

Mitigation Training Workshop for Colorado OEM

Introduction to FEMA's Environmental & Historic
Preservation (EHP) Compliance Requirements

Unit 7.1

OBJECTIVES

- Discuss FEMA's Environmental Planning and Historic Preservation Review
- Introduce the National Environmental Policy Act (NEPA)
- Discuss project planning considerations
- Learn some tips for a timely review

ENVIRONMENTAL PROGRAM

- What we do?
Support DHS/FEMA Programs by providing expertise in Environmental Compliance
- Why we do it?
Because it's FEMA's Policy to insure that "all practical means and measures are used to protect, restore, and enhance the quality of the environment."
44 CFR 10.4

FEMA IS REQUIRED TO:

- Assess environmental consequences of our actions.
- Use a systematic, interdisciplinary, approach in planning and decision making
- Insure that unmeasured environmental amenities are considered
- Consider reasonable alternatives
- Make available advice and information

FEMA's EHP Compliance Review

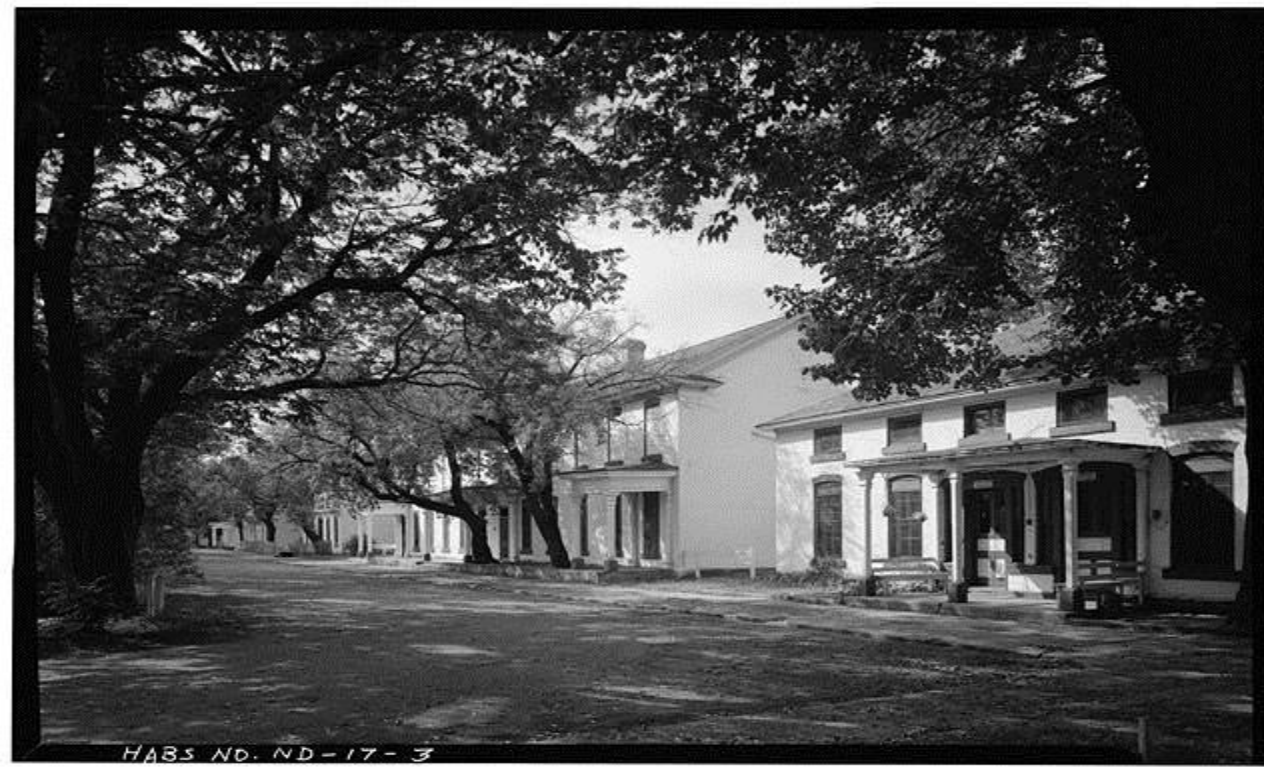
- Overseen by FEMA's Office of Environmental Planning and Historic Preservation (OEHP)
 - HQ office in Washington, DC
 - Ten Regional offices - Regional Environmental Officer & some support staff
- EHP compliance is the responsibility of FEMA Grant Programs; OEHP serves as a technical support office

WHAT ARE EHP CONSIDERATIONS?



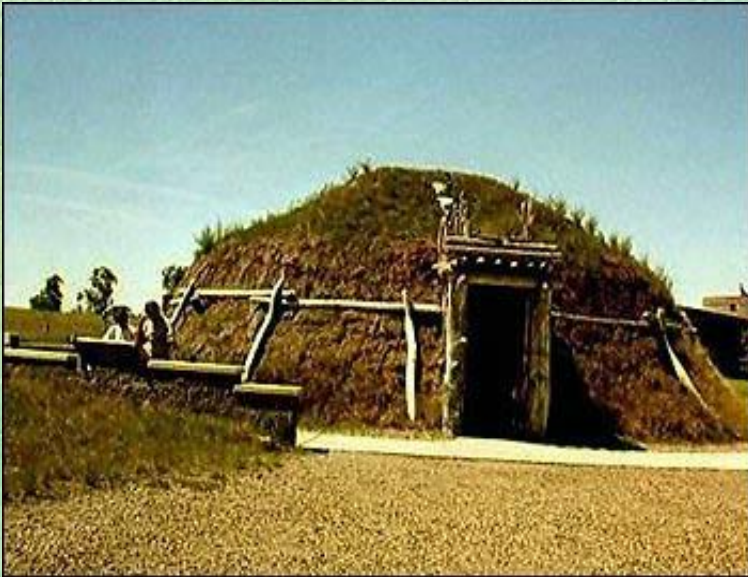
- National Environmental Policy Act (NEPA)
- National Historic Preservation Act (NHPA)
- Endangered Species Act (ESA)
- Clean Water Act (CWA)
- Clean Air Act (CAA)
- Migratory Bird Treaty Act (MTBA)
- Farmland Protection Policy Act (FPPA)
- Resource Conservation & Recovery Act (RCRA)
- State/Tribal and Local Law or Regulations
- Executive Orders:
 - * Wetlands – EO # 11990
 - * Floodplains – EO # 11988
 - * Environmental Justice – EO # 12898

NATIONAL HISTORIC PRESERVATION ACT (NHPA)



Reduce the loss of important historic and cultural properties

WHAT'S HISTORIC?



Properties...

- Associated with events that have a significant contribution to U.S. History
- Associated with lives of persons significant to U.S History
- With distinctive architecture characteristics
- With archaeological significance

Historic Structures – **Date of Construction**

- Buildings
- Bridges
- Culverts
- Monuments

Ground Disturbing Activities

- Staging of equipment
- Road Repair
- Borrow Pits
- Temporary Roads



GENERAL RULE OF THUMB

- If its over 50 years old it has to be considered.....before demolition, construction, reconstruction, digging, etc.

FEMA RESPONSIBLE FOR DETERMINATION

- Applicants gather inform

ENDANGERED SPECIES ACT (ESA)



What?

- Applies to threatened and endangered (T/E) species and their critical habitats
- Includes fish, plants and animals



ENDANGERED SPECIES ACT (ESA)

FEMA RESPONSIBLE FOR DETERMINATION

COMPLIANCE

- Consult with US Fish and Wildlife Service (USFW) or National Marine Fisheries Service (NMFS) to determine species/habitat affected
- Abide with FWS/NMFS determination

MIGRATORY BIRD TREATY ACT (MBTA)

PURPOSE

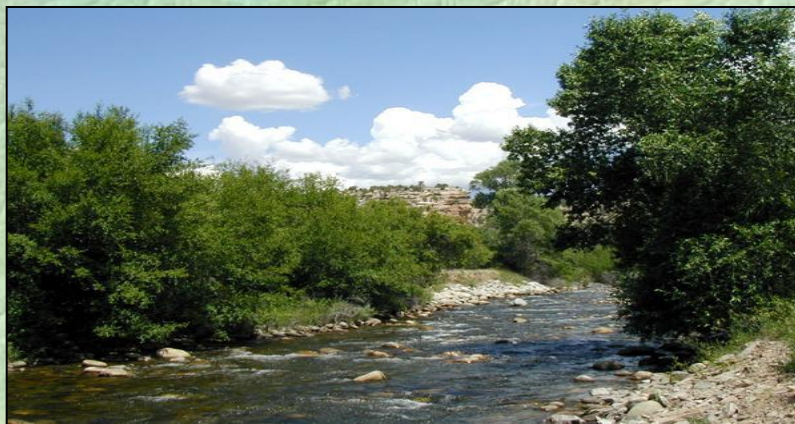
- Protect migratory birds, their eggs, nests and feathers
- Reduce bird kills and collisions with towers



CLEAN WATER ACT (CWA)

What?

- Applies to all 'waters' of the United States including rivers, lakes, streams, wetlands and estuaries



CLEAN WATER ACT (CWA)

Section 404 Permits

- For discharge of dredged or fill material into US waters
- Applies to minor or routine work with minimal impacts
- Individual Permits vs. General Permits
- Contact USACE for Jurisdictional determination

Section 401, 402

- State permits

CLEAN WATER ACT (CWA)

COMPLIANCE

- Applicants apply to US Army Corps of Engineers (USACE)/state for permits
- FEMA ensures that the applicant complies with USACE/state permitting regulations

CLEAN AIR ACT (CWA)



- Requires protection and enhancement of the nation's air resources.
- Attainment for all pollutants. State level enforcement based on EPA.

RCRA/STATE SOLID WASTE LAWS



- Hauling to municipal solid waste landfills, transfer facilities, or composing facilities
- Household Hazardous Waste

EXECUTIVE ORDERS

- Floodplain Management – EO # 11988
- Wetland Protection – EO # 11990
 - Assess the impact of proposed projects on floodplains and wetlands.
 - Ensure that no critical facilities are located in a floodplain or wetland

PURPOSE

- To avoid, to the extent possible, actions within or affecting floodplains/wetlands

COMPLIANCE

- Evaluate impacts to floodplains/wetlands using eight-step process

EXECUTIVE ORDERS

- **Environmental Justice – EO # 12898**
 - directs federal agencies to make environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations

NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

- FEMA reviews all actions to ensure compliance with NEPA.
- FEMA will determine the level of environmental documentation necessary to comply with NEPA.
- Documentation may include:
 - Statutory Exclusion (STATEX)
 - Categorical Exclusion (CATEX)
 - Environmental Assessment (EA)
 - Environmental Impact Statement (EIS)

CATEGORICAL EXCLUSIONS (CATEX)

- Projects that are documented as CATEX have no significant effect on the environment and are excluded from further NEPA review.
- CATEX projects must comply with all relevant environmental laws and executive orders (EO)
- There are three levels of CATEX:

CATEX LEVEL 1



- Studies with no commitment of resources except money & manpower
- Training activities
- Public education
- Technical assistance
- Purchase of equipment

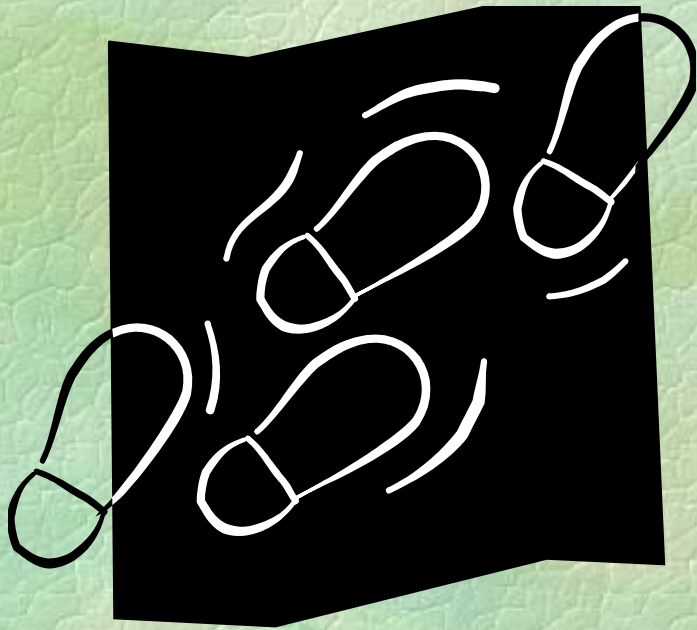
CATEX LEVEL 2

- Property acquisition and associated demolition /removal.
- Acquisition, installation, or operation of utility and communication systems that use existing distribution systems or facilities, or currently used infrastructure rights-of-way.
- Demolition or disposal of uncontaminated structures.

CATEX LEVEL 2

- Physical relocation of structures where others do site selection or development.
- Repair, reconstruction, restoration, elevation, retrofitting, upgrading to current codes or standards in a manner that substantially conforms to pre-existing design.
- Actions conducted within enclosed facilities, etc.

CATEX LEVEL 3



- Improvements to existing facilities and construction of small scale hazard mitigation measures in existing developed areas.

If you have Extraordinary Circumstances or the action is not excluded as a CATEX you will have to do an EA or an EIS



PREBLES JUMPING MOUSE FROM USFWS FILES

EXTRAORDINARY CIRCUMSTANCES

- Greater scope and size
- Public controversy
- Degrade existing poor environmental conditions
- Use of unproven technology
- Endangered or threatened species
- Hazardous or toxic substances

EXTRAORDINARY CIRCUMSTANCES

- Potential to adversely affect special status areas or critical resources
- Adverse effects on health and safety
- Violate laws or requirements for environmental protection
- Cumulative impact

IN EA, COVER AFFECTED ENVIRONMENT AND POTENTIAL IMPACTS

- Describe the environment
- Discuss measures that could be taken to mitigate anticipated impacts.
- Analyze alternatives, including the no - action alternative

PROJECT PLANNING

- The following factors affect the amount of time it takes to complete the EHP review:
 - Completeness of the project scope of work (SOW)
 - Complexity of the project
 - Project location & the types of resources affected
 - Whether consultation with SHPO, FWS, etc. (required under certain laws) is needed
 - EA or EIS preparation

INCORPORATE EHP INTO PLANNING DECISIONS

- Anticipation of impact to the natural and cultural environment.
- Outreach to review agencies
 - Education

SCOPE OF WORK:

**A clear scope of work will save
time and money**

If an approved project has a change in the SOW, the grantee must stop work and wait for the environmental review to be completed and approved on the new SOW before re-initiating work.

Grantee must comply with any conditions placed on project as result of EHP review

CONSEQUENCES OF NON-COMPLIANCE

- Project delays
- Denial of funding
- De-obligation of funding
- Negative publicity
- Civil penalties
- Lawsuits