NEPA MODERNIZATION & THE PUBLIC

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U.S.ARMY

US Army Corps of Engineers®

PLEASE TELL US YOUR DISCIPLINE(S)!

- [ ] Planning
- [ ] Regulatory
- [ ] Public Affairs
- [ ] Engineering
- [ ] Legal / OC
- [ ] Environmental
- [ ] Econ
- [ ] Cultural
- [ ] PM
- [ ] Operations
- [ ] Other (please specify below)

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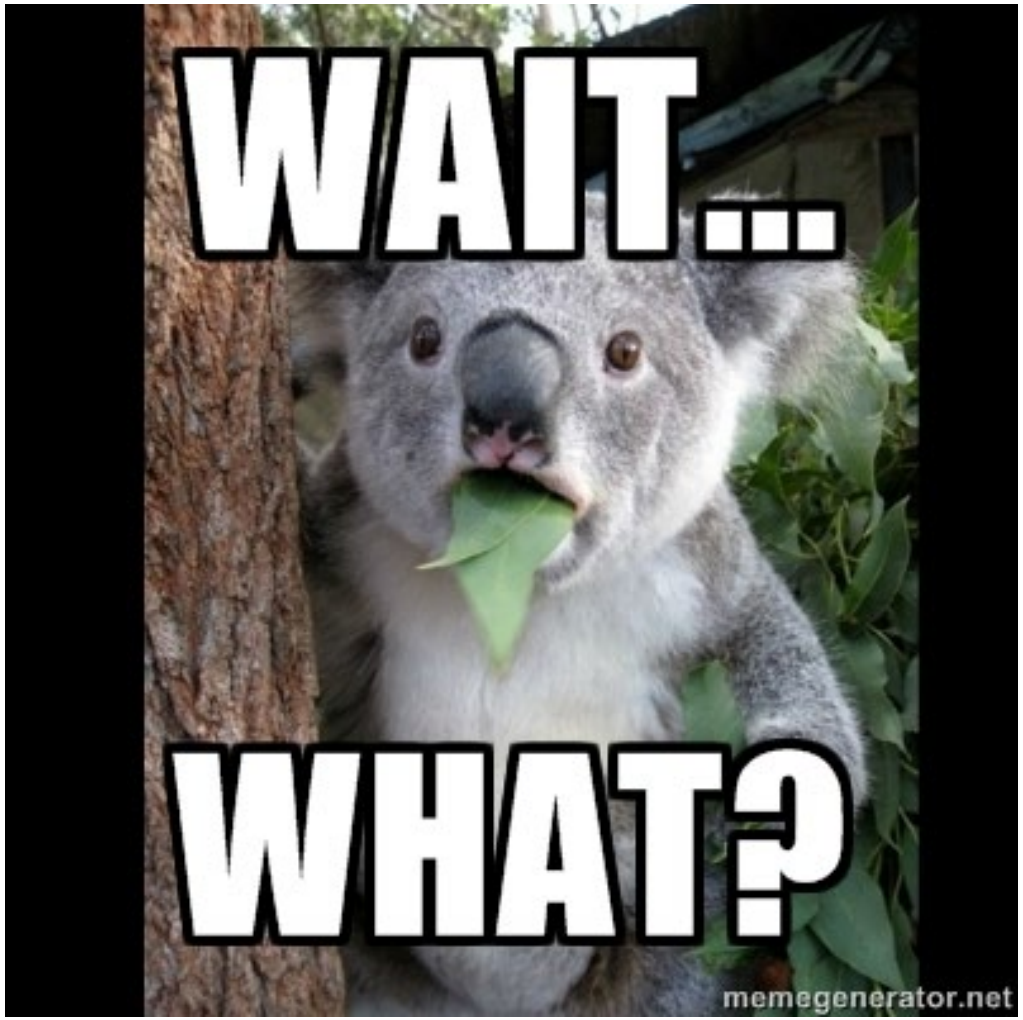
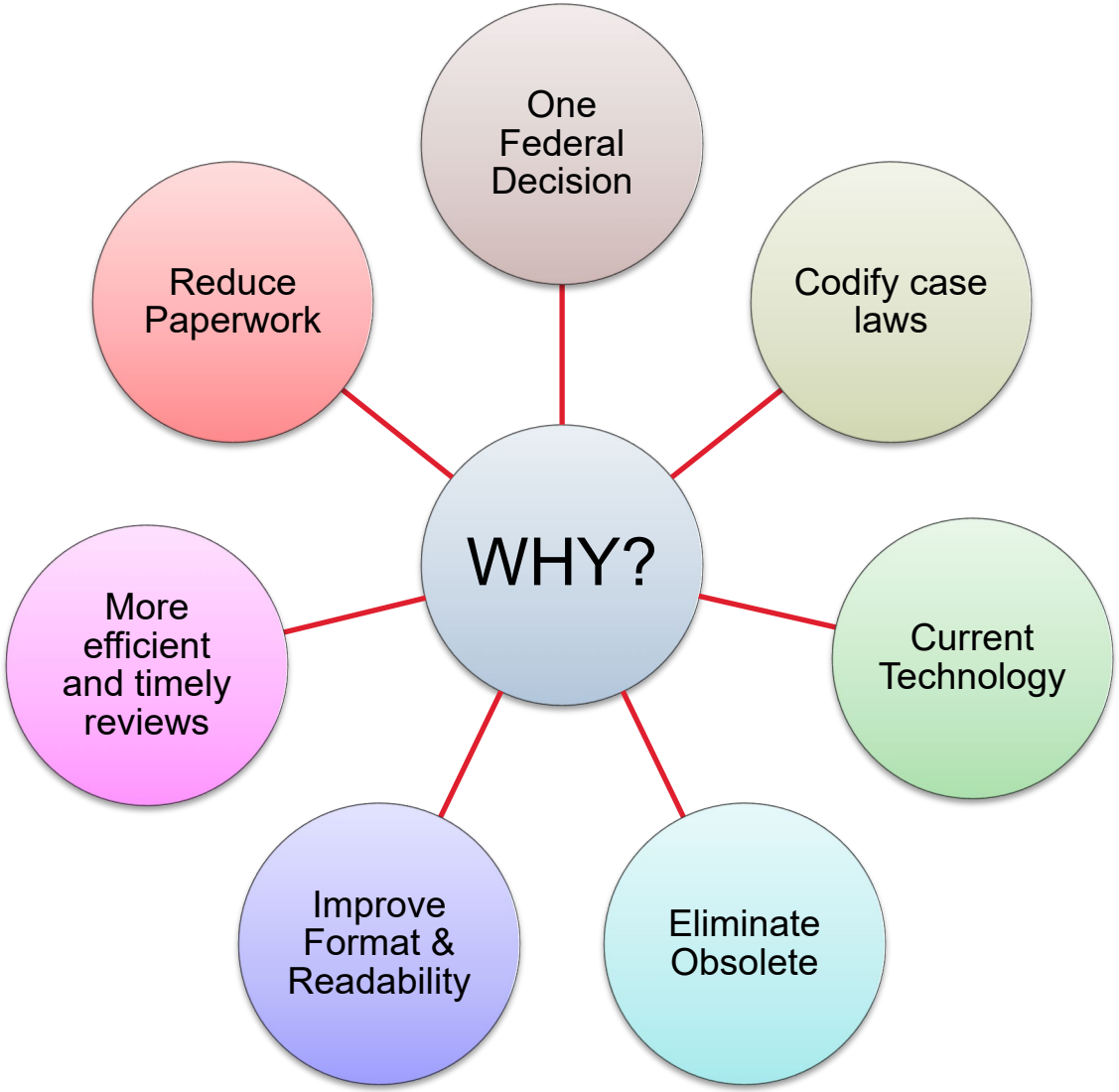
NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) MODERNIZATION

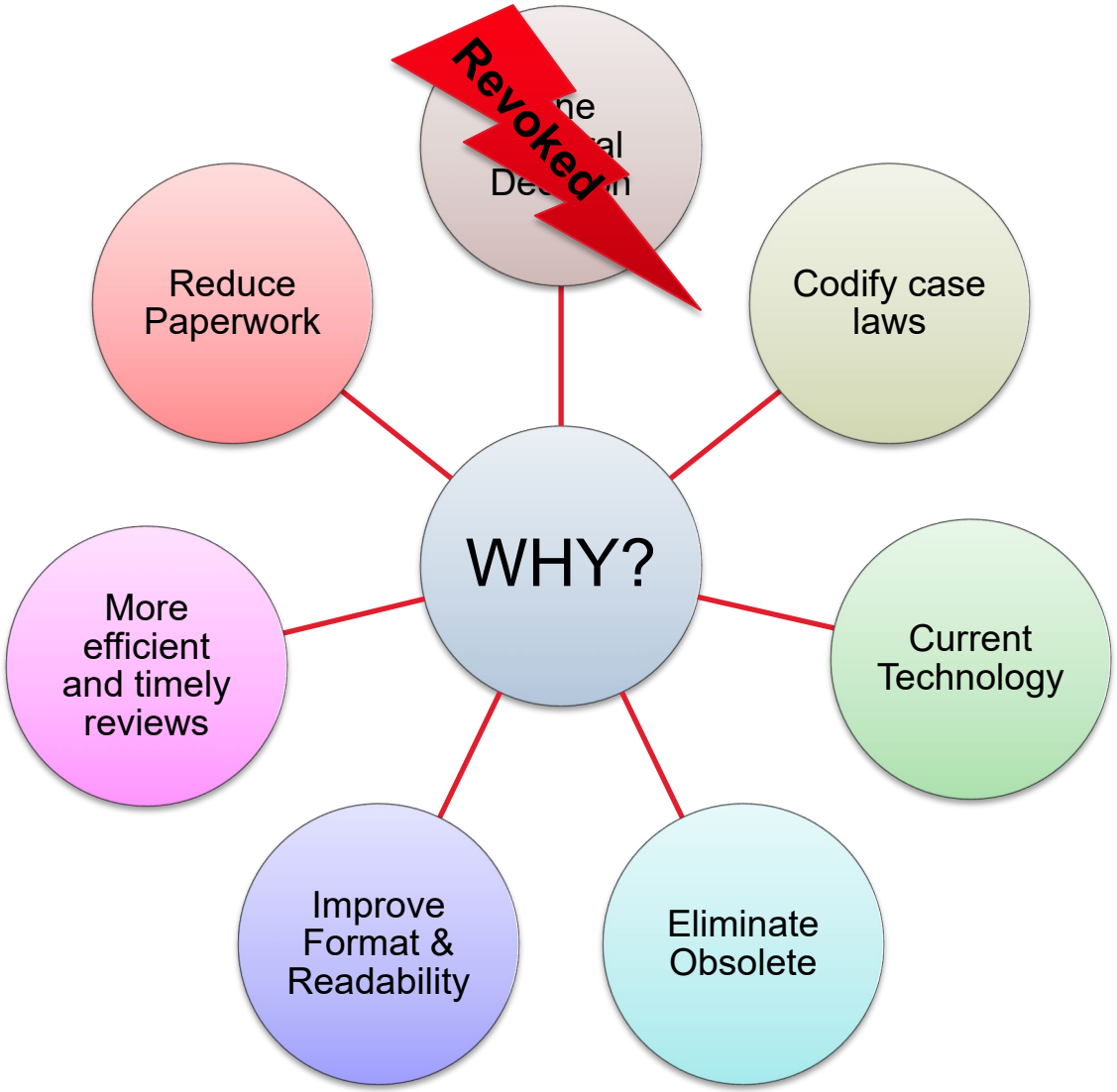


NEPA MODERNIZATION CONT.



Redline Final Revisions: https://ceq.doe.gov/docs/laws-regulations/ceq-final-rule-redline-changes-2020-07-16.pdf

NEPA MODERNIZATION CONT.



Redline Final Revisions: https://ceq.doe.gov/docs/laws-regulations/ceq-final-rule-redline-changes-2020-07-16.pdf

OTHER NEPA BREAKING NEWS

Executive Order 13990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis* (January 20, 2021)

- Rescinded many previous EOs issued between Jan 2017-Jan 2021
- Revived many EOs issued under the Obama Administration

Executive Order 14008, *Tackling the Climate Crisis at Home & Abroad,* § 222

- Requires an upgrade to EJScreen geospatial tool within 6 months (EPA Lead)

Big Changes:

- OFD revoked (but not dead, it may come back to life in another form by CEQ & OMB)
- Greenhouse Gas (GHG) calculations came back

What Stays the Same:

- CEQ NEPA Regulations, including timelines and page limits
- Participating and Cooperating agency activities (Section 1005 of WRDA 2007)

What's Next?

- Draft USACE NEPA Regulations by June 2021
- Potential for more CEQ guidance issued once Director confirmed

WHAT LEVEL OF EXPERIENCE DO YOU HAVE WITH NEPA MODERNIZATION & PUBLIC INVOLVEMENT

Little or none

Moderate

Extensive

WHY IS PUBLIC INVOLVEMENT IMPORTANT TO THE NEPA PROCESS?

Use your annotate tool

WHY IS PUBLIC INVOLVEMENT IMPORTANT TO THE NEPA PROCESS?

PUBLIC INVOLVEMENT & THE NEW RULES

Addressed throughout the new regulations

Exhaustion
(*Addition*)
40 C.F.R. § 1500.3(b)

Scoping
(*Revised*)
40 C.F.R. § 1501.9

Recommended format
(*Revised)*
40 C.F.R. § 1502.10

Summary of submitted alternatives, information, and analyses
(*Addition*)
40 C.F.R. § 1502.17

Commenting on Environmental Impact Statements
(LOTS OF CHANGES)
40 C.F.R. Part 1503

Public Involvement
(*Revised*)
40 C.F.R. § 1506.6

EXHAUSTION

40 C.F.R. § 1500.3(b)

NEW REQUIREMENT: comments or objections "of any kind" that are not submitted during the appropriate comment period will be forfeited as unexhausted

(b) *Exhaustion*. (1) To ensure informed decision making and reduce delays, agencies shall include a request for comments on potential alternatives and impacts, and identification of any relevant information, studies, or analyses of any kind concerning impacts affecting the quality of the human environment in the notice of intent to prepare an environmental impact statement (§ 1501.9(d)(7) of this chapter).

(2) The draft and final environmental impact statements shall include a summary of all alternatives, information, and analyses submitted by State, Tribal, and local governments and other public commenters for consideration by the lead and cooperating agencies in developing the draft and final environmental impact statements (§ 1502.17 of this chapter).

(3) For consideration by the lead and cooperating agencies, State, Tribal, and local governments and other public commenters must submit comments within the comment periods provided, and comments shall be as specific as possible (§§ 1503.1 and 1503.3 of this chapter). Comments or objections of any kind not submitted, including those based on submitted alternatives, information, and analyses, shall be forfeited as unexhausted.

(4) Informed by the submitted alternatives, information, and analyses, including the summary in the final environmental impact statement (§ 1502.17 of this chapter) and the agency's response to comments in the final environmental impact statement (§ 1503.4 of this chapter), together with any other material in the record that he or she determines relevant, the decision maker shall certify in the record of decision that the agency considered all of the alternatives, information, and analyses, and objections submitted by States, Tribal, and local governments and other public commenters for consideration by the lead and cooperating agencies in developing the environmental impact statement (§ 1505.2(b) of this chapter).

SCOPING

(40 C.F.R. § 1501.9 formerly 1501.7)

- EARLY scoping may begin as soon as practicable and prior to publication of the Notice of Intent
- Scoping Outreach:
  - Meetings, publish scoping information OR **USE OTHER MEANS TO COMMUNICATE**
  - Can integrate with any other early planning meeting

§ 1501.9~~7~~ Scoping.

(a) *Generally*. Agencies~~There~~ shall use~~be~~ an early and open process to~~for~~ determine~~ing~~ the scope of issues for analysis in an environmental impact statement, including~~to be addressed and for~~ identifying the significant issues and eliminating from further study non-significant issues~~related to a proposed action. This process shall be termed scoping~~. Scoping may begin ~~A~~as soon as practicable after the proposal for action is sufficiently developed for agency consideration. Scoping may include appropriate pre-application procedures or work conducted prior to publication of the notice of intent~~its decision to prepare an environmental impact statement and before the scoping process the lead agency shall publish a notice of intent (§ 1508.22) in the FEDERAL REGISTER except as provided in § 1507.3(e)~~.

(~~a~~b) *Invite cooperating and participating agencies*. As part of the scoping process, the lead agency shall~~:~~

~~(1)~~ ~~I~~invite the participation of likely affected Federal, State, Tribal, and local agencies and governments, ~~any affected Indian tribe,~~ the proponent of the action, and other likely affected or interested persons (including those who might not be in accord with the action~~on environmental grounds~~), unless there is a limited exception under § 1507.3(~~fe~~)(1) of this chapter.~~ An agency may give notice in accordance with § 1506.6.~~

(c~~4~~) *Scoping outreach*. As part of the scoping process the lead agency may h~~H~~old ~~an early~~ scoping meeting or meetings, publish scoping information, or use other means to communicate with those persons or agencies who may be interested or affected, which the agency may ~~be~~ integrate~~d~~ with any other early planning meeting~~the agency has~~. Such a scoping meeting will often be appropriate when the impacts of a particular action are confined to specific sites.

(d) *Notice of intent*. As soon as practicable after determining that a proposal is sufficiently developed to allow for meaningful public comment and requires an environmental impact statement, the lead agency shall publish a notice of intent to prepare an environmental impact statement in the *Federal Register*, except as provided in § 1507.3(f)(3) of this chapter. An

RECOMMENDED FORMAT

(40 C.F.R. § 1502.10)

FOR A STANDALONE EIS

FOR INTEGRATED PLANNING REPORTS SEE EXHIBIT G-1 IN APPX G OF THE PGN (CURRENTLY BEING UPDATED)

EIS should use the following format:

1. Cover (§ 1502.11) → *NEW requirement:* include COST of EIS
2. Summary (§ 1502.12)
3. Table of contents
4. Purpose of and need for action (§ 1502.13)*
5. Alternatives including the proposed action (§ 1502.14)*
6. Affected environment and environmental consequences (§ 1502.15-16)*
7. Submitted alternatives, information, and analyses (§ 1502.17)
8. List of preparers (§ 1502.18)
9. Appendices (§ 1502.19)

* Part of the EIS 150-page limit

§ 1502.10 Recommended format.

(a) Agencies shall use a format for environmental impact statements that~~which~~ will encourage good analysis and clear presentation of the alternatives including the proposed action. Agencies should use ~~T~~the following standard format for environmental impact statements ~~should be followed~~ unless the agency determines that there is a more effective format for communication~~compelling reason to do otherwise~~:

SUMMARY OF SUBMITTED ALTERNATIVES, INFORMATION, AND ANALYSES

(C.F.R. § 1502.17)

Must include a summary of ALL alternatives, information, and analyses submitted by the public

§ 1502.17 Summary of submitted alternatives, information, and analyses.

(a) The draft environmental impact statement shall include a summary that identifies all alternatives, information, and analyses submitted by State, Tribal, and local governments and other public commenters during the scoping process for consideration by the lead and cooperating agencies in developing the environmental impact statement.

(1) The agency shall append to the draft environmental impact statement or otherwise publish all comments (or summaries thereof where the response has been exceptionally voluminous) received during the scoping process that identified alternatives, information, and analyses for the agency's consideration.

(2) Consistent with § 1503.1(a)(3) of this chapter, the lead agency shall invite comment on the summary identifying all submitted alternatives, information, and analyses in the draft environmental impact statement.

(b) The final environmental impact statement shall include a summary that identifies all alternatives, information, and analyses submitted by State, Tribal, and local governments and other public commenters for consideration by the lead and cooperating agencies in developing the final environmental impact statement.

COMMENTING ON ENVIRONMENTAL IMPACT STATEMENTS (PART 1503)

MAJOR CHANGE: comments **<u>MUST be submitted by a specific deadline</u>** or be considered "unexhausted and forfeited" (§1503.3b)

MAJOR CHANGE: Provides **<u>specific instructions</u>** on what information comments should contain (§1503.3a)

Electronic written comments submitted regardless of virtual platform accepted

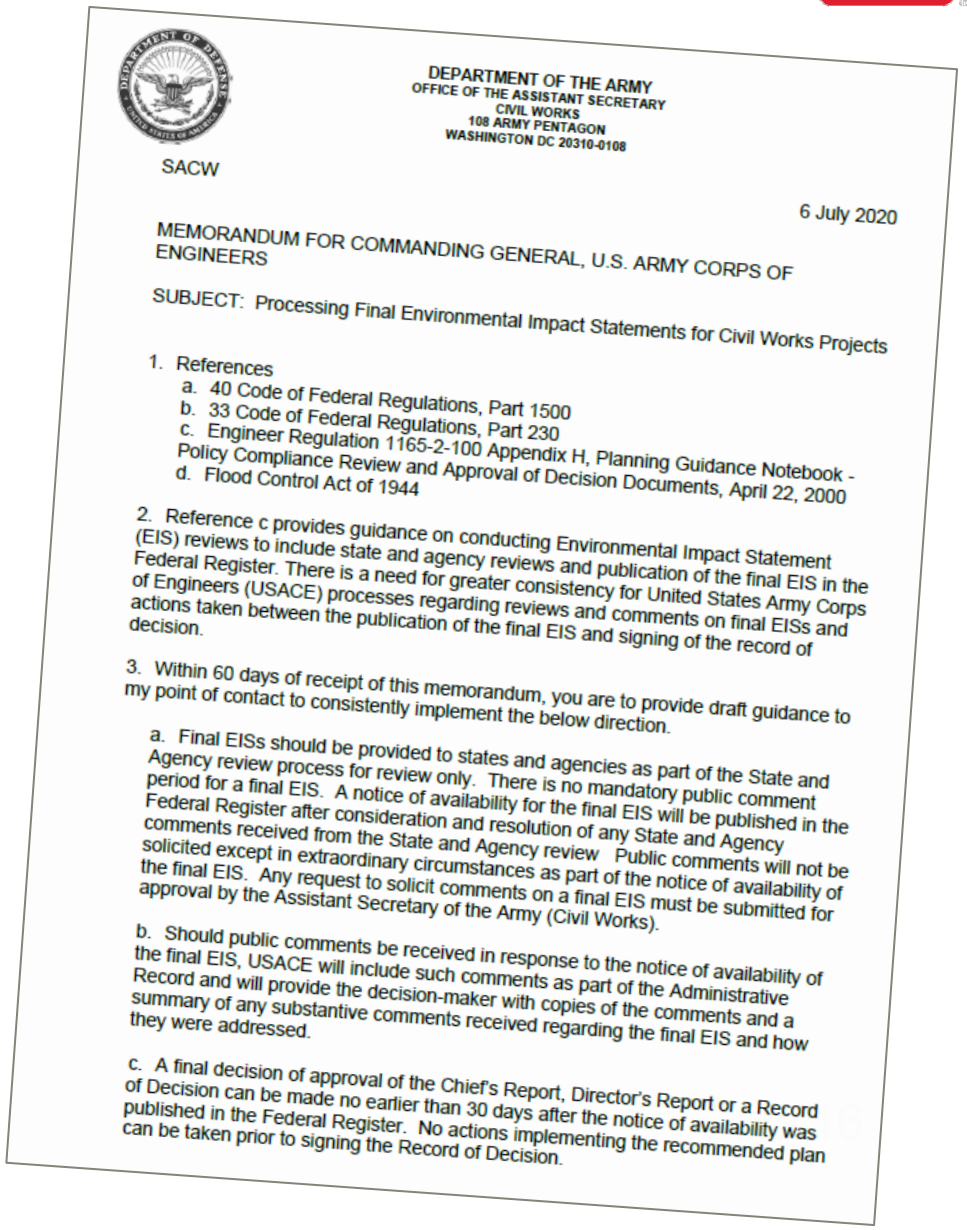
Verbal Comments – no change from existing practices (need to be written down)

Hand-written Comments – no change

ADDITIONAL GUIDANCE: PUBLIC COMMENTS AND FINAL EIS

Assistant Secretary of the Army (Civil Works) Memo 6 July 2020: *Processing Final Environmental Impact Statements for Civil Works Projects*

- **NO MANDATORY public comment period for Final EIS**
- Any request to solicit comments on a Final EIS must be submitted for approval by the ASA(CW)
- Should public comments be received in response to the NOA of the final EIS, document in Administrative Record and provide copies to decision-makers



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON DC 20310-0108

SACW

6 July 2020

MEMORANDUM FOR COMMANDING GENERAL, U.S. ARMY CORPS OF ENGINEERS

SUBJECT: Processing Final Environmental Impact Statements for Civil Works Projects

1. References
   a. 40 Code of Federal Regulations, Part 1500
   b. 33 Code of Federal Regulations, Part 230
   c. Engineer Regulation 1165-2-100 Appendix H, Planning Guidance Notebook - Policy Compliance Review and Approval of Decision Documents, April 22, 2000
   d. Flood Control Act of 1944

2. Reference c provides guidance on conducting Environmental Impact Statement (EIS) reviews to include state and agency reviews and publication of the final EIS in the Federal Register. There is a need for greater consistency for United States Army Corps of Engineers (USACE) processes regarding reviews and comments on final EISs and actions taken between the publication of the final EIS and signing of the record of decision.

3. Within 60 days of receipt of this memorandum, you are to provide draft guidance to my point of contact to consistently implement the below direction.

   a. Final EISs should be provided to states and agencies as part of the State and Agency review process for review only. There is no mandatory public comment period for a final EIS. A notice of availability for the final EIS will be published in the Federal Register after consideration and resolution of any State and Agency comments received from the State and Agency review Public comments will not be solicited except in extraordinary circumstances as part of the notice of availability of the final EIS. Any request to solicit comments on a final EIS must be submitted for approval by the Assistant Secretary of the Army (Civil Works).

   b. Should public comments be received in response to the notice of availability of the final EIS, USACE will include such comments as part of the Administrative Record and will provide the decision-maker with copies of the comments and a summary of any substantive comments received regarding the final EIS and how they were addressed.

   c. A final decision of approval of the Chief's Report, Director's Report or a Record of Decision can be made no earlier than 30 days after the notice of availability was published in the Federal Register. No actions implementing the recommended plan can be taken prior to signing the Record of Decision.

NEPA MODERNIZATION & THE PUBLIC: THE PROS

Use the annotate tool

NEPA MODERNIZATION & THE PUBLIC: THE PROS

- New format (page restrictions and word limits per page) improves readability online
- Provides greater flexibility in how to transmit information to the public in lieu of a public hearing
- Provides greater flexibility to use technology and electronic means to inform public/receive comments
- NEPA documents will be shorter and more readable – should make it easier for the public to comment upon
- Provides greater support of using existing data and resources – agencies not required to undertake new research

NEPA MODERNIZATION & THE PUBLIC: THE CONS

Use the annotate tool

NEPA MODERNIZATION & THE PUBLIC: THE CONS

- Specific instructions on what information comments should contain could intimidate the general public
- Mandatory timelines for completions of EAs and EISs accelerate the NEPA process, and may result in agencies not extending comment deadlines for the public
- Need to identify affected entities EARLY to ensure electronic media are accessible
- Main body of the EA/EIS may be shorter but use of appendices and incorporation of reference may be daunting for a commenter to review everything during the public review period

COMMUNICATION PLAN….
IT WILL HELP YOU WITH PUBLIC INVOLVEMENT!

US Army Corps of Engineers - Communication Approach

Communication Plan Template

1. Identify Communication Requirements (Defining the Issue)
2. Analyze the Current Situation
   A. Research current communication environment, as applicable.
   B. Conduct a SWOT Analysis.
      1) Background:
      2) Strengths:
      3) Weaknesses:
      4) Opportunities:
      5) Threats:
      6) Desired Behavior/Mindset Change Desired based on SWOT:
3. Identify program/project/issue stakeholders and target audiences. Use separate Stakeholder Engagement Level Worksheet (Appendix A)

USACE-level Stakeholders				
National	Administration	Congress	Fed Agencies	Internal/Army
HQUSACE	ASA(CW), OMB		FEMA, DOE, DOT, HHS	

Division (Regional)/District Stakeholders				
State Gov't	State Orgs	Local Gov't	Local Population	Interest Groups

4. Determine the Communication goals and objectives. (What's the desired end result and when do you want it happen by?)
   A. Goal: To communicate to:
      1) Objective:
         a. Metric:
      2) Objective:
         a. Metric:
   B. Goal: To communicate to:
      1) Objective:
         a. Metric:

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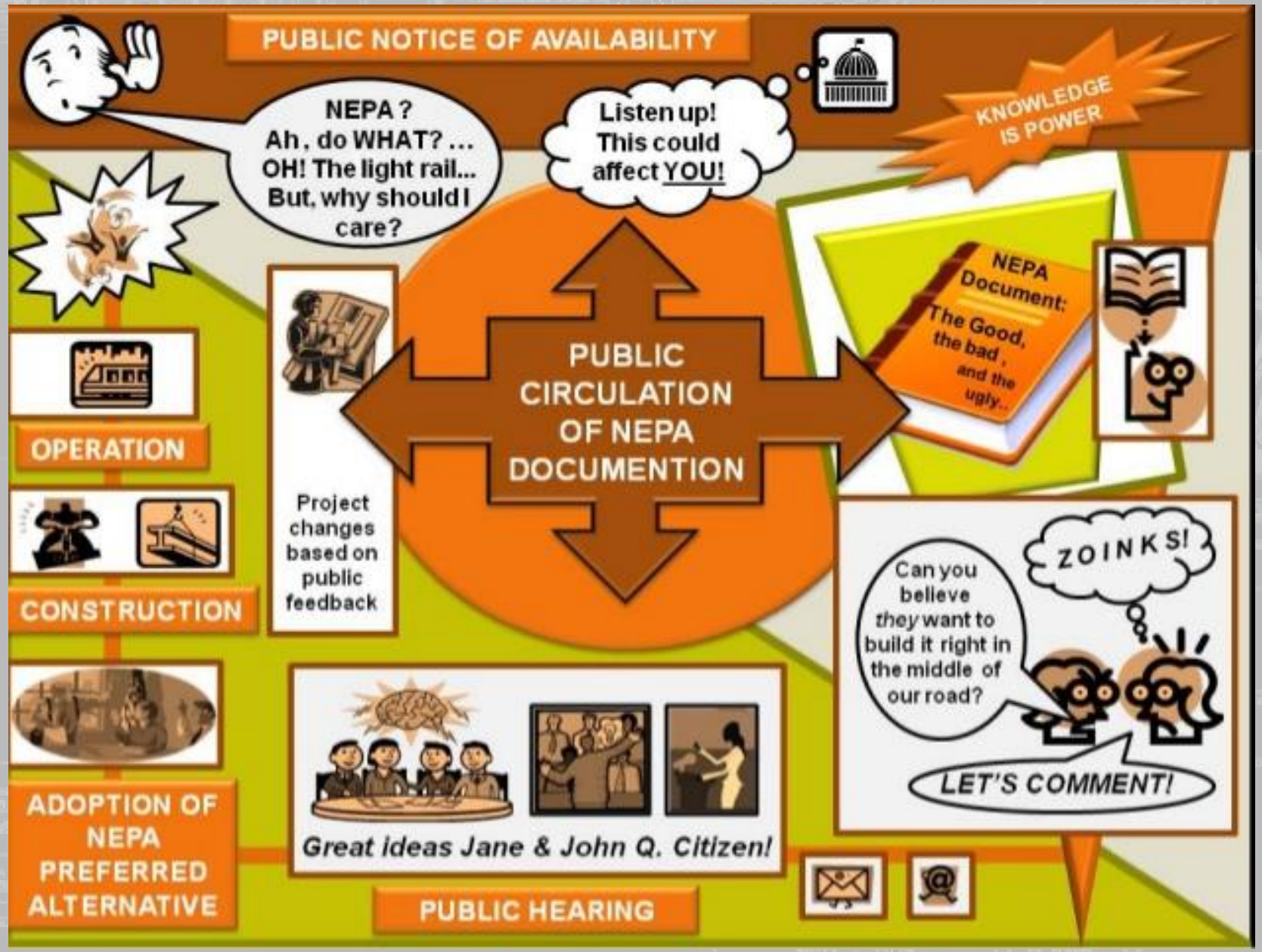
- Public involvement do it early and often
- Scale it based on complexity
- Consider use of a Communication Plan to help identify and engage the public and interested parties
  - ➢ There's a template!
- Need help with facilitation, planning or how to engage the public?
  - ➢ Ask a District's PAO and Public Involvement Specialist
  - ➢ Ask the Collaboration and Public Participation Center of Expertise (CPCX)

https://www.iwr.usace.army.mil/About/Technical-Centers/CPCX-Collaboration-Public-Participation/

QUESTIONS?

NEWNEPA@USACE.ARMY.MIL



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