



# **Environment 101: NEPA and Environmental Requirements**

FHWA Office of Tribal Transportation



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## 35 Tribes

Regions (8): Rocky Mountain, Great Plains,  
Western, Southwest, Southern  
Plains, Navajo and E.  
Oklahoma and Eastern

States (13): North and South Carolina,  
North and South Dakota, New  
Mexico, Arizona, Oklahoma,  
Texas, Montana, Wyoming,  
Massachusetts, Connecticut and  
New York

What is NEPA??



# National Environmental Policy Act (NEPA) (1969)

- It is the “National Charter” for protection of the environment, and it applies to all federal actions.
- Requires that a Federal agency consider **the impacts** of its activities on the natural and human environment.
- NEPA provides a comparative process that allows the decision maker (FHWA) to make an informed decision.

# The NATURAL Environment



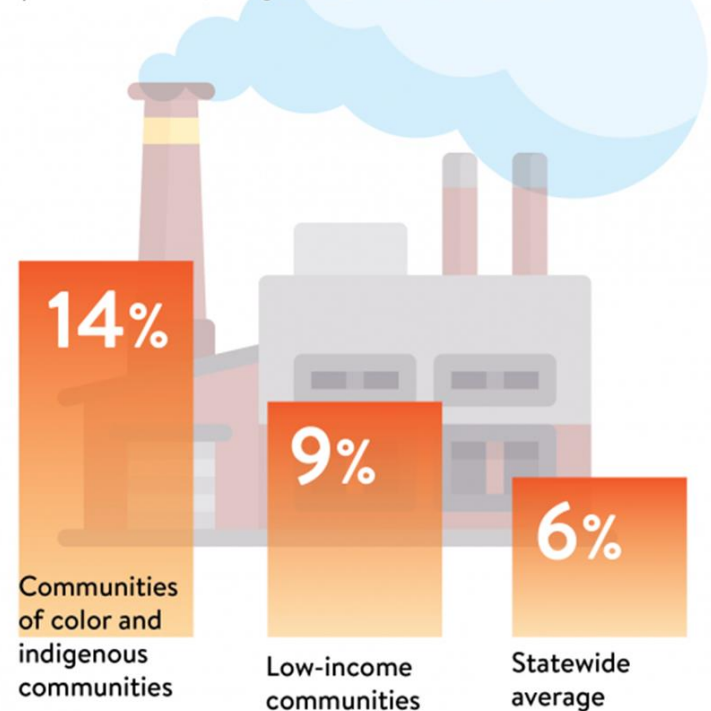


# The HUMAN Environment



## Living near air pollution

Your likelihood of living near a facility that emits pollution at a level above health guidelines is higher if you are a person of color, indigenous, or lower income.







# NEPA Umbrella

- National Historic Preservation Act
- Endangered Species Act
- Coastal Zone Management Act
- Clean Air Act
- Clean Water Act
- Section 4(f) - Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites
- Section 6(f) - Land and Water Conservation Fund Act
- Fish and Wildlife Coordination Act
- Farmland Protection Policy Act
- Native American Graves Protection and Repatriation Act
- Protection of Wetlands Executive Order
- Floodplain Management Executive Order
- Procedures for Abatement of Highway Traffic Noises and Construction Noises
- Applicable Tribal/State laws
- Other applicable Federal laws and regulations

# Great, But What IS NEPA?

- Purpose and Need
- Alternatives
- Impacts
- Mitigations
- Public Consultation
- Interagency Coordination
- Documentation

# Great, But What IS NEPA?

- NEPA is a CONSULTATION PROCESS (not regulatory)
- It is “Procedural” not “Substantive”
- About the process, not necessarily about the resulting decision.
- Did we follow the process? Did we do our “due diligence”?  
Did we attempt to discern all impacts and take them into account? Did we include all affected parties?
- The “owned” regulations that the NEPA process covers may be regulatory.



# Great, But What IS NEPA?

- Think of the “NEPA” document as a Box
- The box will hold all of the necessary Environmental Information for an understanding impacts for a project in one place.
- Federal Agency determines the size of the box (and when it is full)
  - The type of documentation (CE, EA or EIS).
- The box will contain all of the necessary Regulations.
  - Pertinent Regulations under the NEPA Umbrella

# Great, But What IS NEPA?

- The Regulations that go in the box are “owned” by other agencies (Agency with Jurisdiction).
  - FHWA needs to “ask permission” (consultation) to place those regs in the box. (This is consultation)
    - Cultural is “owned” by the THPO or SHPO
    - Biology is “owned” by USFWS
    - ROW is “owned” by BIA
    - Etc.
- FHWA needs to be sure that all of the necessary environmental regulations and information has been placed in the box before “putting on the lid” (issuing clearance).

When does NEPA officially start and why?

What is the difference between NEPA and the Environmental Process?

When should “NEPA” really start?



# NEPA and the Environmental Process

- “NEPA” officially begins with a clear purpose and need, scope of work, range of alternatives, and initiation of the consultation process.
- The Environmental Process should begin much earlier, during planning.
- Need to have starting dates to understand timelines and deadlines.

# 3 Types of NEPA Documents

## ■ Environmental Impact Statement

- Used when a project will or is likely to result in significant environmental impacts

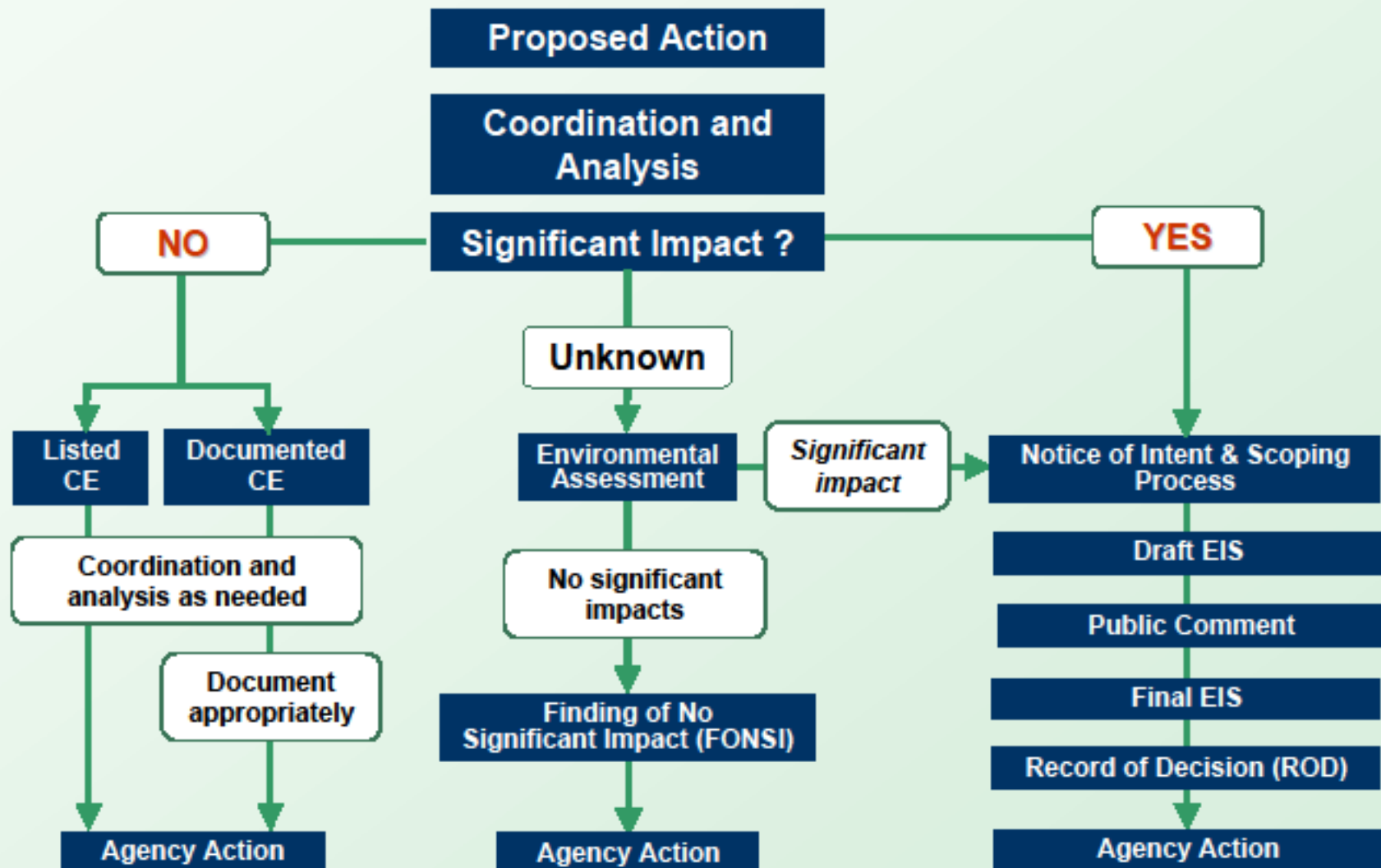
## ■ Categorical Exclusion

- Used for certain types of projects that normally will not result in significant environmental impacts

## ■ Environmental Assessment

- Used when it is uncertain if a project will result in significant environmental impacts

# ***NEPA Process Options (Classes of Action)***





# FHWA Categorical Exclusions

- (a) Actions which, based on past experience with similar actions, do not involve significant environmental impacts.
  - do not induce significant impacts to planned growth or land use for the area;
  - do not require the relocation of significant numbers of people;
  - do not have a significant impact on any natural, cultural, recreational, historic or other resource;
  - do not involve significant air, noise, or water quality impacts;
  - do not have significant impacts on travel patterns;
  - do not otherwise, either individually or cumulatively, have any significant environmental impacts

# Unusual Circumstances

- (b) Any action which normally would be classified as a CE but could involve unusual circumstances will require appropriate environmental studies to determine if the CE classification is proper. Such unusual circumstances include:
  - 1) Significant environmental impacts;
  - 2) Substantial controversy on environmental grounds;
  - 3) Significant impact on properties protected by Section 4(f) of the DOT Act or Section 106 of the National Historic Preservation Act; or
  - 4) Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action.

# FHWA Categorical Exclusions

- FHWA has 2 groups of CEs: **c-list** and **d-list**.
  - Comes from 23 CFR 771.117 **(c)** and **(d)**
- Actions in c-list normally do not require further NEPA approval by FHWA.
- Actions in d-list require formal approval (i.e. signature) by the appropriate FHWA official.
- FHWA TTP usually provides a “clearance document” for all projects regardless of type.

# Categorical Exclusions

- Cat Ex does not mean that a project is excluded from the NEPA process and can automatically proceed.
- Though a project may be documented as a Cat Ex for NEPA, The Agency still needs to fulfill requirements and obligations of ALL regulations (Example: Section 106)



# Exercise: Which Project is a Cat Ex?

- Chip Seal Project on 58 miles of roadway.
- Creation of Bike Trails through a local park
- 23 Miles of New Asphalt Roadway
- Paving 17 miles of a previously dirt road

# It's All About the Impacts

- NEPA documentation and Mitigations are about IMPACTS, not (necessarily) project type.
- An impact can be defined as a change (that the project will produce) on the natural, cultural, historic, and human environment.

# It's All About the Impacts

- What is setting of the project prior to construction and implementation?
- What will the setting be like after the project has been completed?
- How will these impacts change the (Human and Natural) environment?

# Maintenance vs. Construction

- Technically, NEPA does not differentiate between Maintenance and Construction projects.
  - Level of Documentation is based on potential impacts, not these two categories.
  - Often agencies will have Cat Ex for such projects

# Maintenance vs. Construction

- Just because a project is “maintenance” does not mean that NEPA does not apply, or that it will automatically be documented as a Cat Ex.
  - DON'T PANIC: usually these projects can be quickly cleared with a Cat Ex
  - Need to discuss what types of projects a Tribe considers maintenance
  - Need to take into account the potential impacts of that project type



# What Does it Lead To?

- Mitigations and Commitments:
  - If there are impacts generated by a project, can those impacts be avoided?
    - This is the best way to handle impacts.
  - Can't be avoided: Can the impacts be mitigated?
    - How can we lessen the impacts on resources?

# What Does it Lead To?

- These Mitigations become Commitments.
  - Must follow through on what it has agreed to do in order to avoid, minimize, and/or mitigate environmental impacts.
  - Mitigations will usually be created during consultation and coordination with cooperating agencies.

# What Does it Lead To?

## ■ Documentation:

- Putting a “Lid” on the “Box”
- Putting the “box” where it can be accessed
  - The Project File:
    - While the final NEPA document should be short and concise, the project file should contain all appropriate documentation
    - It should be clear why a decision was made

# How Should I Start?



# NEPA Considerations

## ■ Purpose and Need

- **Purpose and Need** for the Project tells us:

- What is the Need?: Why a project is being implemented and what issue it intends to resolve (What's the problem?)
- What is the Purpose?: How will the project resolve the issue



# The TTP Environmental Checklist

- Purpose and Need
- Chip Seal Project:
  - Over the years, many miles of paved roadway have not been adequately maintained within the Community, creating safety hazards and difficult traveling conditions. The purpose of this project is to address the basic maintenance needs for many of these roads to create safer traveling conditions.

# The TTP Environmental Checklist

- Purpose and Need
- Bridge Replacement Project:
  - Bridge XXX has the lowest Sufficiency Rating of any bridge on the reservation. It is not considered safe for regular use. If not replaced, the bridge will continue to deteriorate and eventually will need to be closed. The new bridge structure will enable travelers to safely access to homes and facilities on both sides of the river.

# The TTP Environmental Checklist

- Purpose and Need
- New Roadway:
  - Currently, citizens cannot directly access facilities on the Northeast side of the Reservation. Transit and emergency services currently must travel north to XXX and then south to the XXX to access this area. Transit services make 3 roundtrips per day. The proposed project corridor will shorten the route to this area by more than 20 miles. This equates to 20,000 miles per year saved by the transit service. In addition, the lack of mileage makes it easier for emergency services to reach the area, saving time and potentially saving lives.

# NEPA Considerations

## ■ The Project Description:

- Needs to give **Details** about the proposed project
  - How large is the project area and/or the area studied?
  - What work will be done?
  - What tasks will be involved?
  - What will be installed?
  - What equipment will be used?

# NEPA Considerations

- The Project Description (continued)
  - The Description should give a good idea of potential impacts (changes to the current project area).
    - How large will the area of impact be?
    - What impacts will construction have?
    - What impacts will installed structures have?
    - What impacts will the equipment have?
    - What studies will be required to understand the nature of impacts
    - Which permits will be potentially required



# NEPA Considerations

- Project Description
- Chip Seal Project:
  - XXXDOT is proposing to conduct approximately 36.25 miles of chip sealing maintenance operations on 14 separate paved roads around XXXX. Chip seal is a pavement surface treatment to improve the durability of the roadway. Chip seals are applied to existing asphalt to keep water from penetrating the road structure and to seal cracks on old pavement. All operations will stay within the right-of-way (ROW) easement boundaries and within the existing roadway prism and asphalt surfaces. The project areas are located in Section XX of Township X South, Range X East on Route XXX; Section XX of Township X South, Range X East; Sections XX-XX...

# NEPA Considerations

- Project Description
- Bridge Replacement Project:
  - The XXX Nation, proposes the replacement of Bridge XXX spanning the XXX River with a GRS/IBS structure. The existing bridge is located on Route XX, in a rural area about 17 miles east of XX. The new bridge will be located 55 feet upstream (centerline to centerline) of the existing bridge due to hydraulic/hydrology considerations. The new bridge will be located in a previously undisturbed area. Relocation of the bridge upstream will require that the alignment of XXX also be relocated to the east of the existing alignment, intersecting with the existing alignment approximately 517 feet south of the new intersection of XX and XX. The bridge beams will be pre-cast concrete box girders. Installation of the new bridge will require in-stream work with heavy machinery. Upon completion of the new bridge, the existing bridge will be removed as well as the north side abutment and approach with the are excavated to the historic floodplain.

# NEPA Considerations

- Project Description
- New Roadway Project:
  - The 16-mile project would construct a transportation corridor from the city of XXX to US XX that serves the areas south and east of the city of XXX, connects to the XXX, and the XX state line. The corridor would mostly be located in rural areas, with a portion of the project running through the town of XXXX along XXXX street. The roadway will be approximately XX wide and will include two 12' lanes, 4' shoulders, safety pavement edges, recoverable side slopes, rumble strips, pavement striping, signage, ditches to carry drainage and hold snow, and culverts. Additionally, the intersection of XXX and XXX in the city of XXXX will be reconfigured to reduce current hazardous intersection conditions. The majority of the reconstruction will take place along the same alignment with some minor adjustments to meet required AASHTO design standards or to avoid impacts to adjacent properties. The new roadway will run through previously undisturbed areas, with the exception of the alignment that will connect with, and run along XXX in downtown XXX.

# NEPA Considerations

## ■ Relevant Environmental Regulations

### ■ Requirements of Note:

- A. Right-of-Way
- B. Cultural Resources
- C. Wetlands
- E. Biology
- P. Permits (Sections 402 and 404 of the Clean Water Act)

# Relevant Environmental Regulations

- Right-of-Way (ROW)
  - Will the project involve Acquisitions or Easements?
  - Will a ROW action by BIA be required?
    - If a ROW action by BIA is required, BIA will stipulate what environmental documentation they will require for approval
    - In this case, BIA is the Agency with Jurisdiction (owner)

# Relevant Environmental Regulations

- Cultural Resources

- Section 106 of the National Historic Preservation Act
- Evaluates and consults on project impacts to “Historic Properties”
- Determines potential “adverse effects” to historic properties



# Relevant Environmental Regulations

## ■ Cultural Resources

- Whole workshops are dedicated just to this Regulation.
- A consultation process that is usually bundled with NEPA, but is technically separate.
- Has the potential to be the most complicated portion of the NEPA process.

# Relevant Environmental Regulations

## ■ Cultural Resources

- 36 CFR 800.3 (2)(c)(4):
- If the SHPO/THPO fails to respond within 30 days of receipt of a request for review of a finding or determination, the agency official may either proceed to the next step in the process based on the finding or determination or consult with the Council in lieu of the SHPO/THPO. If the SHPO/THPO re-enters the section 106 process, the agency official shall continue the consultation without being required to reconsider previous findings or determinations.

# Relevant Environmental Regulations

## ■ Wetlands

- Will there be construction in Wetlands?
  - Not always decided by standing water (might require a Wetlands Survey or Delineation)
  - Dictated by Soils and Vegetation (and hydrology)
- Might require a permit from the USACE
- USACE is the “owner” of this regulation

# Relevant Environmental Regulations

## ■ Wetlands

### ■ 3 Online Tools:

#### ■ USDA Soil Survey

<https://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm>

#### ■ USFWS IPaC <https://ecos.fws.gov/ipac/>

#### ■ National Wetland Inventory

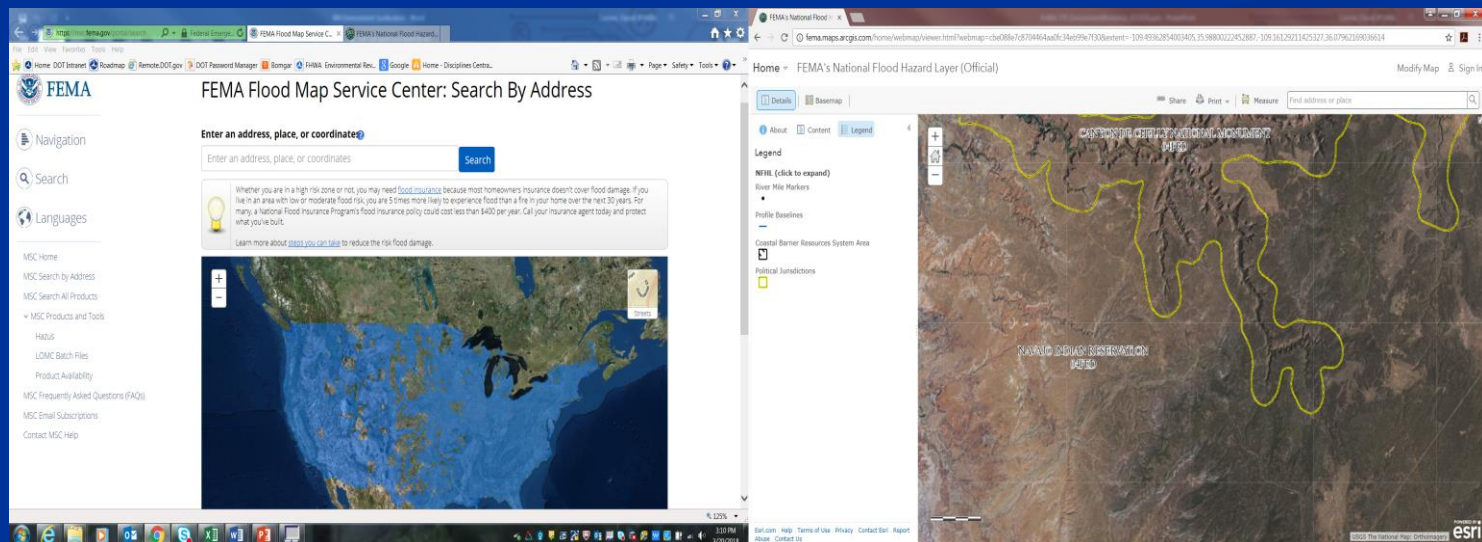
<https://www.fws.gov/wetlands/data/Mapper.html>

# Relevant Environmental Regulations

## ■ Floodplains

- Check FEMA Flood Maps

- FEMA Flood Map Service Center: <https://msc.fema.gov/portal/search>



# Relevant Environmental Regulations

## ■ Biology

- Section 7 of the Endangered Species Act
- Evaluates and consults on potential impacts to Threatened or Endangered Species
- A consultation process that is usually bundled with NEPA, but is technically separate
- Very similar to Section 106: Cultural Resources



# Relevant Environmental Regulations

## ■ Biology

- Will Not Affect = No consultation needed
- May Affect, Not Likely to Adversely Affect = Informal Consultation
- Likely to Adversely Affect = Formal Consultation

# Relevant Environmental Regulations

## ■ Biology

- Also has the potential to significantly complicate a project
- This is often directly confused with “NEPA” but it is a part of the process
- This regulation is “owned” by the USFWS

# Relevant Environmental Regulations

## ■ Biology

- Access the USFWS IPaC (Information for Planning and Consultation) site:
  - IPaC: <https://ecos.fws.gov/ipac/>
- You will be directed to a mapping (GIS) system and will draw the boundaries of your project area.
- IPaC will provide a list of any Threatened or Endangered Species that are known to occur within the project area.

# Relevant Environmental Regulations

The image displays two screenshots of the IPaC (Information for Planning and Consultation) web application, which is a project planning tool developed by the U.S. Fish & Wildlife Service (USFWS).

**Left Screenshot (Homepage):**

- Header:** U.S. Fish & Wildlife Service logo and "IPaC Information for Planning and Consultation" title.
- Text:** "IPaC is a project planning tool which streamlines the USFWS environmental review process."
- Buttons:** "GET STARTED" and "LOG IN".
- Link:** "[Need an updated species list?](#)"
- Footer:** "Integrate the environmental review process into your project design. Quickly and easily identify USFWS managed resources and suggested conservation measures for your project."
- Navigation:** Three main sections: "Explore species and habitat", "Conduct a regulatory review", and "Perform an impact analysis".

**Right Screenshot (Find location and Define area steps):**

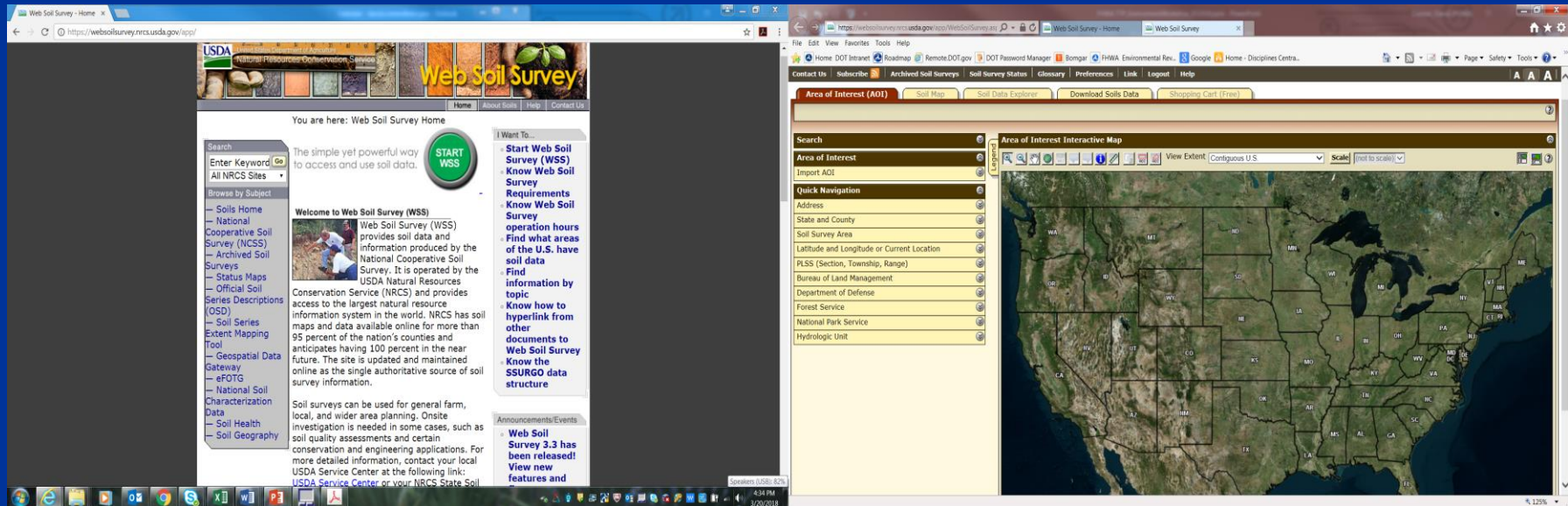
- Step 1: Find location**
  - Search or zoom to find the project location.
  - Find a place (input field).
  - Or skip this step and: **UPLOAD SHAPE FILE** or **SELECT BY STATE OR COUNTY**.
- Step 2: Define area**
  - Map of the United States showing state and county boundaries.
  - Layers panel (ADD button).

# Relevant Environmental Regulations

## ■ Farmland Protection Policy Act:

- The FPPA is intended to minimize the impact Federal programs have on the conversion of farmland to nonagricultural uses.
- Can easily be checked using the USDA Soil Survey Website:  
<https://websoilsurvey.nrcs.usda.gov/app/>
- If it is determined that the project will significantly effect Prime or Unique farmland, further consultation with USDA will be necessary.
- Usually will need to fill out a AD-1006 form.

# Relevant Environmental Regulations





# Relevant Environmental Regulations

The screenshot displays a computer screen with two main windows. The left window is a PDF viewer showing a 'FARMLAND CONVERSION IMPACT RATING' form from the U.S. Department of Agriculture. The right window is a web browser displaying the 'Web Soil Survey' application.

**Farmland Conversion Impact Rating Form (Left Window):**

**U.S. Department of Agriculture**  
**FARMLAND CONVERSION IMPACT RATING**

**PART I (To be completed by Federal Agency)**  
Name of Project: Chapman Road  
Agency: Alabama Dept. of Transportation  
Date Request Received by NRCS: 10/1/18

**PART II (To be completed by NRCS)**  
Check the appropriate prime, unique, statewide or local important farmland: ☐ Yes ☒ No (Acres Impaired) 0.0 Average Farm Size: 100  
If the farmland does not apply - do not complete additional parts of this form.  
Map: Chapman Road  
Name of Land Evaluation System Used: State Land Evaluation System  
Name of Local Site Assessment System: State Land Evaluation System

**PART III (To be completed by Federal Agency)**  
A. Total Acres To Be Converted Directly: 40.0  
B. Total Acres To Be Converted Indirectly: 0.0  
C. Total Acres To Be Converted: 40.0

**PART IV (To be completed by NRCS) Land Evaluation Information**  
A. Total Acres Prime And Unique Farmland: 0.0  
B. Total Acres Statewide And Local Important Farmland: 0.0  
C. Percentage of Farmland in County Or Local Govt. Unit To Be Converted: 0.0  
D. Percentage of Farmland in State Jurisdiction With State Or Higher National Value: 0.0

**PART V (To be completed by NRCS) Land Evaluation Criteria**  
Relative Value of Farmland To Be Converted (Scale of 1 to 100 Points)  
100 0 0 0

**PART VI (To be completed by Federal Agency)**  
Site Assessment Checklist (These criteria are explained in 7 CFR 658.60)  
1. Areas In Nonpoint Source: 10  
2. Potential For Nonpoint Source: 10  
3. Percent Of Site Being Farmed: 10  
4. Protection Provided By State And Local Government: 0  
5. Distance From Urban Subdivided Area: 10  
6. Distance To Urban Support Services: 0  
7. Size Of Present Farm Unit Compared To Average: 0  
8. Creation Of Nonpoint Source: 0  
9. Availability Of Farm Support Services: 0  
10. On Farm Investments: 0  
11. Effects Of Conversion On Farm Support Services: 0  
12. Compatibility With Existing Agricultural Use: 0

**TOTAL SITE ASSESSMENT POINTS**  
100 100 0 0 0

**PART VII (To be completed by Federal Agency)**  
Relative Value Of Farmland (From Part VI)  
100 100 0 0 0  
Total Site Assessment From Part VI (Scale of 1 to 100 Points)  
100 100 0 0 0  
TOTAL POINTS (Total of above 2 items)  
200 100 0 0 0

**Web Soil Survey (Right Window):**  
Search  
Area of Interest  
Open All Close All  
AOI Properties  
Clear AOI  
AOI Information  
Name:   
Map Unit Symbols  
☒ Use Soil Survey Area Map Unit Symbols  
☐ Use National Map Unit Symbols  
Area (acres): 11,914  
Soil Data Available from Web Soil Survey  
Sandoval County Area, New Mexico, Parts of Los Alamos, Sandoval, and Rio Arriba Counties (NM056)  
Data Availability: Tabular and Spatial, complete  
Tabular Data: Version 10, Sep 6, 2017  
Spatial Data: Version 3, Sep 6, 2017  
Clear AOI  
Import AOI  
Export AOI  
Quick Navigation  
Address:   
State and County  
Soil Survey Area  
Set AOI Select Map Units View  
State: Alabama  
Country (optional):

# Relevant Environmental Regulations

- Hazardous Waste and Materials:
  - This subsection deals with several regulations and material types.
    - Fuel Storage Tanks (ex. USTs and LUSTs)
    - Materials of concern (ex. Asbestos and Lead Paint)
    - Landfills
  - An inspection and survey may be required to know full extent of contamination.
  - Will often result in very specific mitigations and commitments.

# Relevant Environmental Regulations

- Hazardous Waste and Materials:
  - Check local repositories and Web sites for information.
  - It is often best to see if there is a Tribal or State Department that works with these regulations and consult directly with them.
  - Provide the Department with project information.

# Relevant Environmental Regulations

## ■ Hazardous Waste and Materials:

- EPA Superfund sites:

<https://www.epa.gov/superfund/search-superfund-sites-where-you-live>

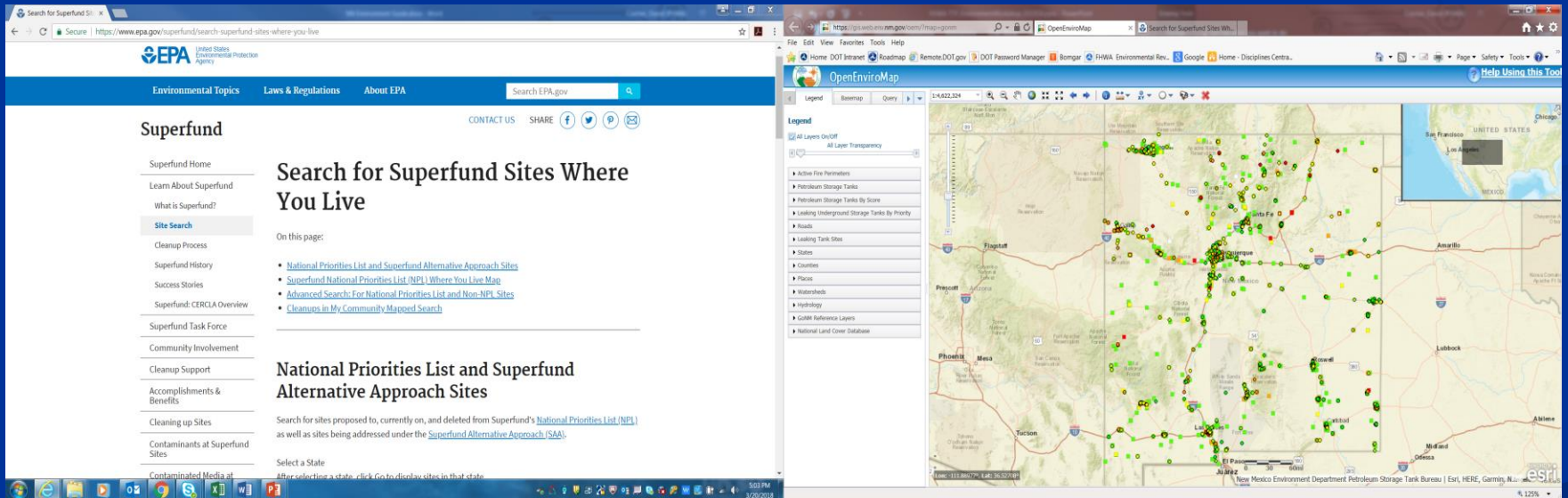
- State and County Environmental Departments  
(Environmental Quality, Environmental Conservation,  
Ecology)

(EXAMPLE) New Mexico OpenEnviroMap:

<https://gis.web.env.nm.gov/oem/?map=gonm>

# Relevant Environmental Regulations

## ■ Hazardous Waste and Materials:



# Relevant Environmental Regulations

## ■ Air Quality:

- EPA established National Ambient Air Quality Standards (NAAQS)
- This includes many different contaminant types.
- Most areas are considered “attainment” for NAAQS
- Only specific areas are non-attainment
- Most usual issue for this area is Particulate Matter (PM)



# The TTP Environmental Checklist

- Air Quality:

- Green Book: <https://www.epa.gov/green-book>

# Relevant Environmental Regulations

- Socioeconomics and Environmental Justice



# Relevant Environmental Regulations

## ■ Permits

- Sections 402 and 404 of the Clean Water Act
  - 404: Discharges or Impacts to Waters of the US (USACE)
  - 402: National Pollutant Discharge Elimination System (EPA)
  - The most “Regulatory” subsection or regulation
  - Evaluation of Required Permits will be in the Environmental Commitments

# Relevant Environmental Regulations

- 402: SWPPPs (Storm Water Pollution Prevention Plan)
- Required by the NPDES permit and helps assure compliance with its terms and conditions
- Identifies all potential sources of pollution expected to affect the quality of storm water discharges from the construction site
- Identifies controls to be put in place to minimize erosion and run-off of sediment and other pollutants.

# Relevant Environmental Regulations

- Section 404 Permit
- Regulates discharge of dredged or fill material into waters of the U. S., including wetlands.
- Administered by the U.S. Corps of Engineers
- Two types of 404 Permits (Nationwide or Individual)

# Relevant Environmental Regulations

- Section 404 Permits
- “Pre-Approved”
- Shorter review time by the Corps
- General conditions of the Nationwide permit must be met.
- Regional conditions must also be met.
  - Check the regional conditions for your state



# Relevant Environmental Regulations

- Section 404 Permits
- Commonly used Transportation Nationwide Permits
  - #3 Maintenance
  - #13 Bank Stabilization
  - **#14 Linear Transportation Projects**
  - #15 U.S. Coast Guard Approved Bridges
  - #23 Approved Categorical Exclusions
  - #28 Modifications of existing Marinas

# Relevant Environmental Regulations

- Individual Permits
- Involves evaluation of individual, project specific applications
- Three main steps:
  - Pre-application consultation
  - Formal permit application review
  - Permit decision
- Processing time:
  - Could be a few months
  - Could be years
  - Depends on elements of the project and level of NEPA document

# Finally: NEPA Considerations



# Important NEPA Considerations

- NEPA applies to all federal actions
- NEPA is an inherently Federal function
  - For OTT projects, all NEPA documents must be approved by FHWA
- NEPA must be complete before acceptance of final design, and before funding can be expended on right-of-way acquisition, material purchase, or construction
  - At 30% design is ideal

# Good Planning and Decision Making



- Early Coordination and Planning
  - Lead Federal Agency Resource and Regulatory Agencies
  - Public
- Continuous coordination throughout project development
- Changes to the SOW need to be reviewed and approved by the Lead Agency



# Good Planning and Decision Making



- It's about the project's IMPACTS
- AND...build relationships with the regulating agencies.





An aerial photograph of a coastal landscape. On the left, a steep, densely forested hillside slopes down towards a body of water. The forest is a mix of green and brown, suggesting some areas of regrowth or different tree species. The water is a deep blue, and the coastline is irregular with small inlets and peninsulas. In the background, more forested hills and mountains are visible under a sky with scattered white clouds. The word "Questions?" is superimposed in white serif font over the middle of the image.

Questions?