United States Department of the Interior

OFFICE OF THE SECRETARY
Office of Environmental Policy and Compliance
1849 C Street, NW -- MS 2342-MIB
Washington, D.C. 20240

9043.1/PEP/NRM
July 13, 2006

ELECTRONIC MAIL MEMO

To: Assistant Secretary, Indian Affairs*
Director, Bureau of Land Management
Director, Fish and Wildlife Service
Director, Geological Survey
Director, Minerals Management Service
Director, National Park Service
Director, Office of Insular Affairs
Director, Office of Surface Mining
Commissioner, Bureau of Reclamation

From: Team Leader, Natural Resources Management
Office of Environmental Policy and Compliance

Subject: Review of a Draft Guide Developed for Comment: A Citizen's Guide to the National Environmental Policy Act; Having Your Voice Heard
(**ER 06/718**) (Agency due date: **August 11, 2006**)

The Council on Environmental Quality (CEQ), Executive Office of the President (EOP) has prepared the Draft Guide: A Citizen's Guide to the National Environmental Policy Act; Having Your Voice Heard (attachment) and is requesting comments.

Please review A Citizen's Guide to the National Environmental Policy Act; Having Your Voice Heard from your particular jurisdiction or special expertise and provide any information or comments to: horst_greczmiel@ceq.eop.gov and Dinah_Bear@ceq.eop.gov by **August 11, 2006**. Also, please provide a copy of any comments you make to this office.

Additional background information regarding the efforts to implement the recommendations of the CEQ NEPA Task Force is available by clicking on "CEQ NEPA Task Force" in the "Current Developments" section at www.NEPA.gov

Any comments should reflect that they are the views of the bureau or office and do not necessarily reflect the views and comments of the Department of the Interior.

/s/ 7/13/06
Shawn Alam (Acting)

Attachment

cc: Assistant Secretaries
REOs-All

OEPC-Staff Contact: Ken Havran, 202-208-7116; kenneth_havran@ios.doi.gov
*Hard copy is being distributed by regular mail.

Draft Guide Developed for Comments

Council on Environmental Quality
Executive Office of the President

A Citizen's Guide to the National Environmental Policy Act

Having Your Voice Heard

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List of Acronyms

NEPA: The National Environmental Policy Act
CEQ: The White House Council on Environmental Quality
EPA: The Environmental Protection Agency
EIS: Environmental Impact Statement
EA: Environmental Assessment
CE: Categorical Exclusion
FONSI: Finding of No Significant Impact
NOI: Notice of Intent
ROD: Record of Decision
EMS: Environmental Management System

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Purpose of the Guide

This is a guide to help citizens and organizations who are concerned about the environmental effects of federal decision-making to effectively participate in federal agencies' environmental impact assessment under the National Environmental Policy Act (NEPA). With some limited exceptions, all federal agencies in the executive branch have to comply with NEPA before they make decisions about federal actions that could have environmental effects. Thus, NEPA applies to a very wide range of federal actions: for example, issuing regulations that govern grazing on public lands, managing a military installation, building or expanding airports, expanding the interstate highway system, designating a new national marine sanctuary, managing a national wildlife refuge, issuing a permit for a transboundary oil pipeline, developing an airspace plan over a National Park, deciding to control a predator, or providing funding for economic development in a community. The federal government takes hundreds of actions every day that are, in some way, covered by NEPA.

No matter the reason, NEPA's environmental impact assessment process provides an opportunity for you to be involved in federal agency decision-making. NEPA provides you one of the best ways to understand what the federal agency is proposing to do, to offer your thoughts on alternative ways for the agency to accomplish what it is proposing, and to offer your comments on the agency's analysis of the environmental effects[1] of the proposed action. NEPA requires federal agencies to consider environmental effects that include, among others, impacts on social, cultural and economic resources as well as natural resources.[2] Citizens often have valuable information about places and resources that they value and the potential environmental, social and economic effects that proposed federal actions can have on those places and resources. NEPA's requirements provide you the means to work with the agencies so they can take your information into account.

Background on NEPA

Signed into law on January 1, 1970, NEPA was the first major environmental law in the United States and is often called the "Magna Carta" of environmental laws. Importantly, NEPA established this country's environmental policies. To implement these policies, NEPA instructs agencies to undertake an assessment of the environmental effects of their proposed actions prior to making decisions. Two of the major purposes of the environmental impact assessment process are better informed decisions and citizen involvement, both of which should lead to implementation of NEPA's policies.

[1] "Effects" and "Impacts" are synonymous terms under the Council on Environmental Quality Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 40 C.F.R. parts 1500-1508 (hereinafter referred to as the CEQ NEPA Regulations or CEQ regulations) at 40 C.F.R. Section 1508.8.
[2] *Ibid.*

Before exploring the specifics of the NEPA process, it's important to understand several key "actors" or agencies involved in providing oversight in the NEPA process. In NEPA, Congress also established the Council on Environmental Quality (CEQ) in the Executive Office of the President to ensure that federal agencies meet their obligations under the Act.[3] CEQ oversees implementation of NEPA, issues NEPA regulations, coordination among agencies, and dispute resolution.

The Environmental Protection Agency's (EPA) Office of Federal Activities is another key actor. This office reviews Environmental Impact Statements (EIS) and many Environmental Assessments (EA) that are produced by federal agencies and provides its comments to the public by publishing them in the Federal Register, which is a daily publication that provides notice of federal agency rule-making.[4] EPA's reviews are intended to assist federal agencies in improving their NEPA process, analyses, documents, and decisions.[5]

A government entity involved in NEPA is the U.S. Institute for Environmental Conflict Resolution which was established by the 1998 Environmental Policy and Conflict Resolution Act (P.L. 105-156) to assist in resolving conflict over environmental issues that involve federal agencies. While part of the federal government, it provides an independent, neutral, place for federal agencies and others to work together to reach common ground rather than through litigation and other adversarial approaches to dispute resolution.[6] The U.S. Institute is also charged with assisting the federal government in the implementation of the substantive policies set forth in Section 101 of NEPA.[7]

Navigating the NEPA Process

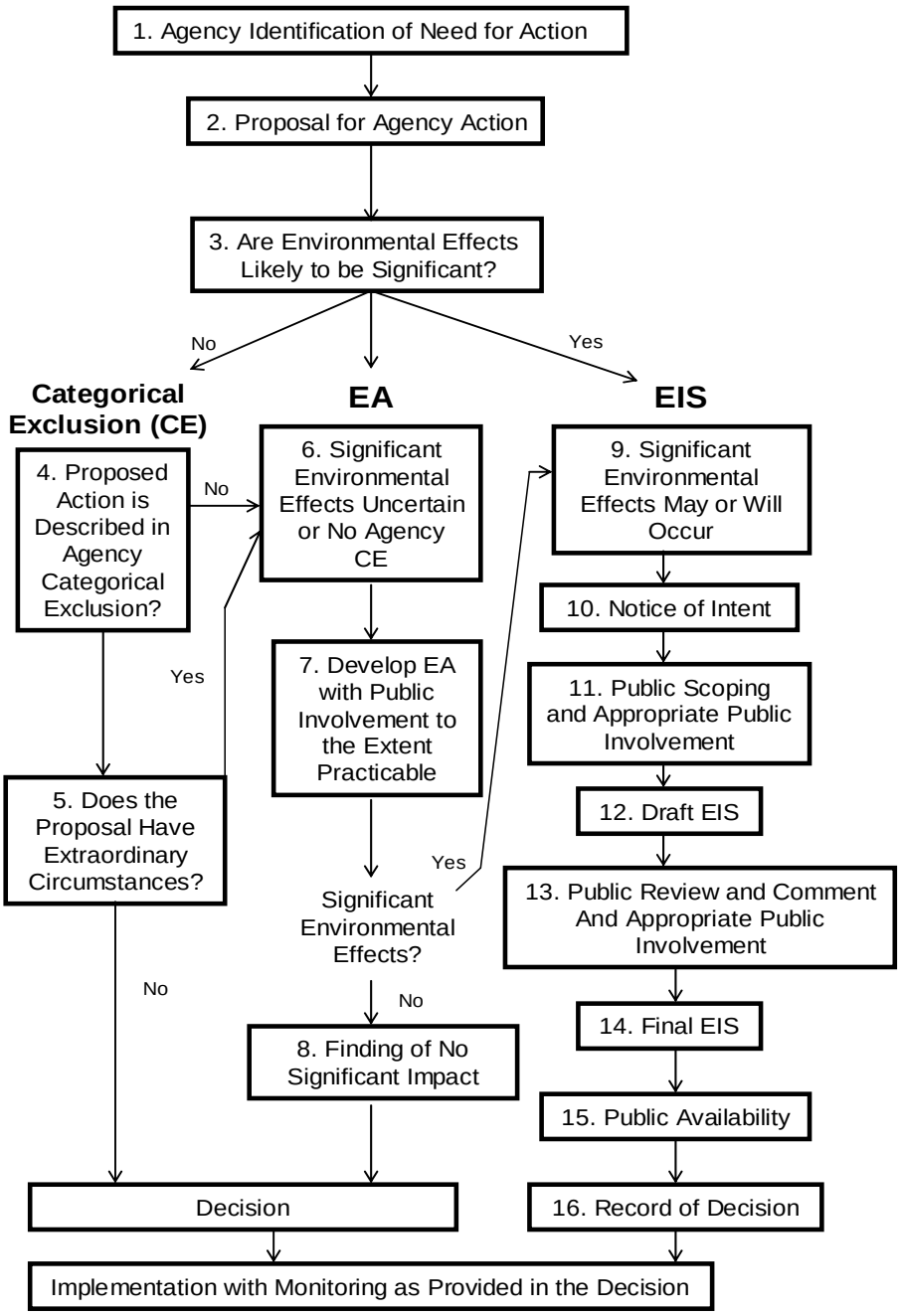
Each year, thousands of Environmental Assessments (EAs) and hundreds of Environmental Impact Statements (EISs) are prepared by federal agencies. These documents provide citizens and communities an opportunity to learn about and be involved in each of those environmental impact assessments that are part of the federal agency decision-making process. It is important to understand that commenting on a proposal is not a "vote" on whether or not the proposed action should take place. Nonetheless, the information you provide during the EA and EIS process can influence the decision makers and their final decisions because NEPA does require that federal decision-makers are informed of the environmental consequences of their decisions.

This guide will help you better navigate the NEPA process and understand the roles of the various other actors. While reading the guide, refer back to the diagram on the

[3] National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321-4347 (2000).
[4] Clean Air Act, 42 U.S.C. § 7609 (2000).
[5] For additional information, see http://www.epa.gov/compliance/nepa/index.htm
[6] Environmental Policy and Conflict Resolution Act of 1998, 20 U.S.C. §§ 5601-5609 (2000).
[7] National Environmental Conflict Resolution Advisory Committee. 2005. Final Report to the U.S. Institute for Environmental Conflict Resolution of the Morris K. Udall Foundation. Available at: http://www.ecr.gov/necrac/reports.htm

following page, which details the steps of the NEPA process. For easier reference, each step of the process is designated with a number which is highlighted in the text discussing that step. While agencies may differ slightly in how they comply with NEPA, understanding the basics will give you the information you need to be an effective part of any agency's process.

Figure 1. The NEPA Process



What is NEPA?

In NEPA, Congress recognized that the federal government's actions may cause significant environmental effects. The range of actions that cause significant environmental effects is broad and includes issuing regulations, providing permits for private actions, funding private actions, making federal land management decisions, constructing new facilities, etc. Using the NEPA process, agencies are required to determine if their proposed actions have significant environmental effects.

Section 101 of NEPA is our country's national environmental policy and applies to all Americans. Part A of the section states that:

> "it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans." [8]

Section 102 of NEPA establishes a decision-making process, a tool to comply with the law and meet the intent of Section 101. Section 102 provides the basis for the procedural requirements set out in the CEQ regulations as well as the procedures which federal agencies develop to implement and meet their NEPA obligations as we know them today.

To Whom do the Procedural Requirements of NEPA Apply?

NEPA's procedural requirements apply to all federal agencies in the executive branch. The agencies that produce the most NEPA documents are the U.S. Forest Service, Federal Highway Administration, Army Corps of Engineers, Bureau of Land Management and National Park Service. NEPA does not apply to the President, his immediate advisors, to Congress and its agencies or to the courts.

To What do the Procedural Requirements of NEPA Apply?

NEPA's procedural requirements apply to a federal agency's decisions for actions, including financing, assisting, conducting, or approving projects or programs; agency rules, regulations, plans, policies, or procedures; and legislative proposals.[9] Overall, this can be thought of as actions that are partially or totally funded, regulated, approved or taken by a federal agency.[10]

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[8] National Environmental Policy Act of 1969, 42 U.S.C. § 4331 (2000).
[9] CEQ NEPA Regulations, 40 C.F.R. § 1508.18 (2005).
[10] *Ibid.*

One common way private individuals or companies become involved in the NEPA process is when they need a permit issued by a federal agency. When the company applies for a permit (such as using federal lands or waters or impacting federally protected resources) the agency that is being asked to issue the permit must evaluate the environmental effects of the permit decision under NEPA. Federal agencies might require the private company or developer to pay for the preparation of a portion, or the entire, NEPA analyses and documents for the agency to review in order to make a decision on the permit; however, the agency remains responsible for the accuracy of the analysis.

NEPA is About Informed Decisions

NEPA requires agency decision-makers to make informed decisions. As noted earlier, these decision-makers may have economic, social, national security and other concerns to balance with the environmental issues. A good NEPA analysis and document will ensure NEPA policy goals (Section 101) are considered and incorporated into the decision to the extent they are consistent with other considerations of national policy; however, NEPA does not require the decision-maker to select the environmentally preferred alternative.

Agencies are required to develop their own capacity within a NEPA program in order to develop analyses and documents (or review those prepared by others) to ensure informed decision-making.[11] The NEPA process can serve to meet the requirements of other environmental review requirements. For instance, actions that require the NEPA process may have an impact on endangered species, historic properties, or low income communities. The NEPA analysis, which takes into account many potential impacts of the proposed action and investigates alternative actions, may serve as a framework to meet other environmental review requirements, such as the Endangered Species Act, the National Historic Preservation Act, the Environmental Justice Executive Order, and other federal, state, tribal, and local laws and regulations.

The Mechanics of the NEPA Process Demystified

In 1978, CEQ issued binding regulations to direct agencies on the fundamental requirements necessary for agencies to fulfill their NEPA obligations. The CEQ regulations are the foundation of the NEPA process and set forth minimum requirements for agencies. The CEQ regulations also called for agencies to create their own implementing procedures that supplement the minimum requirements based on each agency's specific mandates, obligations and missions.[12] These agency-specific NEPA procedures account for the slight differences in each agency's NEPA process.

Most agency NEPA procedures are available on-line at the NEPA net website (http://ceq.eh.doe.gov/nepa/regs/agency/agencies.cfm), some are published in the

[11] CEQ NEPA Regulations, 40 C.F.R. § 1507.2 (2005).
[12] CEQ NEPA Regulations, 40 C.F.R. § 1507.3 (2005).

Federal Register, or you can write or call the agency NEPA point of contacts and ask for a copy of their regulations.[13]

The NEPA process begins when an agency identifies a need (Number 1 in Figure 1) to take an action.[14] Based on that need, the agency develops a proposal for action (Number 2 in Figure 1) that will meet its needs. If it is the only federal agency involved, that agency will automatically be the "lead agency", which means it has the primary responsibility for complying with NEPA. However, in many cases, there will be more than one federal agency involved. Some large, complex proposals involve multiple federal agencies along with state, local and/or tribal agencies. If another federal, state, local or tribal agency has a major role in the proposed action and also has NEPA responsibilities or responsibilities under a similar NEPA-like law[15], that agency may be a "joint lead agency". A "joint lead agency" shares the lead agency's responsibility for management of the NEPA process, including public involvement and preparation of documents. Other agencies may have a decision or special expertise regarding a proposed action, but less of a role than the lead agency. In that case, a federal, state, tribal or local government agency may be a "cooperating agency". A "cooperating agency" is an agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative). Thus, a "cooperating agency" typically will have some responsibilities for the analysis related to its jurisdiction or special expertise.

In most cases, the agency will enter the initial analytical approach (Number 3 in Figure 1) to determine if the agency will pursue the path of a Categorical Exclusion (CE), an Environmental Assessment (EA) or an Environmental Impact Statement (EIS).

Implementing the NEPA Process

Categorical Exclusions (CEs) (Number 4 in Figure 1)

A CE is a description of a category of actions that the agency has determined does not individually or cumulatively have a significant effect on the quality of the human

[13] Their addresses and phone numbers are found in Appendix D. The draft agency implementing procedures, or regulations, are published in the Federal Register, and a public comment period is required prior to CEQ approval. Commenting on these agency regulations is one way to be involved in their development. Most agencies already have implementing procedures; however, when they are changed, the agency will again provide for public comment on the proposed changes.

[14] On rare occasions, Congress may exempt an action from NEPA. On other occasions, an agency may face an emergency situation (40 C.F.R. §1506.11 (2005)). If the agency needs to take an action in response to an emergency that would typically require preparation of an environmental impact statement, the agency can proceed immediately and work with CEQ to develop alternative arrangements for compliance with NEPA. A proposed action may also involve classified information. If the entire action is classified, the agency will still comply with the analytical requirements of NEPA, but the information will not be released for public review. If only a portion of the information is classified, the agency will release the unclassified analysis for review (40 C.F.R. §1507.3(c) (2005)).

[15] About a quarter of the states have such laws; for example, New York, Montana, Washington, and California all have such laws. New York City also has such a law.

environment. Examples include issuing administrative procedures, making minor facility renovations that do not increase the capacity of existing buildings, and reconstruction of trails. Agencies develop a list of CEs specific to their operations when they develop or revise their NEPA implementing procedures in accordance with CEQ's NEPA regulations.

A CE is based on an agency's experience with that kind of action and its environmental effects. The agency may have studied an action in previous EAs and found no significant impact on the environment. If this is an action that will be repeated, the agency may decide to amend their implementing regulations to include the action as a CE. In these cases, the draft agency procedures are published in the Federal Register, and a public comment period is required. Participating in these comment periods is an important way to be involved in the development of a particular CE.

If the action is included in the description provided for a listed CE, the agency must check to make sure that no extraordinary circumstances exist. Extraordinary circumstances are also set out in the agency NEPA procedures and typically include such matters as effects to endangered species, protected cultural sites, and wetlands (Number 5 in Figure 1). If there are no extraordinary circumstances indicating that the effects of the action may be significant, then the agency can proceed with the action.

If the action is not included in the description provided in the CE, or there are extraordinary circumstances, then the agency must choose whether to modify the proposed action to avoid environmental effects, drop the proposed action, or prepare an EA or an EIS. When the agency does not know whether significant impacts are expected, the agency will prepare an EA to determine if there are significant environmental effects. An EIS is prepared when significant environmental effects are expected to result from the proposed action.

Environmental Assessments (EA) (Number 6 in Figure 1)

The purpose of an EA is to determine the significance of the environmental effects and to look at alternative means to achieve the agency's objectives. The EA is intended to be a concise document that (1) briefly provides sufficient evidence and analysis for determining whether to prepare an environmental impact statement or finding of no significant impact (FONSI); (2) aids an agency's compliance with NEPA when no environmental impact statement is necessary; and, (3) facilitates preparation of a statement when one is necessary.[16]

The EA will include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.[17] Because the EA

[16] CEQ NEPA Regulations, 40 C.F.R. § 1508.9 (2005).
[17] *Ibid.*

serves to evaluate the significance of a proposal for agency actions, it should focus on the context and intensity of effects that may "significantly" affect the quality of the human environment.[18] At the conclusion of the EA, the agency will either issue a FONSI or a notice of intent (NOI) to prepare an EIS. Often the EA will identify ways in which the agency can revise the action to minimize environmental effects.

When preparing an EA, the agency has discretion as to the level of public involvement (Number 7 in Figure 1). The CEQ regulations state that the agency shall involve environmental agencies, applicants and the public, to the extent practicable, in preparing EAs.[19] Sometimes agencies will mirror the scoping and public comment periods that are found in the EIS process. In other situations, agencies may make the EA and a draft FONSI available to interested members of the public.

An EA is a public document, but its availability is not always advertised. Some agencies, such as the Army, require that interested parties be notified of the decision to prepare an EA, and the Army also makes the EA publicly available. Some agencies keep a notification list of parties interested in a particular kind of action or in all agency actions. Other agencies simply prepare the EA. To further understand the EA process, it is important that you read the specific implementing procedures of the proposing agency or ask the local NEPA point of contact working on the project.

A FONSI (Number 8 in Figure 1) is a legal finding that summarizes the analyses of the EA, concluding that there are no significant environmental impacts projected to occur upon implementation of the action. The EA and FONSI are the documents that show how the agency complied with their NEPA obligations. CEQ regulations require agencies to make the proposed FONSI available for public review for 30 days if the action has no precedent or if it's something that typically would require an EIS under the agency NEPA procedures.[20] If this is the case, the FONSI is usually published in the Federal Register,[21] and the notice of availability of the FONSI will include information on how and where to provide your comments.

Environmental Impact Statements (EIS) (Number 9 in Figure 1)

While preparing the environmental assessment (EA), an agency may learn that the proposed action is expected to or will have significant environmental effects. An agency may also, based on its judgment and past experience, expect a type of proposed action to have significant environmental effects and thus will have already identified the proposed action as the type normally requiring preparation of an EIS in their agency NEPA procedures. Through NEPA, agencies are obligated to provide opportunities for meaningful public involvement.

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[18] CEQ NEPA Regulations 40 C.F.R. §1508.27 (2005).
[19] CEQ NEPA Regulations, 40 C.F.R. § 1501.4 (2005).
[20] *Ibid.*
[21] Government Printing Office Electronic Information Enhancement Act of 1993. 44 U.S.C. §§ 4101-4104 (2000).

Notice of Intent and Scoping

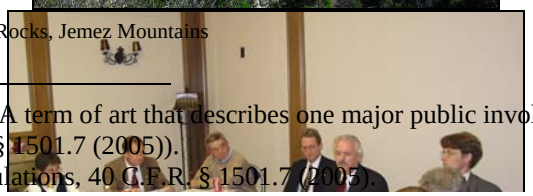
The EIS process begins with the Notice of Intent (NOI) (Number 10 in Figure 1). The NOI is a good place to start gathering information on the proposed action in preparation of the scoping[22] process (Number 11 in Figure 1). The NOI provides a brief description of the proposed action and possible alternatives. It also describes the agency's proposed scoping process, including any meetings and how the public can get involved. For example, if a meeting changes or one is newly scheduled, the NOI describes where the agency may publish the meeting notice, such as in the local paper or on a website. The NOI will also contain the agency point of contact for the project, and some agencies will include the point of contact for their NEPA process.

The scoping process is the best time to identify issues, determine points of contact, determine project schedules and provide recommendations to the agency. The overall goal is to define the scope of issues to be addressed in depth in the analyses that will be included in the EIS. Specifically, the scoping process[23] will:

- Identify the significant issues to be analyzed in the EIS;
- Identify and eliminate from detailed review those issues that will not be significant or those that have been covered in prior environmental review;
- Determine the roles and responsibilities of lead and cooperating agencies;
- Identify any related EAs or EISs;
- Identify other environmental review and consultation requirements so they can be integrated with the EIS; and,
- Indicate the relationship between the development of the environmental analysis and the agency's tentative decision-making schedule.

NEPA is about people and places.

Tent Rocks, Jemez Mountains



Southern Regional NEPA Roundtable discussion on the NEPA Task Force report entitled, Modernizing NEPA Implementation

[22] Scoping is a NEPA term of art that describes one major public involvement aspect of the NEPA EIS process (40 C.F.R. § 1501.7 (2005)).
[23] CEQ NEPA Regulations, 40 C.F.R. § 1501.7 (2005).

US District Courthouse, Sioux Falls, SD

As part of the process, agencies are required to invite the participation of interested persons. The key component of scoping is that agencies will solicit public comments on their proposed action, which is an opportunity to provide written comments or exchange information by attending public meetings or workshops. Citizens are expected to assist agencies in making better environmental decisions. It is in your interest to encourage agencies to engage the public as soon as the proposals are shaped sufficiently to have meaningful public participation and to use the scoping opportunity to make thoughtful, rational presentations on impacts and alternatives.[24] Some of the most constructive interaction between the public and agencies occur when citizens identify reasonable alternatives that the agency can evaluate in the EIS.

Draft EIS (Number 12 in Figure 1)

The next major step in the EIS process that provides an opportunity for your input is when the agencies submit a draft EIS for public comment. The Environmental Protection Agency (EPA) publishes the Federal Register Notice of Availability informing you and other members of the public that the draft is available for comment (Number 13 in Figure 1). Based on the communication plan set up by the agency, websites, local papers or other means of public notice may also be used. The comment period is at least 45 days long[25]; however, it may be longer based on requirements spelled out in the agency specific NEPA procedures or at the agency's discretion. During this time, the agency may conduct public meetings as a way to solicit comments. The agency will also request comments from other federal, state, tribal and local agencies that may have jurisdiction or interest in the matter.

One key aspect of a draft EIS is the statement of the underlying purpose and need. [26] Agencies draft a "Purpose and Need" statement to describe what they are trying to achieve by proposing an action. The purpose and need statement explains to the

[24] CEQ NEPA Regulations, 40 C.F.R. § 1501.7 (2005).
[25] CEQ NEPA Regulations, 40 C.F.R. § 1506.10 (2005).
[26] CEQ NEPA Regulations, 40 C.F.R. § 1502.13 (2005).

reader why an agency action is necessary, and serves as the basis for identifying the reasonable alternatives available to the agency.

The identification and evaluation of alternative ways of meeting the purpose and need of the proposed action is the heart of the NEPA analysis. The lead agency or agencies must, "objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated."[27] Reasonable alternatives are those that substantially meet the agency's purpose and need. Agencies are obligated to evaluate all reasonable alternatives, or a range of reasonable alternatives, in enough detail so that a reader can compare and contrast the environmental effects of the various alternatives.

Agencies must always describe and analyze a "no action alternative". The "no action" alternative is simply what would happen if the agency did not act upon the proposal for agency action. For example, in the case of an application to the U.S. Army Corps of Engineers for a permit to place fill in an area, the "no action" alternative is no permit. But in the case of a proposed new management plan for the National Park Service's management of a national park, the "no action" alternative is the continuation of the current management plan.

If an agency has a preferred alternative when it publishes a draft EIS, the draft must identify which alternative the agency prefers. All agencies must identify a preferred alternative in the final EIS, unless another law prohibits it from doing so.

In addition to the purpose and need, identification of reasonable alternatives, and the environmental effects of the alternatives, the draft EIS will contain a description of the environment that would be affected by the various alternatives.

Finally, the EIS will have a list of who prepared the document, who received the EIS from the agency when it was first published, and it will provide both a table of contents and an index. The agency may choose to include technical information in appendices that are either circulated with the draft or readily available for review.

Final EIS (Number 14 in Figure 1)

When the public comment period is finished, the agency analyzes comments, conducts further analysis as necessary, and prepares the final EIS. In the final EIS, the agency must respond to the comments received from other government agencies and from you and other members of the public.[28] The response can be in the form of changes in the final EIS, factual corrections, modifications to the analyses or the alternatives, new alternatives considered, or an explanation of why a comment does not require the agency's response.[29] Often the agency proposing an action will meet with resource protection agencies (e.g., EPA or U.S. Fish and Wildlife Service) that

[27] CEQ NEPA Regulations 40 C.F.R. § 1502.14 (2005).
[28] CEQ NEPA Regulations, 40 C.F.R. § 1503.4 (2005).
[29] *Ibid*.

may be affected by the action in an effort to resolve an issue or mitigate project effects. A copy or a summary of your substantive comments will be included in the final EIS.[30]

When it is ready, the agency will publish the final EIS and EPA will publish a Notice of Availability in the Federal Register. The Notice of Availability marks the start of a review period (Number 15 in Figure 1). A minimum of 30 days must pass before the agency can make a decision on their proposed action unless the agency couples the 30 days with a formal internal appeals process.[31] This provides time for the agency decision-maker to consider the purpose and need, weigh the alternatives, balance their objectives and make a decision. The 30 day waiting period is required by the CEQ regulations, and you should check the agency NEPA procedures to see if those procedures require a longer period to elapse before the agency renders its decision.

There is an additional (but rarely used) procedure worth noting: Pre-decision Referrals to CEQ.[32] This referral process takes place when EPA or another federal agency determines that proceeding with the proposed action is environmentally unacceptable. If an agency reaches that conclusion, it can refer the issue to CEQ within 25 days after the Notice of Availability for the final EIS is issued. CEQ then works to resolve the issue with the agencies concerned. CEQ may also refer the agencies to the U.S. Institute for Environmental Conflict Resolution to try to address the matter before formal elevation.[33]CEQ typically provides you and other members of the public an opportunity for public involvement during the referral process. Note that there is no provision for citizens to formally refer an action to CEQ, although CEQ accepts informal complaints.

EPA's Review

EPA plays a critical role in other agencies' NEPA processes. EPA is required to review and provide comments on the adequacy of the analysis and the impact to the environment.[34] EPA uses a rating system that serves as a basis for their recommendations to the lead agency (Appendix D). If EPA determines that the action is environmentally unsatisfactory, it is required by law to refer the matter to CEQ.

The Office of Federal Activities (OFA) in EPA is the official recipient of all EISs prepared by federal agencies, and OFA publishes the notices of availability in the Federal Register for all draft, final and supplemental EISs. These notices start the official "clock" for public review and comment periods.

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[30] CEQ NEPA Regulations, 40 C.F.R. § 1503.4 (2005).
[31] CEQ NEPA Regulations, 40 C.F.R. § 1506.10 (2005).
[32] CEQ NEPA Regulations, 40 C.F.R. § 1504 (2005).
[33] The U.S. Institute reports disputes it is involved with to CEQ and requests concurrence from CEQ to engage in those disputes involving two or more federal agencies.
[34] Clean Air Act, 42 U.S.C. § 7609 (2000).

Record of Decision (ROD) (Number 16 in Figure 1)

The ROD is the final step for agencies in the EIS process. The ROD is a document that states what the decision was; identifies the alternatives considered, including the environmentally preferred alternative; and discusses mitigation plans, including any enforcement and monitoring commitments.[35] In the ROD, the agency discusses all the factors that it balanced, including any considerations of national policy, when it reached its decision on whether to, and if so how to, proceed with the proposed action. The ROD will also discuss if all practical means to avoid or minimize environmental harm have been adopted, and if not, why they were not.[36] The ROD is a publicly available document. Sometimes they are published in the federal register or on the agency's website. If you are interested in receiving the ROD you can ask the agency contact for a copy.

When and How to Get Involved?

It Depends on the Agency

To determine the specific steps in the process where public involvement will be the most effective, it is very important to review the agency's NEPA implementing procedures. As mentioned previously, NEPA processes differ among agencies. For example, the Federal Highway Administration provides a 30 day comment period (with or without a public meeting) on all EAs that they develop before a FONSI is issued while some other agencies have no required comment periods for EAs.[37]

In addition, new legislation can change the way NEPA is implemented in agencies. For example, with the passage of SAFETEA-LU (new transportation legislation) in August 2005, the Department of Transportation updated its NEPA processes to implement the new transportation legislation. Agencies such as, Federal Highway Administration and Federal Transit Administration, have kept websites up to date and are tracking the evolving guidance. (http://www.environment.fhwa.dot.gov/strmlng/index.asp#safetealu)

Be Informed of Actions

Sometimes citizens are generally interested in actions taking place in a particular area (for example, in your community or in an ecosystem or a facility that affects you). If this is the case, you can inform the appropriate agency or agencies that you would like to be notified of any proposed action and or environmental impact analysis that might be prepared. In addition, many agencies now have websites where they post notices for actions they are proposing.

[35] CEQ NEPA Regulations, 40 C.F.R. § 1505.2 (2005).
[36] *Ibid.*
[37] Federal Highway Administration NEPA Regulations, 23 C.F.R. § 771.119 (2005).

Active Involvement

Being active in the NEPA process requires you to dedicate your resources to the effort. Environmental impact analyses can be technical and lengthy, but there are ways to "level the playing field." If an agency is taking an action for which your local, state or tribal government has special expertise or any approval authority, they can become a "cooperating agency" with the federal agency.[38] This formal status does not increase their role in decision-making, but it does allow the governments to use their knowledge and authorities to help shape the federal decision-making. If your local, state, or tribal government is involved, this is one more way for you to voice your opinion about a federal project.

Some agencies involve citizen advisory groups that can be an effective forum for providing public comments. Citizen advisory groups have proved very effective in providing public input to both the Boston "Big Dig" project and forest management in California.

Another way to participate is to check with local experts such as biologists or economists at a university to assist you with your review of the NEPA analyses and documents. You can also form study groups to review environmental impact analyses and enlist experts to review your comments on the documents. There are examples, such as the one provided below, of situations where citizen groups have worked with agencies to develop an alternative to a proposal and the agency adopted that alternative.

[38] CEQ NEPA Regulations, 40 C.F.R. §§ 1501.6, 1508.5 (2005).

Forest Service Pesticide Use in the Pacific Northwest

In many cases, cooperation isn't the first experience that communities and agencies share with one another. In the case of aerial pesticide spraying by the Forest Service in the 1980's across Washington and Oregon, litigation gave way to collaboration that yielded a better decision for all parties.

At issue was the use of 2,4-D, a pesticide comprising half of the well known agent orange, which was being sprayed on large tracks of clear-cut forest in an effort to suppress competition with the replanted conifers from all other plants, including native trees and grasses. In 1984, as a result of a citizen lawsuit, a federal judge ordered the Forest Service stop all pesticide use until the agency addressed the problems associated with its use. The Forest Service decided to draft a new EIS for vegetation management and thereby opened the door for public involvement in their decision.

A coalition of tree planters, scientists, rural residents, and herbicide reform activists volunteered to work with the Forest Service to develop an alternative that didn't rely on pesticides for vegetation management. The group identified several simple alternatives such as rather than planting seedlings, planting two-year old trees since they are better able to deal with encroachment. Likewise, letting native red alders grow will actually benefit new conifer growth because the alders fix nitrogen in the soils. Much to the coalition's surprise the forest supervisor selected most of the "least-herbicide" approaches for implementation.

Your involvement in the NEPA process does not have to be confined to commenting on the analysis. If the agency has committed to monitoring or mitigation, community groups can be involved in developing these plans and in some cases can assist in monitoring and in assessing the effectiveness of the mitigation. Where the lead agency adopts monitoring and mitigation, the lead agency should report progress in carrying out the mitigation. Recently there has been an Executive Order (EO 13148) and subsequent directives issued from the Office of Management and Budget and CEQ for all agencies to adopt an Environmental Management System (EMS). "An EMS is a systematic approach to identifying and managing an organization's environmental obligations and issues that can complement many aspects of the NEPA review process."[39] EMSs are typically used by organizations and agencies to set up the procedures that will help them comply with the specific requirements of environmental law and regulations, such air and water permits. EMSs are particularly useful in NEPA in the context of post-decision monitoring and mitigation. Using the procedures provided by an EMS, agencies can better ensure they are properly implementing the mitigation measures and that the actual effects of the actions and mitigation are known.

[39] Boling, E.A. 2005. *Environmental Management Systems and NEPA: A Framework for Productive Harmony*. The Environmental Law Reporter. 35 ELR 10022. Environmental Law Institute.

In summary, there are a number of places to be involved in the NEPA process: (1) when the agency prepares its NEPA procedures, (2) before and as a NEPA analysis is being prepared, (3) when a NEPA document is published for public review and comment, and (4) monitoring the implementation of the proposed action and the effectiveness of any associated mitigation.

Other Processes that Require Public Involvement

When a proposed action is part of a permitting process there may be opportunities to comment provided in the statute or regulations for that permitting process in addition to the NEPA public involvement opportunities discussed above. For example, under the Endangered Species Act, agencies are required to publish an application for an incidental take permit in the Federal Register after which there is a minimum 30 day comment period.[40] Incidental take permits are required for non-federal actions that may "take" (harass, harm, etc.) a threatened or endangered species. In some cases, citizens are integral in developing the Habitat Conservation Plan that is required for application of an incidental take permit.[41] While this guide can not cover all of those additional possibilities for commenting, the NEPA team working on a particular proposal will be familiar with the various commenting periods and will be able to inform you of those opportunities. Note that the permitting and NEPA processes should be integrated or run concurrently in order to have an effective and efficient decision-making process.

[40] Endangered Species Act § 10(c), 42 U.S.C. § 1539(c).
[41]The Audubon Society, 1997. A Citizen's Guide to Habitat Conservation Plans. Http://www.audubon.org/campaign/esa/hcp-guide.html#how

Public Comment Periods

Agencies are required to make efforts to provide meaningful public involvement in their NEPA processes.[42] Citizens involved in the process should ensure that they know how agencies will inform the public (via Federal Register, newspapers, direct mailing, etc.) that an action is proposed and the NEPA process is beginning; that certain documents are available; and that decisions have been made on the environmental effects of the proposal (e.g., FONSI or ROD).

Agencies solicit different levels of involvement when they prepare an EA versus an EIS. In preparing an EIS, agencies are likely to have public meetings and are required to have a 45 day comment period after the draft EIS is made available. In the case of an agency preparing an EA, the CEQ regulations require the agency to involve the public to the extent practicable, but each agency has its own guidelines about public review periods for EAs. However, in any case, citizens are entitled to receive public documents involved in the NEPA process.[43]

In terms of a specific agency, required public comment periods associated with an EA or an EIS can be found in its NEPA implementing procedures. In some cases, the draft EIS that an agency prepares may be extremely long. In such cases, an agency will often entertain requests to extend the comment period to ensure enough time for the public and other agencies to review and comment.

Citizens who want to raise issues with the agency should do so at the earliest possible stage in the process. Agencies are much more likely to evaluate a new alternative or address a concern if it is raised in a timely manner. And the Supreme Court has held in two NEPA cases that if a person or organization expects courts to address a concern or evaluate an alternative, the issue must have been raised to the agency at a point in the administrative process when it can be meaningfully addressed.

How to Comment

Comments can be the most important contribution from citizens if they are well written. It is the goal of citizen involvement to help the agency make better informed decisions. Comments should be clear, concise, and on-point. Take the time to organize thoughts and edit the document submitted.[44] As a general rule, the tone of the comments should be polite and respectful. Those reviewing comments are public servants tasked with a job, and they all deserve the same respect and professional treatment that you and other citizens should expect in return. Comments that are solution oriented and provide specific examples will be more effective than those that simply oppose the proposed project. Most important, comments that contribute to developing alternatives that yield a solution to address the purpose and need of the action will help the agency make a better decision.

Before commenting, understand: (1) what the agency's purpose and need is; (2) what decision is being made; (2) who is making the decision; (3) what issues the decision-maker is balancing; and (4) what the agency's NEPA procedures require. In drafting

[42] CEQ NEPA Regulations, 40 C.F.R. § 1506.6(b) (2005).
[43] CEQ NEPA Regulations, 40 C.F.R. §§ 1501.4(b), 1506.6 (2005).
[44] There are many reference books for how to research issues, review documents, and write comments. One in particular is "The Art of Commenting" by Elizabeth Mullin from the Environmental Law Institute [Mullin, Elizabeth D. 2000. The Art of Commenting: How to Influence Environmental Decisionmaking with Effective Comments, Environmental Law Institute. Washington, DC.].

comments, try to focus on the purpose and need of the analysis, the proposed alternatives, and the assessment of the environmental impacts of those alternatives.

Commenting is not a form of "voting" on an alternative. The number of negative comments an agency receives does not prevent an action from moving forward. Numerous comments that repeat the same basic message of support or opposition will typically be responded to collectively. General comments that state an action will have "significant environmental effects" may also not help an agency make a better decision unless the relevant causes and environmental effects are explained.

Finally, remember that the NEPA process is an environmental impact analysis and includes environmentally-related social and economic impacts. Decision-makers also receive other information and data such as operational and technical information related to implementing an action that they will have to balance in making a final decision.

What If Involvement Isn't Going Well?

For the purposes of this discussion, "not going well" means that you or your organization believes that the lead agency isn't giving the public sufficient opportunity to get involved or isn't using that involvement appropriately. Perhaps you think that the agency should hold a public meeting, and it refuses to do so. Or you or your community or group has developed an alternative that you think meets the purpose and need of the proposed action and reflects the policies set forth in NEPA, but the agency says it won't analyze it in the NEPA document. Maybe you want an extension of the comment period because the document is very lengthy, and you simply need more time to review it. Or maybe you feel that communications between your organization and the lead agency have, for some reason, not been constructive.

The most appropriate steps to take if you find yourself in these kinds of situations always depend, of course, on the particular people, timing and proposal at hand. Nonetheless, here are some possible factors and courses of action to consider:

I. First, don't wait too long to try to raise your concerns. If you just sit back and hope that things will get "better" or that your comments will have greater effect later, you may hear that "you should have raised this sooner." At times, waiting can be detrimental to you as well as to the rest of the public and the agency involved. For example, if you feel strongly that a particular alternative should be addressed and don't raise it during the scoping process, then it won't get the benefit of comparative analysis with the other alternatives. In addition, it could result in a more expensive and lengthy process (costing taxpayers and yourself more) if your delayed suggestion results in the agency deciding to issue a supplemental EIS analyzing that alternative. Or if you, or your organization, later go to court to argue that a certain alternative should have been analyzed in the NEPA document, the judge may find that the court can't consider that information because you should have raised your concern earlier.

II. Your first line of recourse should be with the individual from the agency in charge of this particular process. See if you can sit down with him or her and discuss your concern. You may be pleasantly surprised at his or her response.

III. If, for whatever reason, you believe that the process ahead may be particularly contentious or challenging, given a past history of community conflict or deeply divided interests, consider raising with the lead agency the possibility of designing a collaborative process with outside assistance. One source of such assistance is the U.S. Institute for Environmental Conflict Resolution. Located in Tucson, Arizona, as part of the Morris K. Udall Foundation, the Institute is a federal entity that offers neutral environmental conflict resolution design, facilitation, education, training and mediation. Anyone, whether in or out of government, can call the Institute and ask to speak to a professional staff person about what possibilities exist for the Institute's involvement in a proposed federal action. You might want to look at their website at www.ecr.gov or contact the Institute (see Appendix E for contact information) to get a better sense of who they are and what they do. You might also be interested in reviewing the April 2005 report of the National Environmental Conflict Resolution Advisory Committee that discusses the linkages between NEPA's policies and environmental conflict resolution at http://www.ecr.gov/necrac/reports.htm. There may be an environmental conflict resolution office in your state that can provide assistance, and there are also many other individuals and organizations in the private sector that provide various types of conflict resolution services. The U.S. Institute also maintains a publicly accessible roster of environmental mediators and facilitators (www.ecr.gov/referal_sp.htm).

IV. Perhaps your concern involves understanding a legal requirement. There are, of course, many ways to obtain the advice of lawyers knowledgeable about the NEPA process: the lead agency, private attorneys, and public interest attorneys. Build your own understanding by reading source documents at the NEPA net website at http://www.NEPA.gov that has posted the CEQ regulations and guidance documents. You may also call the General Counsel's office at the Council on Environmental Quality for assistance in interpreting NEPA's legal requirements (see Appendix D for contact information). You may also call CEQ for advice and assistance if you have tried to work with the lead agency but feel those efforts have been unsuccessful.

V. Finally, of course, there are both administrative and judicial remedies available. Some agencies have an administrative appeals process. If one exists, you must go through that process first. NEPA complaints are heard in federal court. Courts will generally decline to hear a complaint if there is an administrative remedy still open. If you are represented by a lawyer, you should consult with him or her about appropriate options or about communication with federal agencies.

Please see Appendix D for contact information and other references that may be helpful in these situations.