

INTRODUCTION TO APPLICABLE EHP LAWS AND EXECUTIVE ORDERS



Laws and Executive Orders: The basis for FEMA's EHP Review

Endangered Species Act

**National Historic
Preservation Act**

**Executive Orders:
Environmental Justice
Floodplains
Wetlands**

NEPA

Clean Air Act

Clean Water Act

**Resource Conservation &
Recovery Act**

**Coastal Barrier
Resources Act**

**Coastal Zone
Management Act**

National Environmental Policy Act (NEPA)



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NEPA Principles

- Applies to actions that have the potential to impact the human environment (natural and built)
- Gives the environment an equal footing with economic and engineering considerations
- Requires that the public be informed and has the opportunity to comment
- Directs decision-makers to be informed of impacts prior to deciding to fund a project



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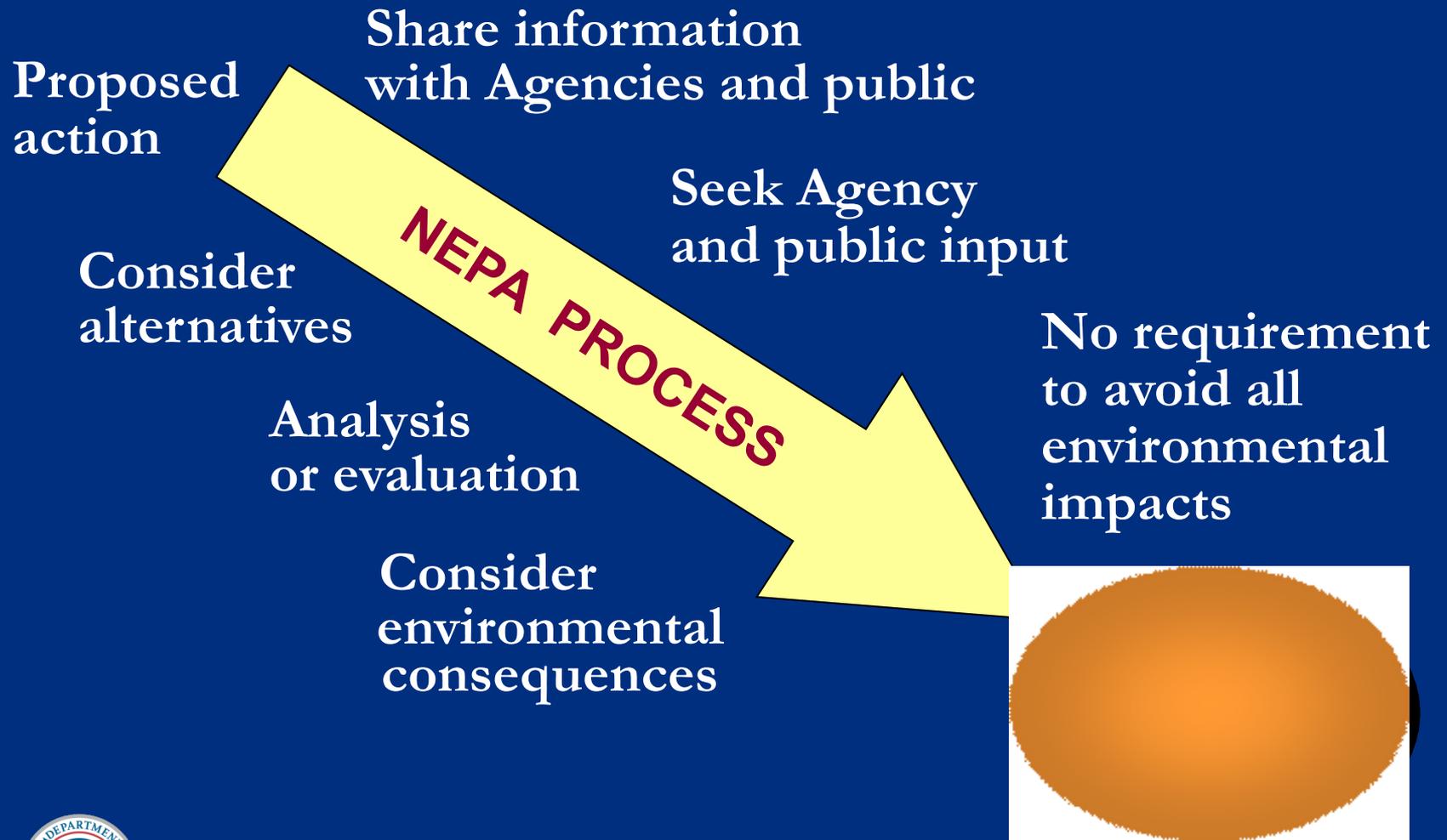
When Does NEPA Apply?

- Federal Funding
- Federal Permits
- Federal Facilities, Land & Equipment
- Federal Agency Rulemaking



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NEPA is a Decision-Making Process



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FEMA's Environmental Regulations

- 44 CFR 10 provides the framework for FEMA's compliance with NEPA
 - Outlines responsibilities
 - Establishes how to determine the level of NEPA review needed
 - Describes planning procedures
 - Provides guidance for the preparation of NEPA documents
 - Describes pre-implementation procedures



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Levels of NEPA Review & Documentation

- Categorical Exclusion (CE or CATEX)
- Environmental Assessment & Finding of No Significant Impact (EA/FONSI)
- Environmental Impact Statement & Record of Decision (EIS/ROD)



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Categorical Exclusion (CATEX or CE)

A category of actions which, based on the agency's past experience, do not individually or cumulatively have a significant effect on the human environment

See 44 CFR 10.8 for list of FEMA's CEs

- *Classroom-based training*
- *Administrative actions*
- *Preparation & distribution of documents*
- *Certain kinds of activities at existing facilities*

Even if an action is categorically excluded from further NEPA review, all other EHP laws/EOs and permitting requirements still apply



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Extraordinary Circumstances

Refers to something about the nature or location of the proposed action that makes it substantially different from a typical action of its category.

- Greater scope
- Public controversy
- Degradation of environmental conditions
- Unproven technology
- Presence of TES or HP
- Hazardous/toxic substances
- Special status areas
- Health and safety
- Legal violation
- Cumulative impact



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Environmental Assessment (EA)

- Concise public document
- Analyzes and discloses potential impacts to resources and population in the project vicinity
- Integrates compliance with other EHP laws/EOs
- Typically put forth for 30-day public comment
- May set forth required project conditions or mitigation/treatment measures
- Outcomes:
 - Finding of No Significant Impact (FONSI)
 - Notice of Intent to prepare EIS (NOI)



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Environmental Impact Statement (EIS)

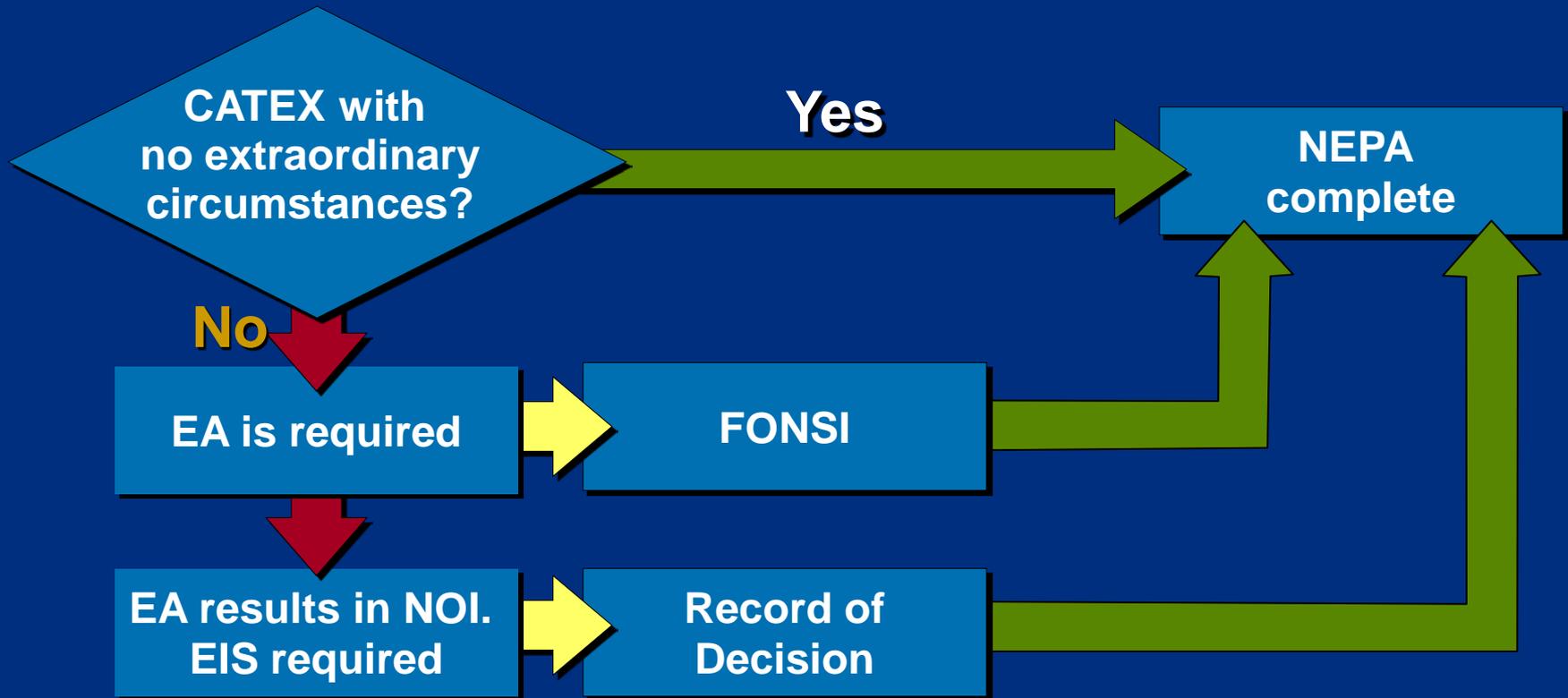
Similar to an EA in format, but requires:

- More rigorous data collection and analysis
- More formal public involvement
- Fixed schedule for public review and comment
- Does not prevent actions having significant impacts from being implemented
- Takes at least a year and usually costs more than \$250,000



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NEPA Review Process



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National Historic Preservation Act (NHPA)



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National Historic Preservation Act

Requires Federal agencies to consider effects of its actions on historic properties



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Historic Properties

- Are buildings, sites, structures, objects, districts
- Are at least 50 years old (with exceptions)
- Are significant within their historic context
- Retain integrity or convey their significance
- Listed on or eligible for listing on the National Register of Historic Places



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National Register of Historic Places

- “Official list” of properties important in U.S. history and culture
- Significant at local, state, regional and/or national level
- Administered by National Park Service
- Contains over 80,000 listings
- <http://www.nps.gov/nr/>



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National Historic Landmarks

- Over 2,400 properties
- Possess exceptional value or quality in illustrating and interpreting the heritage of the United States
- Significant at national level
- <http://www.nps.gov/history/nhl/>



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NHPA Consultation

- Required under Section 106 of NHPA
- It is FEMA's responsibility to consult
 - State Historic Preservation Office/Tribal Historic Preservation Office
 - Advisory Council on Historic Preservation
- Cannot be delegated to grantee
- Grantees must comply with any conditions placed on project as a result of SHPO/THPO consultation



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State/Tribal Historic Preservation Officer

- Maintains inventory of historic properties in the state or on tribal lands
- FEMA's primary contact for Section 106 consultation
- Grantees are encouraged to contact SHPO/THPO to obtain information about the presence of historic properties in project vicinity (<http://www.ncshpo.org/stateinfolist/fulllist.htm>)



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Advisory Council on Historic Preservation

- Independent federal agency
- Mission is to promote the preservation, enhancement, and productive use of our nation's historic resources
- Advises the President and Congress on national historic preservation policy



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Information for the NHPA Review

- Age of buildings/structures directly affected
- Method & location of equipment installation
- Age of surrounding buildings/structures
- Site and structure photographs (color, labeled, good quality)
- USGS topographic quadrangle map (1:24,000 scale)
- Will there be ground disturbance?
 - Previously disturbed or undisturbed ground?



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Biological Related Laws



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The Endangered Species Act (ESA)



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ESA Requirements

- FEMA must consider effects of its actions on threatened/endangered species
- FEMA cannot fund any action that would
 - jeopardize the continued existence of any endangered or threatened species
 - result in the adverse modification of habitat of such species



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ESA “Taking”

- Unlawful to “take” any endangered species
- Applies to everyone, regardless of whether Federal funds are involved
- Violation of the ESA can result in individual civil and criminal penalties, including fines and jail time



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ESA Consultation

- Required under Section 7 of ESA
- FEMA consults with US Fish and Wildlife Service (FWS) or National Marine Fisheries Service (NMFS)
- Consultation determines:
 - Species or habitat affected
 - What action is required to avoid or mitigate impacts to TES
- Grantees must meet any conditions placed on project as a result of FWS/NMFS consultation



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Helpful Information for the ESA Review

- Grantees are encouraged to gather information from a regional FWS office or an appropriate state entity (e.g. Department of Natural Resources)
- Description of project location
 - Urban/developed
 - Industrial
 - Wilderness/forested
 - Agricultural, etc.



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Helpful Information for the ESA Review

- TES lists are often available on the FWS or state DNR websites (<http://www.fws.gov/angered/>)
- Site photographs help to provide context and enhance habitat descriptions



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Migratory Bird Treaty Act



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MBTA Purpose

- To protect migratory birds, their nests, eggs, and feathers



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MBTA Compliance

- FEMA consults with FWS
- For communication towers
 - consider FWS guidance on tower location, design, construction and operation

<http://www.fws.gov/migratorybirds/issues/towers/comtow.html>



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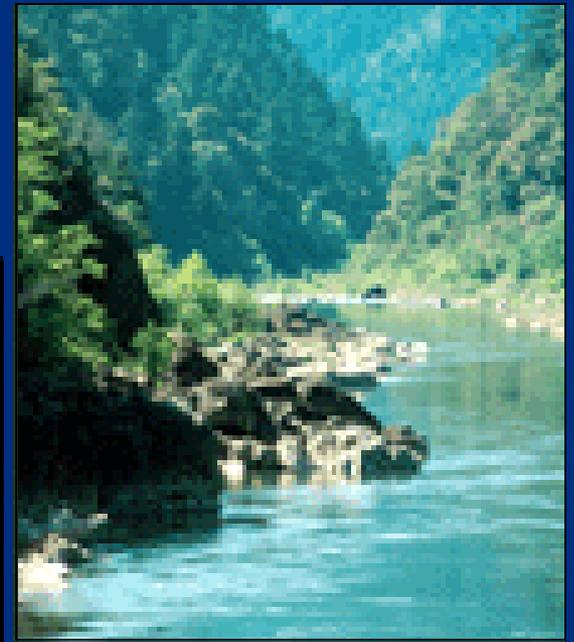
Helpful information for the MBTA Review (tower projects)

- Height of tower
- Guy wires vs. lattice design
- Will aviation lighting be used?
If so, describe.



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Water Related Laws and Executive Orders



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Executive Orders (EOs)

- Floodplain Management (11988)
- Wetland Protection (11990)



FEMA's regulations for Floodplain Management & Protection of Wetlands are found in 44 CFR § 9



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Floodplain Management

- Maintain natural and beneficial floodplain values
- Avoid, to extent possible, actions within or affecting the floodplain
- If there is a reasonable alternative outside the floodplain, FEMA cannot fund the project within the floodplain
 - 100-year floodplain
 - 500-year floodplain for actions involving critical facilities
 - FEMA uses Flood Insurance Rate Maps (FIRMs) to identify the regulatory 100-year and 500-year floodplains



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Protection of Wetlands

- Avoid, to extent possible, adverse impacts to wetlands
- The U.S. Army Corps of Engineers (USACE) regulates the discharge of dredged or fill material into waters of the U.S., including wetlands, pursuant to Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act
- If there is a reasonable alternative outside the wetland, FEMA cannot fund the project within the wetland



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What Is A Wetland?



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Wetlands

“In the simplest sense wetlands are just places where land and water mingle in novel and intricate ways to create a remarkable diverse assortment of habitat types. Water is the dominant influence in soil structure and the kinds of plants and animals characterizing a wetlands.”

Excerpt from: The Wetlands Resource, United States Environmental Protection Agency, Office of Water, Office of Wetlands Protection, 2-9/89



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Key Identifiers of Wetlands

- Vegetation
- Soils
- Hydrology



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Eight-Step Planning Process for Floodplain/Wetland Management

8 > Comply with Executive Orders

7 > Provide Public Explanation

6 > Determine Practicality

5 > Minimize Impacts

4 > Assess Impacts

3 > Evaluate Alternatives

2 > Encourage Public Involvement

1 > Project Location in Floodplain/Wetland



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Helpful information for the Floodplain review

- Provide flood zone information
- Provide copy of FIRM covering project area
<http://www.fema.gov/business/nfip/mscjumppage.shtm>



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Helpful information for the Wetlands Review

- Provide National Wetlands Inventory Map of project area
<http://www.fws.gov/nwi/>
- Provide site photographs



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Clean Water Act



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Goals of the CWA

- Meet pollution control standards
- States set water quality criteria
- States receive money to reduce water pollution
- Protection of wetlands and aquatic habitat



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Waters of the United States

- Rivers and streams
- Lakes and ponds
- Coastlines
- Wetlands
- Estuaries



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Clean Water Act Permits

- Permits regulate the discharge of dredged or fill materials
 - Nationwide Permit
 - Section 404 Permit
 - Section 10 Permit (Rivers and Harbors Act)
 - National Pollutant Discharge Elimination System (NPDES)



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CWA/RHA Compliance

- Grantee is responsible for obtaining applicable permit(s) from USACE and state Department of Environmental Quality



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Pollution Management Related Laws



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Resource Conservation and Recovery Act (RCRA) & Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

When do RCRA & CERCLA apply?

- Construction and demolition activities
- Operation and maintenance activities involving the use, storage, and disposal of hazardous materials
- Above-ground and underground storage tanks
- Improper handling, storage, and disposal of hazardous materials
- An uncontrolled or abandoned site where hazardous waste is located



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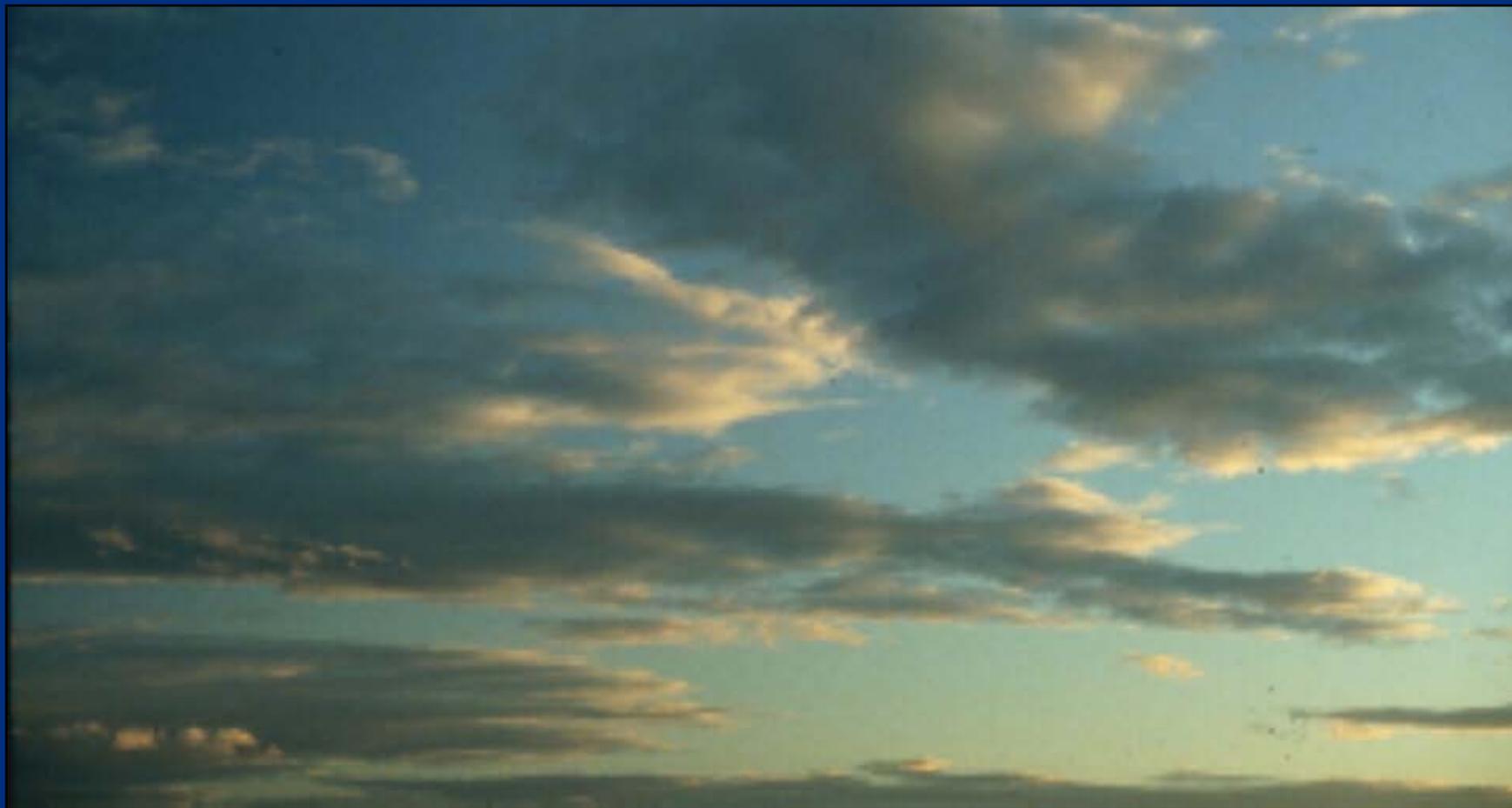
CERCLA & RCRA Compliance

- FEMA may be liable for providing grant funds for a project that causes the release of hazardous pollutants
- If a site may contain hazardous waste or a project may cause the release of hazardous pollutants, the grantee should notify their PA and request guidance
- GPD must coordinate with FEMA's Office of Environmental Planning and Historic Preservation and the Office of Chief Counsel



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Clean Air Act (CAA)



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CAA

- Protect and improve the nation's air quality
- Requires Environmental Protection Agency (EPA) to establish primary and secondary National Ambient Air Quality Standards (NAAQS) for seven criteria pollutants considered harmful to the public and the environment
- Makes states responsible for air quality programs & requires states to adopt ambient air quality standards



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When Does CAA Apply?

- Demolition of properties containing potentially harmful materials
- Equipment exhaust and fugitive dust from construction activities
- Release of air pollutants during facility operation
- Projects that cause an increase in traffic



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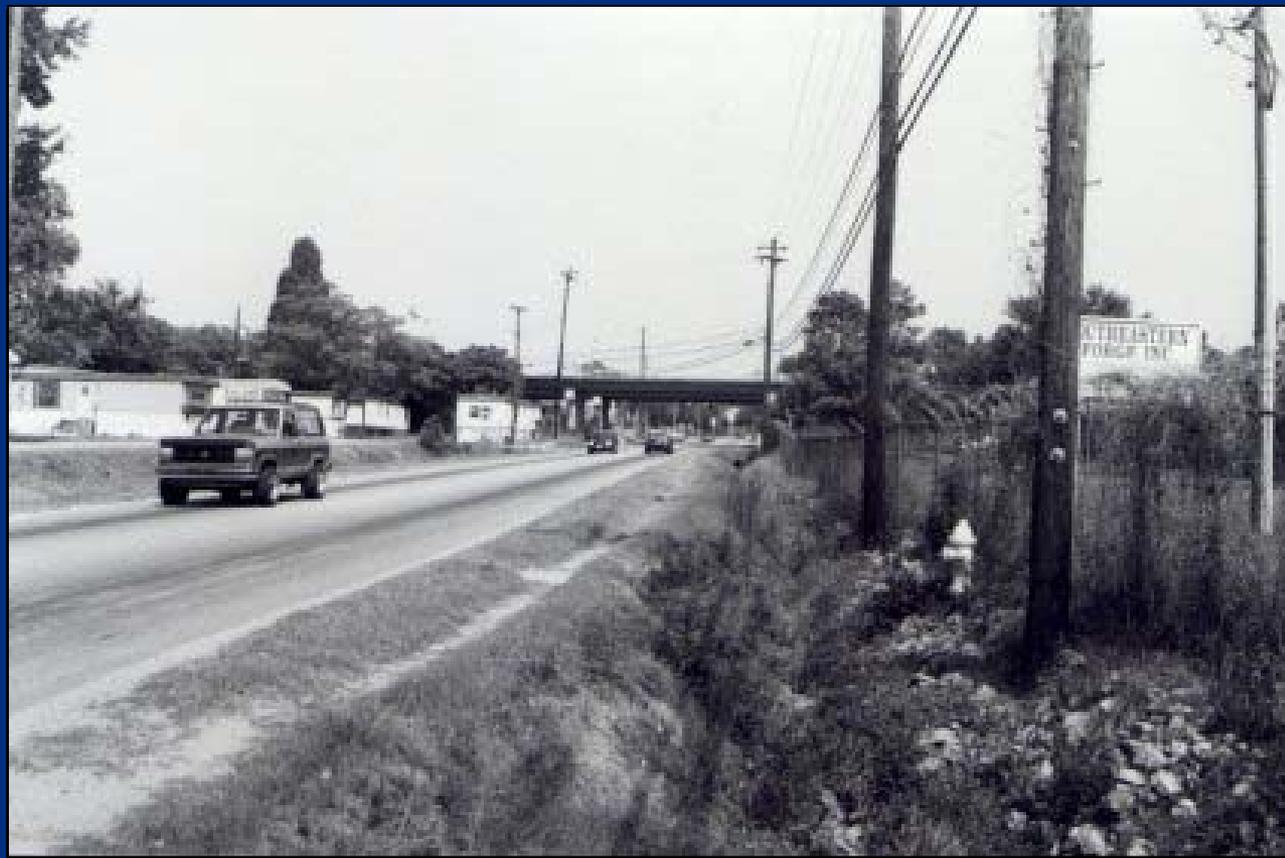
Helpful Information for the CAA Review

- Indicate the kinds and number of construction equipment/vehicles that will be used
- Indicate whether the project will affect traffic levels or patterns
- Indicate whether project is located in NAAQS attainment, maintenance, or non-attainment area
- Identify sensitive receptors in project vicinity, such as schools, nursing homes, and hospitals



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Socioeconomic Laws and Executive Orders



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Farmland Protection Policy Act (FPPA)



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Types of Farmland

- Prime farmlands - land that has best combination of physical and chemical characteristics for producing crops
- Unique farmland - land used for production of high-value crops such as citrus, tree nuts, olives, fruits, etc.
- Farmland of statewide or local importance



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FPPA Consultation

- FEMA consults with the Natural Resources Conservation Service (NRCS)



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Helpful information for the FPPA Review

- Total acreage of project area, including access roads, that will have an impact on farmland
- Soil type(s) present in project area
 - NRCS Web Soil Survey Map
<http://websoilsurvey.nrcs.usda.gov/app/>
- Site photographs



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Executive Order 12898 – Environmental Justice

Mandates that federal agencies identify and address, as appropriate, disproportionately high and adverse human health, environmental, and/or socio-economic effects of their programs, policies, and activities on minority and low-income populations.



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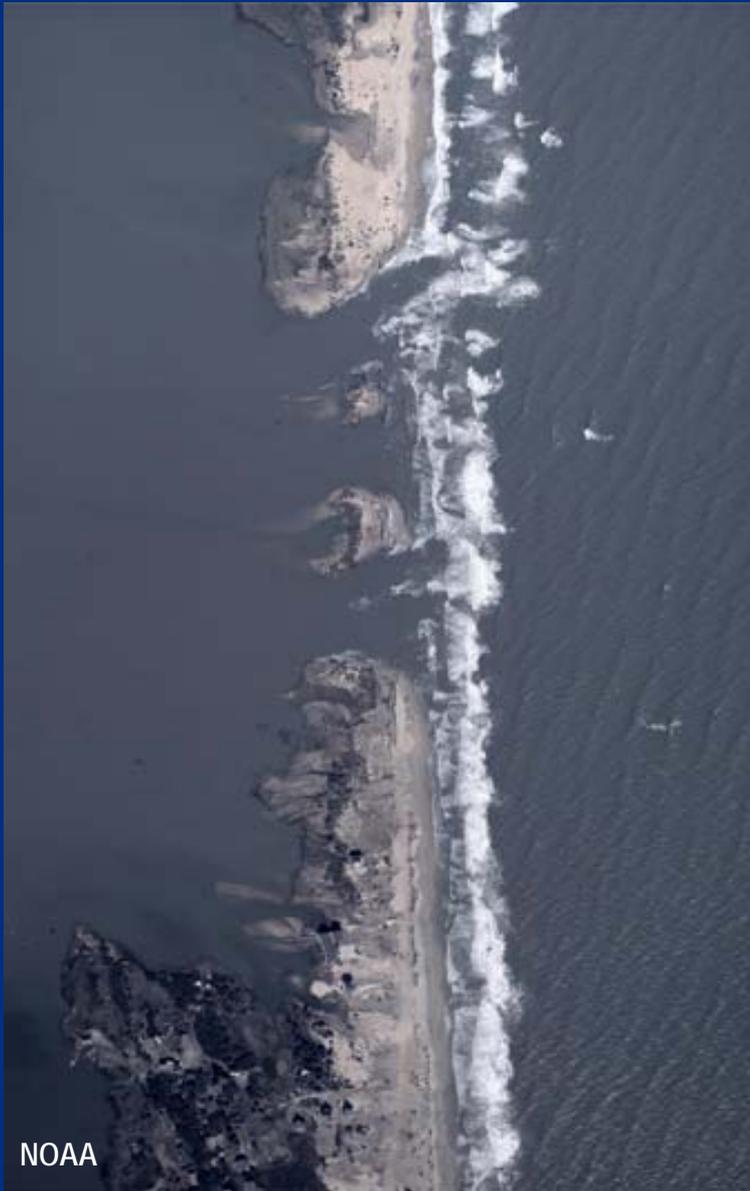
Helpful Information for the 12898 Review

- Grantees should collect socioeconomic and demographic data for the project area to help determine whether there are any potential EO 12898 concerns



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Coastal Area Laws



NOAA



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Coastal Zone Management Act (CZMA)



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CZMA Goals

- Reduce uncontrolled development on islands, beaches, salt marshes, transitional or inter-tidal areas, and other coastal areas



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CZMA Applicability

- States with a shoreline in the coastal zone or those that border the Great Lakes
- All states in a coastal zone have a Coastal Zone Management Plan



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Helpful information for the CZMA Review

- Grantees should contact their state office responsible for coastal zone management to determine if proposed project is consistent with that state's Plan



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Coastal Barriers Resources Act (CBRA)



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CBRA Goals

- Protect ecologically sensitive coastal barriers that serve as
 - barriers against forces of wind and tidal action caused by coastal storms
 - species habitat
- Establish the Coastal Barrier Resources System (CBRS) and Otherwise Protected Areas (OPAs)
- Prohibit new federal expenditures and financial assistance for development, in order to manage development and limit damage to property, wildlife, and natural resources in those areas



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CBRA Compliance

- FEMA must consult with FWS before any action in CBRS zone can occur



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