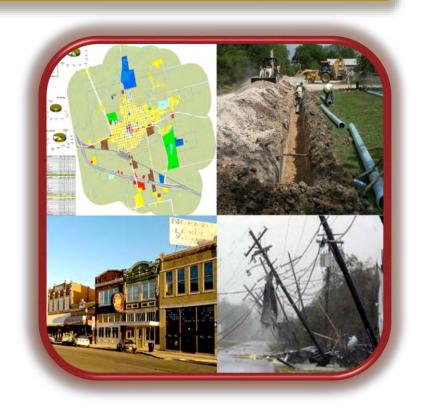
Office of Rural Affairs

TxCDBG Environmental Training Workshop 2019

PRESENTERS:

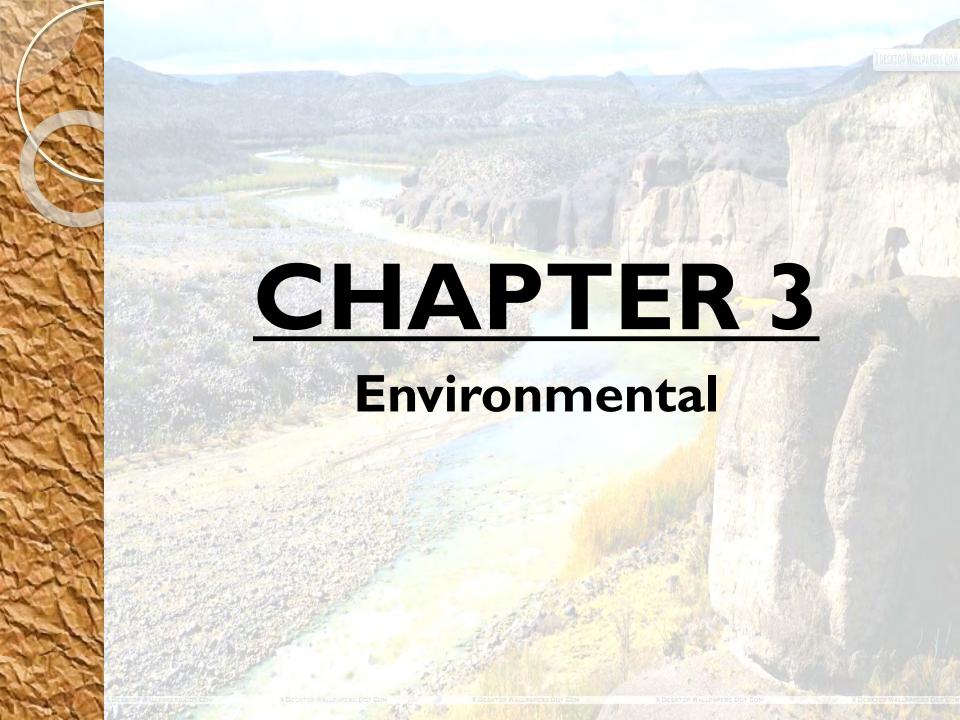
PAM WOZNIAK, LUCI COOK-HILDRETH, TANYA SOMMER, DAVID STORMS, BILL MARTIN, CAITLIN BRASHEAR, KARI BETH SMITH

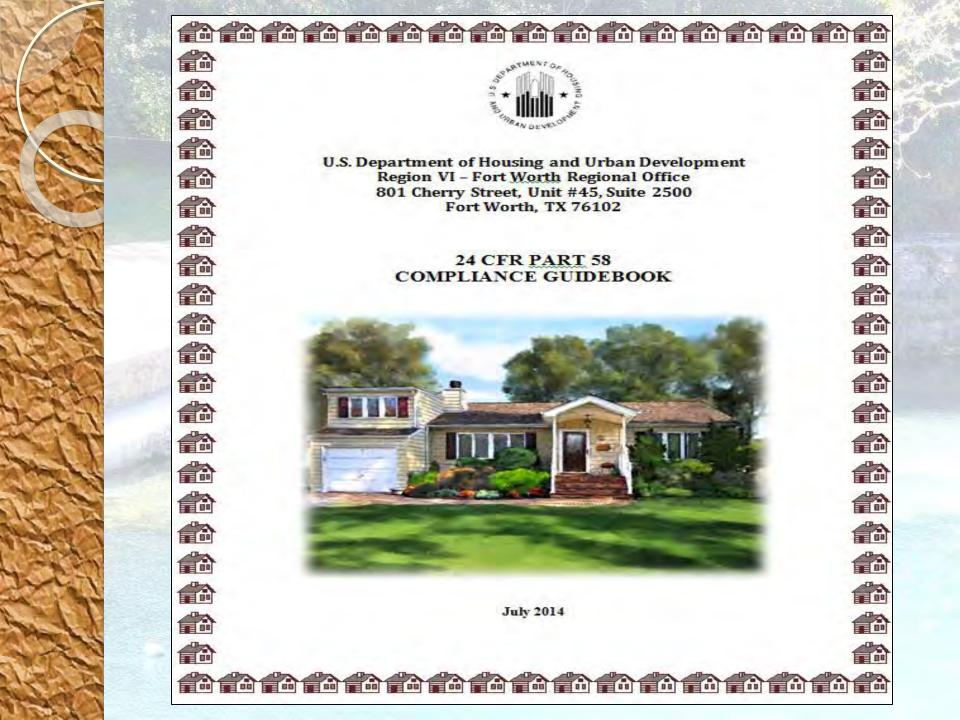




Introductions

- Pam Wozniak, TDA Environmental Specialist
- Luci Cook-Hildreth, TDA Asst. Environmental Specialist
- Tanya Sommer, Branch Chief USFW
- David Storms, HUD Regional Environmental Officer
- Bill Martin, Team Lead Review & Compliance THC
- Caitlin Brashear, Historian, THC
- Kari Beth Smith, Environmental Specialist







The Region VI Guidebook

Please use this to include the Worksheets in the guidebook. There is helpful information and even information that may help you eliminate unnecessary work.

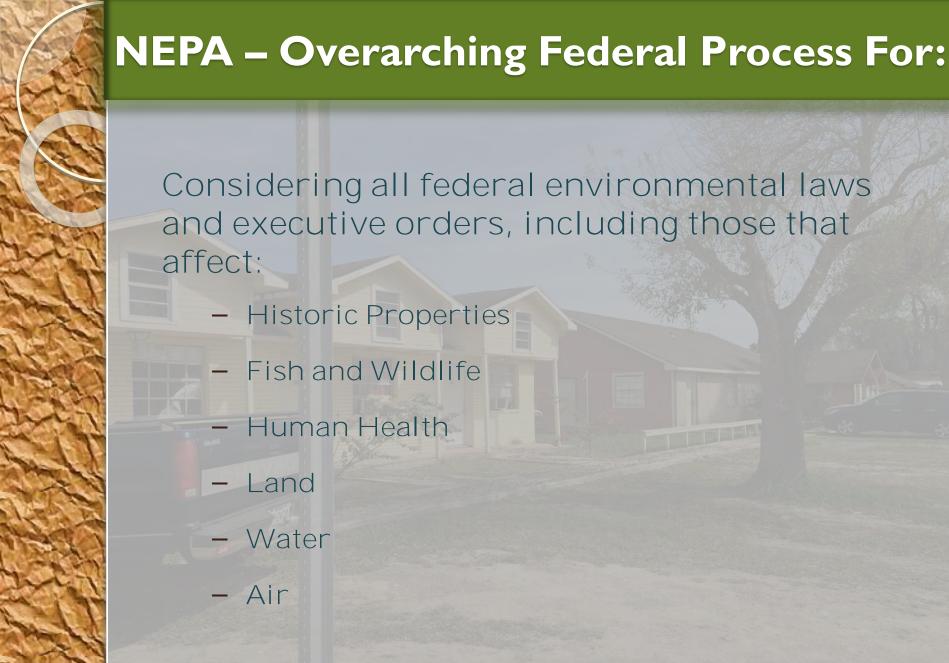
For example: Central Data File – for source documentation

- A central data file is useful for managing statutory and environmental issues that are common to many projects and programs. Source documentation is the documentation and reference material that supports determinations made for the statutory authorities (§58.5) and other requirements (§58.6).
- Locating source documentation in a central file allows the responsible entity to:
 - Collect in one place material that is common to a wide-range of activities or recurs among more than one activity; and,
 - Easily update information on an annual, periodic or as-needed basis.



National Environmental Policy Act of 1969 (NEPA)

- National Charter for environmental protection
- Establish Council on Environmental Quality
 (CEQ)
- Requires all Federal agencies to adopt a systematic interdisciplinary approach to decision-making to ensure environmental values are considered





Value of Environmental Review

- Required by Law
- Secures the value of public investment
- Results in higher quality projects
- Avoids or mitigates environmental impacts that harm:
 - Our beneficiaries
 - Our projects
 - The surrounding environment
 - Helps avoid litigation that could stop project
 - Grant Recipients avoid monitoring findings and sanctions



24 CFR Part 58 Overview

Applies to States, Counties, Cities, Tribes

- Environmental Review Procedures for Entities
 Assuming HUD Environmental Responsibilities.
- Responsible Entities (REs) assume HUD's NEPA
 responsibility for
 - Environmental review
 - Environmental decision-making
 - Environmental action that would apply to HUD under NEPA and related laws

Overview

- Review changes to the Program Implementation Manual and as directed by HUD.
- Process of reviewing a project and its potential on the Human Environment (i.e. everything)
- CDBG projects are required to undergo an environmental review (ER)
- Analysis includes:
 - ✓ How the project affects the environment
 - ✓ How the environment can affect the project, site and end users
- ER must be performed before funds are obligated
- Documentation of the ER must be maintained in the environmental review record (ERR) at the Locality
- ERR must be available for public review



Timing of the Review

Environmental Review <u>must</u> be performed before committing or spending funds on any HUD funded activity to include:

- Acquisition
- Rehabilitation
- Construction
- Contracting or committing to any of these actions
- TDA uses the date of the resolution as the earliest date it is known that HUD funds will be used. 24CFR58.30(b): The environmental review process should begin as soon as a recipient determines the projected use of HUD assistance.



Environmental Review - 9 Step Process

- Step 1 Project Description
- Step 2 Determine Level of Review
- Step 3 Complete Checklists and worksheets
- Step 4 Publish Notice of Intent to Request Release of Funds, and FONSI if applicable (Local Comment period)
- Step 5 Prepare RROF and Certifications
- Step 6 Submit Clearance to TDA
- Step 7 State Objection Period (15 days)
- Step 8 State's Post-Release Review
- Step 9 Re-Evaluation of the Environmental Determination



Step I Project Description

Project Description must be detailed and:

- Be complete and clear:
 - What is there
 - What will be there
 - How will this happen
- Capture maximum possible scope;
- Provide location specific information (Actual Streets, not what might be there in the future);
- Geographical boundaries (Not the entire county/ city);
- Existing conditions of the site;
- The Environmental Project Description will be more detailed than the Performance Statement.
- Include at the end of the project description, "to include Administrative and Engineering Services."



Step 2 Determine Level of Review

- Determine the most appropriate level of review Use Checklist and HUD website for guidance
- All forms should be completed and signed
 - Complete Project Description and Location (Joe Public)
- Who can sign forms: The Chief Elected Official of the Responsible Entity. Who can represent in court? (Note the publication)
- Samples provided by TDA/HUD are usually Word based.

Complete Checklists

Admin and Eng. Exemption Included in project description.

Exempt and Categorically Excluded Not Subject to §58.5:

- Compliance Checklist for 24 CFR §58.6, Other Requirements
- Exemption Determination under 24CFR58.34
- Categorical Exclusion Determination under §58.35(b)

Categorically Excluded, Subject to §58.5:

- Compliance Checklist for 24 CFR §58.6
- Categorical Exclusion Determination under §58.35(a)
- Statutory Checklist for compliance with 24CFR58.5 and related Worksheet
- Request for Release of funds HUD 7015.15

Environmental Assessment:

- Compliance Checklist for 24 CFR §58.6, Other Requirements
- Statutory Checklist
- Assessment Checklist
- All related Worksheets
- Request for Release of Funds HUD 7015.15

Complete Checklists (cont.)

Historical Preservation

- Must have concurrence from the State Historic Preservation Office (SHPO)
- TDA Programmatic Agreement with Texas Historical Commission (THC)
- Request for Exemption from SHPO Review Project Determination Form (Form A301)

<u>Categorical Exclusion Converted to Exemption</u> §58.34(a)(12)

• Under rare circumstances a Category Excluded project fails under Exempt status under §58.34(a)(12) and that none of the statutory requirements under §58.5 apply. Grant Recipient will determine if the project can be converted to Exempt under §58.34(a)(12).

Tiered Review

- Projects with multiple, non-contiguous locations (ex. housing rehab)
- Complete a <u>Broad-Level Tiered Environmental Review</u> using format provided on HUD website
- Document compliance for each specific site
- Site specific review must be completed prior to obligating funds for each site
- Publication must explain the criteria and review process for the project.

Complete Checklists (cont.)

S 117 - 19 // 1174		The state of the s	Color State of the	· ISSYDOWNERS
Complete TxCDBG Impler	mentation	Manual (Select forms are ONLY available below)	Download	
Chapter	Form No.	Form Description		Availability
Table of Contents			Download	
Acronym List				View
Section A Community De	Download	View		
Chapter 1 Administration	Download	View		
1 Admin. and Reporting	A102	Administrative Activities Checklist	Download	
1 Admin. and Reporting	A103	Filing System	Download	
1 Admin. and Reporting	A104	Quarterly Progress Report	Download	Discontinued
1 Admin. and Reporting	A104 DR	Disaster Relief Quarterly Report (1 Year)	Download	
Chapter 2 Financial Management				View
2 Financial Management	A201	Sample Signatory Resolution	Download	
2 Financial Management	A202	Depository-Authorized Signatories Designation	Download	
2 Financial Management	A203	Request for Payment	Download	View
2 Financial Management	A206	Balance Adjustment Notice	Download	
2 Financial Management	A207	Backup for Eligible Costs	Download	
2 Financial Management	A208	TxCDBG Match Calculator	Download	View
Chapter 3 Environmental Review			Download	View
3 Environmental Review	A301	Request for Exemption from SHPO Review	Download	View
3 Environmental Review	A302	Full Environmental Assessment (EA) Checklist	Download	
3 Environmental Review	A303	Exempt or Categorical Exclusion Not Subject to 58.5	Download	
3 Environmental Review	A304	Categorical Exclusion Subject to 58.5	Download	
3 Environmental Review	A305	Sample NOI / RROF	Download	
3 Environmental Review	A306	Sample Notice of FONSI	Download	View
3 Environmental Review	A307	Floodplain Early Notice and Explanation Sample	Download	
3 Environmental Review	A308	Sample Request for Release of Funds (RROF)	Download	
3 Environmental Review	A309	Summary of Levels of Environmental Review & Documentation Required in ERR		View
	1 4 100			1.0

http://www.texasagriculture.gov/GrantsServices/RuralEconomicDevelopment/RuralCommunityDevelopmentBlockGrant(CDBG)/Forms.aspx



EXEMPT PROJECTS UNDER 24 CFR §58.34(a):

- Exemption Determination §58.34
- Compliance Documentation Checklist under §58.6
- Letter from the Entity Stating intent to declare exemption.

CATEGORICAL EXCLUSION UNDER §58.35(b)

- Letter from the Grant Recipient supporting the Categorical Exclusion level of review
- Categorical Exclusion Determination §58.35(b)
- Compliance Documentation Checklist §58.6

CATEGORICAL EXCLUSION §58.35(a)

- Letter from Grant Recipient supporting the Categorical Exclusion level of review.
- Categorical Exclusion Determination §58.35(a)
- Publications for NOI/RROF Request for Release of Funds (Scanned and then mail an original) two sided One page.



FULL ENVIRONMENTAL ASSESSMENT (EA)

- Letter from Entity
- Request for Release of Funds scanned (One original to be mailed) two sided single document.
- Publication with affidavit, scanned full print page, scanned and then send tear sheet with the original RROF.

ADDITIONAL REQUIREMENTS FOR EACH LEVEL OF REVIEW

- EXEMPTION
 DETERMINATION
 UNDER 24CFR34(a)(10):
 The entity must review the
 project and ensure that it is
 not:
- located in a floodplain, a known critical habitat for endangered species, an historic property, or a known hazardous site (see HUD Memo 12-11-12).

Step 7 – State Objection Period and Release of Funds

TDA Receives scanned copy of RROF and other required documents.



TDA
Environmental
Officer begins
the 15-day State
Objection
Period.1



If no objections are received after 15 days, and originally signed RROF has been received by TDA, TDA will provide clearance letter, an Authorization to Use Grant Funds.

This is not an indication that TDA has reviewed and approved the entire Environmental Review record for the project.

CE / Exempt projects do not require an Objection Period BUT WILL receive a clearance.



State's Post-Release Review

Following the Authorization to Use Grant Funds, TDA will conduct a post-release monitoring review in accordance with 24 CFR 58.18. Review may occur at any time after the release of funds and prior to the closeout of the grant contract. TDA will request either:

- Complete Statutory Checklist and Assessment Checklist (if applicable) referencing verifiable supporting documentation; or
- Complete Environmental Review Record.

Significant violations of federal requirements may result in disallowed costs and/or requirement to pay grant funds in whole or part if funds have been obligated based on an RROF found to be invalid.



Environmental Review Process - Abbreviated

Administrative and Engineer Exemption is cleared with project description – "to include Administrative and Engineering fees and services.

Review of the project description: What is there now? What will be there in the future? How will this be accomplished?

Create a project description: What will be done and where SPECIFICALLY.

Determine the level of review: Exempt > CE(b) > CE(a) > EA

Prepare the Environmental Review Record (ERR): 58.38 ERR Documents. The ERR shall contain all the environmental review documents, public notices and written determinations or environmental findings required by this part as evidence of review, decision making and actions pertaining to a particular project of a recipient. The ERR shall also contain verifiable source documents

Sign and complete all necessary paperwork and forms. ALL FORMS MUST BE SIGNED BY THE CEO or person taking responsibility for representing the entity in court.

Submit required documentation to TDA for approval and clearance.



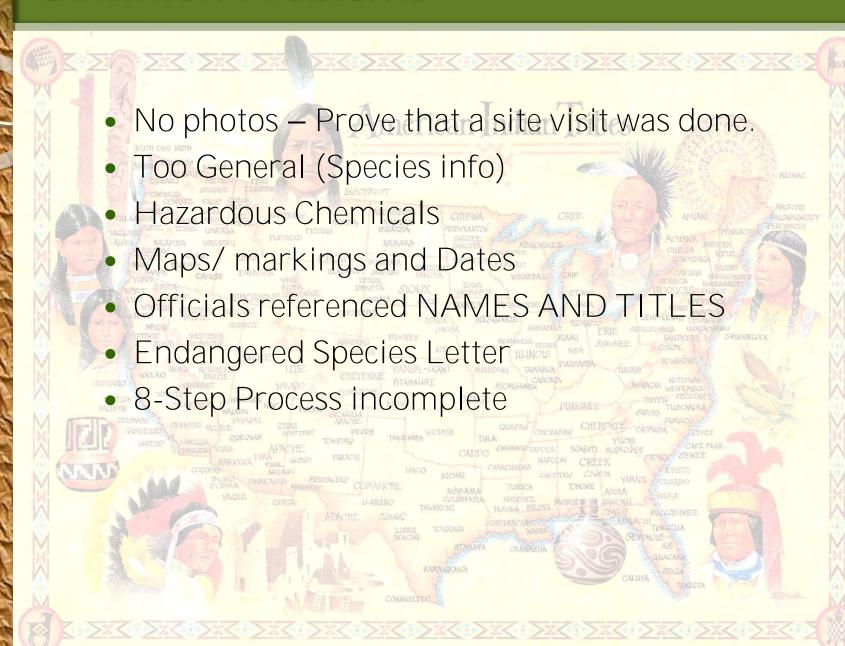
Major reasons for revisiting a review:

- Record mitigation measures
- Changes in project scope
- Adding another source of funding leads to change in the project?
- Change in conditions
- Use of another agency's work

Common Problems

- Signatures
- FONSI signed after publication/posting
- RROF signed before or the day of the end of the local comments period
- Wrong project description
- Admin & Engineering not cleared in project description and not included in publication/posting
- Source of funding not revealed includes match funds
- Historical review not completed
- Environmental Review Record missing verifiable documentation
- Assessment Checklist incomplete. Answer all questions!
- Floodplain 8-Step Process not completed

Common Problems





- This category has essentially been eliminated (Planning)
- HUD Memo from 2012 requires a review of Floodplain, Critical habitat, Hazardous Chemicals, change in footprint and Historical



What' New!

- Authorized signatories for Environmental docs
- Clarification on Floodplain vs. Floodway requirements (8-step process)
- New THC web location: (https://www.thc.texas.gov/etrac-system)
- New USFW web location:
- (https://ecos.fws.gov/ipac/)
- TDA SHPO denials (subsequent requests go to THC)
- Publish/Post in two locations for FONSI/RROF
- New section for Environmental on modification and amendment request forms

"You're Gonna Do What?!!!"



Tanya Sommer



Endangered Species

This module reviews the Endangered Species Act of 1973, and the agencies responsible for carrying it out; explains how to determine the types of effects a project may have on federally listed species or critical habitats; and illustrates the consultation process, including when and how to conduct formal and informal consultation.

Quiz and Feedback



David Storms (Choice Limiting Actions)



David Storms (Clean Air Act)



Caitlin Brashear (National Historic Preservation Act)



Bill Martin (THC Review)



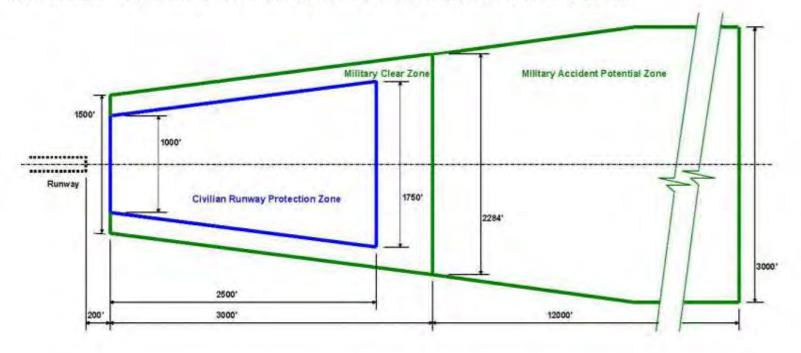
Historic Preservation

This module describes the regulations and processes, including Section 106, that promote the preservation of historic properties, including a detailed discussion of the steps within the Section 106 process. In addition, the module reviews how to identify historic properties, and how to make a determination as to impact and mitigation requirements for a project affecting an historic property.

Quiz and Feedback

Airports

Figure RPZ1—Significant Dimensions and Comparison of Civilian to Military Zones



Airport Type	Runway Protection Zone/Clear Zone Length	Runway Protection Zone/Clear Zone Inner Width	Runway Protection Zone/Clear Zone Outer Width		Accident Potential Zone Inner Width	Accident Potential Zone Outer Width
Civilian	2,500'	1,000'	1,750'	NA	NA	NA
Military	3000'	1,500'	2,284	12,000'	2,284'	3,000'



Environmental Justice

Executive Order 12898 (February, 1994)

- Environmental justice (EJ) is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies.
- Fair treatment means no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental and commercial operations or policies.
- Meaningful involvement means:
 - People have an opportunity to participate in decisions about activities that may affect their environment and/or health;
 - The public's contribution can influence the regulatory agency's decision;
 - Community concerns will be considered in the decision making process; and
 - Decision makers will seek out and facilitate the involvement of those potentially affected.



Site Contamination

- HUD's policy applies to CEST and EAs
- Can have effects on public health, financial implications and legal liabilities
- Evaluate with "due diligence" screening,
 Phase I and II ESAs
- Findings and recognized environmental conditions (RECs)
- HUD's due diligence requires assessment of non-scope items (asbestos, lead, radon)



Site Contamination

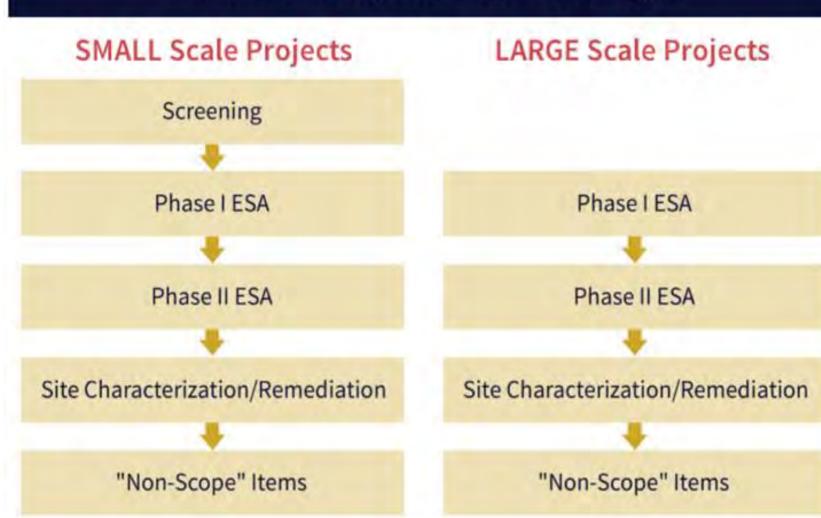
Pollution Sources, Exposure Methods, and Health Implications

Source	Exposure Method	Associated Pollutant	Potential Health Effects Leukemia, other cancers Central Nervous System (CNS) Effects, Cancer	
Petroleum Storage Tanks	Vapor Intrusion through floors	Benzene, Methyl Tertiary Butyl Ether (MTBE), Polycyclic Aromatic Hydrocarbons (PAHs) & other solvents		
Dry Cleaning	Vapor Intrusion, Ambient Air	Perchloroethylene, Tetracholorethylene		
Agricultural Industries	Onsite or buried pesticide containers	Various Pesticides & Herbicides	Range of effects including acute & chronic neurological effects, cancer, birth defects	
Industrial Production Facilities	Air emissions, buried containers, toxic releases, spills	Range of toxic chemicals depending on production process	Range of effects including cancer, birth defects, chronic effects, acute neurological	
Meth Labs	Chemical explosions. Inhaled, absorbed through skin, ingested	Acetone, Lithium, Toluene, Sulfuric Acid, Pseudoephedrine	Fire and explosion hazard, acute & chronic CNS effects, cardiac arrest, lung damage, renal failure, stroke death, developmental toxicity	



Site Contamination

What Are the Steps for Each Project Type?





- Initial Screening: consider two lines of inquiry
 - -Aboveground stationary storage tanks near the project? (Within one mile)
 - -Hazardous facilities included in the project? (What's there now?)



Explosive and Flammable Hazards

- Acceptable Separation Distance Guidebook
- Calculating ASD
 - -ASD Electronic Assessment Tool (on HUD Exchange website)
 - -Manual Calculations (Appendix B of ASD Guidebook)
 - Appendix C, Data Resources (ASD Guidebook)



Explosives, Flammable Facilities

- Flammables, Combustibles, Blast Overpressure
- Exclusions from Subpart C
 - -Underground storage tanks
 - -AGST less then 100gal
 - —Floating tops
 - -Pipelines and mobile conveyances
- Thermal radiation (people, buildings, explosion)



Farmland Protection

- Farmland Protection Policy Act (FPPA) in1981to curb urban sprawl from Federal programs
- Projects subject to FPPA if irreversibly converting farmland to nonagricultural use
- Many projects may be exempt from FPPA



Farmland Protection

- Initial screening: Project in undeveloped area?
- NRCS Web Soil
 Survey tool for
 Farmland
 Classification Report
- If NOT exempt consult with local NRCS district Conservationist (Farm Conversion Impact Rating)



FA	U.S. Departme	nt of Agriculture SION IMPACT R	ATING			
PART I (To be completed by Federal Agency)		Date Of Land Evaluation Request				
Name of Project	Federal Agency Involved					
Proposed Land Use		County and State county and state				
PART II (To be completed by NRCS)		Date Request Received By NRCS		Person Completing Form:		
Does the site contain Prime, Unique, Statew (If no, the FPPA does not apply - do not com		Acres Irrigated A		Average Farm Size		
Major Crop(s)	Farmable Land In Govt Acres: %	able Land In Govt. Jurisdiction s: %		Amount of Farmland As Defined in FPPA Acres: %		
Name of Land Evaluation System Used	Name of State or Local Site Assessment System		Date Land Evaluation Returned by NRCS			

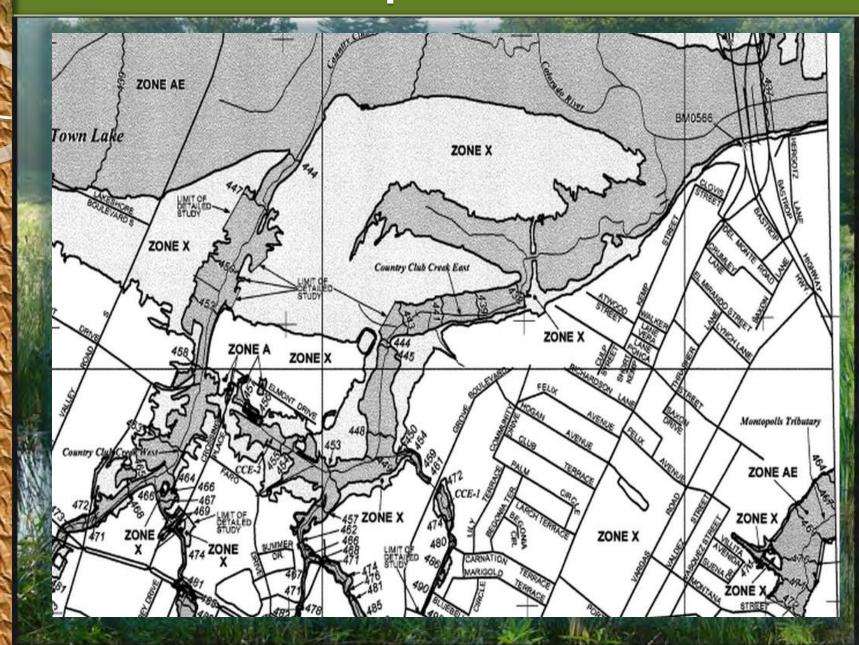
FLOODPLAIN VS. FLOODWAY What is the difference between a Floodway and a Floodplain on a map? Following are three examples:

48453 C0490 J eff. 8/18/2014

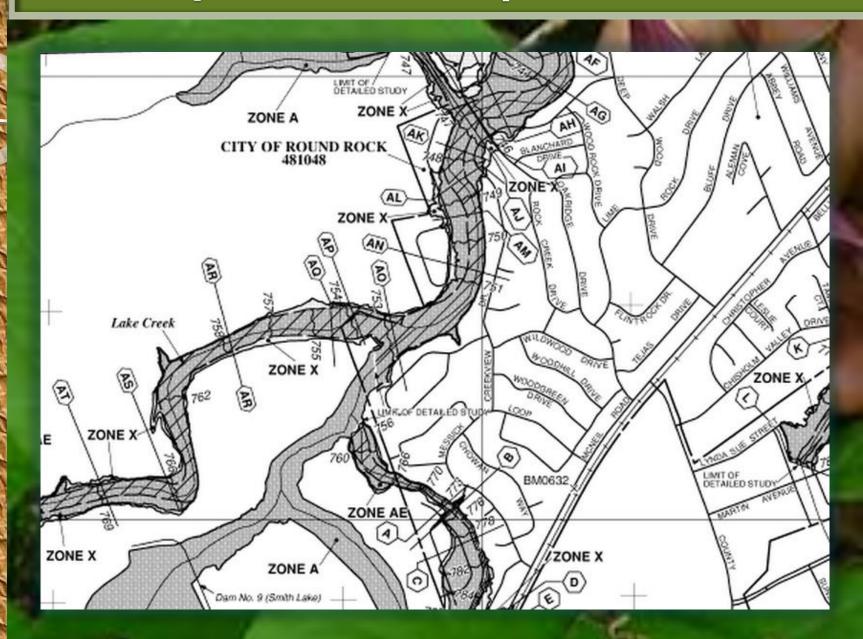
Floodplain Management 24 CFR §55



Standard Firm Map



Floodway on a FIRM Map



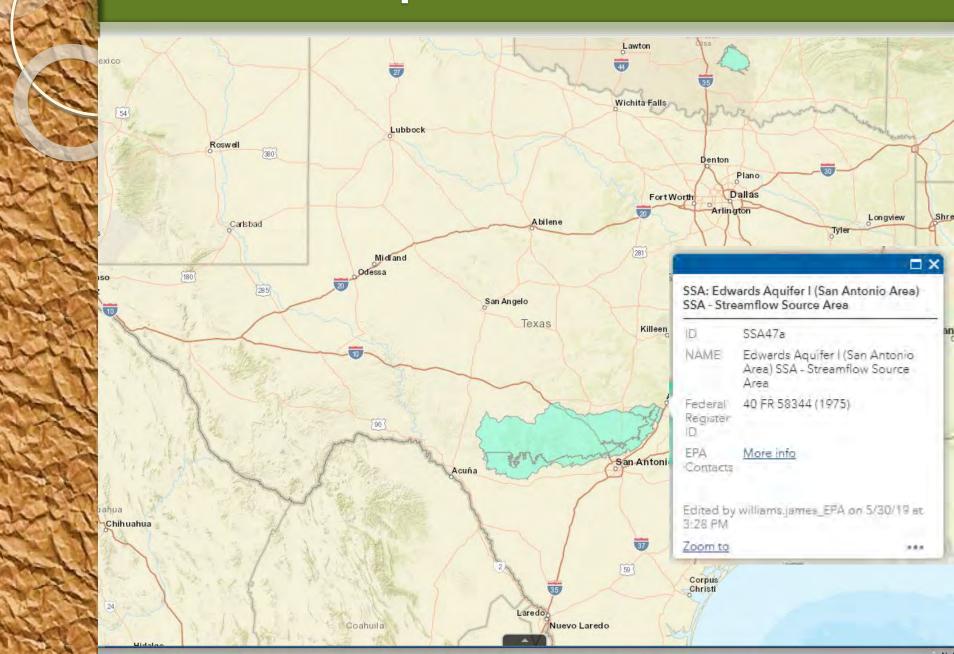
Common Problems Floodplain

- Not doing the 8 step process
- Not doing anything
- Outdated maps
- No maps
- Wrong locations
- Not looking after amendment
- Publishing notices at the same time
- 2nd Notice can be published at the same time as NOI/RROF/Combined Notice

Sole Source Aquifers

- Safe Drinking Water Act (EPA) SSA supplies at least 50% of drinking water
 w/ no reasonably available alternatives.
- Consult EPA regional SSA map (Texas has Edwards Aquifer as only SSA)
- Activities other then acquisition, leasing, or rehabilitation of existing buildings?
- NEW! MOU with EPA for Texas work with EPA on mitigation measures.

Sole Source Aquifers in Texas





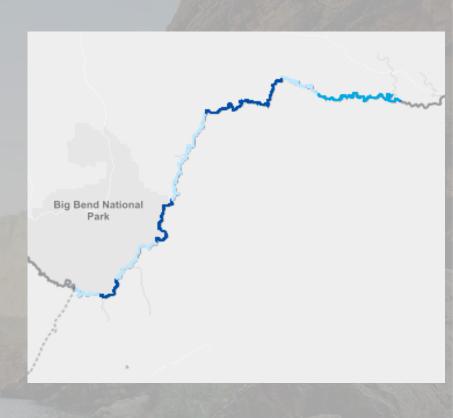
Wild and Scenic Rivers

- Wild and Scenic Rivers Act 1968 to protect "outstandingly remarkable river values".
- Prohibits Federal projects that would negatively impact river.
- Document project location to river.
- Consult with managing agency if project may effect river.



Wild and Scenic Rivers in Texas

- This 191-mile stretch of the United States side of the Rio Grande along the Mexican border begins in Big Bend National Park.
- The river cuts through isolated, rugged canyons and the Chihuahuan Desert as it flows through some of the most critical wildlife habitat in the country.





Coastal Barrier Resources

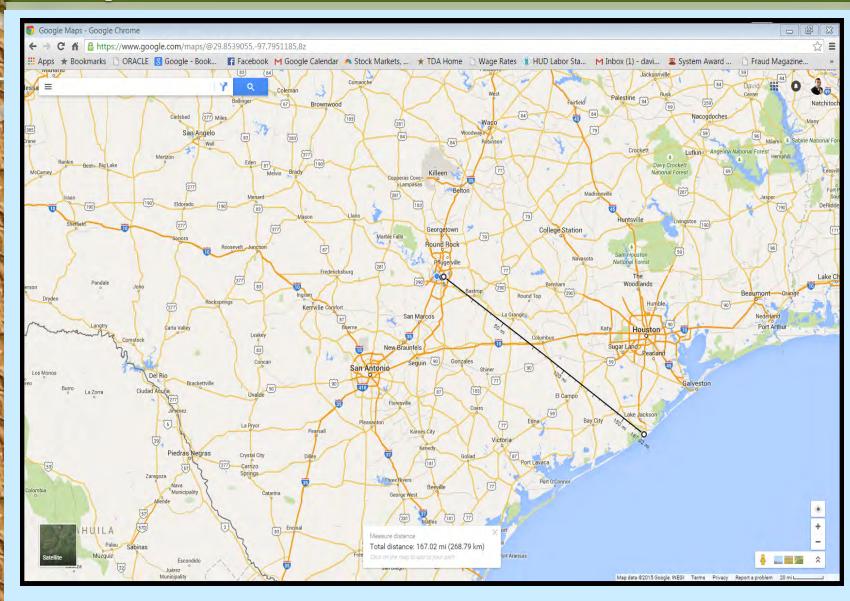
- Coastal Barrier Resources Act restricts Federal financial assistance w/in CBR System.
- Determine if project is in a CBRS unit (can request FWS map)
- If project is in a CBRS funding from HUD is precluded except in rare circumstances.



Coastal Zone Management

- Coastal Zone Management Act (CZMA) to preserve, protect, develop, and restore
- State Coastal Management Program has listed activities subject to State review
- If project is in a Coastal Zone a letter of consistency w/ CMP is needed from State agency.

Coastal Zone Management: Sample ERR Documentation



Steps in Completing Checklists



Air Quality



Coastal Zone Management



Explosive and Flammable Facilities



Floodplain Management



Site Contamination



Airport Hazards



Endangered Species



Farmlands Protection



Historic Preservation



Sole Source Aquifers



Coastal Barrier Resources



Environmental Justice



Flood Insurance



Noise Abatement and Control



Kari Beth Smith (NEPA Analysis)



That's all Folks!

Air Quality 58.5(g) & 50.4(h)

HUD Resources

- HUD Guidance:

 https://www.hudexchange.info/programs/envi-ronmental-review/air-quality
- Air Quality Worksheet:
 https://www.hudexchange.info/resources/d
 ocuments/Air-Quality-Worksheet.docx

Clean Air Act (CAA) of 1970— Criteria Pollutants

- CAA is a comprehensive Federal law that regulates air emissions
- It's provisions cover:
 - Ambient Air Quality for stationary and mobile sources
 - Air Toxics
 - Acid rain
 - Ground-level ozone
 - Stratospheric ozone depletion

Compliance with Ambient Air Standards

- Generally concerned only with projects that require an EA or EIS level of review
- Types of activities that would <u>not</u> likely contribute to non-attainment of the NAAQS
 - Single family housing projects 5 or fewer dwelling units
 - Housing Rehabilitation
 - Play ground improvements
- Focus on projects that either
 - Increase traffic, OR
 - Increase power generation

Compliance with Ambient Air Standards

- Federal projects must conform to Clean Air Act requirements if they may constitute a significant new source of air pollution.
- If your project does not involve new construction or conversion of land use, it can be assumed that its emissions are below de minimis levels and the project is in compliance with the Act.

National Ambient Air Quality Standards (NAAQS)

- Ambient the air we breathe
- EPA sets NAAQS limits on how much of a pollutant can be in the air anywhere in the United States 40 CFR Part 50
- States take on the responsibility of implementing the Act.

National Ambient Air Quality Standards (NAAQS)

- National ambient air quality standards set for criteria pollutants which include:
 - ground-level ozone (smog)
 - particulate matter
 - —carbon monoxide
 - —lead
 - —nitrogen dioxide
 - —sulfur dioxide

- Based on Averaged
 Concentrations Applied to the General
 Population within a
 Geographic Area
- Major sources: Industrial Plants and Automobile Traffic

STEP 1. Determine Whether the Project is Located in a NAAQS Non-Attainment or Maintenance Area

- For new construction projects or changes in land use.
- Currently Designated Nonattainment Areas for All Criteria Pollutants (EPA, March 2012) http://www.epa.gov/oaqps001/greenbk/
- If not in a non-attainment area, the project is in compliance with the Clean Air Act and compliance is complete.

STEP 2. If the Project is Located in a Non-Attainment Area

- Obtain a letter of consistency with the State Implementation Plan from the State oversight agency and include in the ERR; or,
- Permitting and compliance actions (e.g., air modeling) may be required in order to conform with the SIP

State Implementation Plans for Non-Attainment Areas

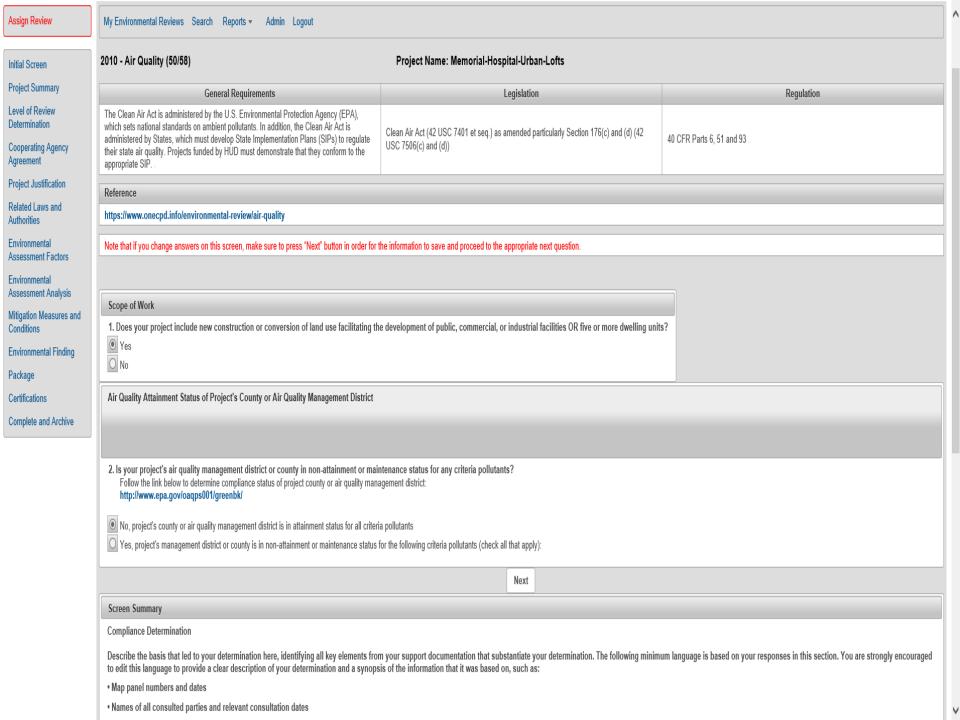
- NAAQS permitting program is generally delegated to states
 - Hold hearings on permit applications by power companies, chemical companies, etc.
 - Involve the public, through hearings and opportunities to comment
 - Fine companies for violating air pollution limits
- State Implementation Plans (SIP) a federally enforceable plan for each state which identifies who that state will attain and/or maintain the primary and secondary NAAQS as set forth in Section 109 of the CAA
 - States that have designated Non-Attainment areas must submit a SIP to EPA for approval
 - Explains how the State will comply with NAAQS

Projects Must Conform to State Implementation Plans

- Statutory Test for Conformance [CAA Sec. 7506(c)(1)(B)(i)-(iii)] -- The Project Will Not:
 - Contribute to any new violation of any standards in any area
 - —Increase the frequency or severity of any existing violation of any standard in any area; or
 - —Delay timely attainment of any standard or any required interim emission reductions or other milestones in any area"

STEP 3. Mitigate Impacts

- Mitigation is required to bring project into compliance if emissions exceed:
 - De minimus emissions levels for pollutants in Non-attainment
 - Maintenance levels necessary to avoid Non-attainment
 - State NAAQS screening levels
- If emissions cannot be mitigated, then, federal funds may not be used
- Conditions that are required for conformance must be included in Environmental Review as a Project Condition
- Must be noted in the Mitigation section of EA checklist

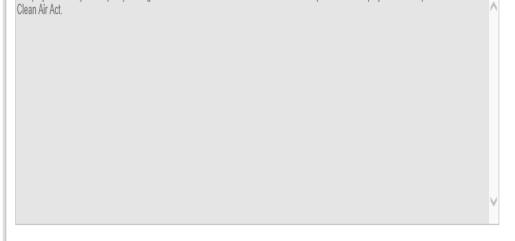


Screen Summary

Compliance Determination

Describe the basis that led to your determination here, identifying all key elements from your support documentation that substantiate your determination. The following minimum language is based on your responses in this section. You are strongly encouraged to edit this language to provide a clear description of your determination and a synopsis of the information that it was based on, such as:

- · Map panel numbers and dates
- · Names of all consulted parties and relevant consultation dates
- · Names of plans or reports and relevant page numbers
- · Any additional requirements specific to your region



The project's county or air quality management district is in attainment status for all criteria pollutants. The project is in compliance with the

Supporting documentation

Upload all supporting documents required in this section here: Upload File

Air Quality Non-Attainment Areas.jpg

Are formal compliance steps or mitigation required?

Only Responsible Entity (for Part 58) or HUD (for Part 50) Users may respond to this question. Ensure that this question is complete before finalizing the review.





QUESTIONS?

Choice Limiting Actions Overview

David A. Storms
Regional Environmental Officer
U.S. Department of Housing and Urban Development
Office of Environment and Energy





Office of Environment and Energy (OEE)

- Administratively located within Community Planning and Development (CPD)
- Responsible for overall oversight of HUD's environmental review procedures and compliance with NEPA and the related laws and authorities as detailed in 24 CFR Parts 58 and 50
- Works collaboratively with all applicable HUD program areas to ensure compliance and assist with the development of policy/guidance materials
- Provide technical assistance and training to staff, grantees, local governments, and consultants*
- Monitoring
- Training





HUD Region VI Environmental Officers

Name	Position	Jurisdiction	Contact
David Storms	Regional Environmental Officer	New Mexico, Louisiana	(817) 978-5540 david.a.storms@hud.gov
Laura Myers	Field Environmental Officer	Fort Worth FO, Oklahoma, TDA, TDHCA, Arkansas	(817) 978-5947 laura.l.myers@hud.gov
Zach Carter	Field Environmental Officer	Houston FO, San Antonio FO, States of Texas and Louisiana Disaster Program	(817) 978-5835 zach.r.carter@hud.gov





Choice Limiting Actions – 24 CFR 58.22

- The National Environmental Policy Act (NEPA) requires the analysis of alternatives through environmental review. Following these regulations, CEQ and other Federal agencies are required to develop policies around choice limiting action.
- HUD's regulations impose limitations on certain activities that would have an adverse environmental impact or limit the choice of reasonable alternatives (choice limiting actions) until an environmental review has been completed.
- Choice limiting actions include:
 - > Acquisition
 - **▶** Demolition
 - ➤ Rehabilitation
 - > Repair
 - ➤ New construction
 - Ground disturbance
 - Leasing





Limitation on Activities Prior to Clearance - §58.22(a)



- Prior to Receiving Environmental Clearance a Recipient Must Not Commit:
 - HUD Funds, or
 - Non-HUD funds if the activity would:
 - have an adverse environmental impact, or
 - limit the choice of reasonable alternatives
- This limitation is rooted in all NEPA related authorities
 - Don't take action until compliance is achieved!





When does this kick in?

• Discuss Project Federalization







Section 58.22 Limitation on Third Parties



Part 58.22 extends this prohibition to third parties, including:

- Recipients, and
- -Participants in the development process
 - Public or Private Nonprofit
 - For Profit Entities
 - Contractors





What are Choice-Limiting Actions?

- Real property acquisition
- Leasing
- Disposition
- Demolition
- Rehabilitation
- Repair
- Construction
- Site improvements





Exempt and CENST Projects

• No RROF is required and the recipient may undertake the activity immediately after the RE has documented its determination as required...but the recipient must comply with 58.6.

• Emergencies under 58.34(a)(10)





Choice Limiting Actions - Acquisition

• Issue:

- > Grantees need to establish site control
- ➤ Environmental reviews can delay site control/purchasing
- > Option agreements are not always viable

Solution:

- Expand the use of conditional contracts to include acquisition that may require an Environmental Assessment level of review
- Encourage the use of conditional contracts to allow purchase/acquisition a site(s) conditioned on the completion and results of an environmental review





Statutory vs. Regulatory Violations

> Regulatory violation:

 Committing or expending <u>non-HUD funds</u> on a choice-limiting action after the resolution for HUD assistance but before approval date on AUGF

Statutory Violation:

 Committing or expending <u>HUD funds</u> on a choicelimiting action *after the resolution* for HUD assistance but before recipient submits RROF



Possible Remedies for Non-Compliance

- Mandatory Training
- Corrective Action Plan
- Suspension of funds used to finance the violating activity
- Recapture of funds used to finance the violating activity
- Possible debarment and/or LDP of principals involved
 Other administrative remedies

Last Update: 8/9/2019

Other Topics

- Infrastructure projects and floodways
- HEROS
- HUD Exchange Resources
- Forms
- WISER





QUESTIONS?









TEXAS HISTORICAL COMMISSION

real places telling real stories

Federal Law

The National Historic Preservation Act of 1966

Section 106

Agencies must consider the effects of their projects on Historic Properties.

Regulations (36 CFR 800)

Set forth a process of consultation to resolve Adverse Effects on Historic Properties.



The National Historic Preservation Act of 1966

Created:

The National Register of Historic Places

List of sites, buildings, districts, or objects significant at the national, state, or local level.

The State Historic Preservation Officer

Maintains a database of historic properties and assists with National Register nominations.

The Advisory Council on Historic Preservation

Independent federal agency that wrote the regulations and must be given an opportunity to comment.

State Historic Preservation Officer (SHPO)

Texas SHPO is the Executive Director of the Texas Historical Commission: Mark Wolfe

Charged with:

- (1) maintaining a database of historic properties.
- (2) assisting with National Register nominations.
- (3) providing recommendations in the Section 106 Review process.



The National Historic Preservation Act of 1966

Section 106 is a Consultation Process among the Federal Agency, the SHPO, the Tribes, and Consulting Parties that follows four steps.

- Step 1. Agency (RE) initiates consultation.
- Step 2. Consult to Identify Historic Properties.
- Step 3. Consult to Assess Adverse Effects on Historic Properties.
- Step 4. Consult to Resolve Adverse Effects on Historic Properties.

36 CFR Part 800: Undertaking

What is a Federal Undertaking?

Any project with the potential to affect historic properties that involves:

Federal funds

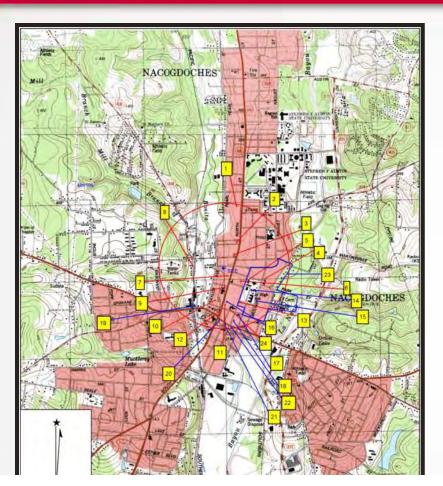
Federal permits

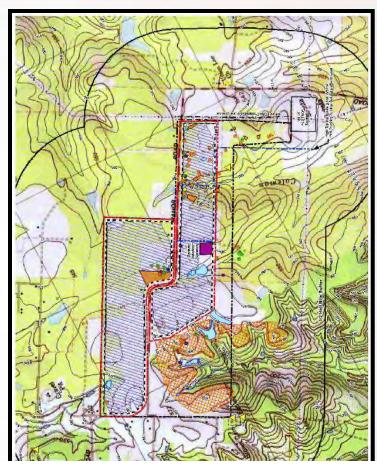
Federal licenses

Federal approval









The geographic area or areas within which an undertaking may cause changes in the character or use of historic properties.



Area of Potential Effects (APE)

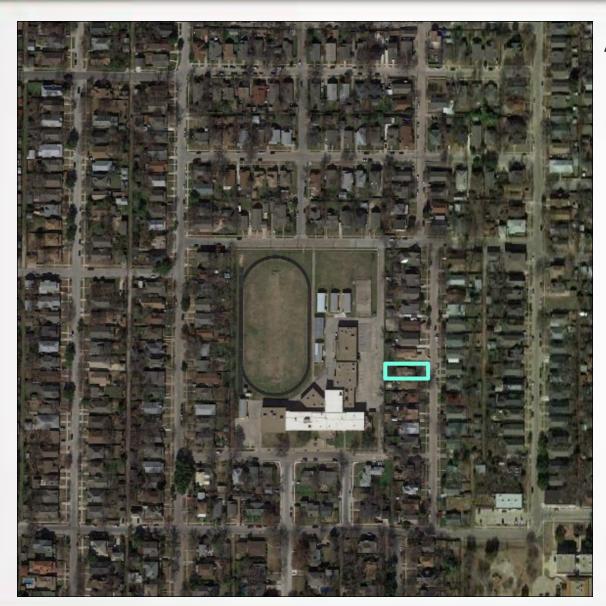
Direct effects:

- Rehabilitation of a building, structure, or built environment: limited to the building being rehabilitated.
- New construction or ground disturbance: the footprint to be directly affected by new construction, staging areas, and access areas.

Indirect effects:

Must account for potential visual or auditory effects.

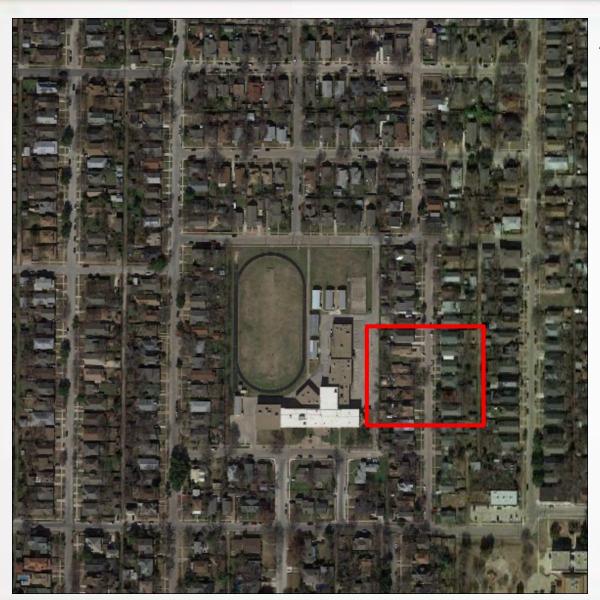




Area of Potential Effect Examples

Interior Rehabilitation

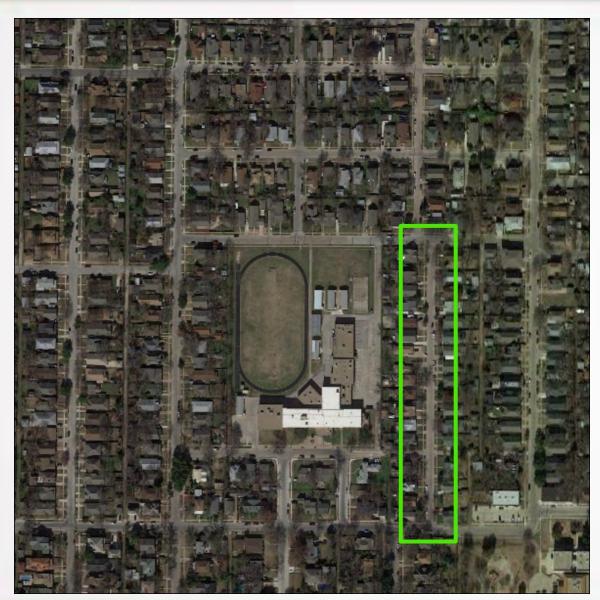




Area of Potential Effect Examples

New Construction or Exterior Rehabilitation

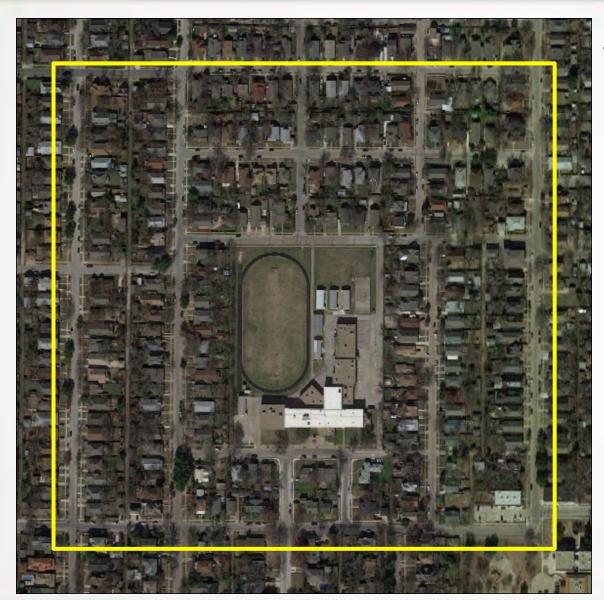




Area of Potential Effect Examples

Utility Lines or Street Improvements





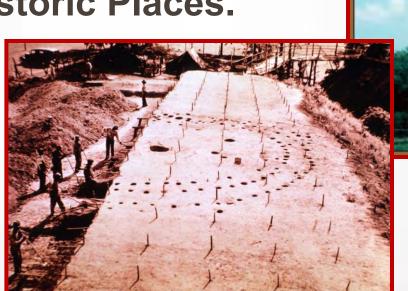
Area of Potential Effect Examples

Major Redevelopment

36 CFR Part 800: Historic Properties

What is a Historic Property?

Any historic or prehistoric site, district, building, structure, or object included in, or eligible for inclusion in the National Register of Historic Places.



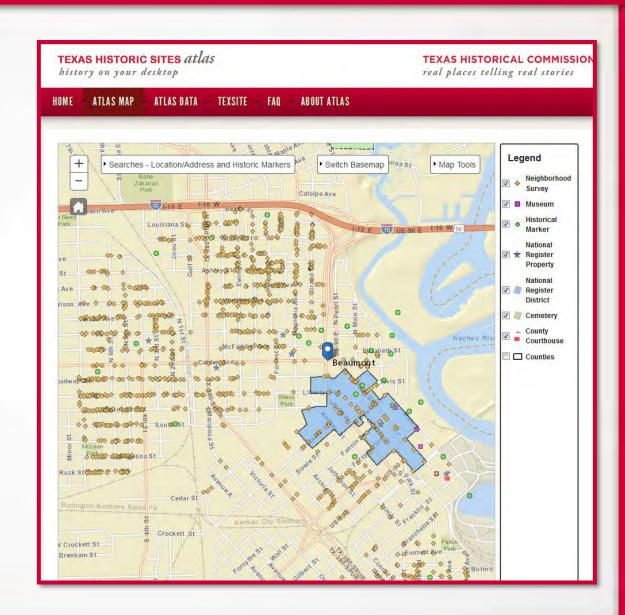


36 CFR Part 800: Historic Properties

THC's **Texas Historic Sites Atlas** features layers for:

- National Register
- NR Historic District
- Historical Markers
- Cemeteries
- Neighborhood Survey

http://atlas.thc.texas.gov





36 CFR Part 800: Historic Properties

Age of the property:

- Projects affecting structures or buildings 45 years of age or older should be submitted for review
- Projects affecting buildings less than 45 years of age generally do not need to be submitted unless there is ground disturbance
- Properties determined not eligible for the National Register should be reexamined every 5 years





Cold Springs Log Cabin School, Grayson County (ca. 1855)

Angelo and Lillian Minella House, Houston (1950)

Endangered Species Act Overview TxCDBG Environmental Training Workshop



Tanya Sommer
US Fish and Wildlife Service
Branch Chief, Consultations and Habitat Conservation Planning
Austin Ecological Services Field Office
August 13, 2019

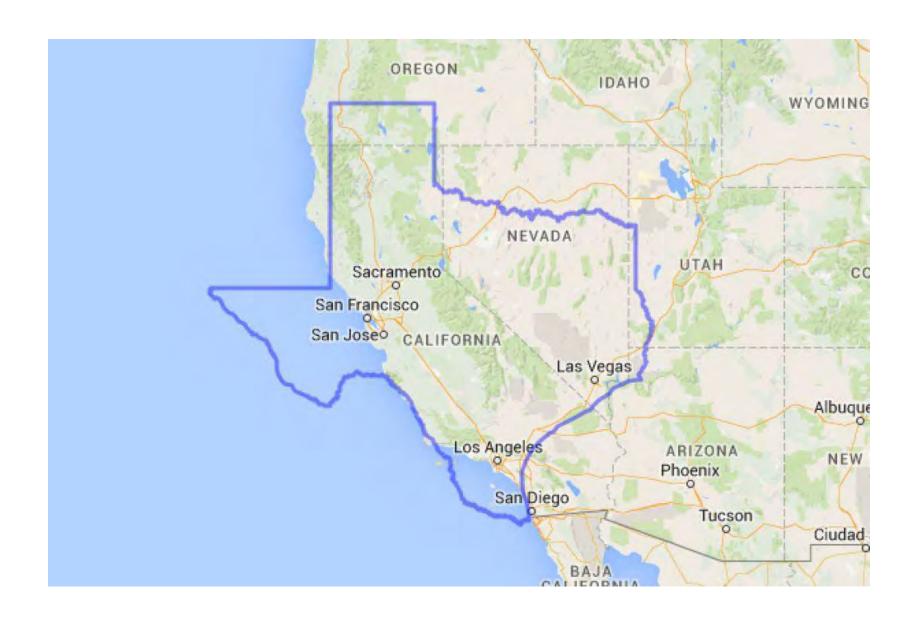
U.S. Fish & Wildlife Service

The U.S. Fish and Wildlife Service works with others to conserve, protect, and enhance fish, wildlife, plants and their habitats for the continuing benefit of the American people.

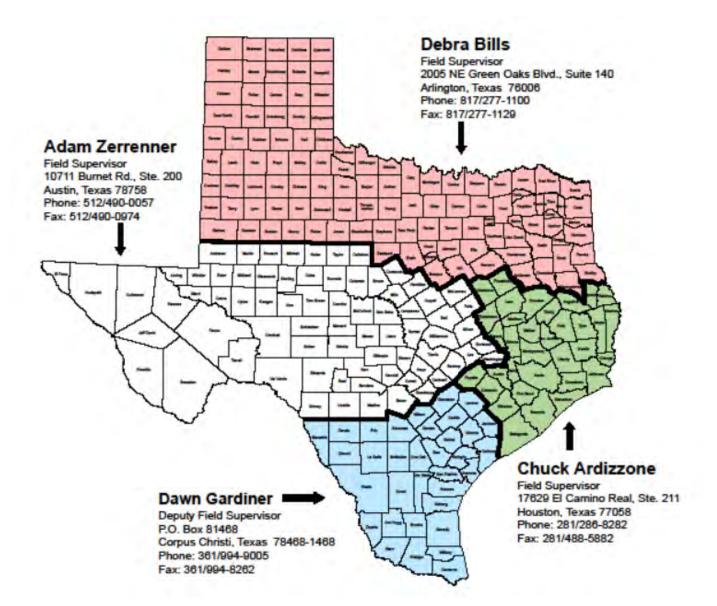


Overview

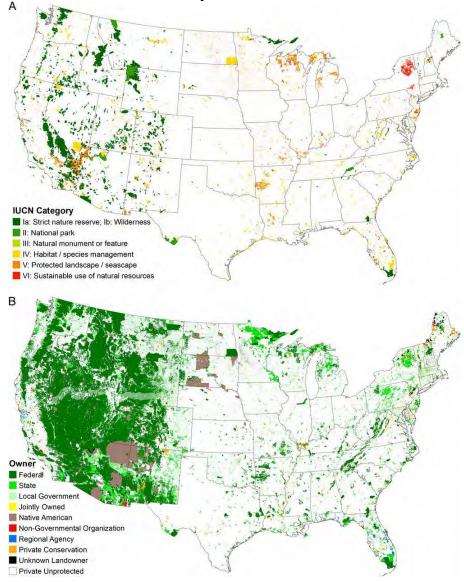
- 1. Listed species in Texas
- 2. Section 7 process
- 3. Information for Planning and Conservation (IPAC)
- 4. Questions



Where you can find us



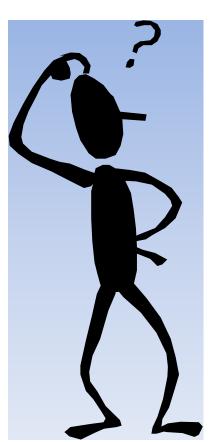
Protection status and ownership of lands in the lower 48 states.



Clinton N. Jenkins et al. PNAS 2015;112:5081-5086

T&E species in Texas

- 102 species total
- 71 animals
- 31 plants
- Approx. 40 petitioned species on the work plan (2023) within or overlapping with Texas
- https://www.fws.gov/endangered/what-wedo/listing-workplan.html





















Section 7 Consultation

Federal agencies are to ensure that any action

they fund, authorize, or carry out

is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat.

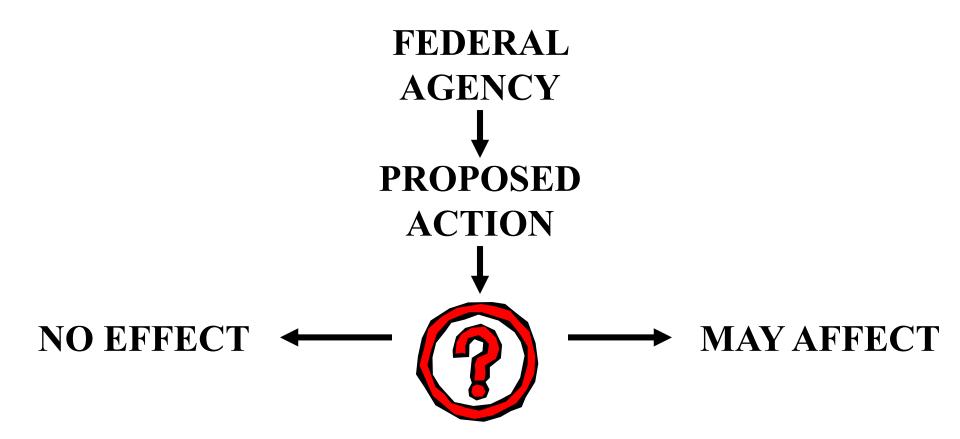
All Federal agencies

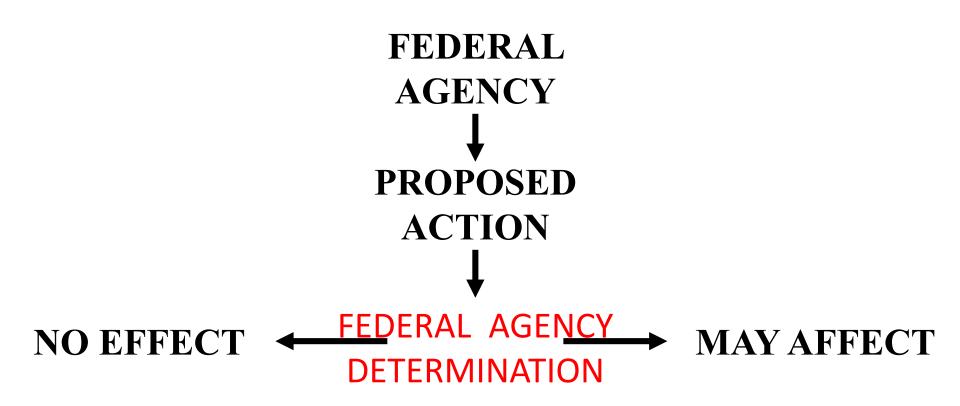
shall consult with the Service on any <u>prospective</u> agency action

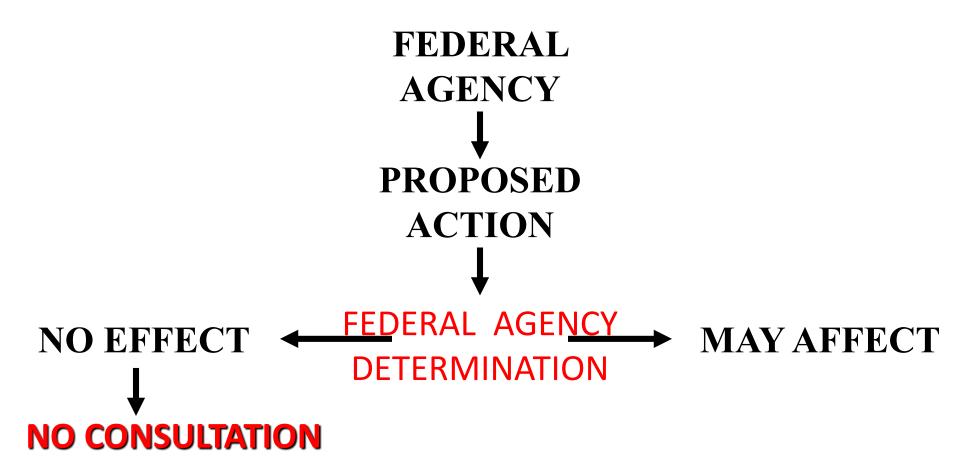
if the agency <u>believes a threatened or endangered</u> <u>species may be present in the area affected by the project</u>

and the implementation of such action will likely affect such species

Section 7(a)(3) Duty to Consult

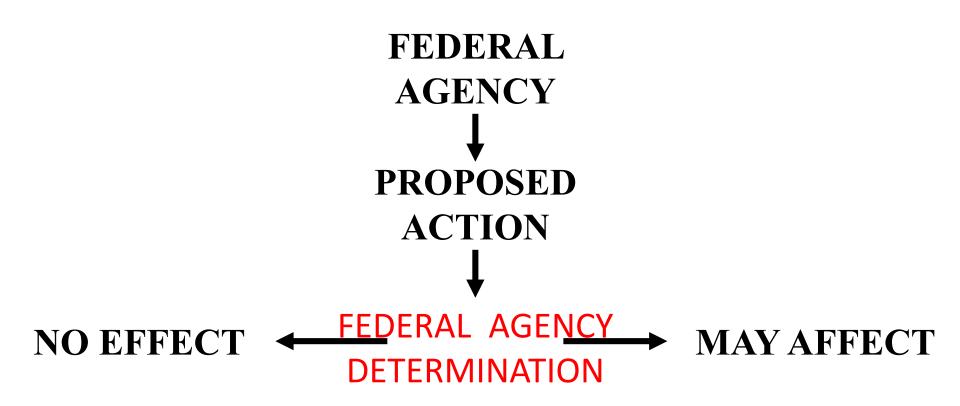


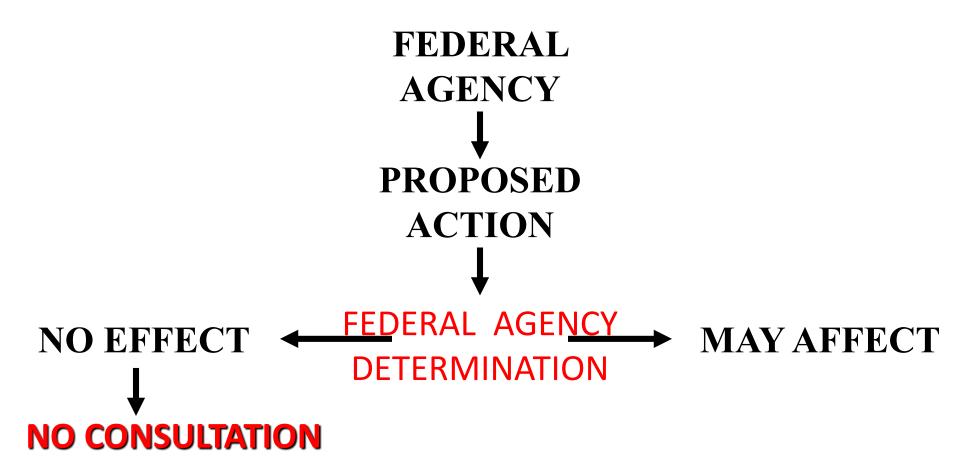




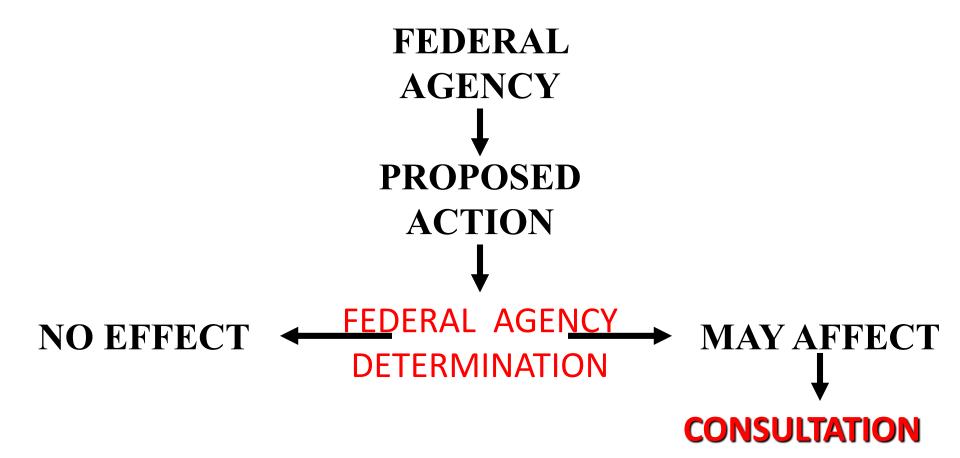
No Effect







Consultation



Informal Consultation

May Affect

Not likely to adversely affect

Beneficial Effects
Insignificant Effects
Discountable Effects

Informal Consultation

Informal Consultation

- Federal agency explains the effects of the action on the species
- And clearly shows that the project's effects on listed species are insignificant or discountable
- Requests the Service to concur with the Federal agency's determination the project may affect, is not likely to adversely affect
- Service response

Incidental Take

To harass, harm, pursue, shoot, wound, kill, trap, capture, or collect, or an attempt to engage in such conduct.

- Harm an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.
- Harass an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering.
- 50 CFR 17.3

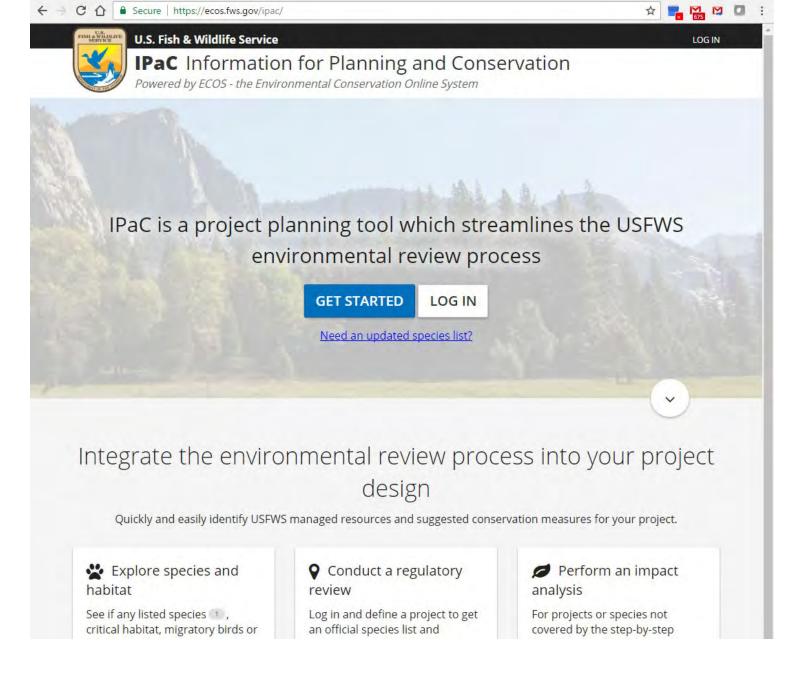
Formal Consultation

Determination of Affect May Affect

- Likely to adversely affect
 - **Biological Assessment**
 - ■135 day timeline
 - Biological Opinion
 - Jeopardy analysis
 - Incidental Take Statement
 - Reasonable and Prudent Measures (RPMs)



San Marcos Salamander











IPaC Information for Planning and Conservation

U.S. Fish & Wildlife Service



Search or **zoom** to find the project location

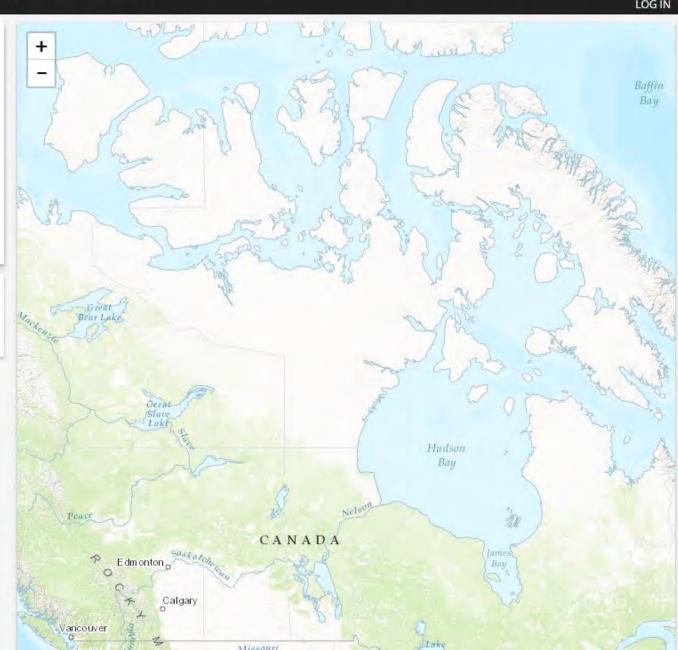
Find a place

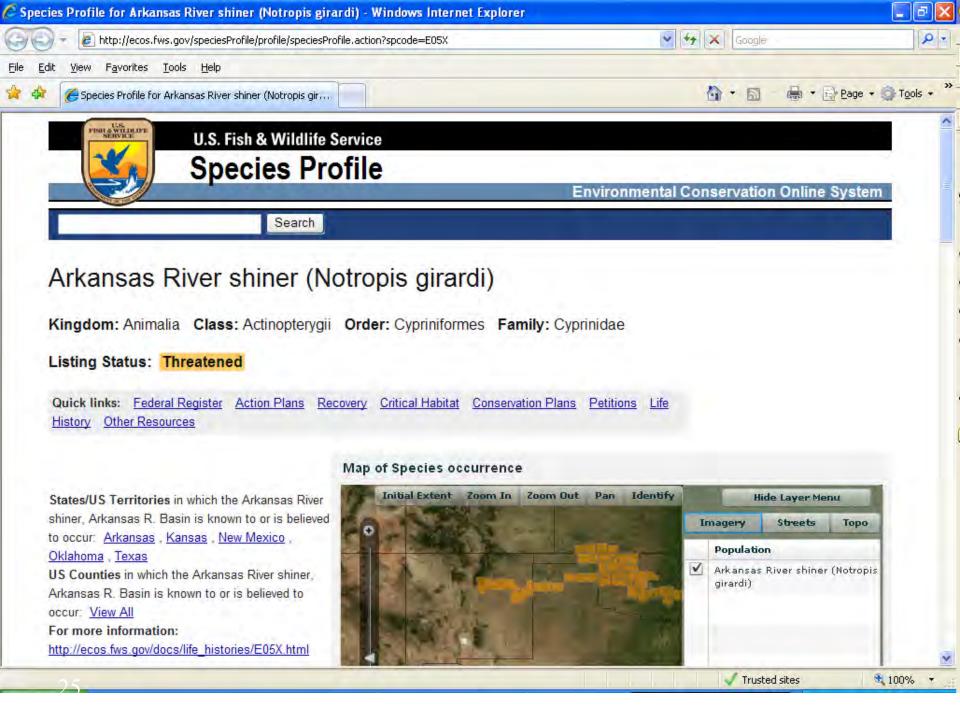
Or skip this step and:

UPLOAD SHAPE FILE

SELECT BY STATE OR COUNTY

Define area





IPAC Helpful Reference Videos

Jun 2017 - Mock-Up of the Next Phases of Work (19 min)

This video shows a mock-up demonstration of the new functionality currently underway.

https://www.youtube.com/watch?v=RILOBAZ6GW8&feature=youtu.be

Dec 2016 - What's new in IPaC: Assisted Determinations (12 min)

This video demonstrates the DKey functionality.

https://www.youtube.com/watch?v=mDWazJTZk9Q

Apr 2016 – What IPaC Does Today (5 min):

This video describes the impact analysis feature that comes from the EPM.

https://www.youtube.com/watch?v=mDWazJTZk9Q

Thank you

Tanya Sommer Tanya_Sommer@fws.gov 512-490-0057 ext. 222



National Register Criteria for Evaluation









NATIONAL REGISTER
BULLETIN
How to Apply the National
Register
Criteria for Evaluation

Criterion A: Events

Criterion B: Persons

Criterion C: Design, Unique

Characteristics

Criterion D: Potential to

Yield Information

Applied to districts, sites, buildings, structures and objects with integrity of location, design, setting, materials, workmanship, feeling, and association.



36 CFR Part 800: Historic Properties

Above-Ground Resources

While some buildings are individually eligible for National Register listing, many more are eligible as contributing to **historic districts**



Donnybrook Duplex Historic District, Tyler





Beaumont Commercial Historic District

Blue Tile Street Sign, Houston



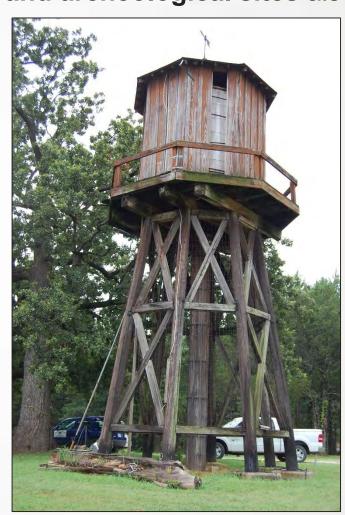
36 CFR Part 800: Historic Properties

Cultural landscapes, structures, objects, and archeological sites also

require consideration



Boykin Springs Dam, Angelina National Forest





36 CFR Part 800: Assess Adverse Effects

A project will have an <u>Adverse Effect</u> if it alters characteristics that contribute to the historic integrity and eligibility of the property.

Efforts should be made to avoid any adverse effects. However, when adverse effects cannot or will not be avoided, mitigation for the loss or damage to the historic property must be considered.





Historic American Buildings Survey-like documentation Stegman Building, Brownsville



Tribal Consultation



Tribes are interested in protecting their Traditional Cultural Properties, but usually will not share details about these with outsiders.

Under Section 106, Tribes are accorded the same status in the consultation process as trained professional archeologists.

Be sure to allow plenty of time for the Tribes to respond to your request. They have a small staff and a lot of requests from multiple states.



Agreement Documents

Memorandum of Agreement (MOA)

Agency, SHPO, Tribes, Consulting Parties (sometimes ACHP)

Spells out mitigation measures that the agency will follow to resolve adverse effects.

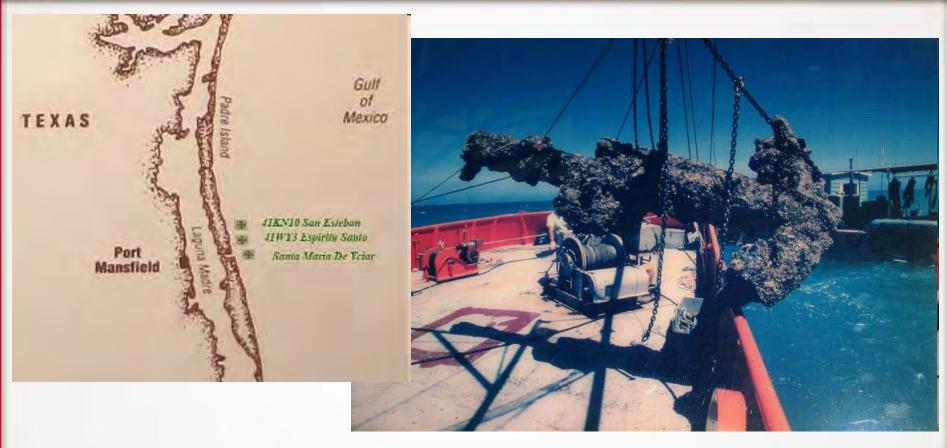
Programmatic Agreement (PA)

Agency, SHPO, Tribes, Consulting Parties (often ACHP)

Spells out a special arrangement to serve as Section 106 process for an agency's programs.

State Law





The Texas Legislature created the Antiquities Code of Texas in 1969 to protect the state's cultural resources. This legislation was a direct response to ongoing salvage activities at the sites of 16th-century Spanish shipwrecks.

Title 9, Chapter 191 of the Texas Natural Resources Code

Directs state agencies and political subdivisions (cities, counties, river authorities, etc.) to assist the THC in preserving archeological resources on state land and beneath state waters.



Notification Requirements

State agencies and political subdivisions must submit projects for advance review if they:

Are 5 acres or more in area.

Involve 5000 cu. yds. or more of earth moving.

Are located in a designated historic district.

Are located on a tract containing a recorded archeological site.

State Antiquities Landmarks

Antiquities Permits

Rules (Title 13, Part 2, Chapter 26 of the Texas Administrative Code)

The Antiquities Advisory Board (a later amendment)



State Antiquities Landmarks

Archeological sites can be designated SALs by the THC, if they meet any one of the five criteria for designation.

Archeological sites on private property can be designated only if the landowner wants them to be designated. The THC maintains control over these SALs.

Buildings can be designated as SALs, but only if they are already *listed* in the National Register of Historic Places (not just eligible for listing).



State Antiquities Landmarks

SAL Criteria

- (1) the site can contribute to a better understanding of the prehistory and/or history of Texas by the addition of new and important information.
- (2) archeological deposits are preserved and intact, thereby supporting research potential.
- (3) the site possesses unique or rare attributes concerning Texas prehistory and/or history.
- (4) the site offers the opportunity to test theories and methods of preservation.
- (5) There is a high likelihood that vandalism and relic collecting has occurred or could occur.

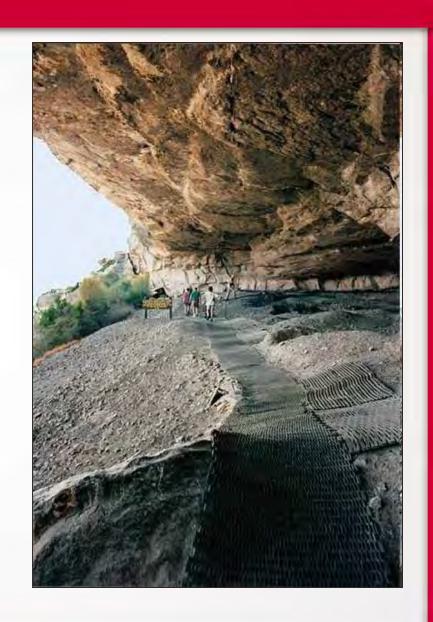


Antiquities Permits

Antiquities Permits are issued for investigations on land owned or controlled by state agencies & political subdivisions of the state.

The land-owning agency is responsible for resources under its jurisdiction.

Signatories: PI, Sponsor, Land-owning agency



The Antiquities Advisory Board

Created in 1995 to provide advice on archeological matters to the THC.

Modified in 1999 to include advice on architectural and historical issues.

The Antiquities Advisory Board is *strictly* advisory. It is not analogous to the Advisory Council on Historic Preservation.



Legal Protection under the Antiquities Code

Criminal Penalty for Damaging SALs:

Misdemeanor punishable by fine not less than \$50 or more than \$1000 or jail time up to 30 days or both. Each day of violation is a separate offense.

Civil Action by Attorney General:

Attorney General may file a restraining order or injunction to prevent threatened violations.



Chapter 711 of the Health & Safety Code of Texas

Individual, isolated, unmarked graves are classified as cemeteries and are afforded the same protections that apply to perpetual care cemeteries.

Human remains and objects associated with them are protected.



Professional archeologists are listed among those professionals qualified to remove human remains.



Mechanical Scraping Can Find Graves





Many Graves Have No Surface Evidence





Entities Involved in Consultation by Law

SECTION 106 Fede

Federal Agencies

State Historic Preservation Officer (SHPO)

Tribal Historic Preservation Officer (THPO)

Consulting Parties

Indian Tribes

Advisory Council on Historic Preservation

ANTIQUITIES CODE

State Agencies

Political Subdivisions of the State

Cities, Counties, River Authorities, etc.

Executive Director of the THC (SHPO)



Local Governments



Local Governments must comply with the Antiquities Code of Texas. If they seek federal money or permits for their projects, they are also subject to Section 106. Sometimes these laws conflict.

The THC tries to make the Antiquities Code and Section 106 review processes as similar as possible to avoid confusion. However, some significant differences must be addressed.



Local Governments



Over the years, the Antiquities Code has been changed by the legislature to accommodate local governments and political subdivisions of the state.

For above-ground resources, state agencies (including public universities) must notify the THC prior to making modifications or demolishing any building 50 years old or older.

Working with the Texas Historical Commission

+

Review Process

- For information on Section 106 and how the THC reviews projects, visit http://www.thc.texas.gov/project-review
- 30-day review period from THC receipt date
- Submit by mail or via eTRAC



Electronic Submission is Here!



Using eTRAC

roject Informati	on				
Project Name*		0	Project County*	Select County	¥ @
Project Address*		0	Other Counties		0
Project City*		0	Program*	Select Program	v 0
Project Zip			Permit	9	
	, , , , , , , , , , , , , , , , , , , ,	ram the proje	ect in one or two sentence	es.	2
'ederal & State II		ram the proj	ect in one or two sentence	es.	2
		31		es.	
This project involved	nvolvernent es approval, funding, permit or licen	31		es.	

Using eTRAC

Some Notes about eTRAC:

- Eliminates the need for submitting a hard copy
- Same 30-day review period but no mailing time and costs
- Applicants may submit Additional Information for projects currently under review, or a Supplemental Review for submissions related to an ongoing project
- Projects subject to Section 106 of the NHPA or the Antiquities Code of Texas may be submitted
- Find user's guide and videos at www.thc.texas.gov/etrac-system

1

What to Send for Review

Submit the following information for review:

- Cover letter or Request for SHPO Consultation Form
- Project description
 - Undertaking description, potential effects
 - APE (direct and indirect): dimensions, acreage, depth of impact
 - Known historic properties
 - Known archival information
- Photos
- Map(s)
- More info may be required depending on the type of project and the site



Submit Useful Maps and Images





Submit Useful Maps and Images



-

Contact Us

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Divided by Agency

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