

Let's talk about the critical elements checklist. Ted, what happened to it? Where is it? It's gone.

>> T. Milesnick: Cathy, I know a lot of people must be using the new handbook because we've gotten as much feedback on this one topic as practically anything else we've heard back on. The answer is there is no longer the critical elements checklist in the handbook. The primary reason for that being that it didn't represent NEPA requirements. What was listed there are requirements from other authorities. So that being said, I guess it's worthwhile to recognize that there are other authorities that are pertinent when we are considering an action, and these other authorities can come from statutes such as the Endangered Species Act, historic preservation act, Executive Orders such as environmental justice or program specific requirements. So those are still necessary to consider other authorities, and these other authorities can be very pertinent to the NEPA analysis to several steps in our NEPA analysis process. For example, identifying regulatory thresholds that may be pertinent when we are determining cumulative impacts. Also as a basis for determining significance. So there is some benefits of those other authorities. And in many cases, kind of compliance with other authorities can be done at the same time as we're doing our NEPA analysis. And the new handbook does have a list of supplemental authorities in appendix 1. There's a couple things to remember and note about that list. The first is that it's not an exhaustive list. There's other authorities out there applicable to various programs. The second point is that that list will change over time. There's other things that come and go for other authorities standpoint. What we were trying to, I think, emphasize is that when we're doing a NEPA analysis, we need to put on our thinking caps and think about what other authorities might

be pertinent to the action that's being taken at the time. Not just go to some check-off list that may or may not be complete or current. One final point concerning the -- the supplemental authorities is that there isn't a need or requirement to document or make a negative declaration for program areas that are described in the supplemental authorities that are not relevant to the proposed action. So you wouldn't need to make that extensive list of negative declarations.

>> C. Humphrey: So, Ted, if they don't have to make a negative declaration, how does the manager, the public, other people know they've addressed it or considered it?

>> T. Milesnick: One mechanism of doing that would be to include that in the administrative record. You know, outside the NEPA document, that you considered these other things or how you addressed these other things.

>> C. Humphrey: Okay. And the purpose of that is you're trying to limit the extraneous information in the NEPA document?

>> T. Milesnick: Correct.

>> R. Hardt: And also we want to make it clear that what NEPA requires as opposed to what these other authorities require. If we say you need to document in your NEPA analysis these negative declarations about these authorities, it becomes a NEPA requirement or we confuse it with a NEPA requirement. We find if we confuse what the requirements are, we find the judges tend to as well.