

Large Facilities Office Workshop

May 26, 2016

Environmental Compliance and Permitting for NSF Funded Projects



Environmental Compliance and Permitting

Environmental Compliance

- ❖ NSF's legal responsibility
- ❖ Occurs before a funding decision is made

Permitting

- ❖ Typically, it is the Awardee's responsibility
- ❖ Permits are obtained after a funding decision is made

What Is Environmental Compliance?

- Federal agencies must consider the impacts of their proposed activities on the environment as part of their decision-making processes.
- Major federal statutes requiring environmental compliance include:
 - National Environmental Policy Act (“NEPA”)
 - National Historic Preservation Act (“NHPA”)
 - Endangered Species Act (“ESA”)

Threshold Issues

- *What are examples of triggers for federal agencies' environmental compliance obligations?*
 - An activity, the issuance of a license or permit, or the issuance of federal funds
 - At NSF, compliance is triggered by the issuance of federal funds
- *When does compliance begin and end?*
 - Compliance should begin at the *earliest* possible point in the process, but **only after a proposal is deemed viable for funding**
 - Compliance should end when the steps have been completed and documented, but **before a decision is reached**

Roles of Program Officer, PI, and OGC

- **Program Officers:** Responsible for identifying *viable* proposals and determining whether significant environmental impacts are anticipated
- **PI's:** Responsible for providing program officers sufficient information to determine whether significant environmental impacts may result
- **OGC:** Responsible for providing support (i.e., training, tools, advice and assistance) to program officers so that NSF's environmental compliance obligations can be met

Environmental Compliance at NSF

1. Program Officer identifies viable proposals
2. Program Officer notifies PI and requests that the *Organization Environmental Impacts Checklist* be completed
3. Upon receipt of the completed *Checklist*, Program Officer determines (with the help of EC Team, if requested) whether compliance can be completed in-house or with the assistance of a contractor
4. If negligible or no impacts are anticipated, Program Officer completes *NSF Record of Environmental Compliance*

Environmental Compliance at NSF

- continued

1. If impacts are anticipated, Program Officer may use NSF's Blanket Purchase Agreement to complete compliance work
2. Environmental impacts are factored into NSF's decision-making process
3. Completion of environmental compliance can take from a couple of minutes to over a year, depending upon the level of impacts associated with the proposed project

Major Environmental Compliance Statutes Implicated by NSF's Funding Decisions

- **National Environmental Policy Act:** Requires federal agencies to consider impacts on the human environment before decisions are made
- **National Historic Preservation Act:** Requires federal agencies to consider impacts on significant historic, cultural, and archeological resources before decisions are made
- **Endangered Species Act:** Requires federal agencies to consider impacts on endangered and threatened species and their habitats

NEPA Compliance: Three Levels of Review

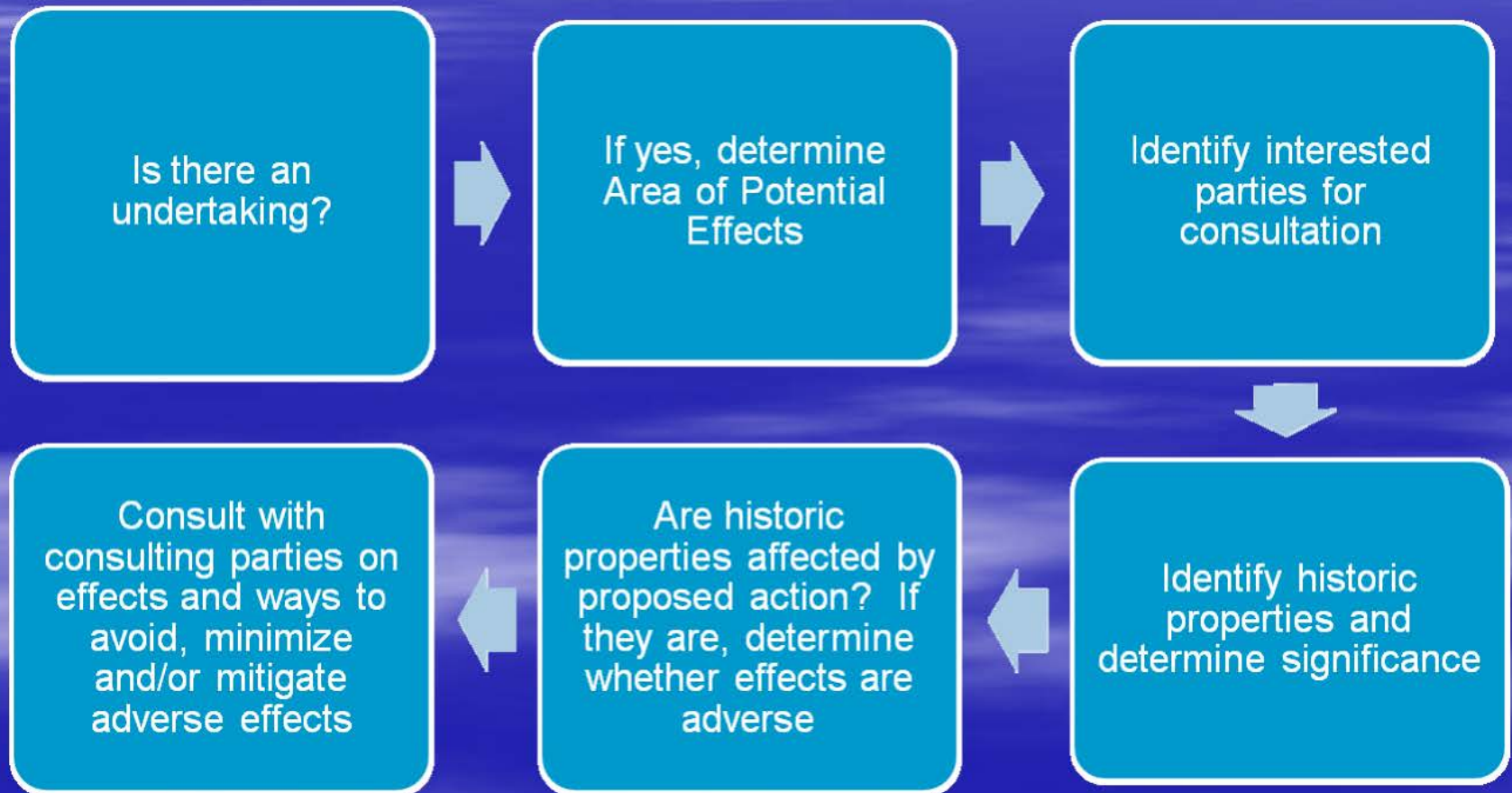
- ❖ **Categorical Exclusions:** Pursuant to NSF regulations, no significant impacts are anticipated to result (most NSF proposals fall under this category)
- ❖ **Environmental Assessments:** Activities that are not categorically excluded, but are not anticipated to result in significant impacts (some NSF proposals)
- ❖ **Environmental Impact Statement:** Activities that are anticipated to result in significant impacts (few NSF proposals fall under this category)

Note: OGC can assist in determining appropriate level of environmental review

Examples of Activities Requiring Limited Environmental Review

- Interior alterations/renovations
- Theoretical and/or laboratory research
- Data analysis/Modeling
- Planning/conducting scientific workshops/conferences
- Conducting day-to-day management activities of FFRDCs
- Educational development grants
- Scholarships/Fellowships
- Purchasing Equipment
- Field work not affecting the environment
- Activities having minor disturbance to the local environment
- Drilling/excavation of the earth with no significant impacts

National Historic Preservation Act: the Section 106 Process



Endangered Species Act

- Requires NSF to determine whether endangered/threatened species and/or their habitat are present in the area of the proposed project
- Requires determination of anticipated effects to such species/habitat
- Preparation of Biological Assessment if formal consultation with USFWS or NMFS is required
- Incidental Take Permit might also be required

Streamlining Environmental Compliance

- ❖ Overlap exists in requirements of planning statutes such as NEPA, the NHPA, and the ESA
- ❖ NEPA document can be used as an umbrella document to demonstrate compliance with other statutes such as the NHPA, and ESA

Permitting

- Awardees typically are the entities responsible for obtaining required permits to carry out the proposed activities.
- Permitting does *not* include environmental compliance responsibilities – permitting occurs *after* NSF has issued a decision to fund the proposed activities.

Examples of Permits

- Construction Permit
- Research Permit
- Special-Use Permits (SUP)
 - Note that when a SUP is issued by a federal agency (i.e., the National Park Service or the National Forest Service), that agency will have to complete its environmental compliance processes before issuing the SUP.

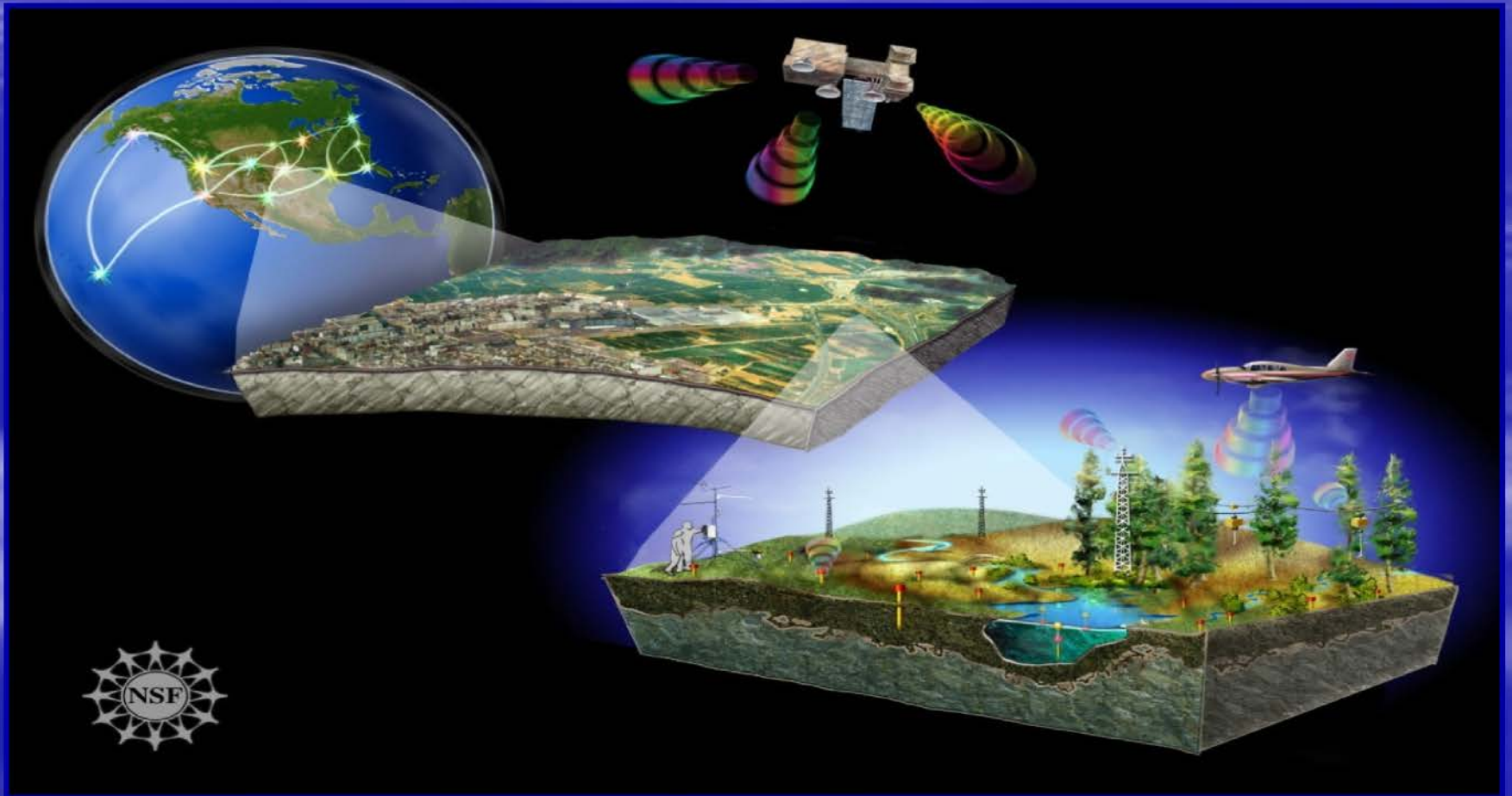
NCAR Wyoming Supercomputer Center

Compliance:

1. Few, if any, impacts were anticipated
2. EA/FONSI



National Ecological Observatory Network





**Airborne
Platform**

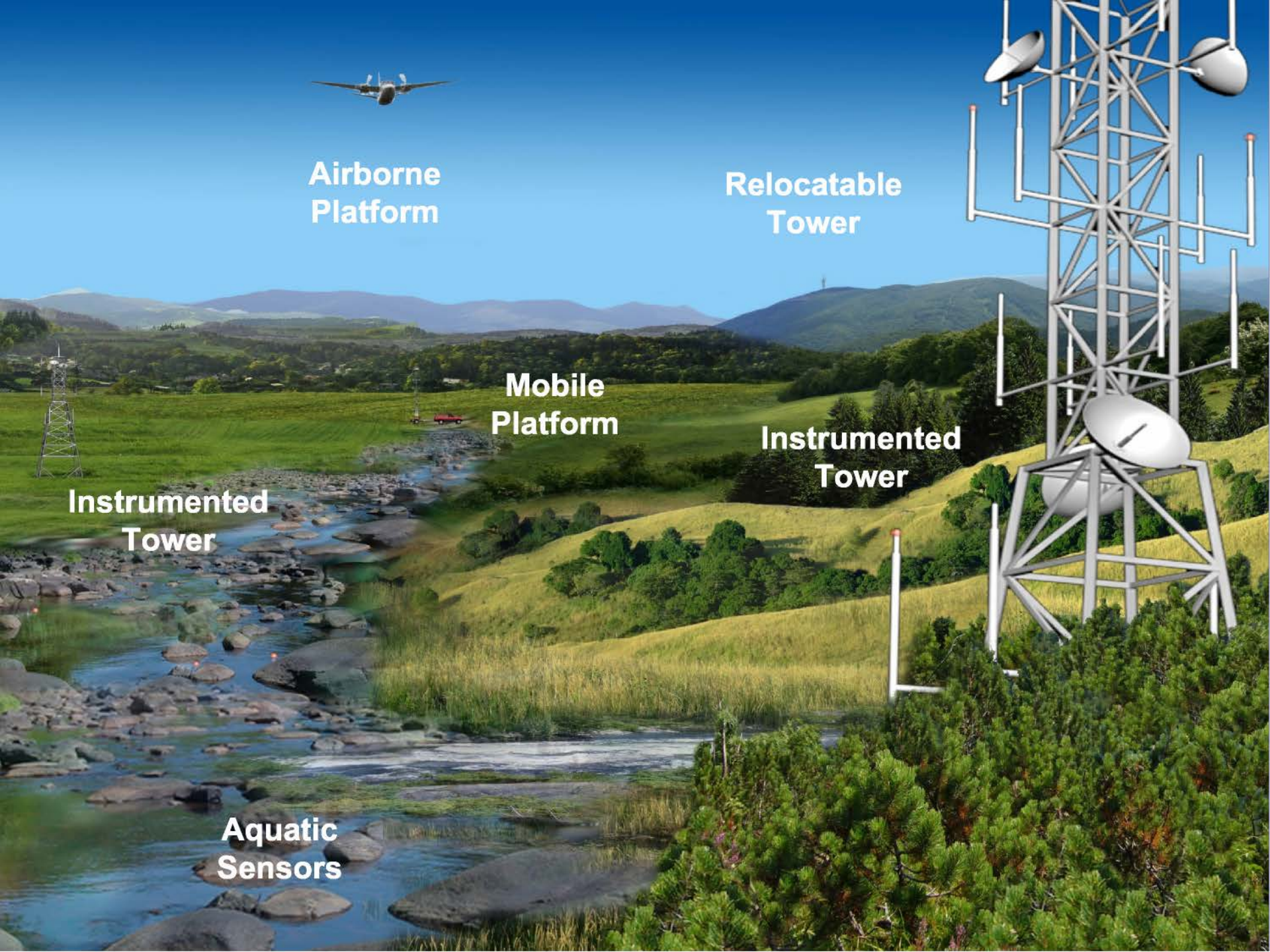
**Relocatable
Tower**

**Mobile
Platform**

**Instrumented
Tower**

**Instrumented
Tower**

**Aquatic
Sensors**

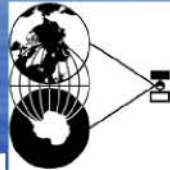




NEON Domains

- | | | | | |
|------------------------|-----------------------------------|---------------------|--------------------------------------|----------------------|
| 1 Northeast | 5 Great Lakes | 9 Northern Plains | 13 Southern Rockies/Colorado Plateau | 17 Pacific Southwest |
| 2 Mid Atlantic | 6 Prairie Peninsula | 10 Central Plains | 14 Desert Southwest | 18 Tundra |
| 3 Southeast | 7 Appalachians/Cumberland Plateau | 11 Southern Plains | 15 Great Basin | 19 Taiga |
| 4 Atlantic Neotropical | 8 Ozarks Complex | 12 Northern Rockies | 16 Pacific Northwest | 20 Pacific Tropical |

USGEO



USGS science for a changing world

GEO GROUP ON EARTH OBSERVATIONS

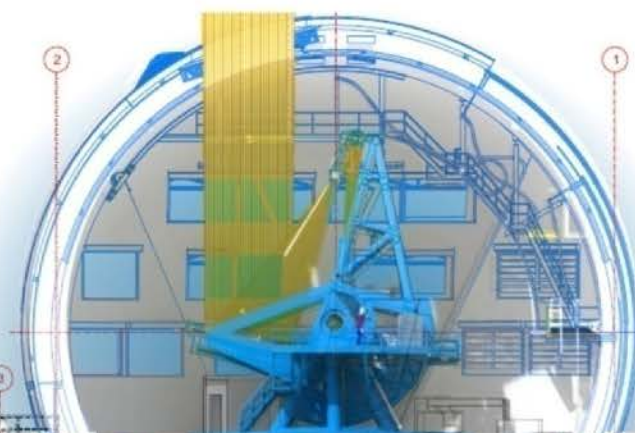
NSF NEON NEPA Cooperating Agencies

NEON: Lessons Learned

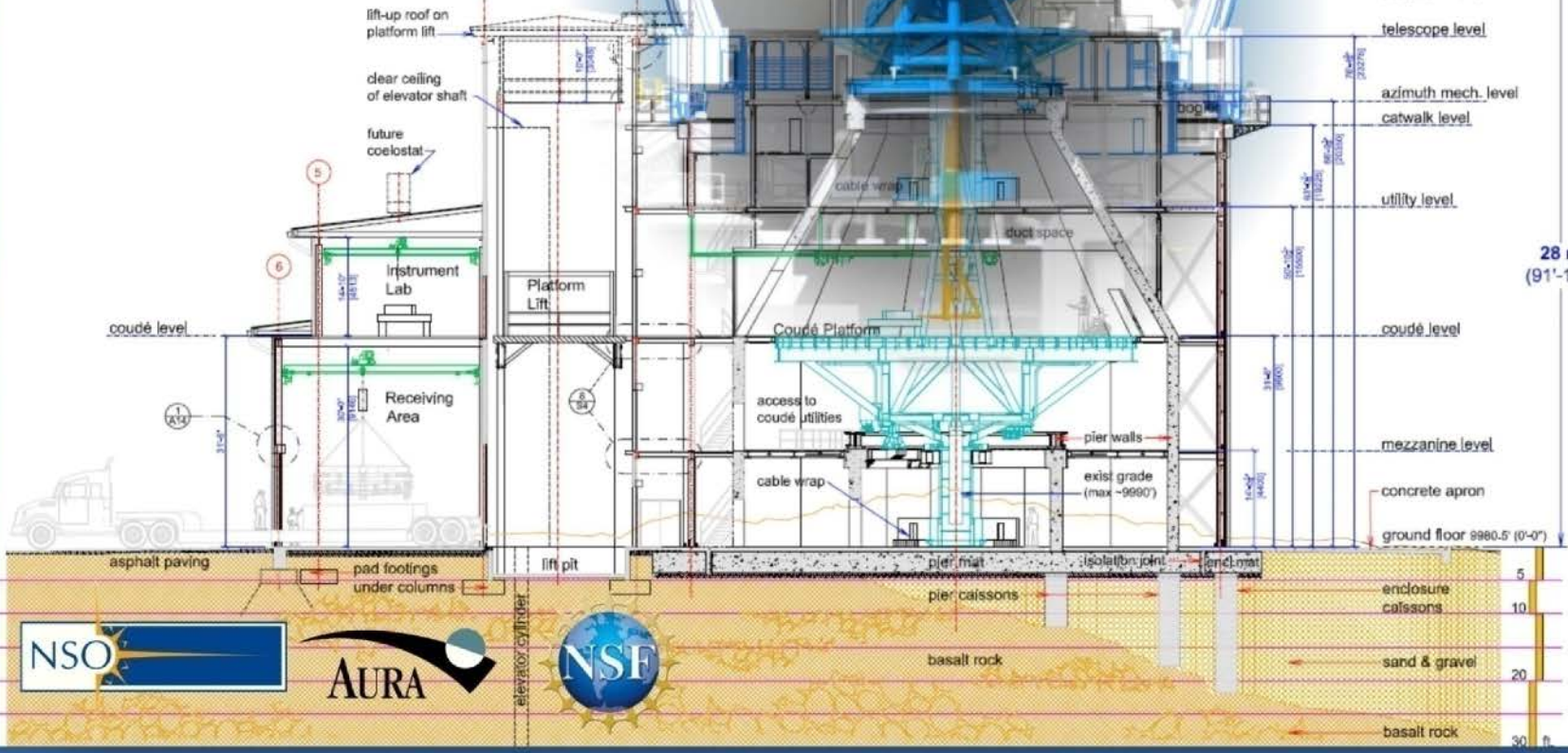
Environmental Compliance

v.

Permitting



B SECTION (E-W)
scale 1/8" = 1'-0"





Haleakala Crater

Haleakala Visitor Center

Haleakala National Park's Red Hill Overlook

Proposed ATST Site

The u'au -- Hawaiian Petrel



ATST Environmental Compliance



Dr. Bement signing the ROD

EIS:

3116 pages, ~\$3.5M.

Preceded by a DEIS and a SDEIS

ROD: Signed in December 2009

NHPA Programmatic Agreement:

SHPO

ACHP

Native Hawaiian Stakeholders

ESA:

USFWS – Biological Opinion

State – Habitat Conservation Plan

DKIST: Lessons Learned

Understand the local culture
And
Begin permit process early

Additional Thoughts

- Do not imply that the decision is a done deal; refer to the project as the “proposed project”
- All memoranda, correspondence (including letters and e-mails), technical studies, records of public participation, public comments, notes, etc. become part of the administrative record
- Try to develop more than one action alternative if possible; if not possible, explain why other alternatives were not selected
- Begin environmental compliance **early on** in the decision-making process

Resources

- ❖ NSF: Caroline M. Blanco, Assistant General Counsel, cblanco@nsf.gov, (703) 292-4592
- ❖ ECOs: Kristen Hamilton and Holly Smith
- ❖ Legal Analyst: Dana Thibodeau
- ❖ NEPA: Council on Environmental Quality (www.NEPA.gov)
- ❖ NHPA: Advisory Council on Historic Preservation (www.achp.gov)