

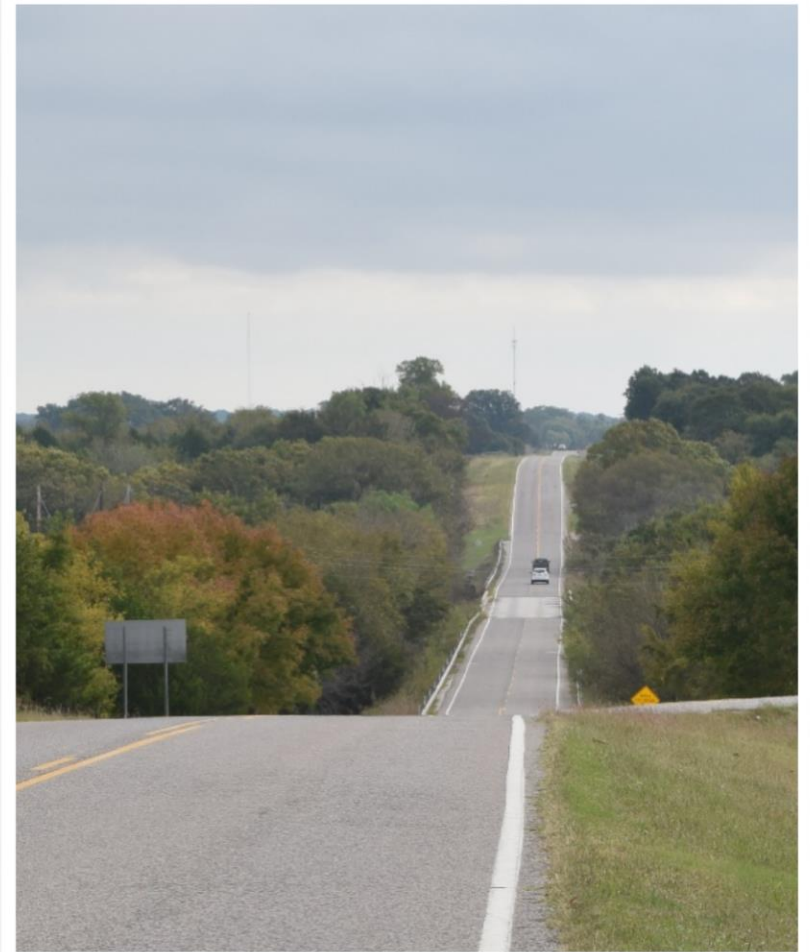
COX | McLAIN

Environmental Consulting

NEPA 101

CM2 Brown Bag
March 5, 2020

Presenter
L. Ashley McLain, AICP
UT MSCRP



What is NEPA?

- National Environmental Policy Act of 1969 as amended
- Who are our clients?
- What is a lead agency?
- *The lead Federal agency is the agency charged with conducting the NEPA process (CEQ 2007).*
- Our documents = legal documents
- Industry terms/buzzwords



The Policy (as amended)

- Sec. 2 [42 USC § 4321]. The purposes of this Act are: **To declare a national policy which will encourage productive and enjoyable harmony between man and his environment;** to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.
- 40 CFR 1500.1(c) **Ultimately, of course, it is not better documents but better decisions that count. NEPA's purpose is not to generate paperwork - even excellent paperwork - but to foster excellent action.** The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment...



Why comply? - Federal Law



- The major environmental law that applies to federal agencies is the **National Environmental Policy Act of 1969 (NEPA)**.
- Applies to federal agency actions, including anything that is federally funded, assisted, regulated, or approved.
- Each federal agency develops its own internal regulations to implement and comply with NEPA.
- NEPA is an 'umbrella' for numerous other environmental laws that apply specifically to various resources.
- AND because we care about the environment!

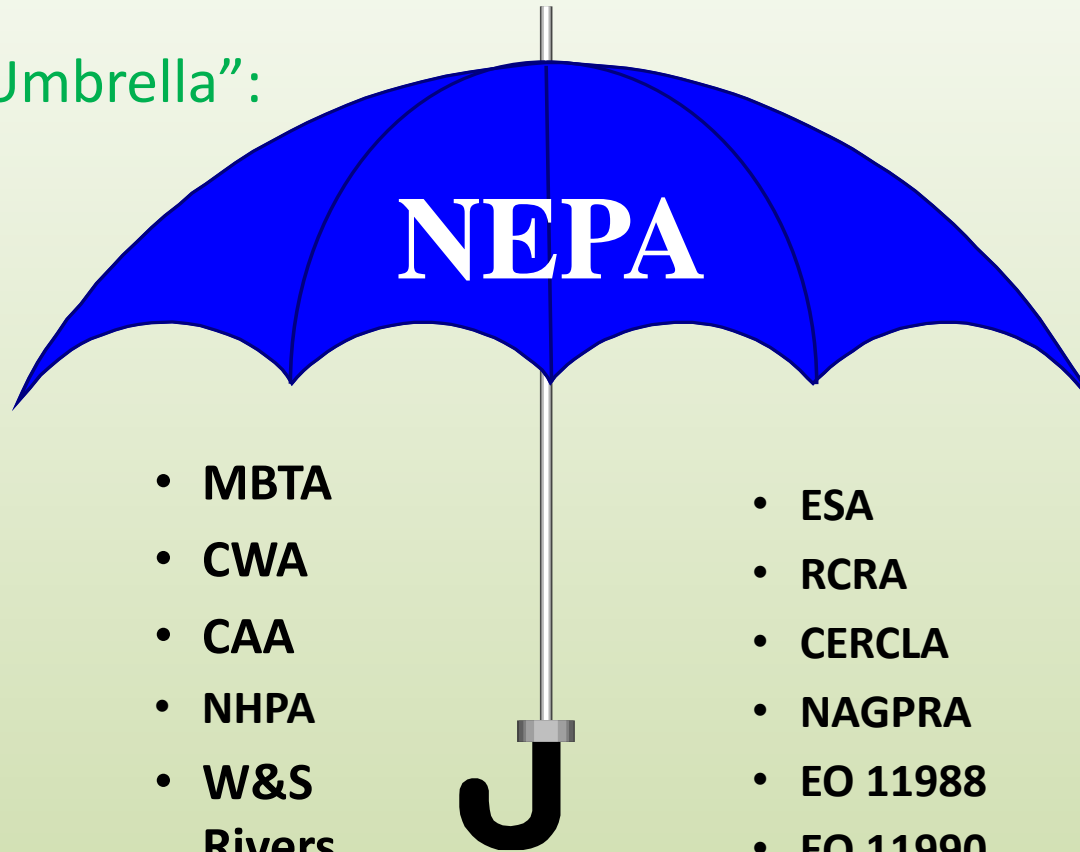
Goals of NEPA

- Integrate with other activities in the planning process:
 - Consider environmental issues along with other issues
 - **Begin at earliest possible time**
- Environmental review **before final decisions** are made and before actions are taken (i.e. money is obligated)
- If there are adverse environmental actions, then identify and evaluate all **reasonable alternatives**
 - Acknowledge the environmental effects from a project **and deal with them in the narrative of the environmental report/assessment (i.e. alternatives, mitigation, etc.)**

The Goals of NEPA Rest with the Federal Agency

- Provide **guidance and assistance** to applicants, engineers, and consultants
- **Consult with other agencies** who have special expertise or legal jurisdiction
- **Evaluate accuracy** of environmental information supplied by applicant or consultant
- Provide for **public involvement** (usually newspaper notices+++)
- **Complete** the environmental review of a project **before a commitment** of agency resources is made

The NEPA “Umbrella”:



- MBTA
- CWA
- CAA
- NHPA
- W&S
Rivers
- CZMA

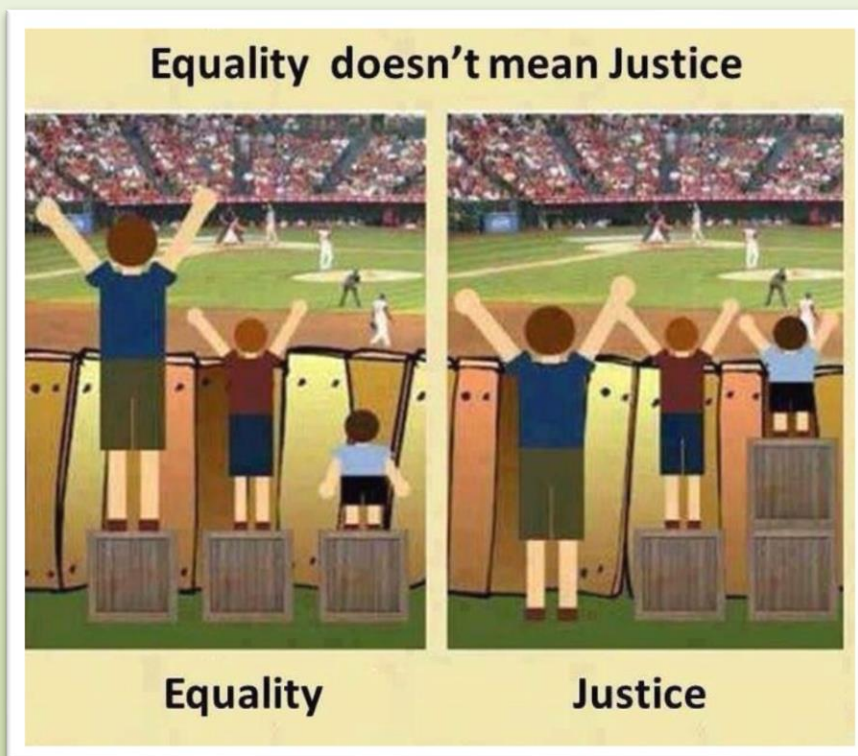
- ESA
- RCRA
- CERCLA
- NAGPRA
- EO 11988
- EO 11990
- Other EOs

The NEPA Umbrella

- MBTA: Migratory Bird Treaty Act of 1918
- CWA: Federal Water Pollution Control Act of 1948 (amended as the Clean Water Act of 1972)
- CAA: Clean Air Act of 1963
- NHPA: National Historic Preservation Act of 1966
- W & S RIVERS: Wild and Scenic Rivers Act of 1968
- CZMA: Coastal Zone Management Act of 1972
- ESA: Endangered Species Act of 1973
- RCRA: Resource Conservation and Recovery Act of 1976
- CERCLA: Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (aka Superfund program)
- NAGPRA: Native American Graves Protection and Repatriation Act of 1990

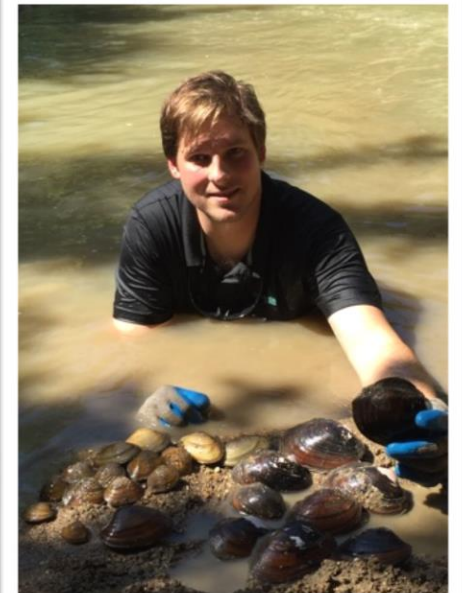
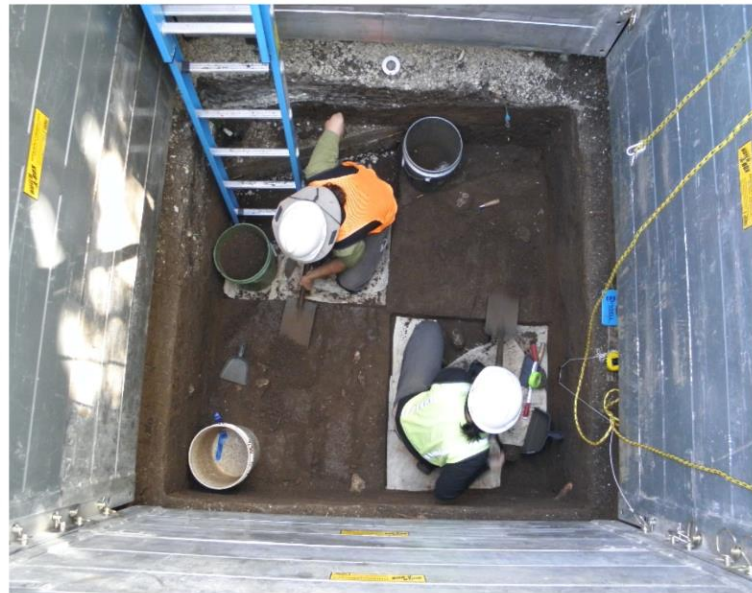
Important Environmental Executive Orders (EO)

- EO 11988 – *Floodplain Management*
- EO 11990 – *Protection of Wetlands*
- EO 12898 – *Environmental Justice*
- EO 13166 – *Limited English Proficiency*
- EO 13186 – *Responsibilities of Federal Agencies to Protect Migratory Birds*
- EO 13514 – *Environmental , Energy, and Economic Performance*
- EO 13604 - *Federal Infrastructure Permitting and Review Process Improvement*
- EO 13563 - *Improving Regulation and Regulatory Review*
- EO 13690 – *Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input*



Specialist Studies and Skill Building

- Socio-economic Impact Analysis
- Section 4(f)
- GIS Analysis
- Historic Resources
- Archeology
- Hazardous Waste
- Farmland Impacts
- Section 404 permitting
- Wild & Scenic Rivers
- Threatened & Endangered Species
- Floodplain Impacts
- Noise Studies
- Air Quality Analysis



What Are Project/Document Types Under NEPA?



EIS

EA

CE

CMEC cleared documents:

- 40+ CEs in 5 years
- 21 EAs in 7 years
- Several hundred Technical Reports



Categorical Exclusions

- Most common type of NEPA document
- 23 CFR 771.117 definitions

<https://www.law.cornell.edu/cfr/text/23/771.117>

- Assumes no significant impacts, no controversy, limited permitting needs, minor proposed ROW
- (c) and (d) list CE types
- (b) and (e) include specific 'triggers'



Environmental Assessments

- Unclear if impacts would be significant; determine if EIS needed
- Public and agency involvement needed
- Some protected resources affected
- Determines if EIS needed
- End result = FONSI or recommendation for EIS

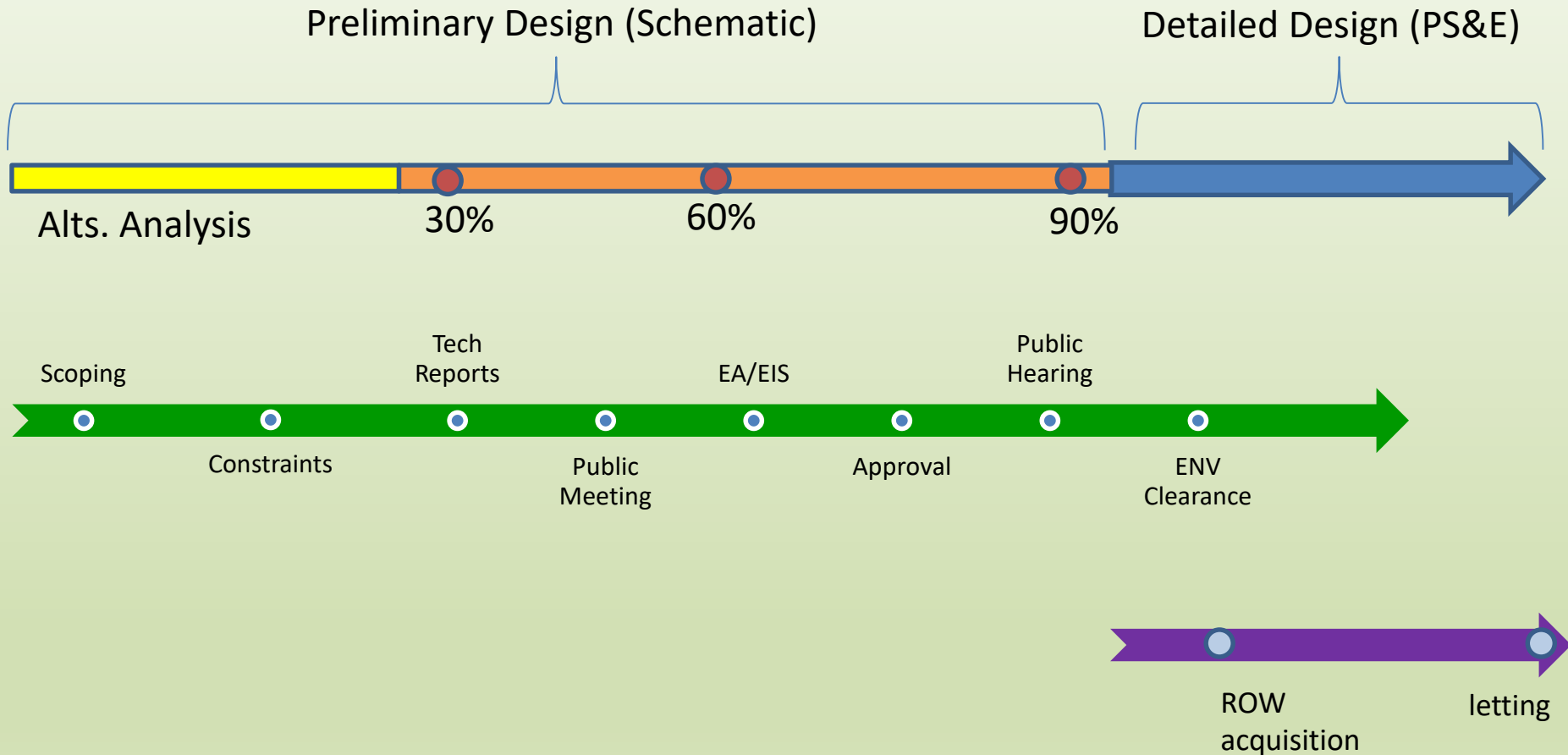


Environmental Impact Statements

- Complex and significant environmental issues
- Alternatives analysis
- Likelihood of legal challenge(s)
- Multi-year process
- Decision document is called a Record of Decision, or “ROD”



Project Life Cycle

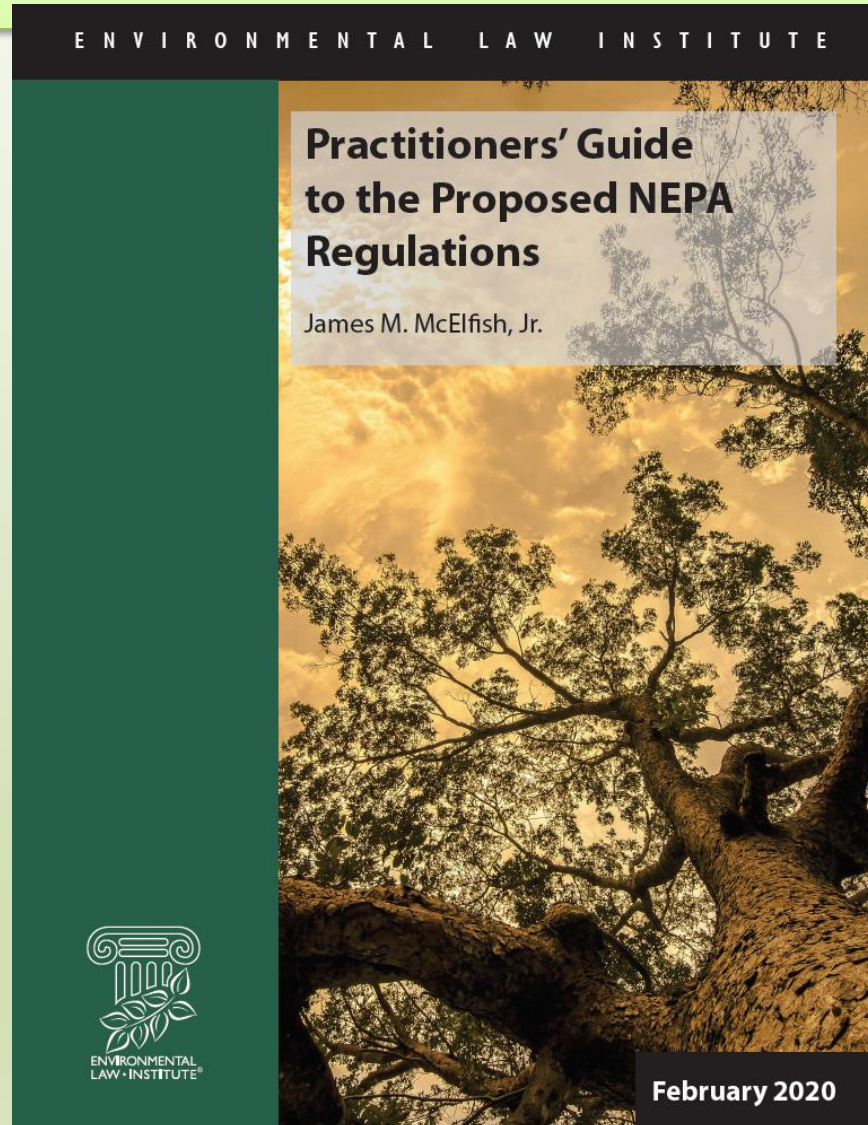


CEQ Proposed Rules to Update NEPA

- Proposed revisions published 1/10/20 (not my favorite bday present)
- Comments on the proposed rule are due 3/10/2020
- Proposal would, among other substantive changes:
 - remove the definition of “significantly”;
 - remove “cumulative effects” as an element of NEPA analysis;
 - redefine the range of reasonable alternatives;
 - establish time and page limits for environmental review;
 - delete conflict of interest provisions; and
 - create agency-certified “conclusive presumptions.”
- <https://www.eli.org/research-report/practitioners-guide-proposed-nepa-regulations>



ELI's Issue Spotter



Q&A





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CMEC Mission: To provide the highest quality **NEPA** consulting services and excellent customer care in a stimulating and collaborative professional environment.

Thank you!!



Responsibly Moving
Infrastructure Projects
FORWARD,
TOGETHER

CMEC welcomes
Prewitt & Associates
to our team

