

Environmental Training – Topic 1: NEPA

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- 20 years with ODOT
- 18 years serving as Region Environmental Coordinator (REC), Biologist, Stormwater Specialist and Environmental Permits Specialist for Region 3.



What is the National Environmental Policy Act (NEPA)?

- 1970 statute requiring Federal agencies to consider and disclose impacts on the environment in a systematic way
- A procedural law (a step-by-step decision-making process) that allows for “**environmental review**”
- Comprehensive framework to comply with all other federal, state and local laws
- NEPA provides a forum for Interested Party (public and agency) involvement
- **NEPA is a ‘good decision-making’ tool/playbook**

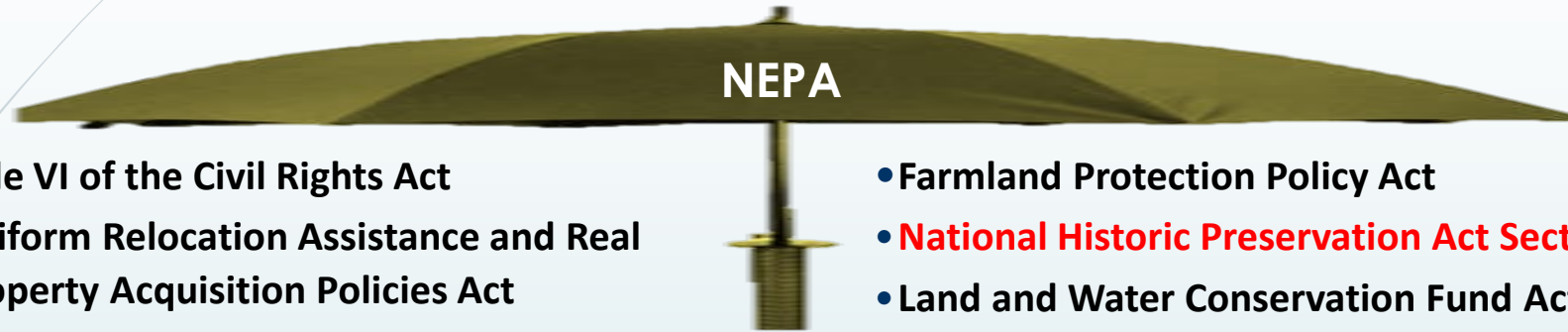




Federal Nexus = NEPA

1. Funded by
 2. Regulated by
 3. Conducted by
 4. Approved by
 5. Permitted by
- ... a Federal Agency

NEPA Covers Many 'Substantive' Laws a.k.a. "Umbrella Law"



- Title VI of the Civil Rights Act
- Uniform Relocation Assistance and Real Property Acquisition Policies Act
- Americans with Disabilities Act
- **E. O. 12898 (Environmental Justice)**
- **Section 4(f) of 1966 U.S. DOT Act (49 USC 303)**
- Clean Air Act and amendments
- **Endangered Species Act Section 7**
- **Migratory Bird Treaty Act**
- **Clean Water Act Section 401(b)**
- E. O. 11988 (Floodplain Management)
- Resource Conservation and Recovery Act
- Comprehensive Environmental Response, Compensation and Liability Act
- **Clean Water Act Section 404**

- Farmland Protection Policy Act
- **National Historic Preservation Act Section 106**
- Land and Water Conservation Fund Act Section 6(f)(3)
- Wild and Scenic Rivers Act
- **Clean Air Act and amendments**
- **Highway Noise Standards**
- **Public Involvement Requirements**
- NEPA case law

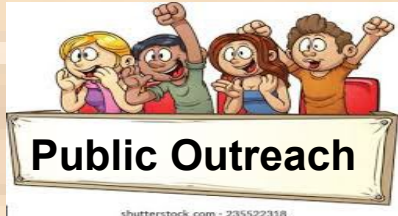
In Oregon:

- **Land Use Actions / Goal Exceptions**
- **Fish Passage Statute**
- **Removal/Fill Law**
- **AND MORE, including state and local requirements...**



NEPA “Class of Action”

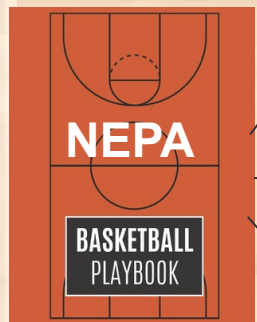
- Class 1 – Environmental Impact Statement
 - Significant impacts, complex, controversial
 - Required to study a *range* of build alternatives
- **Class 2 – Categorical Exclusion (CE) or Programmatic CE (PCE)** (*most Local Projects fit*)
 - **Impacts not significant**
 - **EA or EIS not required, but environmental work usually needed to avoid, minimize, and mitigate impacts**
- Class 3 – Environmental Assessment
 - Determines Significance and if an EIS is required
 - Not required to study more than one build alternative



FHWA



CE/PCE



EA



EIS



Environment



How to Efficiently Navigate the CE/PCE Process

“Score on the Fast Break”

1. Learn the CE/PCE Playbook.
2. Learn the rules and regulations. (Avoid, Minimize, Mitigate)
3. Coordinate, Coordinate, Coordinate
 1. Call the ODOT Region Environmental Coordinator (REC) early and often!!!

Learn the CE/PCE Playbook



- Become familiar with the FHWA and ODOT Programmatic Agreements.
 - ODOT has 3 major **environmental clearance** “Programmatic Agreements” with several state & fed agencies (streamlines approval processes)
 - Federal Aid Highway Program (FAHP) programmatic for ESA impacts
 - Programmatic Agreement with SHPO for Section 106 (Cultural Resources)
 - Programmatic Agreement (PA) with FHWA for certain CE project types (PCE).
- NEPA Manual <https://www.oregon.gov/odot/GeoEnvironmental/Pages/NEPA-Manual.aspx>



So, what are “PCEs”?

Most state DOTs have Programmatic Agreements (PAs) with FHWA for certain CE project types.

- The “PCE Agreement” allows ODOT to “approve NEPA” for those projects on behalf of FHWA
- FHWA does not need to “review or approve NEPA” for PCE types of projects (saves time!)
 - Projects must fit several conditions, a.k.a. “PCE kickouts”



Impact Thresholds of the 2015 PCE Agreement (PCE Kickouts)

- 1. Involve unusual circumstances as described in 23 CFR 771.117(b)?
- 2. Involve the use of properties protected by Section 4(f) that requires preparation of an Individual Section 4(f) Evaluation?
- 3. Result in a determination of “Adverse Effect” on historic properties under Section 106 of the National Historic Preservation Act?
- 4. Require a U.S. Coast Guard permit?
- 5. Require an Individual Permit under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act?
- 6. Result in an increase in the designated regulatory floodway elevation, or an increase of more than 1 foot of surface water elevation in the 100-year floodplain?
- 7. Require a Wild and Scenic River Section 7 determination from the administering agency?
- 8. Result in changes that substantially affect traffic patterns temporarily or permanently?
- 9. Require the acquisition of more than minor amounts of right-of-way or displacement of owners and/or tenants?
- 10. Fail to conform to the Air Quality State Implementation Plan?
- 11. Require project-level formal consultation under Section 7 of the Endangered Species Act?
- 12. Require an exception to Oregon Statewide Planning Goals?
- 13. Be controversial?

FHWA NEPA & Project Development Overview

Planning

- identify critical environmental issues

Environmental (NEPA) Scoping

- establish Area of Potential Impact (API)
- identify all environmental issues and compliance requirements
- identify probable class of action (CE, EA, EIS)
- **prepare Environmental Prospectus**

Conduct environmental studies

- as appropriate to scope of action
- environmental resources inform design
- coordinate with jurisdictional agencies
- **sign CE Closeout or PCE Determination (PCED)**

Obtain clearances / approvals (set final footprint/API)

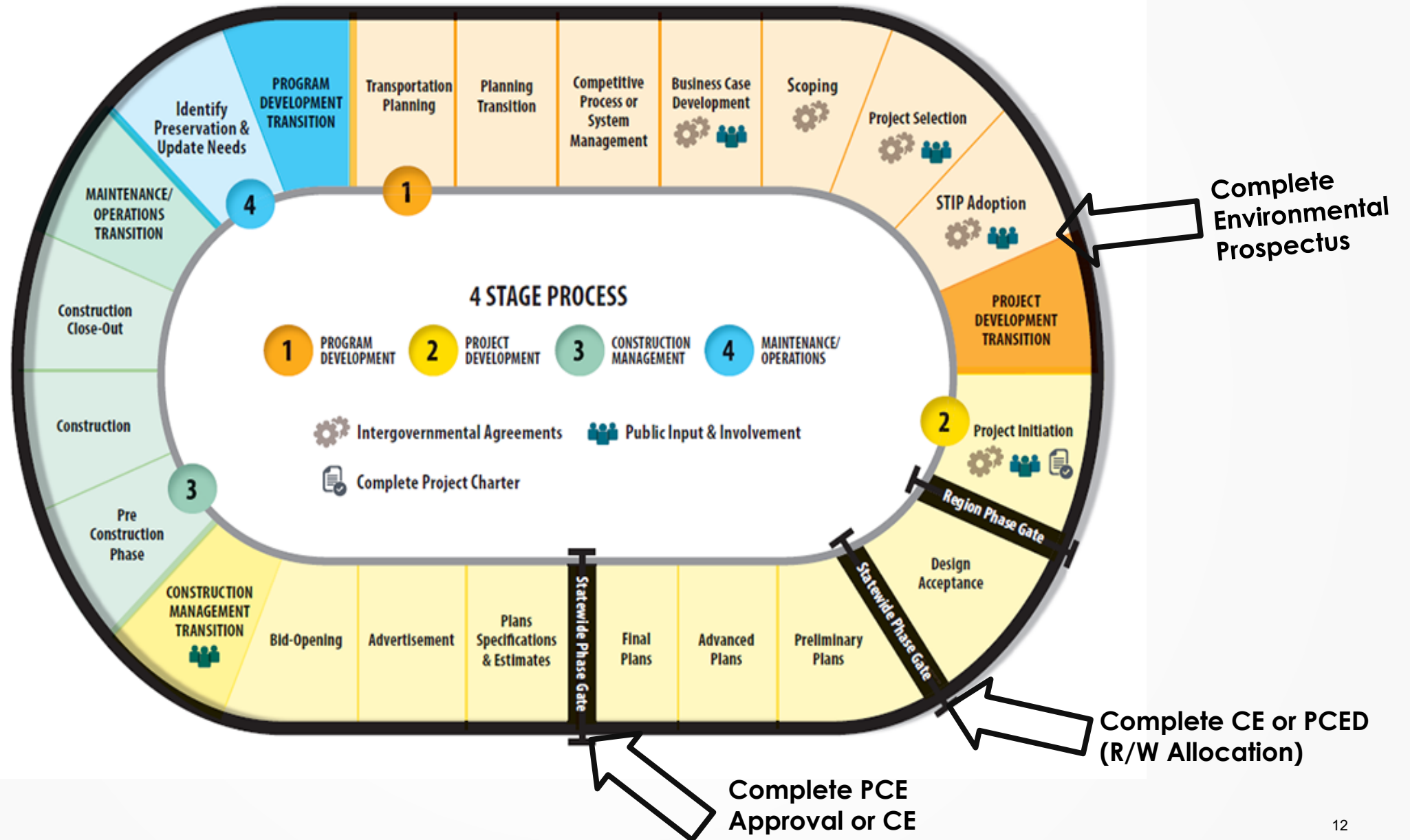
Document CE/PCE rationale

- complete CE Closeout / PCE Approval package
- document environmental commitments
- FHWA or ODOT signature concludes CE / PCE process

Environmental Review Process



TRANSPORTATION SYSTEM PROJECT LIFECYCLE



Learn the rules and regulations. (Avoid, Minimize, Mitigate)



- Planning/Scoping (w/Environmental lens)
 - Note potential Environmental hurdles during the early scoping process.
 - ✓ Helps create a realistic budget
 - ✓ Helps minimize risk to scope
 - ✓ Helps minimize risk to schedule
- ❖ Tip – Huddle up with the REC early in the process.

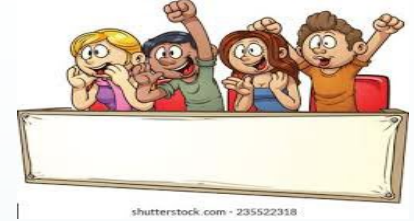
Typical Rules and Regulations (Avoid, Minimize, Mitigate)



Typical ODOT/LPA FHWA Projects require clearances for...

- Biological Resources
- Wetlands & Waters
- Stormwater
- Archaeology
- Historic Resources
- Land Use
- Socioeconomics
- Parks and Recreation
- Air Quality
- Hazardous Materials
- Floodplains
- Hydraulics
- Geology and Soils
- Traffic Noise
- Environmental Justice
- Right of Way
- Traffic Impacts
- Fish Passage

Agency Coordination & Consultation



TRIBAL – all 9 federally recognized Tribes

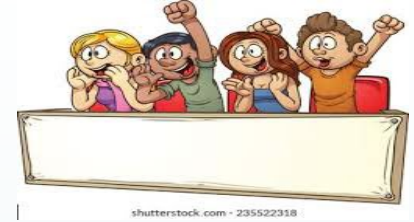
FEDERAL AGENCIES *(not all listed)*

- U.S. Fish and Wildlife Service (*ESA*)
- National Marine Fisheries Service (*ESA*)
- U.S. Army Corps of Engineers (*Sec. 404 CWA*)
- FHWA (Parks & Historic Resources) (*Section 4(f)*)
- FHWA Noise Rule
- National Park Service – Parks & Rec Areas (*Section 6(f)*)

STATE AGENCIES *(not all listed)*

- Department of Fish and Wildlife (*404 and Fish Passage*)
- Department of State Lands (*Removal Fill Law*)
- Department of Environmental Quality (*NPDES, Air Quality*)
- State Historic Preservation Office (*Sec. 106*)

Coordination is Key



- Interested Party Coordination
- Public Involvement
- Regulatory Agency Coordination
- Tribal Coordination
- FHWA Coordination
- ODOT Coordination—*early, often, any time you have a question!!*

Coordination is Key

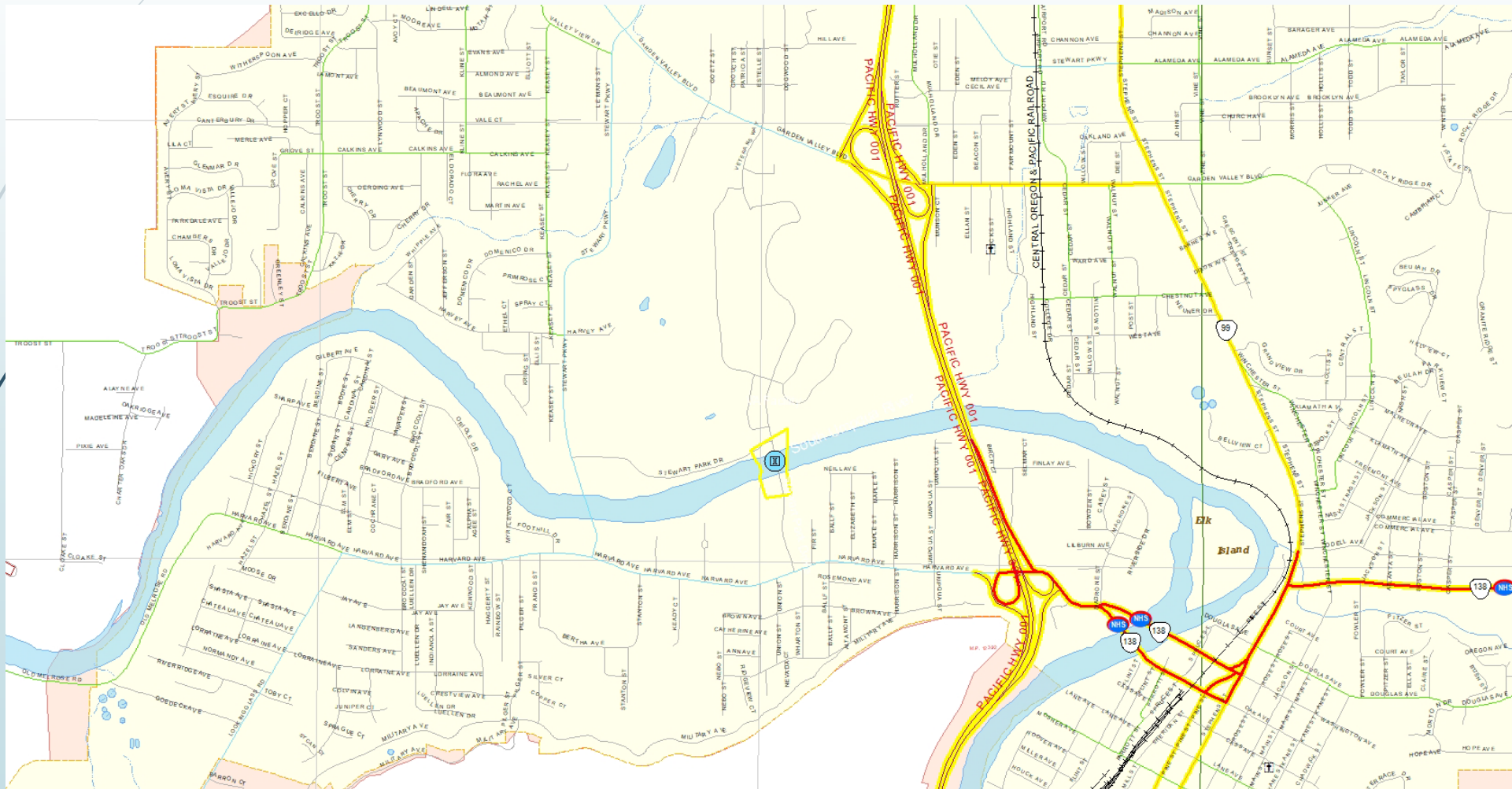
- Early Coordination W/REC (Common Theme)
 - If applicable, schedule a pre-kickoff meeting with REC and ROW to collaborate on the Prospectus and API/APE.
 - Identify
 - ✓ Staging Areas
 - ✓ Access Roads
 - ✓ Traffic and Pedestrian Detours
 - Identify Advance Investigations
 - ✓ Geotech Drilling
 - ✓ HazMat Sampling

Final Thoughts on Winning the NEPA Game

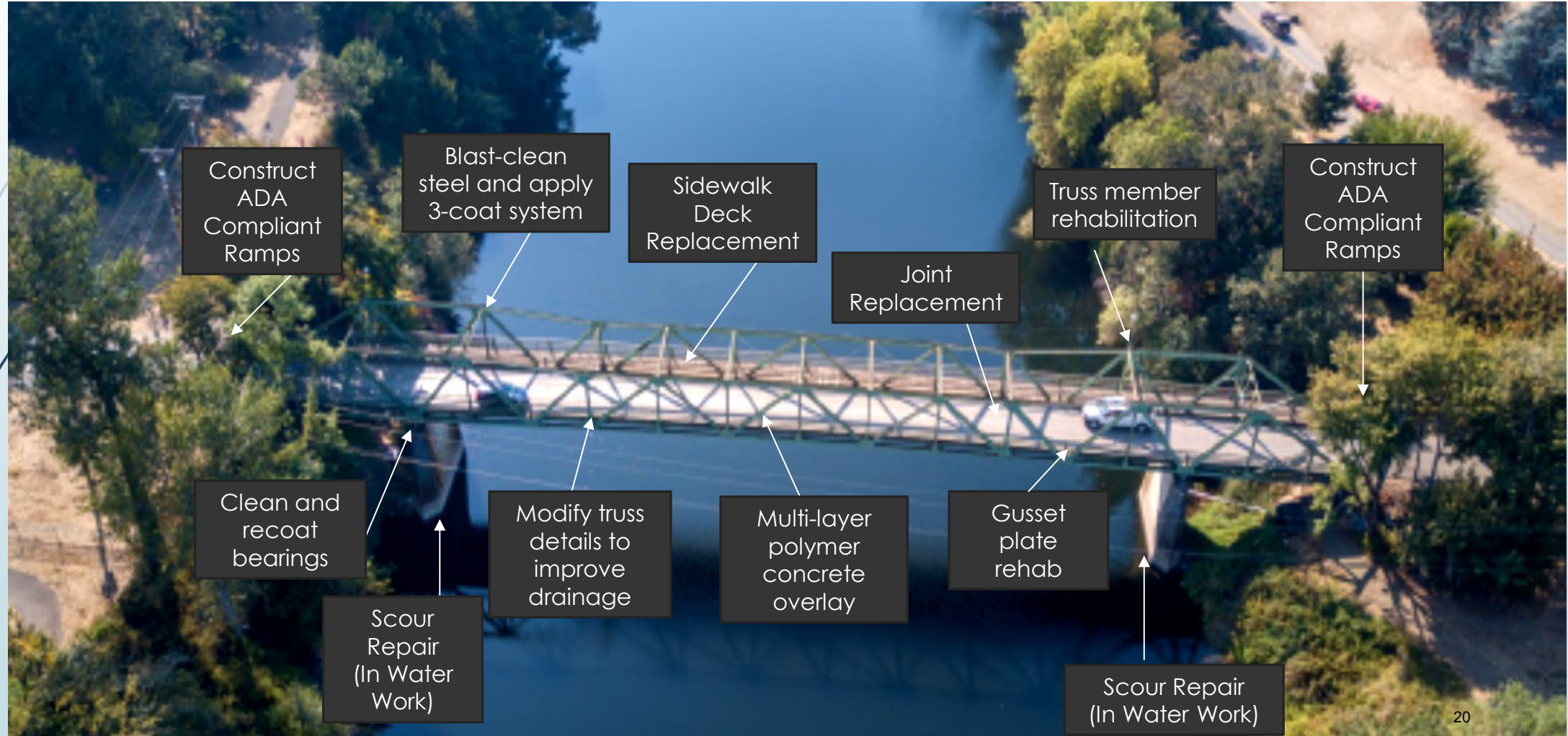
- Include environmental scoping in Local Planning (Scope w/environmental lens)
- Engage ODOT environmental staff early
- Identify environmental constraints early
- Engage regulatory agencies early
- Address issues and concerns as they arise
- Manage scope creep and project changes
- Foster effective communication—engage often!!



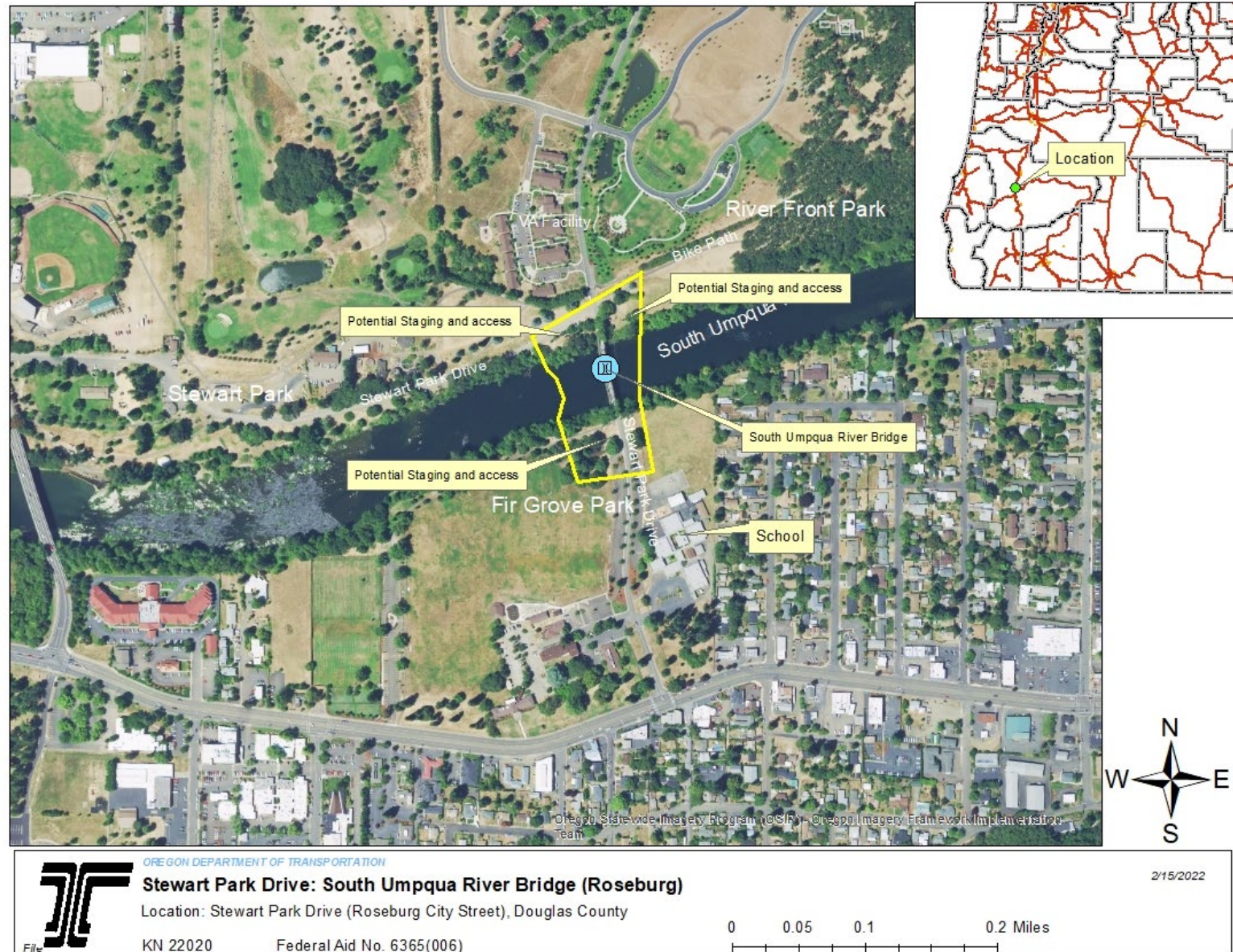
Stewart Park Drive: South Umpqua River Bridge (Roseburg)



Stewart Park Drive: South Umpqua River Bridge (Roseburg) – Bridge Rehab



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Historic Bridge considered eligible/significant. Adverse Effect? Section 4(f)?

Coast Guard jurisdiction: concurrence only.

Archaeology: Known artifacts. Probing likely required. SHPO permit? Avoidance or recovery?



ESA: FAHP (SWMP/In Water Work)
Corps NW Permit
DSL Gen Permit
Hazmat Testing/Reporting

Potential Road Closure/Detour Potential Impacts to School and VA hospital (Interested Party Coordination)

Parks and bike-paths: Section 4(f)?
Use, de minimis, temp occupancy?
Section 6(f) in play
(Interested Party Coordination)

Questions

