Administrative Record CBT

Welcome to National Environmental Policy Act, also known as NEPA, Assignment Course on Administrative Record provided by the Florida Department of Transportation's Office of Environmental Management, or OEM. To begin, select the start button or press Shift+N on your keyboard.

This course will cover requirements for creating, maintaining, and retrieving the Administrative Record for NEPA projects."

Prepare Quality Documents

The Administrative Record should contain quality documents which enhance legal defensibility. Documents should be clear with logical organization and writing. Visuals should be effectively used. Documents should tell the project story. Documents should always support your assumptions and statements, and should thoroughly explain your methods. Quality documents will help you build a strong Administrative Record.

Administrative Record – When and Why

When and why should there be an Administrative Record? If a project is being challenged in court for not complying with NEPA, the case is brought in federal district court under the Administrative Procedures Act (5 U.S.C. *S*ection 551 et seq.).

Agencies are to follow procedures and document the decision-making process. The Administrative Record is used to support the Agency's process. The analysis, findings and conclusions and their basis must be in the Administrative Record. If not, the Court will draw its own conclusions. Always remember, if it's not in the record, it didn't happen.

Court Relies on the Administrative Record to Review the Action

The Court relies heavily on the Administrative Record for the details to review the action before them. The Standard of Judicial Review covers Arbitrary and Capricious, Abuse of Discretion, and not in accordance with the law. If you properly document what you did and you can show it in the Administrative Record, the Court will give great deference to the agency.

An Agency Decision will be upheld if the Agency follows the Rule of Reason, which means sufficient information to show full consideration of environmental factors with reasoned decision after balancing risk of harm against project benefits and reasoned choice between alternatives.

Preparing the Administrative Record

Preparing the Administrative Record is very important. The District Project Manager, or DPM, should start early in the process and maintain accurate files. The District Project Manager has primary recordkeeping responsibilities in SWEPT, including Project File, Administrative Record, and Attorney Work Product.

The DPM should randomly check files to make sure they are updated. To make sure the files are complete, the DPM should contact all personnel involved in the project and gather files and documents. Gathering the records will be much easier if the DPM with assistance of project team has been managing the files and preparing the Administrative Record during the entire process.

Additionally, the DPM finalizes the Administrative Record when litigation is filed. The Administrative Record consists of all documents and materials directly or indirectly considered or relied upon by the agency decision-

maker. The Administrative Record also consists of all documents and materials prepared, reviewed or received by agency personnel. If unsure about what documents to include, contact your FDOT attorney for advice. It would be helpful if you are working with the attorney during the entire process.

What to Include

By now, you may be wondering, what are specific examples of what to include in the Administrative Record. Both paper and electronic documents must be considered for the Administrative Record. You should include all NEPA documents; technical reports; modeling that covers assumptions, methods and results; and maps, drawings and displays. You should include both agency and public comments and FDOT responses to comments. A matrix is commonly used to display comments and responses.

What are some other examples of what to include in the Administrative Record? You should include correspondence with Agencies, Consultants and stakeholders; both internal and external e-mails containing discussion of the proposed project; Public Notices issued by the Agency; and meeting transcripts, minutes, summaries and notes.

There are items that should NOT be included in the Administrative Record. Generally draft documents are not included in the record. However, if the draft was circulated for public comments, then the draft, comments received and the agency's response to those comments should be included in the record. Also drafts may still be requested under Florida's Public Records Act. While not required with the above exception, drafts in the Administrative Record can show that the agency gave the required "hard look."

What NOT to Include

There are other documents and records that should not be in the Administrative Record. These include Attorney Work Product, information prohibited by other laws or regulations such as Endangered Species Act or Cultural Resources, and personal notes unless they are the actual record or meeting minutes.

Statutes and Regulations should not be in the Administrative Record because they are universally available. Some documents may need personal and confidential information redacted or blacked out. Contact your attorney if you have questions about redacting personal and confidential information.

Organize the Record

Organize, organize, organize. Organizing your Administrative Record is very important to ensure you can find the right documents when needed. Chronological order is a typical method to keep your records in context. You should put comments and responses to your comments together. You may have several emails that could become easily separated, even if on your computer. Create an easy to follow table of contents. This will get you to the needed record quickly and efficiently.

District Project Manager should conduct a thorough search for documents and records for the Administrative Record. As stated earlier in the course, if records are being maintained early and correctly throughout the process, a search will be much easier. The District Project Manager should keep a record of where searched and who contacted, then sign and certify the Administrative Record.

Administrative Record Tool

SWEPT has an Administrative Record Tool that makes the creation, maintenance and organization of the Administrative Record simpler. The Administrative Record is built as project files are uploaded and stored in

SWEPT. The Administrative record page on SWEPT allows authorized users to verify and edit the organization and content of the Administrative Record. The project team also uses it to request approval from OGC to export and distribute the record.

Most Important Factor Relating to the Project File

As is the case for the Environmental Document Project File, the most important factor of documenting the Administrative Record is to ensure your environmental records and supporting materials are in SWEPT. Remember, if it's not in the record, it didn't happen.

Questions

If you have questions regarding Administrative Records, please contact the Office of General Counsel.

Conclusion

This concludes the presentation on NEPA Assignment course on Administrative Records. Please proceed to and complete the test to receive credit for this course.