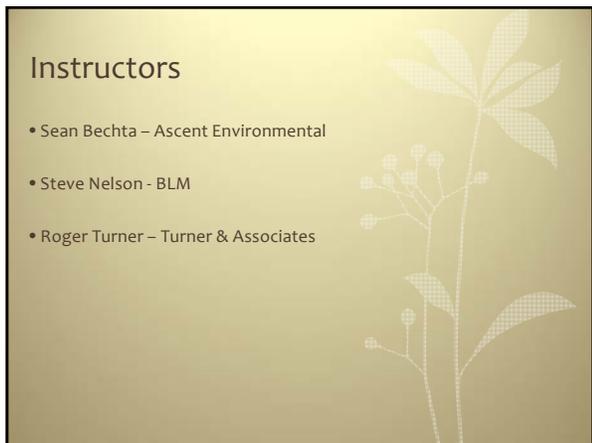


AEP CENTRAL CHAPTER
EASTERN SLOPE CONFERENCE
MAMMOTH LAKES, CA

NEPA Workshop
Friday September 27, 2013



Instructors

- Sean Bechta – Ascent Environmental
- Steve Nelson - BLM
- Roger Turner – Turner & Associates



Thank You to our Sponsors

- HELIX Environmental Planning
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What We Will Cover

- Part 1 – NEPA Background
- Part 2 – Determining Whether NEPA Applies
- Part 3 – Determining What Type of NEPA Document to Prepare
- Part 4 – NEPA Document Preparation and Review
- Part 5 – Integrating NEPA with Other Laws

PART 1 – NEPA BACKGROUND

What is the National Environmental Policy Act (NEPA)?

- Signed into law by President Nixon in 1969
- The law that:
 - Established our national policy for environmental responsibility
 - Created in interdisciplinary framework for federal planning and decisions making
 - Established action-forcing procedures to require federal agencies to consider environmental factors
 - Introduced the Environmental Impact Statement as a public policy tool
 - Created the Council on Environmental Quality (CEQ)
- Provided the foundation for the development of the California Environmental Quality Act (CEQA)

Why Was NEPA Necessary?

- Environmental factors rarely considered when implementing actions
- Little public notification about projects
- Public comments fell on deaf ears
- Little interagency coordination
- Decisions made “behind closed doors” without explanation
- Limited opportunity for judicial enforcement

NEPA Section 101: Congressional Declaration of National Environmental Policy

- Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
- Assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
- Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
- Preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;
- Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
- Enhance the quality of renewable resources and approach the maximum attainable recycling of depleted resources.

NEPA Section 102: Requirements to prepare an “EIS”

- All agencies of the federal government shall include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on:
 - (i) the environmental impact of the proposed action,
 - (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
 - (iii) alternatives to the proposed action,
 - (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
 - (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

NEPA's Objectives

- Provide supplemental legal authority
- Procedural reform
- Disclosure of environmental information
- Resolve environmental problems
- Foster intergovernmental coordination and cooperation
- Enhance public participation in government planning and decision making

How is NEPA Different from Other Environmental Laws?

- Multidisciplinary
- Emphasizes disclosure of information
- Assumes that good information will lead to better decisions
- Limited substantive effect – it isn't a permit
- Requires coordination with other laws

Key Participants in the NEPA Process

- Oversight Agencies
 - Council on Environmental Quality
 - U.S. Environmental Protection Agency
- Implementing Entities
 - Lead Agency
 - Cooperating Agencies
 - Project Applicants
 - Third Party Contractors
 - State and Local Agencies
 - Native American Tribes
 - Concerned Citizens and Organizations

CEQ NEPA Responsibilities

- Issue regulations and guidance regarding NEPA
- Resolve Lead Agency disputes
- Mediate interagency disputes over environmental policy
- Provide training and advice to federal agencies regarding compliance
- Maintain NEPAnet and www.nepa.gov websites

CEQ's NEPA Web Site <http://ceq.hss.doe.gov/>

- Full text of NEPA (statute)
- CEQ NEPA regulations
- List of federal agency NEPA web sites/regulations
- NEPA guidance documents from CEQ
- Recent CEQ NEPA studies
- CEQ annual environmental law reports
- Links to federal environmental data
- Recent NEPA case law
- Information about NEPA training opportunities

Note: <http://ceq.hss.doe.gov/> and www.nepa.gov appear to have been down for some time. Many searches lead to <http://www.whitehouse.gov/administration/eop/ceq/>, but all the same information is not there.

EPA NEPA Responsibilities

- Reviewing agency for EISs
- Filing and noticing in the Federal Register
- Cooperating agency for certain EPA issues
- Lead agency for some non-exempt actions

EPA Office of Compliance and Enforcement
<http://www.epa.gov/compliance/nepa/>

- Explanation of EPA role in NEPA process
- Weekly lists of EISs available for public review
- Information on how federal agencies must file an EIS
- Summaries of EPA comments on EISs
- Description of EPA rating system for EISs and proposed federal actions
- EIS statistical information
- List of federal agency web sites
- Updated EPA NEPA guidance

NEPA Legal Authority

- General:
 - The statute (42 USC 4321)
 - CEQ NEPA regulations (40 CFR 1500)
 - CEQ NEPA guidance memoranda
 - EPA NEPA guidance
 - NEPA court decisions
- Agency-specific
 - Agency NEPA regulations
 - Agency guidance, handbooks, and manuals

What is a Lead Agency?

- Definition
 - "The agency with primary responsibility for complying with NEPA on a given proposed action."
- Factors Used to Determine the Lead Agency:
 - Magnitude of involvement
 - Approval/disapproval authority over proposed action
 - Expertise with regard to environmental effects
 - Duration of involvement
 - Sequence of involvement

40 CFR 1508.16

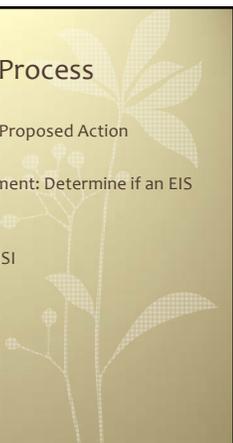
What is a Cooperating Agency?

- Federal agency with discretionary authority
- Federal agency with jurisdiction by law
- Federal agency with special expertise
- State and local agencies
- Tribal governments

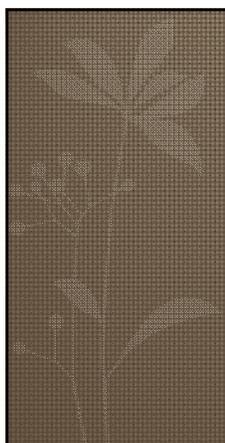


Three Phases of the NEPA Process

- Phase 1 – Determine if NEPA applies to a Proposed Action
- Phase 2 – Prepare Environmental Assessment: Determine if an EIS must be prepared
- Phase 3 – Prepare an EIS or Adopt a FONSI



**PART 2 –
DETERMINING
WHETHER NEPA
APPLIES**



Determining Whether NEPA Applies to the Proposed Action

- Is there a proposal for action?
- Is the action federal?
- Has Congress exempted the action from NEPA?
- Is there a statutory conflict that precludes NEPA compliance?
- Are there other circumstances that exclude the action from NEPA? (national security?)

- Does a Categorical Exclusion apply?

Which Federal Agencies Are Subject to NEPA?

- Subject to NEPA:
 - Executive branch departments and agencies
 - Independent executive agencies
 - Independent regulatory commissions
- Not Subject to NEPA:
 - Congress
 - President
 - Executive office of president
 - Federal Courts
 - Functionally-equivalent actions by certain agencies
- Also Not Subject to NEPA:
 - State agencies and commissions
 - Local governments
 - Regional agencies
 - Bi-state compacts (e.g., TRPA)

Which Types of “Major Federal Actions” are Subject to NEPA?

- New or continuing federal activities, including those that are:
 - Conducted by the agency
 - Assisted by the agency
 - Financed by the agency
 - Approved by the agency (including approval of private activities)
 - New or revised federal agency:
 - Rules
 - Regulations
 - Plans
 - Programs
 - Federal agency legislative proposals to Congress
- *Note: “Major” reinforces but does not have meaning independent from “significantly” (therefore, even a small action may have a significant impact).

40 CFR 1508.18

Examples of Actions Not Subject to NEPA

- Specific statutory exemptions
- Functionally-equivalent exemptions
- Ongoing actions since the time NEPA was enacted (e.g., “grandfathered” activities)
- Ministerial actions (e.g., no federal discretion)
- Condemnations and acquisitions
- Agency budgets and appropriation requests

When is an Action “Federal”

- Federal agency proposes action
- Federal land lease or right-of-way necessary
- Federal funding involved
- Federal agency is partner
- Federal agency permit is necessary
 - Small federal handle exception (i.e., the entire action may not be federal)
- Exception:
 - “Non-major federal action”

Defining the Extent of a Proposed Action

- Proposed actions must be considered broadly to include:
 - “Related actions” and
 - “Connected actions”
- Proposed actions must not be “segmented” or “piecemealed” (i.e., chopped into small pieces) to avoid NEPA or avoid an EIS

When Must Related or Connected Actions Be Evaluated in the Same NEPA Document?

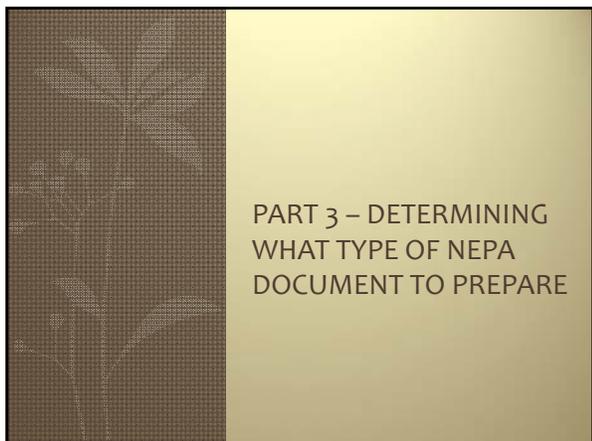
- Action A and Action B are interrelated segments
- Action A is a commitment to Actions B
- Action B is a foreseeable future phase of Action A
- Action A without B would be irrational or unwise

When May Related or Connected Actions Be Evaluated in Separate NEPA Documents?

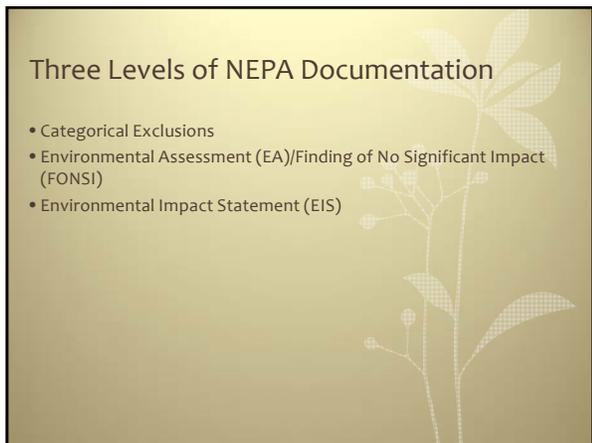
- Action A and Action B have independent utility
- Action A and Action B are independently justified
- Action B is a “tiered” activity under Program A
- Action A is federal, Action B has limited federal control or jurisdiction (e.g., “small federal handle”)

“Small Federal Handle” May Limit NEPA Scope

- Definition: Only a small portion of a large undertaking is under the jurisdiction of the federal agency
- Scope of NEPA documents may be limited to the portion of the proposal under federal jurisdiction
- Examples:
 - ¼ mile of 200-mile utility line crosses BLM land
 - FHWA funding \$1 million for a single intersection of \$100 million multi-city highway project
 - Large private-housing project needs USACE permit to fill 2 acres of 1,000-acre project

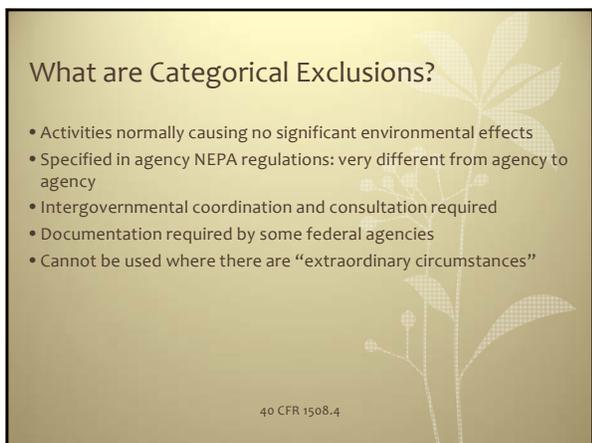


PART 3 – DETERMINING
WHAT TYPE OF NEPA
DOCUMENT TO PREPARE



Three Levels of NEPA Documentation

- Categorical Exclusions
- Environmental Assessment (EA)/Finding of No Significant Impact (FONSI)
- Environmental Impact Statement (EIS)



What are Categorical Exclusions?

- Activities normally causing no significant environmental effects
- Specified in agency NEPA regulations: very different from agency to agency
- Intergovernmental coordination and consultation required
- Documentation required by some federal agencies
- Cannot be used where there are “extraordinary circumstances”

40 CFR 1508.4

Examples of Typical Agency Categorical Exclusions

- Relatively small or minor new facilities and activities:
 - Varies widely by agency
 - Some are not that minor (e.g., USFS/BLM fuel reduction up to 4,500 acres)
- Routine maintenance or repair of existing facilities
- Budgetary and personnel actions
- Administrative activities
- Enforcement actions

Exceptions to Categorical Exemptions: Extraordinary Circumstances

- Activities which would cause an otherwise excluded actions to have the potential to significantly affect the quality of the human environment
- For example, adverse effects on:
 - Wetlands
 - Endangered species
 - Historic resources
- Extraordinary circumstances often linked to "significance" criteria

CEQ Guidance on Establishing and Applying Categorical Exclusions Under NEPA

- Process for establishing a Categorical Exclusion
- The role of public involvement and documentation in defining and substantiating a proposed Categorical Exclusion
- How to use a CE and what documentation is necessary to support it
 - CEQ encourages documentation, but not detailed
 - CEQ encourages public notification of Categorical Exclusions; use of websites encouraged
- Conducting periodic reviews of Ces to assure their continued usefulness

Memorandum for Heads of Federal Departments and Agencies: Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act, 23 November 2010

Illustrative Court Decision
Jones v. Gordon (9th Circuit – 1986)

- Permit application to NMFS from Sea World Corporation
- Collection of up to 100 orcas (killer whales) over five-year period
- Highly controversial:
 - Public hearing held
 - Over 2,000 public comments received
- Extraordinary Circumstances present:
 - Involves uncertain, unique, unknown risks
 - Establishes precedent for future actions
 - Involves unresolved conflicts over resource use (impacts are highly controversial)
 - Involves sensitive resources (wetlands, floodplains, wilderness, roadless areas, cultural sites, and T&E species' habitats)

Illustrative Court Decision
Brady Campaign to Prevent Gun Violence and NPCA v. Salazar (2009 – DC District Court)

- 1983 – DOI implemented regulations that generally prohibited possession of firearms in National Parks unless they were “packed, cased, or stored in a manner that [would] prevent their ready use.”
- Dec. 2008 – DOI issues final rule that allows persons to possess concealed, loaded, and operable firearms
- Firearms in National Parks and wildlife refuges in accordance with the laws of the state in which the National Park or wildlife refuge is located
- Categorical Exclusion is used for NEPA compliance (NPS DO-12 Sect. 3.3G)

Brady Campaign to Prevent Gun Violence and NPCA v. Salazar (2009 – DC District Court) (cont.)

- The DOI has analyzed the Final Rule under NEPA and determined that the action is subject to a categorical exclusion under applicable regulations. First, the Final Rule is in the nature of a legal challenge to existing rules that will not have any actual effects on the environment. And second, the DOI has determined that no “extraordinary circumstances” exist which would prevent the proposed action from being classified as categorically excluded

Brady Campaign to Prevent Gun Violence and NPCA v. Salazar (2009 – DC District Court) (cont.)

- COURT: “The lynchpin of Defendants’ response is that the Final Rule has no environmental impacts – and that Defendants were not required to perform any environmental analysis – because the Final Rule only authorizes persons to possess concealed, loaded, and operable firearms in national parks and wildlife refuges, and does not authorize persons to discharge, brandish, or otherwise use the concealed, loaded, and operable firearms. In other words, the Final Rule has not environmental impacts according to Defendants because the Final Rule does not authorize any environmental impacts.”

Environmental Assessments

- Purpose:
 - Provide sufficient evidence to determine whether EIS required
 - Support agency’s FONSI when no EIS is required
 - Facilitate scoping when EIS is required
 - Facilitate interagency coordination and consultation
- Theory and Reality
 - Theory
 - EA is a tool to help an agency decide whether or not to prepare an EIS
 - CEQ recommends that an EA be a brief document (15 pages)
 - Reality – EA has become a surrogate for the EIS:
 - Many agencies wish to minimize preparing EISs on most proposed actions
 - Most agencies have developed “mini-EIS” processes for the preparation and review of EAs
 - EAs outnumber EISs: about 50,000 vs. about 500 per year

40 CFG 1508.9

Legal Threshold for EIS Preparation

- EIS must be prepared when the lead federal agency makes a:
 - “proposal”
 - “for legislation or other major Federal actions”
 - “significantly”
 - “affecting”
 - “the quality of the human environment”

42 USC 4332 (Section 102 of NEPA)

What is “the Human Environment”?

- Human environment includes effects on:
 - Natural environment
 - Historic and cultural environment
 - Urban and built environment
 - Energy requirements and conservation potential
 - Human health
 - Physical effects on low income and minority populations (i.e., environmental justice)
- Part of the human environment, but no an EIS trigger (i.e., may have to be included once an EIS is prepared):
 - Economic impact
 - Social impacts
- Not subject to NEPA in either an EA or an EIS:
 - Psychological impacts

Definition of “Significantly

- **“Significantly”** as used in MEPA requires consideration of both **“context”** and **“intensity”**
- **“Context”** means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. **“Significance”** varies with the setting of the proposed action.
- For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locales rather than the world as a whole. Both short- and long-term effects are relevant.

40 CFR 1508.27

10 Factors for Determining the “Intensity” of an Impact

- Beneficial actions may have significant effects
- Degree of public health effects
- Unique characteristics
- Degree of controversy
- Degree of unique or unknown risk
- Precedent-setting effect
- Cumulative effect
- Cultural or historic resources
- Special-status species
- Violations of federal, state, local environmental law

Illustrative Court Decision National Parks and Conservation Association v. Babbitt (2001 – 9th Circuit Court)

- EA prepared by NPS for permits to allow increase of cruise ship traffic in Glacier Bay, Alaska
- Context – Glacier Bay National Park and Preserve is a place of “unrivaled scenic and geological values associated with natural landscapes” and “wildlife species of inestimable value to the citizens.” The Bay was proclaimed a national monument in 1925 and a national park in 1980. UNESCO designated Glacier Bay an international biosphere reserve in 1986 and a world heritage site in 1992.

National Parks and Conservation Association v. Babbitt (cont.)

- Intensity:
 - Unknown risks to marine mammals
 - Potential violations of state air quality standards
 - Highly controversial
- NPS deferred essential studies to the future as mitigation and prepared a FONSI
- Court held:
 - NPS violated NEPA
 - Context was unique
 - 3 intensity factors triggered
 - EIS required

Illustrative Court Decision Anderson v. Evans (2002 – 9th Circuit Court)

- NOAA prepared an EA for resumption of ancestral whale hunting by the Makah tribe in the Pacific Northwest (request to hunt up to 2 whales)
- Context:
 - Agency based analysis on regional whale population (e.g., west coast migration routes, approx. 30,000 whales)
 - Agency ignored local, resident population (e.g., Straits of Juan de Fuca, less than 50 whales)
- Intensity:
 - Highly controversial
 - Uncertainty as to size, nature, and extent of impacts
 - Precedent setting cumulative effect on whale hunting in view of IWC treaties
- Court held:
 - Wrong context used
 - 3 intensity factors triggered
 - EIS required

Finding of No Significant Impact (FONSI)

- Purpose:
 - Explains why proposed action will not have significant effect on human environment
- Contents:
 - FONSI includes the EA
 - Reference to related environmental documents

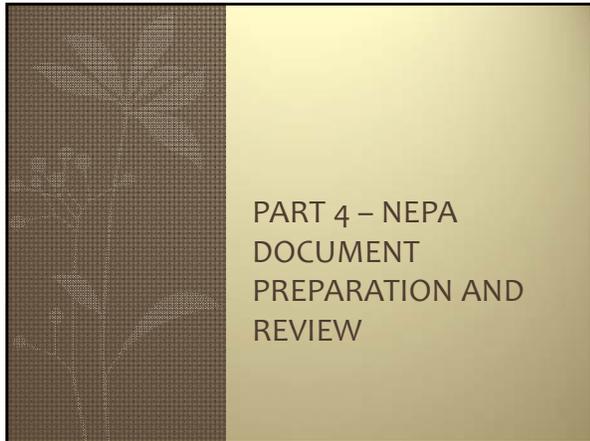
FONSI Based on Mitigation Measures (e.g., a “Mitigated FONSI”): Legal Standards

- Agency must demonstrate it has taken “hard look” at environmental consequences
- Agency must show mitigation measures will reduce impacts to less-than-significant levels
- Mitigation on which FONSI is based is specific and project related
- Agency or applicant committed to implementing mitigation
- FONSI must be supported by adequate EA

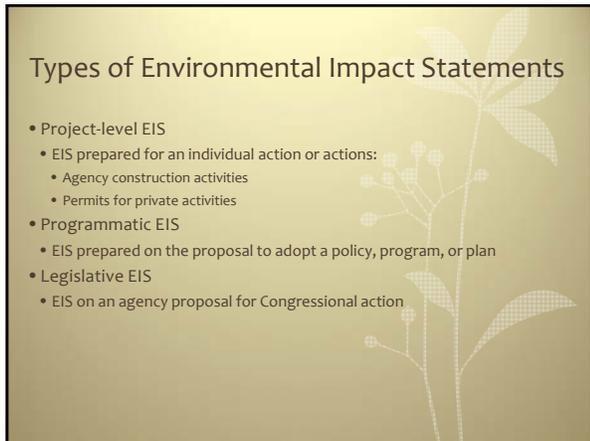
CEQ Guidance on Mitigation and Monitoring

- Validates the “Mitigated FONSI” as a legitimate tool under NEPA
- Sets out three goals:
 - Proposed mitigation should be considered throughout the NEPA process
 - A monitoring program should be created or strengthened to ensure mitigation measures are implemented and effective
 - Public participation and accountability should be encouraged through proactive disclosure of, and access to, agency mitigation monitoring reports and documents
 - Emphasizes both “implementation” monitoring and “effectiveness” monitoring
 - Suggests that failed mitigation may require preparation of supplemental NEPA document
 - Encourages mitigation to rely on principles of adaptive management

Memorandum for Heads of Federal Departments and Agencies: Appropriate Use of Mitigation and Monitoring and Appropriate Use of Mitigated Findings of No Significant Impact, 14 January 2011

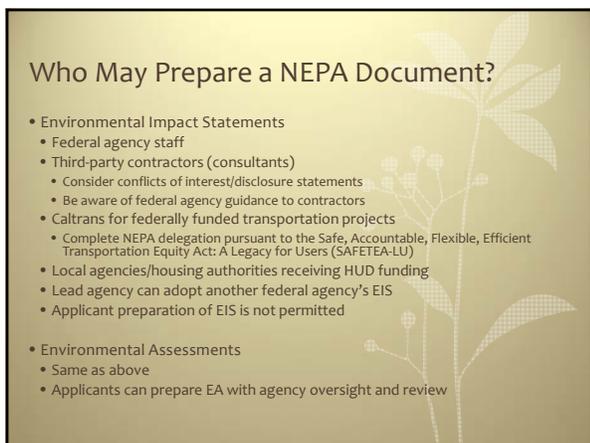


PART 4 – NEPA DOCUMENT PREPARATION AND REVIEW



Types of Environmental Impact Statements

- Project-level EIS
 - EIS prepared for an individual action or actions:
 - Agency construction activities
 - Permits for private activities
- Programmatic EIS
 - EIS prepared on the proposal to adopt a policy, program, or plan
- Legislative EIS
 - EIS on an agency proposal for Congressional action



Who May Prepare a NEPA Document?

- Environmental Impact Statements
 - Federal agency staff
 - Third-party contractors (consultants)
 - Consider conflicts of interest/disclosure statements
 - Be aware of federal agency guidance to contractors
 - Caltrans for federally funded transportation projects
 - Complete NEPA delegation pursuant to the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)
 - Local agencies/housing authorities receiving HUD funding
 - Lead agency can adopt another federal agency's EIS
 - Applicant preparation of EIS is not permitted
- Environmental Assessments
 - Same as above
 - Applicants can prepare EA with agency oversight and review

Steps in the EIS Preparation Process

- Determine Lead Agency
- Prepare Environmental Assessment (optional)
- Publish Notice of Intent (NOI)
- Conduct Scoping Process
- Prepare Draft EIS
 - Agency Coordination
 - Integration with Other Laws
- Circulate Draft EIS for Review (Notice of Availability [NOA])
- File Draft EIS with EPA
- Hold Public Hearing if Required or Desired
- Prepare Final EIS
- Circulate Final EIS
- File with EPA
- Adopt Final EIS
- Make Agency Decision
- Prepare Record of Decision (ROD)



Notice of Intent

- Purpose
 - The official beginning of the EIS process
 - Serves as legal notice an EIS will be prepared
- Content
 - Description of proposed action, alternatives
 - Description of agency's scoping process
 - Name and address of Lead Agency EIS contacts
 - When and where to submit comments
 - When and where scoping meeting will be held
- Where Posted
 - The Federal Register

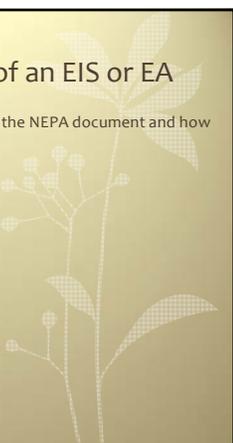
40 CFR 1508.22



Determining the "Scope" of an EIS or EA

- "Scope" means what should be evaluated in the NEPA document and how it should be evaluated. Scope includes:
 - Extent of proposed action:
 - Connected
 - Similar
 - Cumulative
 - Range of alternatives:
 - No Action
 - Other reasonable alternatives
 - Mitigation measures
 - Types of impacts (for each resource):
 - Direct
 - Indirect
 - Cumulative

40 CFR 1508.22



How to Conduct Scoping

- CEQ Scoping Guidance
- Involving other federal agencies
- Involving state and local agencies
- Involving tribal entities and individuals
- Scoping meetings
- Scoping reports
- E.O. 12898 – Environmental Justice considerations:
 - Special efforts may be necessary to reach out to low-income and minority populations

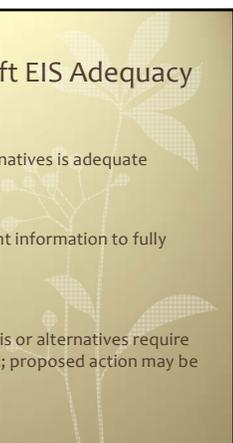


EPA Rating System for Review of Environmental Effects of Proposed Federal Actions

LO (Lack of objection) No potential impacts requiring changes to proposal	EO (Environmental objections) Significant impacts must be avoided to fully protect environment
EC (Environmental concerns) Environmental impacts should be avoided to fully protect environment	EU (Environmentally unsatisfactory) Adverse impacts that are unsatisfactory based on public health or environmental quality; proposed action may be referred to CEQ

EPA Rating System for Draft EIS Adequacy

- **Category 1: Adequate**
EIS treatment of impacts and alternatives is adequate
- **Category 2: Insufficient information**
Draft EIS does not contain sufficient information to fully assess all reasonable alternatives
- **Category 3: Inadequate**
Major deficiencies in impact analysis or alternatives require revised Draft EIS to be recirculated; proposed action may be referred to CEQ



Responding to Comments when Preparing a Final EIS

- Discuss commenter’s concerns about the Draft EIS
- Modify proposed action, alternatives
- Develop, evaluate new alternatives
- Supplement, improve, modify analyses
- Make corrections
- Explain why no response is necessary
- Alternative formats – revise and republish Draft EIS

40 CFR 1503.4

NEPA Decision Documents

- EIS – Record of Decision
 - Explanation of proposed action
 - Explanation of rationale for decision
 - Alternatives considered
 - Mitigation measures adopted or rejected
 - Monitoring and enforcement program
- EA/FONSI – “Decision Record” (names differ from agency to agency)

Supplemental EIS

- Required when environmental effects create:
 - Substantial changes in proposed action
 - New circumstances, new information
- Required after:
 - Preparation of Draft EIS
 - Adoption of Final EIS
- Recirculation required
- Passage of time does not trigger need
- CEQ advises agencies to evaluate EISs more than 5-years old

40 CFR 1502.9[c]

Required Content and Recommended Format of an EIS

- Cover sheet
- Summary
- Table of contents
- Statement of purpose and need
- Alternatives, including proposed actions
- Affected environment
- Environmental consequences, including mitigation measures
- List of preparers
- List of agencies and organizations consulted
- List of all federal permits
- Appendices
- Index

40 CFR 1502.10

Required Content of an EA

- Need for proposed action
- Proposed action
- Alternatives (when there are “unresolved conflicts concerning alternatives’ uses of available resources”)
- Environmental impacts of proposed action and alternatives
- List of agencies and persons consulted

40 CFR 1508.9

Dealing with Incomplete or Unavailable Information

- If cost of obtaining information is not exorbitant, agency must include the information in EIS
- If cost of obtaining information is exorbitant, EIS must:
 - State that information is incomplete or unavailable
 - State relevance of information to evaluating reasonably foreseeable significant effects
 - Summarize credible scientific evidence about impacts
 - Use methods accepted by scientific community
- Worst-case analysis is not required

40 CFR 1502.22

Statement of Purpose and Need

- **Purpose:** The specific objectives of the proposed action
 - For levees to meet updated standards
 - For electrical line to be upgraded to 120 kV to increase reliability
 - For new building to provide X, Y, Z services
- **Need:** The broader underlying social need to which the agency is responding
 - To prevent the suite of adverse consequences resulting from levee failures
 - To minimize the loss of electrical power and resulting adverse consequences
 - To meet X, Y, Z needs of the community/population/users to be served by the building

40 CFR 1502.13

Alternatives in an EIS

- EIS must evaluate a reasonable range of alternatives
- Explain why certain alternatives are included and others were eliminated
- No-action alternative must be evaluated
- Rigorously evaluate and compare alternatives (evaluate at an equal level of detail)
- Identify a preferred alternative, if one exists
- Identify environmentally preferable alternative
- Describe mitigation measures for alternatives

Alternatives in an EA

- An EA need only include alternatives when there are:
 - “unresolved issues relating to the alternative uses of natural resources”
- In an EA, alternatives need not be evaluated at an equal level of detail

Other Environmental Consequences to be Identified

- Unavoidable effects
- Relationship between short-term uses of the environment and long-term productivity
- Irreversible, irretrievable commitments of resources
- Cumulative effects
- Growth-inducing effects

Environmental Effects Typically Included in NEPA Documents

- Water
- Air
- Biological Resources
 - Fish, Wildlife, and Vegetation
- Ecologically Critical Resources
 - Wetlands
 - Special-status species and habitat
- Visual Resources
- Agricultural Resources
- Historic and Cultural Resources
- Traffic and Transportation
- Noise
- Land Use Conflicts
- Population and Housing Impacts
- Recreation
- Utilities and Public Services
- Risk of Natural Disasters
 - Earthquake, landslide, wildfire, flood
- Hazards and Hazardous Materials
 - Including risk of contracting disease

Environmental Effects Typically Included in NEPA Documents: The Nonphysical Environment

- Economic Effects – Not an EIS trigger, but often evaluated in an EIS
- Social Effects - Not an EIS trigger, but often evaluated in an EIS
- Effects to low-income and minority populations:
 - Environmental Justice
 - Physical impacts must be disaggregated by socio-economic factors
 - Cause a disproportionately high and adverse impact on minority or low-income populations

Note: Psychological Effects – Not required by NEPA

Cumulative Impacts

- The impact on the environment that results from the incremental impact of the (proposed) action when added to other past, present, and reasonably foreseeable future actions
- Can result from individually minor but collectively significant actions taking place over a period of time

40 CFR 1508.7

CEQ and EPA Guidance on Cumulative Impacts

- CEQ:
 - “Considering Cumulative Effects” (1999)
 - “Consideration of Past Actions in Cumulative Impact Analysis” (2005)
- EPA:
 - “Consideration of Cumulative Impacts in EPA Review of NEPA Documents” (1999)

See also, CEQ Consideration of Past Actions in Cumulative Impact Analysis

Cumulative Impacts: Greenhouse Gas Emissions and Climate Change

- U.S. Supreme Court has held that GHG are pollutants subject to the Clean Air Act and that the human causes of climate change are well-documented – Massachusetts, et al. v. EPA 549 U.S. 497 (2007)
- Air pollution is part of the human environment under NEPA and therefore, GHGs must be evaluated
- CEQ has issued draft guidance on how to incorporate GHG emissions and climate change impacts under NEPA
 - (Note: As of September 2013, the Guidance has not been finalized)

Draft Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions Overview

- Evaluating GHG emissions:
 - For large projects subject to GHG accounting requirements, such as the EPA reporting requirements under the Clean Air Act (e.g., stationary sources with annual, direct emissions of 25,000 metric tons of CO₂ or more) the GHG emissions identified in those reporting requirements should be included in the NEPA document
 - Three specific modeling approaches recommended
 - For projects less than 25,000 metric tons, utilize scoping and inter-agency consultation to determine whether to quantify GHG emissions and how they should be evaluated
 - In evaluating GHG emissions, agency should consider “upstream” and “downstream” activities, but limited to those that are reasonably foreseeable
- More details and methodology information available in the Draft Guidance

Draft Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions, February 2010

Growth-Inducing Impacts

- Induced growth is a variety of an indirect impact
- Not specifically mentioned in the CEQ NEPA regulations, but mandated by court decisions
- How to evaluate:
 - What types of future growth are likely to occur as a result of the proposed project?
 - How much is likely to occur?
 - Where and when is it likely to occur?
 - What are the impacts of that growth?
 - How can the impacts be mitigated?
- Use “reasonably foreseeable” as the standard

Environmental Justice Impacts

- What is environmental justice?
 - Fair and equitable treatment of people, regardless of race and income level, in the implementation of environmental laws, regulations, and policies
- Legal Framework:
 - Executive Order 12898
 - Presidential Memorandum to federal agencies
 - CEQ NEPA Guidance
 - EPA/Office of Federal Activities Guidance
 - EPA Office of Environmental Justice
 - Agency-specific guidance and programs

Environmental Justice (cont.)

- Two aspects of environmental justice:
 - 1. Procedural – Outreach to and inclusion of low income and minority communities during the NEPA process
 - 2. Substantive – Determining impacts to low income and minority populations
- The fundamental question to be answered in NEPA document:
 - Would the proposed action result in environmental impacts to low-income or minority populations that are disproportionately high or adverse as compared to the impacts on the general population?

Mitigation – Five Categories under CEQ Regulations

- Avoiding impact – Not taking certain action, parts of an action
- Minimizing impact – Limiting degree, magnitude, implementation of action
- Rectifying impact – Repairing, rehabilitating, restoring affected environment
- Reducing or eliminating impact over time – Preserving and maintaining during life of the action
- Compensating for impact – Replacing, providing substitute resources or environments

40 CFR 1508.20

**PART 5 –
INTEGRATING NEPA
WITH OTHER LAWS**

CEQ NEPA Regulations: Mandate to Integrate NEPA With Other Laws

- “To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by the Fish and Wildlife Coordination Act, the National Historic Preservation Act of 1966, the Endangered Species Act of 1973, and other environmental review laws and executive orders.”

40 CFR 1502.25

NEPA Integration Requirements

- Integrate EIS with related environmental review and consultation requirements to fullest extent:
 - Including requirements of ESA, CAA, CWA, NHPA, etc.
- In EIS, list all federal permits and licenses required
- Integration applies also to EA/FONSI actions
- Lead Agencies encouraged to prepare joint documents with states:
 - Situations where Federal and state agencies are both preparing environmental review documents

Major Environmental Compliance Requirements

- Federal
 - ESA Section 7 Consultation
 - CWA Section 404 and 401 (401 delegated to state)
 - NHPA Section 106
 - CAA “Conformity” requirements
 - CZMA consistency
 - Executive Orders on wetlands, floodplains, and environmental justice
- State
 - State “little NEPA” laws: CEQA in California; none in Nevada
 - CWA: SWRCB and RWQCBs in CA; in NV the Nevada Division of Environmental Protection (NDEP), Bureau of Water Quality Planning (BWQP)
 - CAA: ARB and AQMDs in CA, NDEP, Bureau of Air Pollution Control (BAPC) and Bureau of Air Quality Planning (BAQP)
 - NHPA Sec. 106: Consultation required with SHPO

NEPA/CEQA Terminology

NEPA Term	Correlated CEQA Term
• Lead Agency	• Lead Agency
• Cooperating Agency	• Responsible Agency
• Categorical Exclusion	• Categorical Exemption
• Extraordinary Circumstances Limiting Use of CatEx	• Exceptions to Categorical Exemptions
• Environmental Assessment	• Initial Study
• FONSI	• Negative Declaration
• Mitigated FONSI	• Mitigated NegDec
• Environmental Impact Statement	• Environmental Impact Report

NEPA/CEQA Terminology (cont.)

NEPA Term	Correlated CEQA Term
• Notice of Intent	• Notice of Preparation
• Scoping	• Scoping
• Record of Decision	• Findings
• Proposed Action	• Proposed Project
• Project Purpose and Need	• Project Objectives
• Impact	• Significant Impact
• Environmental Commitments	• Mitigation
• Programmatic EIS	• Program EIR

Some Integration Issues

- Process issues:
 - Timing
 - Agency cooperation and timeliness of response
 - Potential federal lead agency layers of review & EPA review
 - Differing legal requirements
 - MOUs
- Documentation issues:
 - Consistent project objectives
 - Consistent range of alternatives and level of evaluations
 - Sequencing of mitigation measures
 - Consistent approaches to cumulative impact assessment
 - Special study or survey protocols
 - Potential reprinting of Final EIS