

# Overview of the NEPA Process



March 26, 2019

# The National Environmental Policy Act

*The great question...is shall we make peace with nature and begin to make reparations for the damage we have done to our air, our land and our water?....Clean air, clean water, open spaces – these should once again be the birthright of every American.....The price tag is high. Through our years of past carelessness, we have incurred debt to nature. Now that debt is being called.*

Richard Nixon, during his State-of-the-Union address explaining why he signed NEPA into law (1970).

# NEPA Compliance

- National Environmental Policy Act Section 101
- National Environmental Policy Act Section 102
- CEQ's Implementing Regulations
- National Historic Preservation Act Section 106
- Government-to-Government Consultation
- Focus of consultations must include treaty rights pertaining to: wildlife, vegetation, water quality, etc.



# NEPA Compliance

- ▶ Section 101 ~ the *spirit of the law*
- ▶ Purpose and goal: **productive harmony**
- ▶ Public Involvement: ...declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations,...

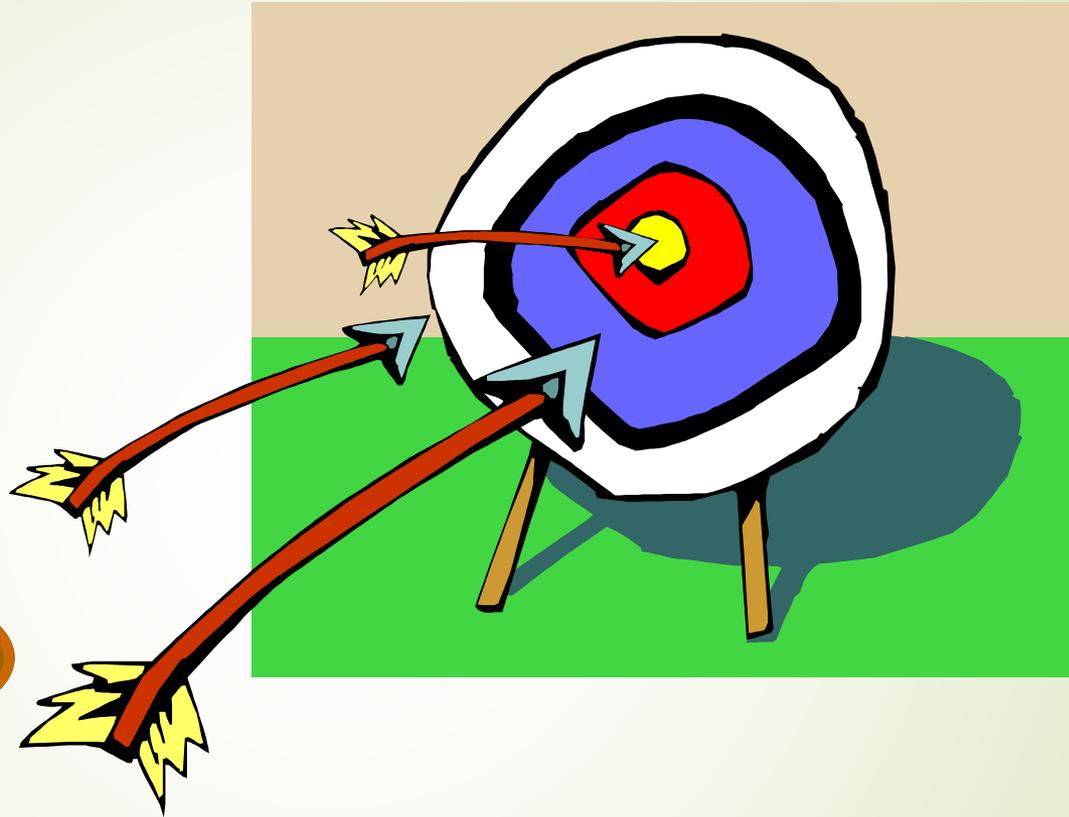
# NEPA Compliance

- ▶ Section 102 ~ the *letter of the law*
- ▶ Utilize a systematic, interdisciplinary approach
- ▶ Ensure unquantified environmental amenities are given appropriate consideration
- ▶ Documentation that includes:
  - ▶ Environmental impacts of proposed action
  - ▶ Adverse environmental effects which cannot be avoided
  - ▶ Alternatives to the proposed action
  - ▶ The relationship between short-term uses and long-term productivity of resources
  - ▶ Irreversible and irretrievable

# Twin Aims of NEPA

Consider

Inform



# NEPA Compliance

## CEQ Regulations

- §1500.1 Purpose.
- §1500.4 Reducing paperwork.
- §1502.5 Timing



# NEPA Compliance

- **Administrative Procedures Act 1946**
  - Requires federal agencies to involve the public in their decision making process.
  - Allows private citizens, state governments, and tribes to sue federal agencies for noncompliance with federal laws.
- **Arbitrary and Capricious Decisions:**
  - If it is not supported by logic or the necessary facts.
  - If it is adopted without thought or reason or is irrational.

# Scoping and Consultation

NEPA process begins with **scoping** – a process defined by CEQ as:

*...an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process shall be termed scoping.*

Scope: Determining relevant actions, alternatives, and impacts associated with implementing an action.

# Scoping and Consultation

**The scoping process includes consultations.**

- Consultation differs from public involvement.
- One definition of consultation from the NPS:

*Consultation means the process of seeking, discussing, and considering the views of others, and, where feasible, seeking agreement with them on how historic properties should be identified, considered, and managed. Consultation is built upon the exchange of ideas, not simply providing information.”*

# GOVERNMENT-TO- GOVERNMENT CONSULTATION

- Federal agencies have an obligation to consult with Native American tribes as **government-to-government**; decision-makers for both governments initiate the consultation.
- This obligation is based on the U.S. Constitution and Federal treaties, statutes, executive orders (13175), and policies.
- Consultation is built upon exchange of information and promotes enhanced communication that emphasizes trust, respect, and shared responsibility.

# Scoping and Consultation

## **The scoping process includes consultations.**

- Federal agencies have an obligation to seek out tribes and provide meaningful opportunities for consultation. This requires more than sending letters, notices, and copies of documents to tribes and requesting comment. An outreach and concerted effort must be made to provide for meaningful involvement in the decision-making processes.
- Protecting and addressing treaty rights, Traditional Cultural Properties, and other tribal concerns.
- Compliance with Section 106 of the National Historic Preservation Act.

# Scoping and Consultation

**The scoping process includes consultations.**

- All consultations must be completed prior to the publication of a final EA or EIS, and before any decisions are made.
- The EA or EIS should also include a copy of any project Memorandum of Agreement or Programmatic Agreement developed in compliance with Section 106.
- Information on Traditional Cultural Properties and archeological sites cannot be included in the EA or EIS – all must be kept confidential.

# Three Types of NEPA Documentation

- ***Categorical Exclusions* used when:**
  - The action would not individually or cumulatively cause a significant impact.
  - Matches a category in the Agency's list of CATEXs (published NEPA Regulations).
  - Must consider extraordinary circumstances.
    - Potential effects to environmentally sensitive areas or resources (e.g., listed species, cultural resources, wetlands, floodplains, etc.).
    - Public controversy over the environmental effects of the agency's proposed actions

# Three Types of NEPA Documentation

- ***Environmental Assessments*** used when:
  - The proposed action is not eligible for a CATEX.
  - The proposed action probably would not cause significant, adverse environmental effects.
  - Finding of No Significant Impact (FONSI) is the decision document for an EA.

# Three Types of NEPA Documentation

- ***Environmental Impact Statement*** used when:
  - The proposed action does not qualify for a CATEX or FONSI.
  - The proposed action will cause significant, adverse environmental effects (degradation of the environment or significant threat or hazard to public health or safety).
  - Might have substantial environmental controversy concerning the significance or nature of the environmental impact of the proposed action.
  - Record of Decision (ROD) is decision document.

# Primary Functions of NEPA Documents:

- Provide sufficient information to the decision-maker to make an informed decision
- Provide that procedural requirements of NEPA have been followed and completed
- Informs the interested public



# Suggested Content of an EIS/EA

- CEQ § 1502.10 Recommended format.
  - Cover sheet
  - Summary
  - Table of Contents
  - Purpose of and need for action
  - Alternatives including the proposed action
  - Affected environment
  - Environmental consequences
  - List of preparers
  - List of agencies, organizations, and persons to whom copies of the statement are sent
  - Appendices

# CEQ §1502.13: Purpose and need for action (Chapter 1)

Explain *who* wants to do *what* and *where* and *when*

- **Summarize the need for the proposal (why)**
  - Show current conditions vs. desired conditions.
  - Driven by agency mission (legal), prior NEPA document, other laws, etc.
- **List objectives**
  - Driven by laws (e.g., ESA, NHPA, CWA, CAA) and agency management plans – may have legal requirements.
  - Explains what the agency hopes to achieve with the action.
  - Helps to set minimum standards for alternatives.

# CEQ §1502.14: Alternatives including proposed action (Chapter 2)

- **Identifies all *reasonable alternatives***
  - Meets the purpose and need (objectives) for the action (chapter 1).
  - Is financially and technological feasible.
  - Doesn't violate existing environmental standards or laws.
  - An interdisciplinary approach was used to develop alternatives.

# CEQ §1502.14: Alternatives including proposed action (Chapter 2)

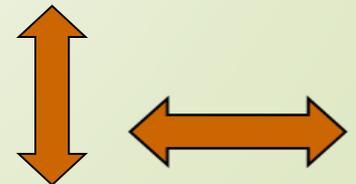
- **Describes the alternatives in detail – and defines the differences between them (heart of the EIS/EA)**
  - No action alternative (current actions in project area)
  - Actions and outputs of each reasonable alternative
  - Mitigation measures both possible and required
  - List alternatives eliminated from consideration

# CEQ §1502.14: Alternatives including proposed action (Chapter 2)

- **Identify the preferred alternative in drafts and final EIS**
  - Allows readers to comment on choice
  - Must be responded to in the Final EIS/EA
  - Agency specific for EAs ~ does your agency require a comment period for EAs in their NEPA regulations?

# CEQ §1502.15: Affected environment (Chapter 3)

- This chapter includes current conditions of all resources, ecosystems, and communities (RECs) measurably impacted by the action.
- Summarizes the current conditions including: geographic boundaries; description of **past and present actions** also impacting RECs.
- Defines conditions with measurement indicators.
- Summarizes the scientific method used to determine current conditions.
- Gives a trend for the RECs affected.

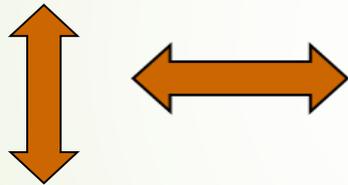


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# CEQ §1502.15: Affected environment (Chapter 3)

- Summarizes the scientific method used to determine current conditions.
- Gives a trend for the RECs affected.



# CEQ § 1502.16: Environmental Consequences (Chapter 4)

- Chapter is organized by resource or alternative
- Describes all potential effects relevant to the decision:
  - direct, indirect, cumulative
  - short-term, long-term
  - beneficial, and adverse
  - irreversible and irretrievable commitments of resources
- Analyzes the effects of all reasonable alternatives identified in chapter 2

# CEQ § 1502.16: Environmental Consequences (Chapter 4)

- Content should include:
  - A discussion that parallels resources, ecosystems, and communities discussed in Chapter 3 (boundaries/quantifications).
  - Methods of analysis used to determine impacts.
  - A literature review that supports the agency's findings – and includes contradictory evidence to the agency's findings.

# CEQ § 1502.16: Environmental Consequences (Chapter 4)

- Content should include:
  - A description of how mitigation measures would reduce impacts.
  - An analysis of the no action alternative.
  - Focused information that is summarized clearly and concisely.
  - An explanation of the “so what” regarding the impacts – “what do the changes to the RECs mean.”

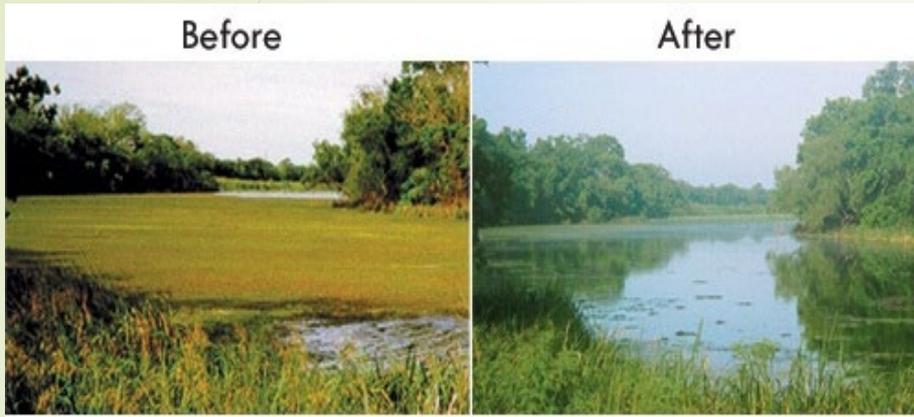
# CEQ § 1502.16: Environmental Consequences (Chapter 4)

- ▶ Content should include:
  - ▶ Use scientific baselines (**thresholds**) whenever possible to explain the significance or non-significance of impacts.
  - ▶ Policy or laws (CWA, CAA)
  - ▶ Science (mercury levels)
  - ▶ Decision-maker's opinion (education, politics, public pressure, personal beliefs)
  - ▶ Substantial change to the resource.
  - ▶ Has a material bearing on the decision.

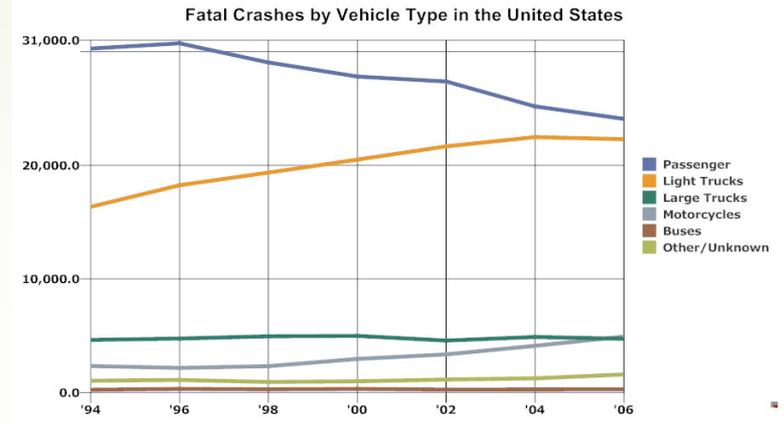
# Describing Impacts

- **Describe cause and effect site-specifically:**
  - Magnitude – how much will the action change the REC?
  - Extent – how vast is the change?
  - Direction – are the impacts beneficial or adverse?
  - Duration – how lasting is the change?
  - Speed – how rapid is the change?
  - Context – where is the change happening?

# Chapters 3 and 4 Should use graphics for emphasis



Comparing current with desired conditions



Line graph

Resources	Alternative 1 No action alt	Alternative 2 3 mile road	Alternative 3 6 mile road
Turbidity	.25 – 2.10 ppm	.75 – 4.0 ppm	1.25 – 5.5 ppm
Fish abundance	25 -30 per mile per hour	18- 22 per mile per hour	15-19 per mile per hour
Anglers per day	55-65 May – Sept.	50-55 May – Sept.	40-50 May – Sept.

Chapter 2 alternatives and impact comparison

# Cumulative Impacts

“Cumulative Impact ... the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.”

# Cumulative Impacts

## Cumulative Impact Analysis Requirements:

- Determine spatial and temporal boundaries (will likely differ from direct and indirect impact boundaries).
- Describe other actions impacting resources – including past, present, and reasonably foreseeable future actions (planned, likely, anticipated vs. speculative, remote, hypothetical)
- Explain baseline (or reference state) used for measuring impacts of these actions.
- Describe methods used to predict impacts.



## CEQ § 1502.17: List of Preparers (Chapter 5)

- List the names and qualifications of the individuals responsible for writing the EA/EIS
- The core team members can and should include members of the tribe.

# List of Agencies and Persons Consulted (Chapter 6)

- ▶ Do not confuse with List of Preparers
- ▶ Includes agencies and individuals outside the agency who assisted in writing the EA/EIS by providing information



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