How does an applicant identify and document that transportation facilities are included in or eligible for inclusion in the National Register of Historic Places (National Register) per FAST Act, Section 1123(f)(5) (criterion 5 of the NOFO)?

Does this criterion apply to all facilities subject to project activities?

The National Historic Preservation Act (54 U.S.C. 300101 et seq.) established the National Register, and the Act defines a “historic property” as “any prehistoric or historic district, site, building, structure, or object included on, or eligible for inclusion on, the National Register, including artifacts, records, and material remains relating to the district, site, building, structure, or object (54 U.S.C. 300308).

When a property is not already listed in the National Register, the Federal agency or the Keeper of the National Register may determine a property’s National Register eligibility. An applicant will otherwise need to establish if project facilities are National Register eligible historic properties based on the professional judgement of an employee or consultant meeting the Secretary of the Interior’s Professional Qualification Standards in one or more disciplines appropriate to identifying all or part of the project facilities.

To indicate that the transportation facility is included in or eligible for inclusion in the National Register of Historic Places, an applicant should document that the transportation facility is a historic property, is a contributing element to a historic property, or that the transportation facility provides an opportunity for enjoyment of or access to a historic property. Linear historic properties often have sections that themselves contribute to the overall National Register eligibility of the property as well as sections that no longer retain sufficient integrity to contribute to National Register eligibility by themselves. Therefore, an applicant can demonstrate that they have met criterion 5 when any part of a project is a historic property or provides enjoyment of or access to a historic property.

Q4.4 What information should an applicant provide regarding the extent to which a project is supported by funds, other than funds received under the Program, to construct, maintain, and operate the facility (*see* FAST Act, Section 1123(f)(7))?

Applicants may demonstrate this by describing the availability of other funding sources besides NSFLTP Program funding that will fund the proposed project. Also, if the funds requested in the application exceed the required match, as applicable (for non-Tribal projects), these applications will be viewed favorably.

Additionally, an applicant could demonstrate non-NSFLTP Program funds are available to maintain and operate a facility built with NSFLTP Program dollars and the applicant has a reasonable expectation those funds will be available throughout the useful life of all project facilities.

Q4.5 If applicable to the project application, how should an applicant demonstrate a project serves multiple Federal or Tribal Lands (*see* FAST Act, Section 1123(f)(9))?

A project does not have to serve multiple Federal or Tribal Lands to be eligible under the NSFLTP Program.

To demonstrate that the project serves land owned by multiple Federal agencies or Indian Tribes, applicants should include a description of the project and how it supports multiple stakeholders. Applicants may also include letters of support from officials at each of the agencies or Tribes that would benefit from the project.

Q4.6 Where can an applicant go to get the National Park System (NPS) visitation figures?

An applicant can go to NPS.gov to retrieve the most recent visitation counts. This information would be needed to take advantage of the new requirement added by the Infrastructure Investment and Jobs Act, that at least one eligible project funded using the 50 percent of funds set aside for eligible projects on Federal Lands transportation facilities and Federal Lands access transportation facilities must be in a unit of the National Park System with at least 3 million annual visitors (*see* FAST Act, Section 1123(h)(2)).

Q4.7 What if the National Park System (NPS) visitation figures are not from the current year?

These visitation figures will be acceptable, regardless of the year of collection.

Q4.8 Can an unsuccessful applicant request a debrief to learn how its application could improve?

Applicants will receive notification of the status of their applications after each award announcement. An applicant can request a debrief, but the debrief would focus on the format and readability of the application and project narrative, not on

the merits of the proposed project described in the application.

5. Project Funding

- Q5.1** FAST Act, Section 1123(h)(2) requires awarding at least one project to the NPS on a unit with more than 3 million annual visitors. How does FHWA administer this requirement?

FHWA will consider the statutory requirement in Section 1123(h)(2) of the FAST Act when evaluating applications; however, FHWA will ultimately evaluate all applications and make awards using the review and selection process laid out in the NSFLTP Program NOFO. It is FHWA's preference to fully fund projects but, on occasion, projects may not receive the full amount of funding requested. While FHWA will seek to ensure that at least one project carried out using the 50 percent of NSFLTP Program funds set aside each fiscal year for eligible projects on Federal Lands transportation facilities and Federal Lands access transportation facilities, FHWA may, in accordance with the NSFLTP Program NOFO, award a project submitted by the NPS with less funding than requested.

- Q5.2** Is there a maximum project cost?

No.

- Q5.3** Can a single project receive funds from the NSFLTP Program from more than one application cycle?

Yes. A single project may apply for funds during multiple application cycles. For each application cycle, the application must clearly identify the phase and deliverables of the project for which it is seeking funding. For example, the resubmission of an identical application (that received funds) will not be considered unless the application clearly identifies how the use of prospective funding will advance additional stages of the project.

- Q5.4** Is there a minimum amount of NSFLTP Program participation that can be awarded to a selected application?

There is no minimum dollar amount that the NSFLTP Program can provide to an applicant. However, FAST Act, Section 1123(c)(3) requires that all eligible projects must have an estimated cost, based on the results of preliminary engineering, of \$12.5 million or more. This is inclusive of all funding sources, meaning that while total construction costs for a project must meet this minimum amount, there is no requirement regarding the minimum amount of NSLFTP Program funding that can be sought.

6. Non-Federal Share Requirement

Q6.1 What are the Federal and non-Federal share requirements?

NSFLTP Program funds may cover up to 100 percent of costs for projects on a Tribal transportation facility (FAST Act, Section 1123(g)(1)(B)). The NSFLTP Program funds may cover up to 90 percent of costs for projects on a Federal Lands transportation facility or a Federal Lands access transportation facility (FAST Act, Section 1123(g)(1)(A)).

Q6.2 May Federal funds be used to satisfy the non-Federal share requirement, consistent with the authorizing legislation for those funds (FAST Act § 1123(g)(2))?

Yes, BIL amended the NSFLTP Program's Federal share provision to allow any other Federal fund to be used to satisfy the 10 percent Federal share requirement on non-Tribal projects.

Q6.3 Can the value of real property acquired by a non-Federal entity before the effective date of the grant award be used toward meeting the non-Federal share?

FHWA may consider the value of property to be incorporated into the awarded project acquired prior to the effective date of the grant award as part of the non-Federal entity's matching share requirement. To be considered part of the non-Federal share, FHWA must authorize acceptance of the non-Federal entity's donation of the real property that is incorporated into the project and the allowable value. 2 CFR 200.306(d). [See question Q3.1 for additional information.]

Q6.4 What costs incurred by a non-Federal entity before the effective date of the grant award may be included in the cost of the project and used toward meeting the non-Federal share?

Pursuant to 2 CFR 200.458, costs incurred by a non-Federal entity for the project after notice of selection and before the effective date of the grant agreement may count toward meeting the non-Federal share if:

- The costs are directly pursuant to the negotiation and in anticipation of the Federal award;
- The costs are necessary for efficient and timely performance of the scope of work;
- The costs would have been allowable if incurred after the date of award; and
- FHWA provides written approval.

Other costs incurred before the effective date of the grant award may not be considered for the non-Federal share or reimbursement. For example, costs incurred for construction activities before notice of selection and negotiation of the project agreement are not eligible for consideration as the non-Federal share or reimbursement.

Q6.5 Is the minimum of \$12.5 million for estimated construction costs inclusive of match?

Yes.

Q6.6 If a Tribal government submits an application for a project on a Federal Lands transportation facility or a Federal Lands access transportation facility, will the program fund that project at 100 percent?

No. The Federal share provisions for the NSFLTP Program are based on what kind of facility the project is on, not the type of applicant. The 100-percent Federal share provision only applies to projects on a Tribal transportation facility (FAST Act, Section 1123(g)(1)(B)). The Federal share for all other projects under the NSFLTP Program, those on a Federal Lands transportation facility or Federal Lands access transportation facility, is 90 percent (FAST Act, Section 1123(g)(1)(A)).