No more NEPA?
Not so fast!

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Agenda

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1. NEPA Background and Intent

2. NEPA Applicability

3. Recent Developments/Changes

4. Navigating Policy and Project Changes Efficiently

5. Conclusions

NEPA Background

- National Environmental Policy Act (NEPA)

- Signed in 1970 to:

    …create and maintain conditions under which man and nature can exist in productive harmony [and to] assure for all Americans safe, healthful, productive, esthetically and culturally pleasing surroundings.

- Federal law requiring agencies to consider environmental consequences of "major federal actions".

    Note: "Policy" not "Protection"

NEPA Background

What it is ✅	What it isn't ❌
• Tool for objective decision-making.	• A permit.
• Based on best available science/data.	• An authorization or approval to begin construction.
• Allows for consideration of agency/public input in decision-making.	• A construction specification document.
• Informs permitting.	• Substitution for other state/local processes.

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NEPA Applicability

Funding — Project receives federal funding

- Includes receiving grants and/or loans from federal agency.
- Varies by agency and program.

Ownership — Project involves federal ownership

- Required for all projects located on public lands.
- Also required for projects impacting federal lands (access roads or utilities crossing public lands).
- Includes federal mineral lease impacts.

Undertaking — Project requires federal undertaking

- Includes issuance of federal permits.
- Common example: project requiring US Army Corps of Engineers (USACE) Section 404 authorization.

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Types of NEPA Review – "the lingo"

Environmental Impact Statement (EIS)	Environmental Assessment (EA)	Categorical Exclusion (CATEX or CE)
• At least some impacts are significant. • Requires external scoping. • Requires public review/comment. • Results in Record of Decision.	• There are impacts, may be significant. • May require external scoping. • Document issued for public review (currently under change). • Results in Finding of No Significant Impact or EIS.	• Impacts are minor (e.g., administrative actions). • No public review. • Categories defined by individual agencies.

Types of NEPA Review (continued)

Who Decides?

- Lead Federal Agency for Project
- Generally based on which agency has approval or permitting authority. May be based on:
  - Relevant federal regulations,
  - Level of involvement in project, or
  - Formal or informal agency agreements.

How do they Decide?

- Discretion is involved.
  - Can elevate to a higher level of review based on issue complexity, anticipated public controversy, other reasons.

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Notable NEPA Changes in 2025 (so far...)
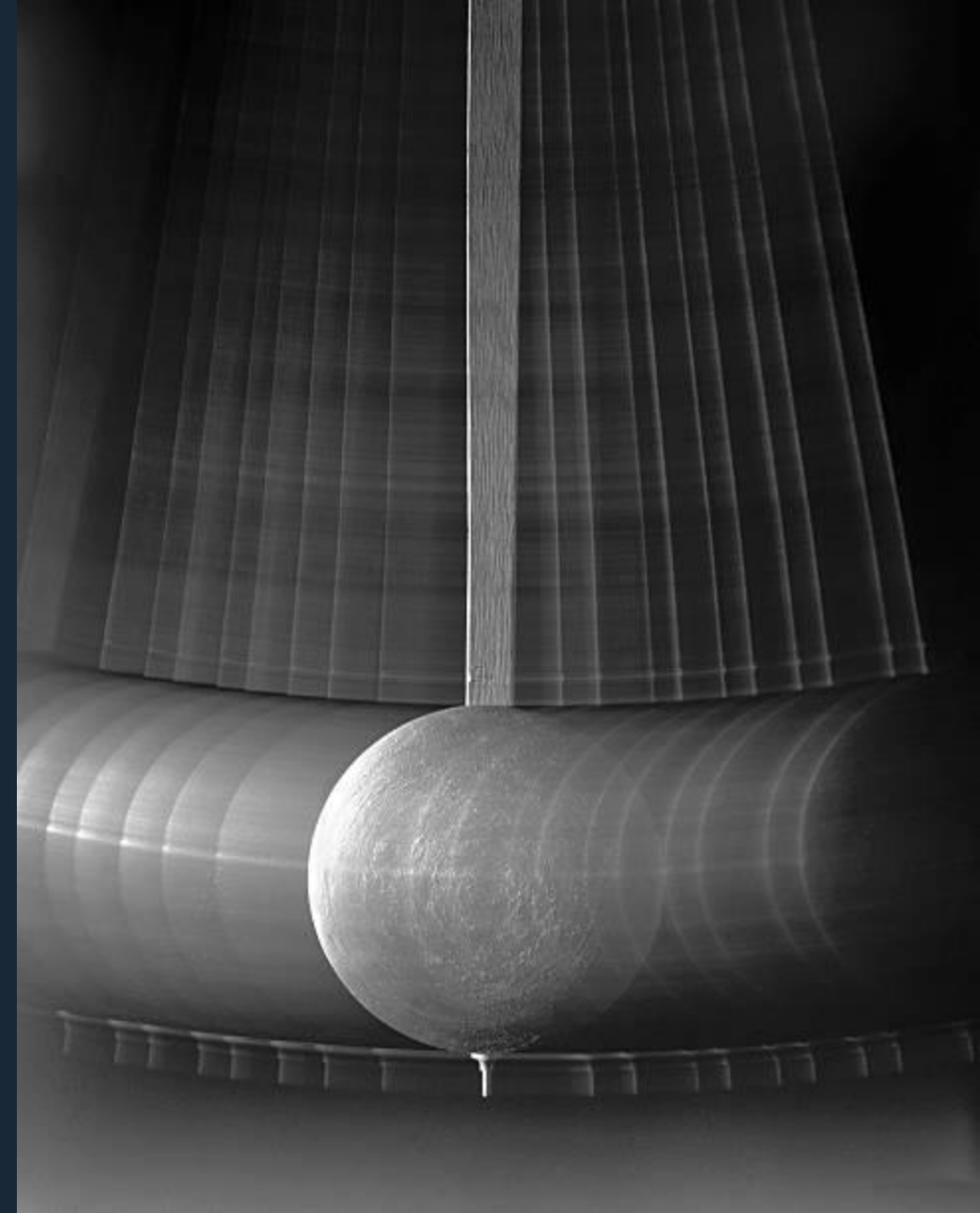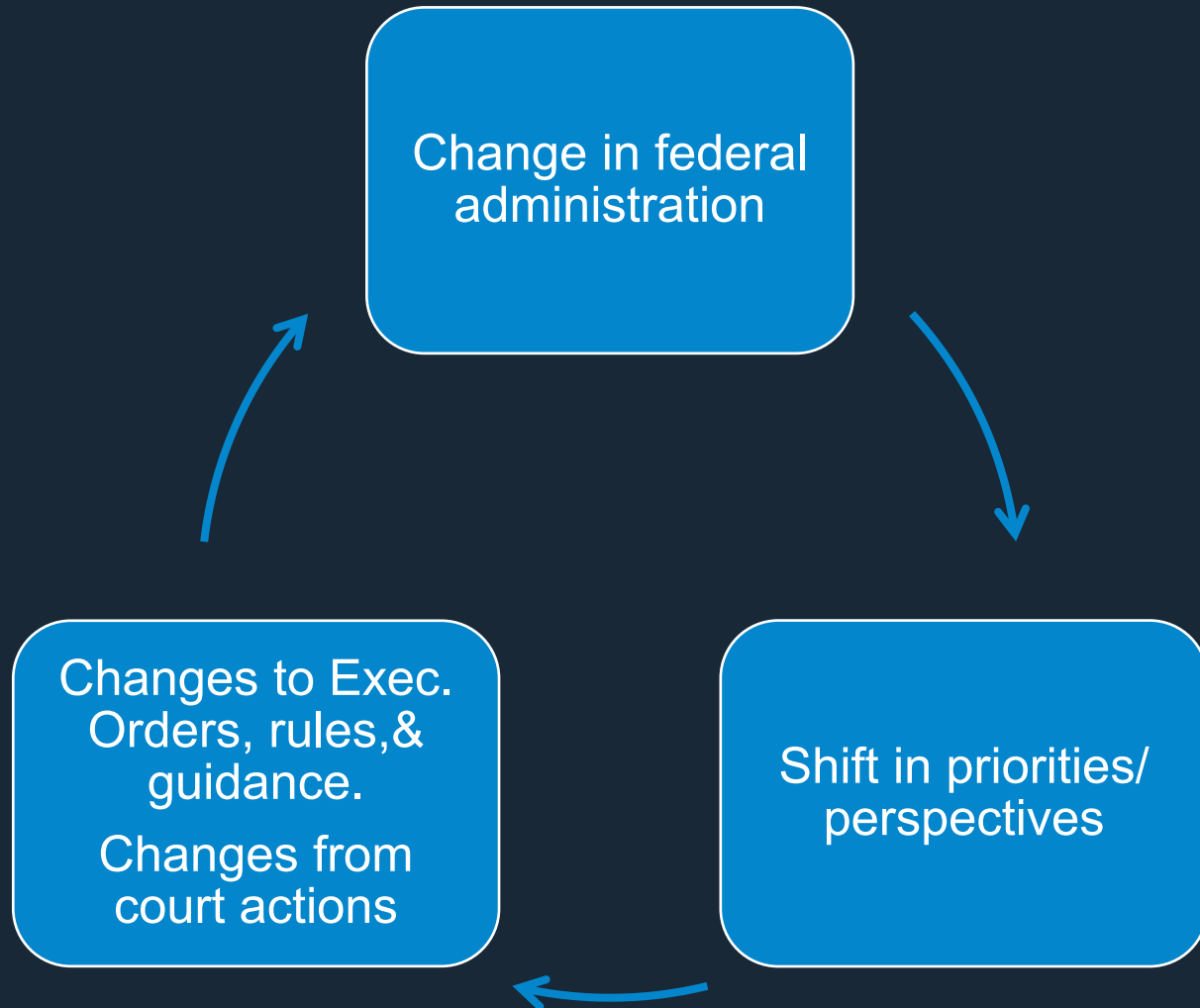
Early 2025 Executive Orders:

- Revisions to agency-level NEPA implementing regs to expedite permitting approvals and meet deadlines.

- Rescind orders related to climate and energy; consider applicability of greenhouse gas emissions under Clean Air Act.

- Prioritize streamlining NEPA for critical energy infrastructure and interstate energy transportation projects.

More recent changes:

- No environmental justice discussion.

- No cumulative impacts discussion (some agencies).

- No public review period for Draft EA (some agencies).

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Still changing...

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Change in federal administration

Shift in priorities/ perspectives

Changes to Exec. Orders, rules,& guidance.

Changes from court actions

What can these changes mean to your projects?

Not all agencies have published new NEPA guidance

- Coordinate with your lead agency.

Changes in Public Perception and Level of Involvement

- Increased general awareness due to news or political messaging.
- Can have real impacts to schedule and level of complexity.

Schedule Impacts

- Impacts are not consistent across agencies.
- Some agencies or types of projects are slowing down while others are speeding up.

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Setting Up for Project Success – Critical Issues Analysis

What: Early evaluation of issues that could influence outcomes.

Why: Planning and risk mitigation.

When: At project initiation.

How:

- Establish environmental, social, and engineering constraints.

- Anticipate permitting and mitigation needs.

- Compare alternatives against established criteria.

- Identify schedule drivers and critical checkpoints.

- Edge match on risk of schedule delay.

Project Examples – Critical Issues Analysis

Analysis Completed 👍

- Identifies concerns early.

- Allows for proactive planning.

- Helps gauge magnitude of permitting and/or mitigation needs.

- Identifies "hard stops" or avoidance areas.

Analysis Skipped 👎

- Concerns not accounted for in design, budgeting, or schedule.

- Planning is reactive with extra cost or delay.

- Increased number of "surprises" during permitting.

- May need late-process design changes to avoid certain resources or accommodate anticipated permit conditions.

Key Takeaway: Not required but helpful in early project planning.

Setting Up for Project Success – Project Description

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What: Develop a "stable" project description.

Why: Increase credibility, reduce regulatory delays.

When: Once project concept is confirmed.

How:

- Consider results of Critical Issues Analysis.
- Well documented design decisions/ assumptions.
- Sound data collection and management plan.
- Built-in impact minimization.
- Be mindful of changing regulatory implications.

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Project Examples – Project Description

Project Description Remaining Stable 👍

- Streamlines focus on actual project proposal.
- Maintains agency and public credibility.
- Changes not significant enough to change schedule.
- Maintains efficient baseline data collection.

Frequently Changing Project Description 👎

- Likely causes need for re-work.
- Frequent changes result in loss of credibility, agency annoyance.
- Lost schedule time (months to years).
- May require new baseline data collection depending on magnitude of changes.

Be aware of seasonal constraints.

Key Takeaway: A project description that doesn't change significantly promotes credibility and maintains schedule.

Setting Up for Project Success – Developing a Project Schedule

What: Develop a logical project schedule.

Why: Informs long lead items, avoids missed steps, and helps set common goals with agencies.

When: As soon as you know NEPA is needed.

How:

- Consider internal and external factors.

- Identify data gaps requiring technical work.

- Prioritize long lead items or those with seasonal restrictions.

- Consider input from agency stakeholders, consultants, contractors, and technical experts.

- Use knowledge from prior experiences to inform agency timelines.

Project Examples – Project Schedule

Logical Project Schedule 👍

- Includes milestones and intermediate deadlines to reach milestones.
- Incorporates review into milestones.
- Accounts for seasonal constraints.
- Team input maintains investment, accountability.
- Includes "buffers" around highly important factors.

Unreasonable Project Schedule 👎

- Too general, only considers major items.
- Doesn't account for required review times (e.g., internal, client, or agency).
- Overlooking seasonal constraints can delay months to year(s).
- Nearly impossible to maintain if team is not in agreement.
- If developed too tightly, slip is difficult to recover.

Key Takeaway: Logical project schedule includes a plan to meet milestones and buffer for unexpected issues.

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Setting Up for Project Success –
Plan and Manage Communications

What: Develop a targeted communication plan for agency and public involvement.

Why: Mitigate potential for regulatory surprises.

When: After critical issues analysis and stable project description.

How:

- Develop unique plans (not "one size fits all").

- Understand internal and external drivers/opinions.

- Factor in what is required vs. recommended.

  – When is enough vs when more is needed

- Incorporate risk management strategy.

- Plan for change (e.g., regulations, staffing) and adapt plans throughout.

- Document, document, document!

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Project Examples –
Plan and Manage Communications

Well Planned and Managed Communications 👍

- Understand agency expectations and early identification of potential pitfalls.
- Plan for timing restrictions, vacations, potential shutdowns, etc.
- Keep tabs on changing NEPA regulations.
- Consistency across communications helps avoid embarrassing mishaps…

News media routinely use NEPA documents and communications for their stories.

No Communication Strategy 👎

- High potential for unappreciated surprises.
- Stuck with responding to direction rather than helping guide direction.
- Lack of cohesive messaging leaves more room for agency opinions.
- Inconsistent communications across multiple permits and agencies leads to confusion and lack of trust.

Key Takeaway: A focused communications management plan mitigates potential for surprises.

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Conclusions

- Uncertainty still exists and changes will continue.

- Early consideration of NEPA requirements and implementation of best practices will help navigate the changing environmental.

- The regulators are working to figure things out along with us, so communication is critical.

- Keep a pulse on influence of political changes, leverage your connections to help you figure out how they affect your projects.

Questions?

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