United States Department of Agriculture

Rural Development

Presented by Kellie Kubena, Director
Engineering and Environmental Staff

RUS Environmental Update
Still Don’t Fear the NEPA!

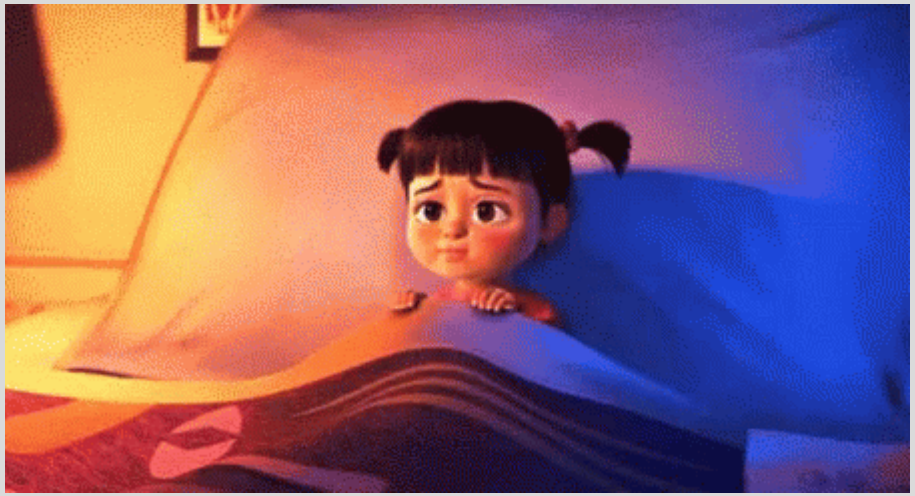
Outline

- Part 1
  - Still Don’t Fear the NEPA!
  - FY17 Overview
  - 1970 now and in the future
  - 2017 Executive Orders
  - Processing Applications
- Part 2
  - Section 106 NHPA Streamlining
  - Telecom Programmatic Environmental Assessment
  - EES Staffing

Still Don’t Fear the NEPA!

For every loan RD makes, no matter the program, there are three components:

- Financial analysis
- Engineering analysis
- Environmental analysis



For each component, the agency must :

- Document that the project meets any applicable requirements and
- Evaluate the risk of financing the project

Test Your Knowledge!

How does your environmental specialist/archeologist help your project?

- Makes recommendations to mitigate impacts
- Explains to permitting agencies why your project is important and how it will be constructed
- Suggests efficiencies in program reviews
- Is super cool
- All of the above

FY17 Telecom Program Performance

- Made 25 loans for $450M
- 72 Distance Learning and Telemedicine Grants for $23.5M
- 8 Community Connect Grants for $17.9M
- 2017 stats on project reviews-
  - 34 Telecom program reviews
  - Most projects (60%) reviewed in under 60 days, 90% in less than 6 months
- Expecting another busy year in FY18!

The “New” 1970 Environmental Policies and Procedures- 2017 Activities

- GFR trainings on: regulation, EES project review tracker, and Section 106 of the National Historic Preservation Act
- Training offered at Aug 2017 ACE Meeting in DC

What’s new in 2018?

- Hurricane recovery temporary hires- Carlos Perez, Jonathan Simpson, and Omololu Dawodu
- New RUS Administrator
- New WEP Assistant Administrator
- Video training
- Nationwide Programmatic Agreement Section 106 Consultation
- Telecom Programmatic Environmental Assessment

The “New” 1970 Environmental Policies and Procedures- 2018 Activities

- Revise and reissue subparts to incorporate new tools, refine instruction
- Explore potential of electronic environmental application that works with RDApply
- Finalize and implement Nationwide Programmatic Agreement for RD- covered later
- Finalize Programmatic Environmental Assessment for Telecommunications Facilities- covered later

Environmental Executive Orders

Executive Order 13766- Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects

- CEQ identifies, at the request of governor, federal agency or others, “high priority” projects important to general welfare, value to the nation, environmental benefits, and other factors
- CEQ works with federal agency to expedite processes and deadlines for completion of environmental reviews
- Agencies will make every effort to prioritize reviews to meet deadlines, otherwise head of agency will submit a written explanation to CEQ

Environmental Executive Orders (cont.)

Executive Order 13807- Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects

- "… the Federal Government, as a whole, must change the way it processes environmental reviews and authorizations decisions."
- Agencies should follow transparent and coordinated processes for conducting environmental reviews and making authorization decisions.
- Introduces "one federal decision", develops a permitting timetable, uses permitting dashboard, and engages senior agency officials
- CEQ modifying existing guidance and identifying any needed regulatory changes

FAST-41

Fixing America's Surface Transportation Act- December 2015

- Title 41 of the FAST Act (42 U.S.C. § 4370; "FAST-41") created a new governance structure, set of procedures, and funding authorities designed to improve the timeliness, predictability, and transparency of the Federal environmental review and authorization process for covered infrastructure projects
- Established Federal Permitting Improvement Steering Council- interagency council to oversee implementation
- Usually applicable to EIS-sized projects

Processing of Applications

- National Environmental Policy Act, National Historic Preservation Act, Endangered Species Act, and other statutes clearly require consultation and consideration of alternatives prior to federal action.
  - Federal action is approval of financial assistance/obligation of funds
  - Litigation around 2008 highlighted and reaffirmed the requirement
  - RD OGC clarified in 2011 that environmental reviews (including Section 106) must be completed before obligating funds to avoid violating the Anti-Deficiency Act.
- **7 CFR 1970 codifies this for Rural Development**

Section 106 Streamlining

- Prior to 2011, RUS sometimes obligated loans with conditional environmental approval
- After 2011, no more conditional environmental approvals
- This sequencing issue is a contributing factor to the need to streamline Section 106 processes

Section 106 Streamlining- more details tomorrow!

- List of Cat-Ex's with No Potential to affect historic or cultural resources (available separately- will be added to Subpart H)
- Use of other Agency Program Alternatives
  - Program Comment on broadband deployment on federal lands
  - Railroad Exemption
  - Other Agency's PAs that allow RD to sign on or use.
- Nationwide Programmatic Agreement for Rural Development
  - Allows for obligation of funds for any program in RD with the condition that Section 106 consultation be completed prior to construction
  - Will later include specific program exemptions in appendices

Test Your Knowledge!

What is the purpose of environmental review?

- To ensure the project has no impact on the environment
- To inform the program decision maker about the impacts of a project
- To allow the public to participate
- To invite lawsuits
- All of the above

Environmental Review Process

Pre-loan

- Applicant prepares environmental documentation and sends to GFR
- GFR sends to EES for review
- EES completes environmental review prior to obligation

Post-loan

- Where changes in scope of project require amending the original environmental review, applicant prepares supplemental environmental information
- EES reviews new information prior to approval of amendment of scope

Potential Pitfalls and How to Avoid

- Public notice time frames have been shortened, but processes remain the same; **there is still time involved** … be aware of situations where a notice may be required, e.g., for a particular resource impact
- Endangered Species Act (Section 7) and National Historic Preservation Act (Section 106) not only have time frames, but also specific procedural requirements; detailed guidance and template documents are available at Subpart N and Subpart H, respectively
- Classification under NEPA; CATEX with or without an ER? EA? Consult the applicable guides that have been developed
- CATEXs without ERs may require review under ESA and NHPA, some won't

Important Exhibits for Borrowers

- Subpart B, Exhibit C, Guide to Applicants for Preparing Environmental Reports under 1970.54
- Subpart C, Exhibit B, Guide to Applicants for Preparing Environmental Assessments under 1970.102
- Subpart H, Exhibit B, Delegation of Authority to Applicants
- Subpart H, Exhibit D, Guide for working with Indian tribes
- Subpart H, Exhibit H, Template letters for consulting with SHPOs and THPOs

More guidance included if a project requires public meetings or an Environmental Impact Statement

What needs to accompany a workplan or Amendment?

- A sufficient description of each activity included in the workplan or amendment that allows the agency to properly determine the environmental review requirements of a project
- Other appropriate documentation- maps, letters, etc

Components of a good project description

- Details of the project and construction method to be used
- Current land use, land owner, and the extent of the disturbance from proposed construction
- Approximate location of the construction; e.g. on a private utility easement adjacent and parallel to road ROW
- USGS or aerial map detailing the location and affected area.

Examples of a good project description

- Project description should include:
  - Method of placement
  - Location of placement (ROW vs not, county, state, federal land)
  - New route miles
  - New vs. existing facilities
  - Photographs and maps
  - Utility poles and easements
  - Site/ROW clearing required
  - Individual project vs group descriptions

Examples of a good project description

- Backup power generator to be placed adjacent to existing electronics cabinet. Exact model not finalized but dimensions expected to be 48”Lx24”Wx30”H. Will require 100 gallon LP tank at site with dimensions of approximately 30” diameter x 54”tall. Generator and tank will sit within site boundaries already designated for existing cabinet which fall within the environmental routes identified in the maps.
- This project involves construction of new buried fiber optic cable along existing, previously disturbed routes using buried construction techniques. When applicable, may plow the cable into the ground using a ripper attachment. This method opens a small, narrow trench, inserts the cable, and closes the trench, all in the same process.

What do we need from you?

- Active understanding of what is needed for expeditious reviews
  - Good project descriptions and maps are key!
  - Use the program efficiencies available- including letter templates, catex with no potential list, etc
- Ask questions? Engage us in your environmental documentation preparation!
- Come back for Part 2 tomorrow, we'll talk about the new streamlining of Section 106 and NEPA reviews

What will we cover tomorrow?

- Section 106 of the National Historic Preservation Act
  - How to make it move as efficiently as possible
  - Streamlining tools- template letters, etc
  - Nationwide Programmatic Agreement
- Programmatic Environmental Assessment for Telecommunications Facilities
  - What does the PEA cover?
  - How does it work?

EES Staffing

Environmental Staff- Supports All RUS Programs

- Vacant, Senior EPS
- Lauren Cusick, EPS
- Dennis Rankin, EPS
- Lauren Rayburn, Env. Sc.
- Steve Polacek, EPS
- Erika Seibert, Ph.D., FPO
- Basia Howard, Archaeologist
- Alex Anderson- Student Trainee
- Carlos Perez- Temporary EPS
- Jonathan Simpson- Temporary EPS
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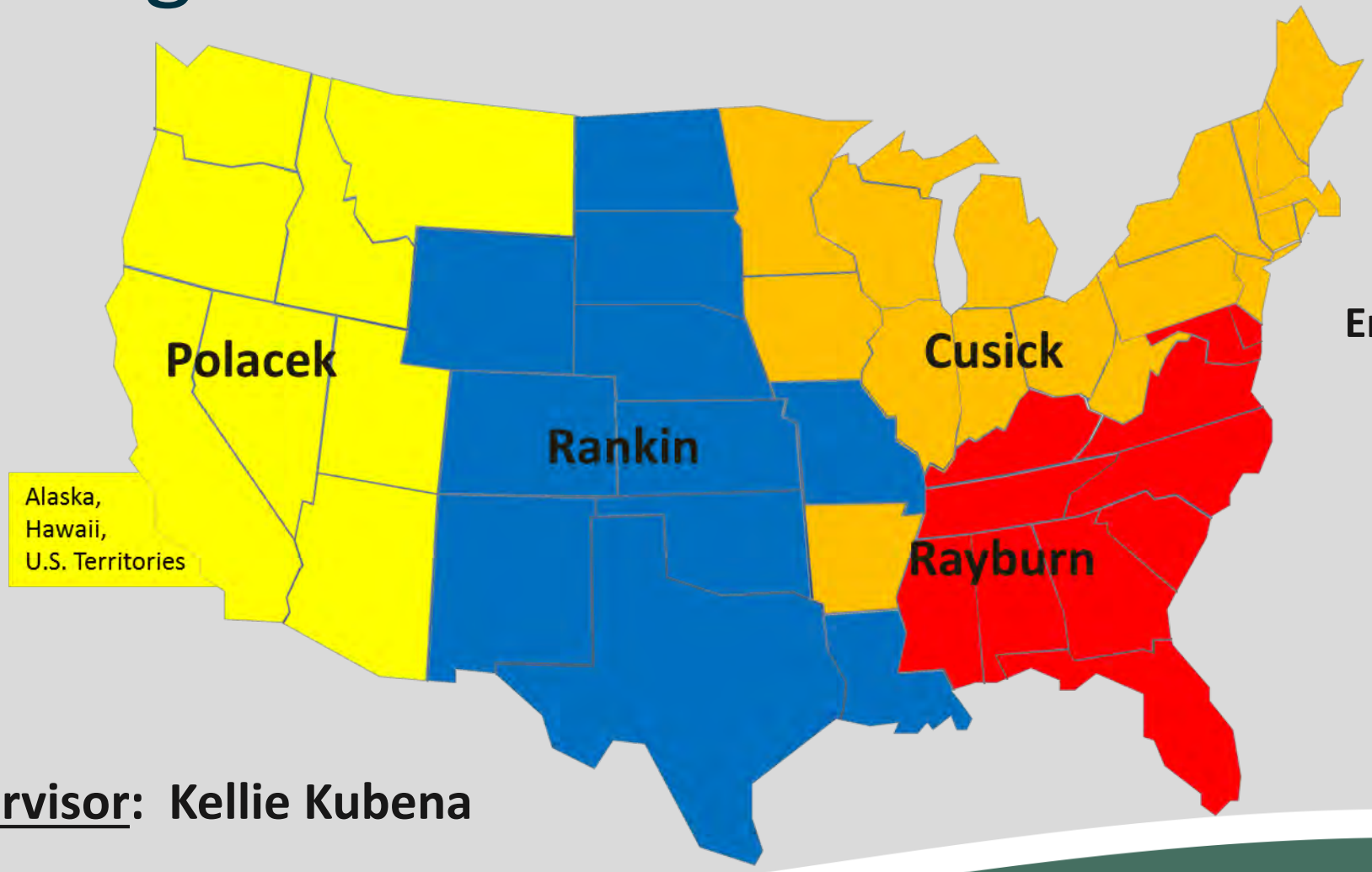
EES Staffing



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Basia Howard
Student Trainee:
Alex Anderson
Temporary EPS:
Carlos Perez
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Questions?

United States Department of Agriculture

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USDA Rural Development is committed to the future of rural communities.

United States Department of Agriculture

Rural Development

Presented by Basia Howard, Archaeologist
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RUS Environmental Update Part 2: Streamlining Section 106 and NEPA Reviews

Outline

- Section 106
  - Overview
  - Applicant and Consultant Role and Responsibilities
  - When to Reach Out
  - Section 106 Stumbling Blocks
  - Nationwide Programmatic Agreement
- Programmatic Environmental Assessment
  - What does it do?
  - Tiering Process
  - How to use it?

Section 106 of the National Historic Preservation Act (NHPA)

Requires Agency takes into account the effects of the undertaking/federal action:

- According to regulation, Section 106 consultation must be completed prior to undertaking (obligation); often done through an individual Programmatic Agreement because of the timing of our loan process.

Applicant and Consultant Roles and Responsibilities

RD has delegated authority to their applicants pursuant to 36 CFR § 800.2(c)(4), and 7 CFR § 1970.5(b)(2) of the regulations, 'Environmental Policies and Procedures' (7 CFR Part 1970), to initiate and proceed through steps 1-3 of the Section 106 review process.

- Initiation (36 CFR 800.3)
- Identification (36 CFR 800.4)
- Assessment of Adverse Effects (36 CFR 800.5)

Applicant and Consultant Roles and Responsibilities

- In delegating this authority, RD is advocating for early communication with SHPOs, THPOs, and Indian tribes in the Section 106 process.
- RD believes this interaction, prior to direct agency involvement, will support and encourage the consideration of impacts to historic properties earlier in project planning.
- This blanket delegation does not delegate the federal government's government–to government consultation responsibilities toward Indian tribes.

When to Involve RUS Cultural Resources Staff

RD applicants and/or their consultants must involve RD national office staff when:

- A THPO or Indian tribe specially asks for government–to–government consultation;
- There will be adverse effects to historic properties or a program alternative needs to be created;
- The SHPO, THPO, and/or Indian tribe disagrees with a recommend finding; and/or
- An inadvertent discovery is made.

Section 106 Stumbling Blocks

- Not including information that a project requires Federal Communications Licensed Spectrum;
- Not including information identifying when a project crosses Federally managed lands;
- Improperly applying the No Potential List (Only applicable for non-tribal and federal lands);

Section 106 Stumbling Blocks

- Not initiating Section 106 with consulting parties early in the process;
- Not using the template letters with the specific language recommended; and
- Insufficient descriptions of the project and the area of potential effects.

Nationwide Programmatic Agreement (NPA)

- Prior to 2011, RUS sometimes obligated loans with conditional environmental approval
  - After 2011, no more conditional environmental approvals
- Once NPA is signed:
  - RUS can obligate funding and consult on specific projects when more details are available
- Once Appendices with exemptions are in place:
  - Borrowers will have access to nationwide efficiencies for certain actions

Section 106 Streamlining- NPA

Why do we need an NPA?

We need to address the sequencing of Section 106 so that we can obligate funds first and then complete Section 106 consultation.

1) Borrowers may not be in a position to accept the expense of Section 106 review without some level of confidence that RD low interest funding is available to them.
2) Identification of an appropriate Area of Potential Effect and impacts to historic properties for multi-year work plans and loan designs is challenging.
3) For long term project plans, we cannot provide good information to consulting parties or start earlier in the planning process.
4) Borrowers may not be able to get permits on federal lands to start survey for identification of historic properties until money has been obligated.
5) The Administration's Goals for the deployment of services to rural America.

Nationwide Programmatic Agreement

- Once NPA is signed:
  - RUS can obligate funding and consult on specific projects when more details are available
- Once Appendices with exemptions are in place:
  - Borrowers will have access to nationwide efficiencies for certain actions

National Programmatic Agreement- Timeline

- Draft NPA under review by National Conference of SHPOs, National Association of THPOs, Advisory Council on Historic Preservation and the National Trust for Historic Preservation
  - Webinar available for viewing at any time
  - Listening sessions were held from April through mid-March
  - We have received comments, and are adjudicating the document
  - Present final document to signatories- spring 2018
- Once NPA is finalized:
  - RD staff will begin drafting Appendices for each program
  - Training on how to use the NPA will be held for borrowers, consultants and SHPOs/THPOs

Telecom Facilities Programmatic Environmental Assessment (PEA)

- Objectives of the PEA
  - Expedite the preparation and evaluation of projects to deploy and expand broadband infrastructure to rural America
  - Save RUS and applicants time, resources, and funds
  - Ensure consistent and accurate evaluation of broadband projects
  - Efficiently comply with laws and regulations
  - Avoid duplicative and repetitive efforts for planning, environmental review, regulatory compliance and permitting

Telecom Facilities Programmatic Environmental Assessment (PEA)

- What is a PEA? (Chapter 1)
  - NEPA encourages agencies to consider repetitive projects and broader program impacts at a program rather than project level
  - Remaining impacts at project level can be “tiered” using a stepped approach to analysis and decision-making
  - The PEA provides a legal way to evaluate impacts programmatically and defer other impact analyses that need more detailed information to a later point and process
- The PEA covers all RUS telecommunications facilities projects

Telecom Facilities Programmatic Environmental Assessment (PEA)

- Detailed Description of Activities (Chapter 2
  - The PEA details the telecommunications facilities activities that would be financed through RUS programs
  - Specific details are provided about the methods of:
    - Underground and buried replacement of cable
    - Aerial placement of cable
    - “Drops to customers
    - Cell and microwave antennas located on buildings and new and existing towers
    - Ancillary and support facilities and equipment
  - The document includes photographs and descriptions of equipment used for these installations, the methods of installation, and how those may affect resources
- Borrowers may use this information to provide to land managing agencies for land use authorization or special use permits

Telecom Facilities Programmatic Environmental Assessment (PEA)

- Program Level environmental analyses (Chapter 3)
  - The information in this chapter replaces what was formerly known as a generic environmental report
  - Analyses for the resources outlined below are complete and do not need further analysis at project-level planning if implementing identified standard operating procedures and mitigation as described in the PEA
  - The document provides programmatic level analyses for the following resources:

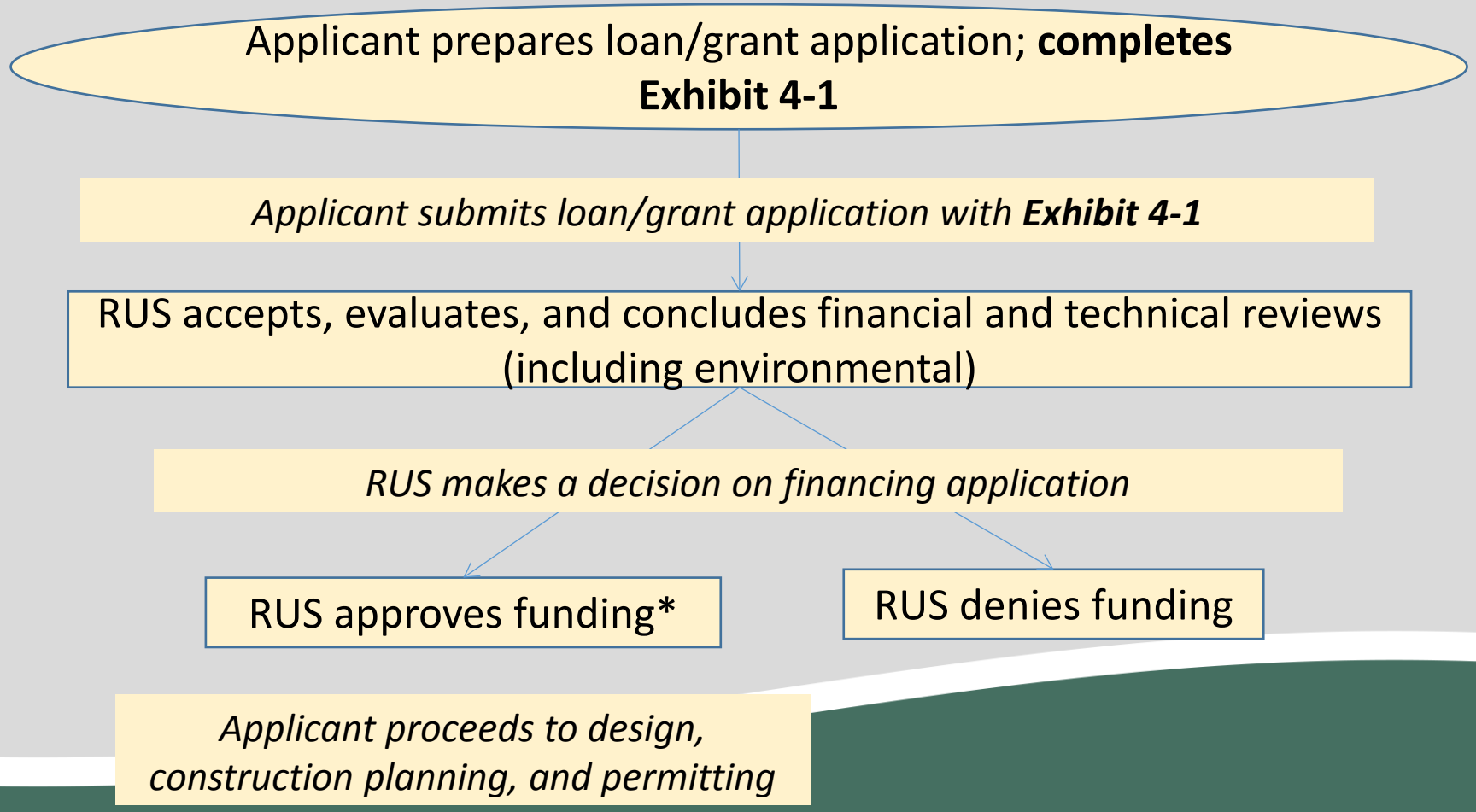
Groundwater	**Greenhouse Gas Emissions**
Surface Water	Noise
Soil Erosion	Electromagnetic Radiation
Native Vegetation	Migratory Birds
Air Quality	Environmental Justice

Telecom Facilities Programmatic Environmental Assessment (PEA)

- Tiering Process (Chapter 4)
  - Spells out the tiering process including what can be approved and what RUS and the borrower can and cannot do until the tiered, site-specific environmental review is completed.
  - Based on the publication of the PEA/FONSI RUS will be able to obligate funds for projects and activities covered in the document
  - Until ALL site-specific, or “tiered” environmental review requirements are met
    - RUS cannot advance loan or grant funds or approve construction contracts
    - The applicant cannot begin site preparation or project construction (see 7 CFR 1970.12)

Telecom Facilities Programmatic Environmental Assessment (PEA)

- Tiering Process

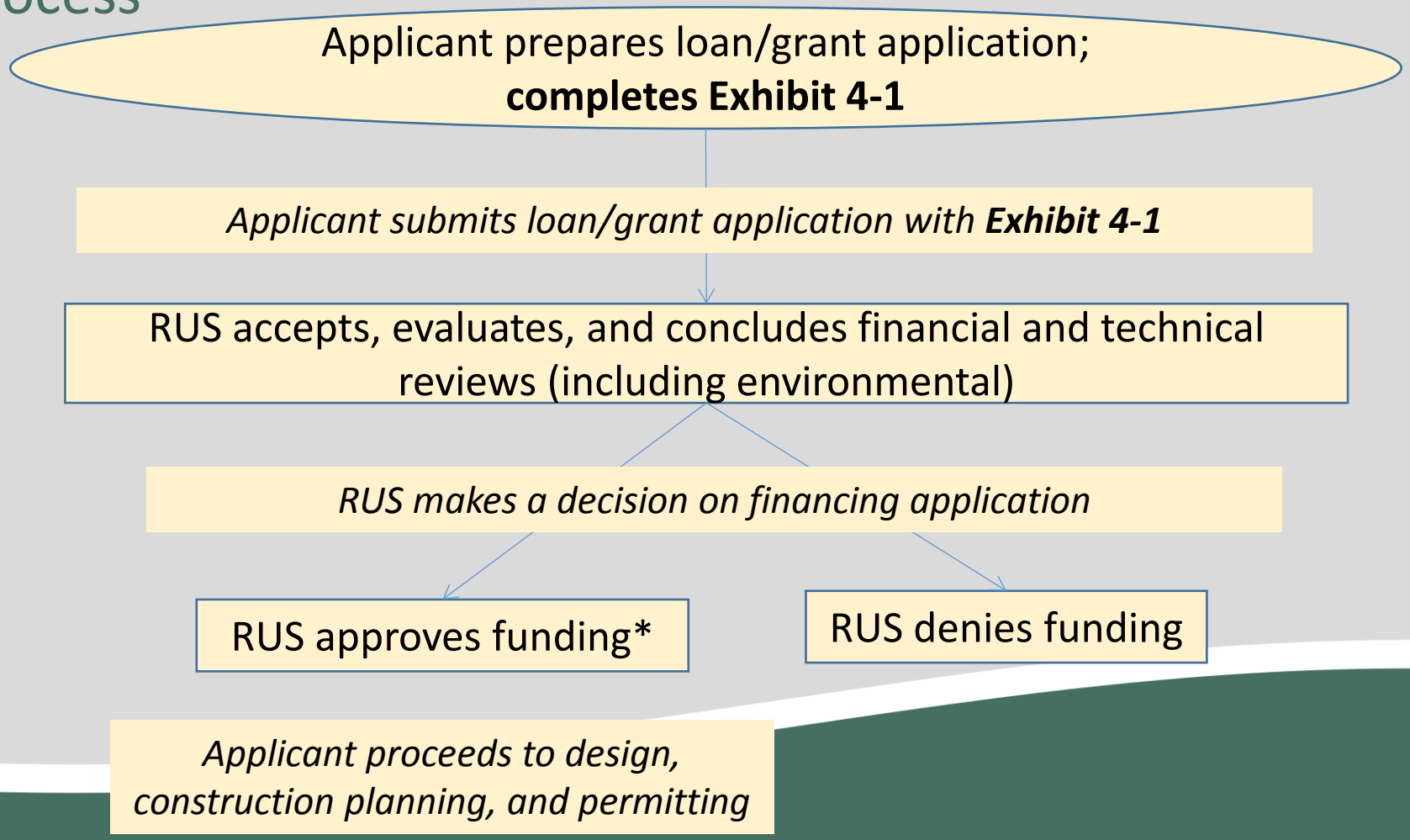


Telecom Facilities Programmatic Environmental Assessment (PEA)

- Tiering Process (Chapter 4- Exhibit 4-1)
  - Exhibit documents that every project or activity included in a loan or grant application is included in the PEA analysis
  - Use of the exhibit allows RUS to make a funding decision based on the PEA/FONSI
  - If subsequent tiered or site-specific environmental review is needed, the following cannot occur until it is complete.
    - RUS cannot advance loan or grant funds or approve construction contracts
    - The applicant cannot begin site preparation or project construction (see 7 CFR 1970.12)

Telecom Facilities Programmatic Environmental Assessment (PEA)

- Tiering Process



Telecom Facilities Programmatic Environmental Assessment (PEA)

- Tiering Process (Chapter 4- Exhibit 4-2-Linear Projects)
  - Exhibit documents:
    - land uses: public and private land
    - Federally listed species/designated critical habitat
    - Wetlands/waters of the US conversions requiring an individual permit
    - Farmland soil conversion (AD 1006 if not sited in existing ROW)
    - Coastal barrier resource area

Telecom Facilities Programmatic Environmental Assessment (PEA)

- Tiering Process (Chapter 4- Exhibit 4-3-Towers/Buildings)
  - Exhibit documents:
    - land uses: public and private land
    - Federally listed species/designated critical habitat
    - Historic properties
    - Floodplain conversions
    - Wetlands/waters of the US conversions requiring an individual permit
    - Farmland soil conversion (AD 1006)
    - Coastal barrier resource area

Telecom Facilities Programmatic Environmental Assessment (PEA)

- Using the PEA-
  - Applicant confirms that all planned activities are consistent with:
    - Technologies analyzed in the PEA Chapter 2
    - Environmental conditions/mitigation described in the PEA Chapter 3
  - The PEA includes appendices that should help applicants coordinate permit and land use authorization requirements from other federal and state agencies.
    - RUS can’t direct other agencies in how to conduct their environmental reviews, but we will reach out to other agencies to encourage cooperation
    - PEA can be a useful tool to provide information

Telecom Facilities Programmatic Environmental Assessment (PEA)

- Using the PEA- Appendices
  - Appendix C and D provide information on NEPA and land use authorization regulations for federal permits
  - Appendix G provides web links to relevant environmental databases
  - Appendix I includes Section 106 templates and guidance specific to telecommunications facilities
  - Chapter 2 describes the activities planned and can be used in coordinating with land use authorizing and permitting agencies

Telecom Facilities Programmatic Environmental Assessment (PEA)

- Status of the PEA
  - PEA published March 2016
    - Comment period ended April 1, 2016
    - 2 comments received that have been incorporated into Agency Finding
  - Finding planned to be published in coordination with Nationwide Programmatic Agreement finalization- expected May-June 2018

Telecom Facilities Programmatic Environmental Assessment (PEA)

- What do I do after this is all in place?
  - Review projects for eligibility under the PEA
    - If eligible, follow PEA
    - If not, review under 1970
  - Use Nationwide Programmatic Agreement, to cover obligation
    - Once exemptions in place, determine what exemptions apply
    - Post obligation, conduct Section 106 review prior to construction

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Environmental Staff- Supports All RUS Programs

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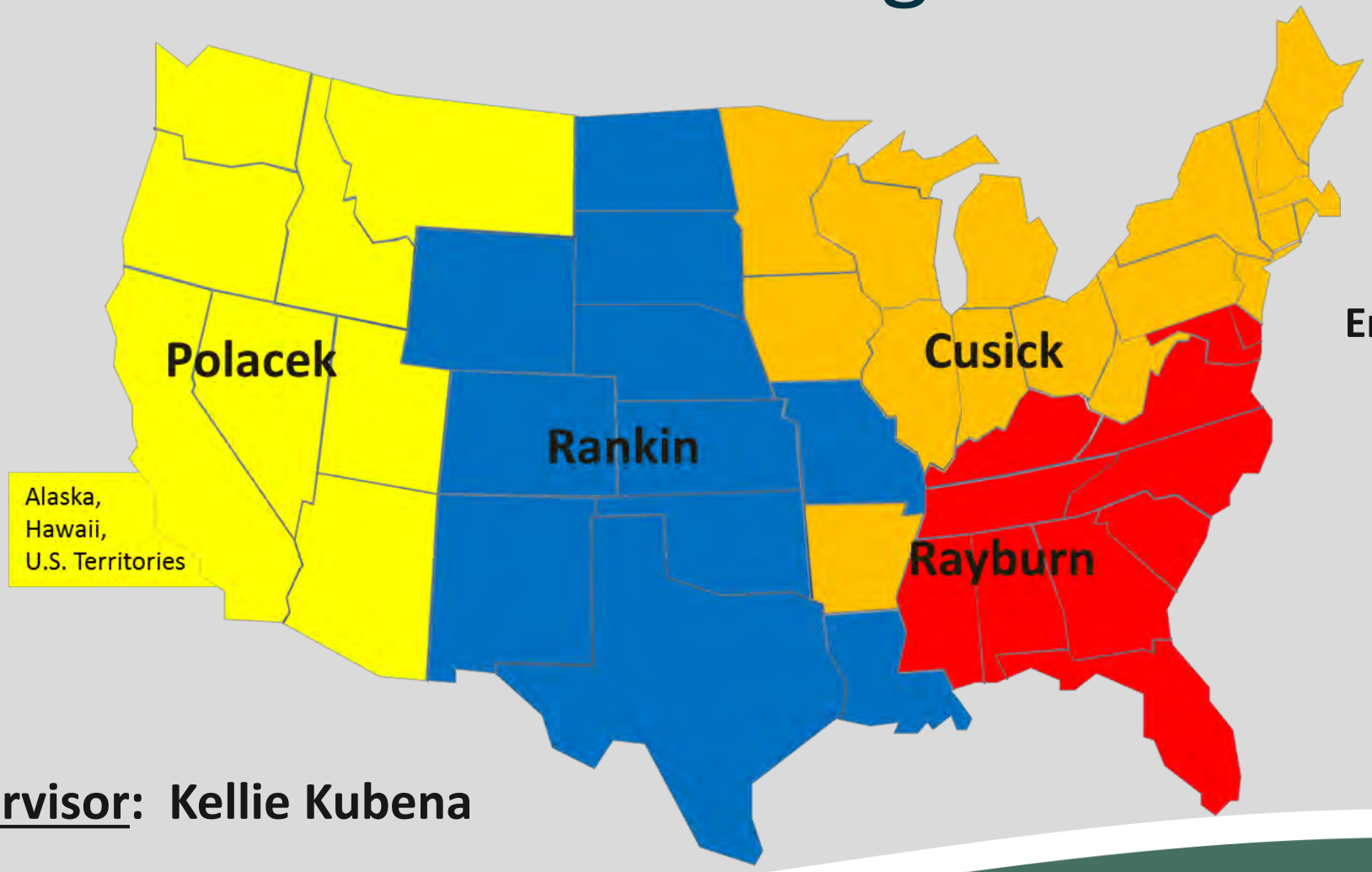

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