

**NATIONAL ENVIRONMENTAL POLICY ACT**

**SHORT COURSE**

**MAY 5 & 6 1992**

May 5, 1992

09:00-0945	Overview	Ken Rice
09:45-10:00	Break	
10:00-12:00	Opportunities/Proposed Action	Sam Grimes
12:00-1:00	Lunch	
1:00-1:30	Scoping	Chuck Frey
1:30-2:30	Issue Identification	Ken Rice
2:30-3:00	Break	
3:00-5:00	Alternatives	Sam Grimes

May 6, 1992

09:00-10:30	Environmental Effects	Ken Rice
10:30-10:45	Break	
10:45-12:00	Environmental Effects Cont.	
12:00-1:00	Lunch	
1:00-1:30	Monitoring	Chuck Frey
1:30-2:15	Response to Comments	Sam Grimes
2:15-2:30	Break	
2:30-3:30	Decision Documents	Ken Rice
3:30-4:00	Project Records	Chuck Frey





# Excerpts from the NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

## *PURPOSE*

"...encourage productive and enjoyable harmony between man and his environment..."

"...promote efforts which will prevent or eliminate damage to the environment and biosphere..."

## *SECTION 101.*

"fulfill the responsibilities of each generation as trustee of the environment for succeeding generations..."

"attain the widest range of beneficial uses of the environment without degradation, risk to health and safety, or other undesirable and unintended consequences..."

## *SECTION 102.*

"Utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and decision making..."

"Include in every recommendation or report...a detailed statement by the responsible official..."

"Prior to making a detailed statement, the ...official shall consult with and obtain comments..."

"Study, develop, and describe appropriate alternatives to recommend courses of action..."

"Make available to States, counties,...advice and information useful in restoring, maintaining and enhancing the quality of the environment."

## COURSE GOAL

By the end of the course, you will be able to:

- Link NEPA and NFMA
- Conduct and document an environmental analysis resulting in decisions that contribute to the implementation of the Forest Plan

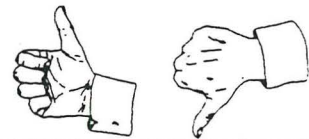
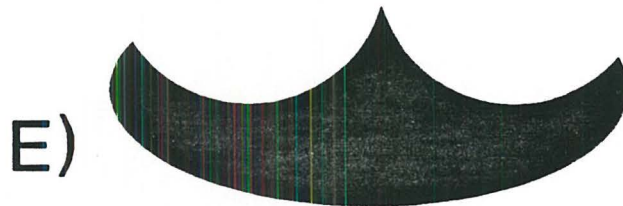
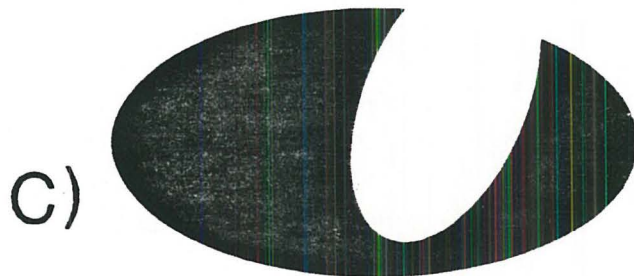
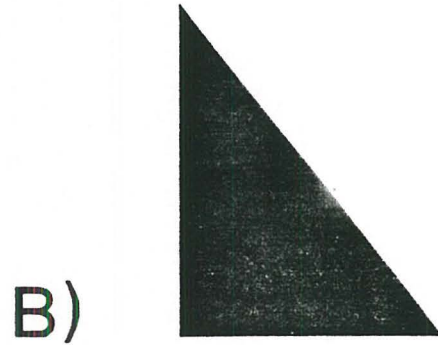
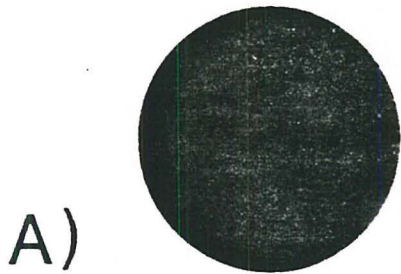
## COURSE OBJECTIVE

Construct a project record by:

- Listing possible management practices
- Writing a proposed action
- Conducting environmental analysis
- Documenting that analysis
- Writing a decision

*Exercise . . .*

Five figures are shown below. Select the one that is different from all of the others.





# TIERING

Agencies are encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review.

Whenever a broad environmental impact statement has been prepared...the subsequent statement or environmental assessment need only summarize the issues discussed in the broader statement... *40 CFR 1502.20*

Tiering is appropriate when the sequence of statements or analyses is: from a program, plan, or policy...to...a site-specific statement or analysis.  
*40 CFR 1508.28*

# SITE SPECIFICITY

## "RULE OF THUMB"

If you can read the:

- proposed action,
- alternatives, and
- environmental effects,

*and* you could apply those descriptions to some other area, then it is NOT site-specific.

# GOAL

*36 CFR 219.3*

A goal is a concise statement that describes a desired condition to be achieved sometime in the future. It is normally expressed in broad, general terms that are timeless in that there is no specific date by which the goal is to be achieved.

# OBJECTIVE

*36 CFR 219.3*

An objective is a concise, time-specific statement of measurable planned results that respond to pre-established goals. An objective forms the basis for further planning to define the precise steps to be taken and resources to be used in achieving identified goals.





## Gifford Pinchot's 11 Maxims

1. A public official is there to serve the public and not to run them.
2. Public support of acts affecting public rights is absolutely required.
3. It is more trouble to consult the public than to ignore them, but that is what you are hired for.
4. Find out in advance what the public will stand for. It is right and they won't stand for it, postpone action and educate them.
5. Use the press first, last, and all the time if you want to reach the public.
6. Get rid of the attitude of personal arrogance or pride of attainment or superior knowledge.
7. Don't try any sly or foxy politics, because a forester is not a politician.
8. Learn tact simply by being absolutely honest and sincere, and by learning to recognize the point of view of the other man and meet him with arguments he will understand.
9. Don't be afraid to give credit to someone else when it belongs to you; not to do so is the sure mark of a weak man. But to do so is the hardest lesson to learn. Encourage others to do things; you may accomplish many things through others that you can't get done on your single initiative.
10. Don't be a knocker; use persuasion rather than force, when possible. Plenty of knockers are to be found; your job is to promote unity.
11. Don't make enemies unnecessarily and for trivial reasons. If you are any good, you will make plenty of them on matters of straight honesty and public policy, and you need all the support you can get.

# QUOTABLE QUOTES

If you don't have public support, even if you are right, you can't do it anymore.

--RO Staff

They send us papers, we want to talk.

--Native American

The only successful decisions are those arrived at in a climate of cooperation.

--FS Planning Officer



# SUMMARY

## LIFE SAVERS \*

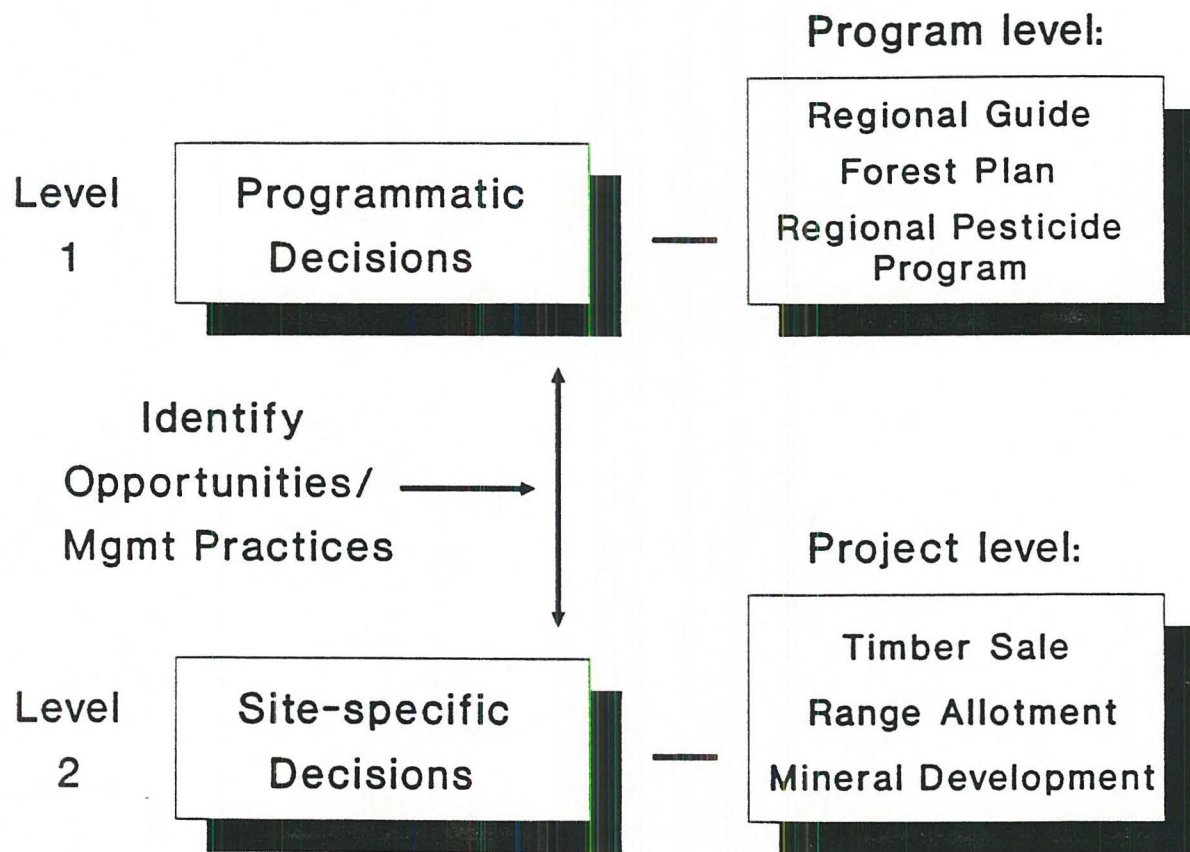
Build your public involvement around the following items:

- Demonstrate that your proposal addresses a serious problem
- Demonstrate that the Forest Service is the appropriate agency to address the problem
- Communicate and legitimize the problem solving/decision making process as sound
- Demonstrate that you are listening to the concerns and interests of all affected interests
- Demonstrate that alternative courses of action are better than "no action"

\* From the Institute of Participatory Planning; Laramie, Wyoming.

VEFNUNULLI  
PROPOSED ACTION  
PURPOSE AND NEED

# TWO DECISION LEVELS




# Components of DESIRED CONDITION

- Vegetation - composition, age class, diversity, openings
- Transportation - road closures, density, trail use
- Facilities - recreation, special uses, support
- People Use/Experience - wilderness, Recreation Opportunities Spectrum
- Visual Resource - visual quality objectives
- Water Quality - state standards
- Others?

*Exercise . . .*

**DIRECTIONS:**

Each block represents a saying or well-known phrase. Please write your answers on the back of the page.

1  <b>PLOT</b>	2  WAY  <u>PASS</u>	3  A CHANCE N	4  NOITANIMIRCSID
5  GONE GONE LET BE GONE GONE	6  GETTING  IT ALL	7  LU CKY	8  PRE4SS
9  ME  <u>IT IT IT</u> IT IT IT IT	10  	11  CHICKEN	12  WHEATHER
13  GET A WORD IN	14  O  MD BA PhD	15  late never	16  ALL / WORLD



## PROPOSED ACTION

A proposal by the Forest Service to authorize, recommend, or implement an action.

*FSH 1909.15*

A proposed action is a proposal the agency agrees to move forward with.

*40 CFR 1508.23*

## COMPONENTS

WHO

WHAT

WHEN

WHERE



# RIPE FOR DECISION

(Rule of Thumb)

A Proposed Action is "ripe for decision" when implementation is less than 3 years away.

A Proposed Action is not "ripe for decision" when implementation is more than 5 years away.

If implementation is between 3 years and 5 years away, the "ripeness for decision" will depend upon the nature of the Proposed Action.

(Further discussion on this topic can be found in CEQ's 40 Most Asked Questions, Question #32.)

## CONNECTED ACTIONS

*40 CFR 1508.25*

Connected actions are actions which are closely related and which:

- Automatically trigger other actions
- Cannot or will not proceed unless other actions are taken previously or simultaneously
- Are interdependent parts of a larger action and depend on the larger action for their justification

## SIMILAR ACTIONS

*40 CFR 1508.25*

Similar actions are actions which have similarities that provide a basis for evaluating their environmental consequences together, such as common timing and geography.

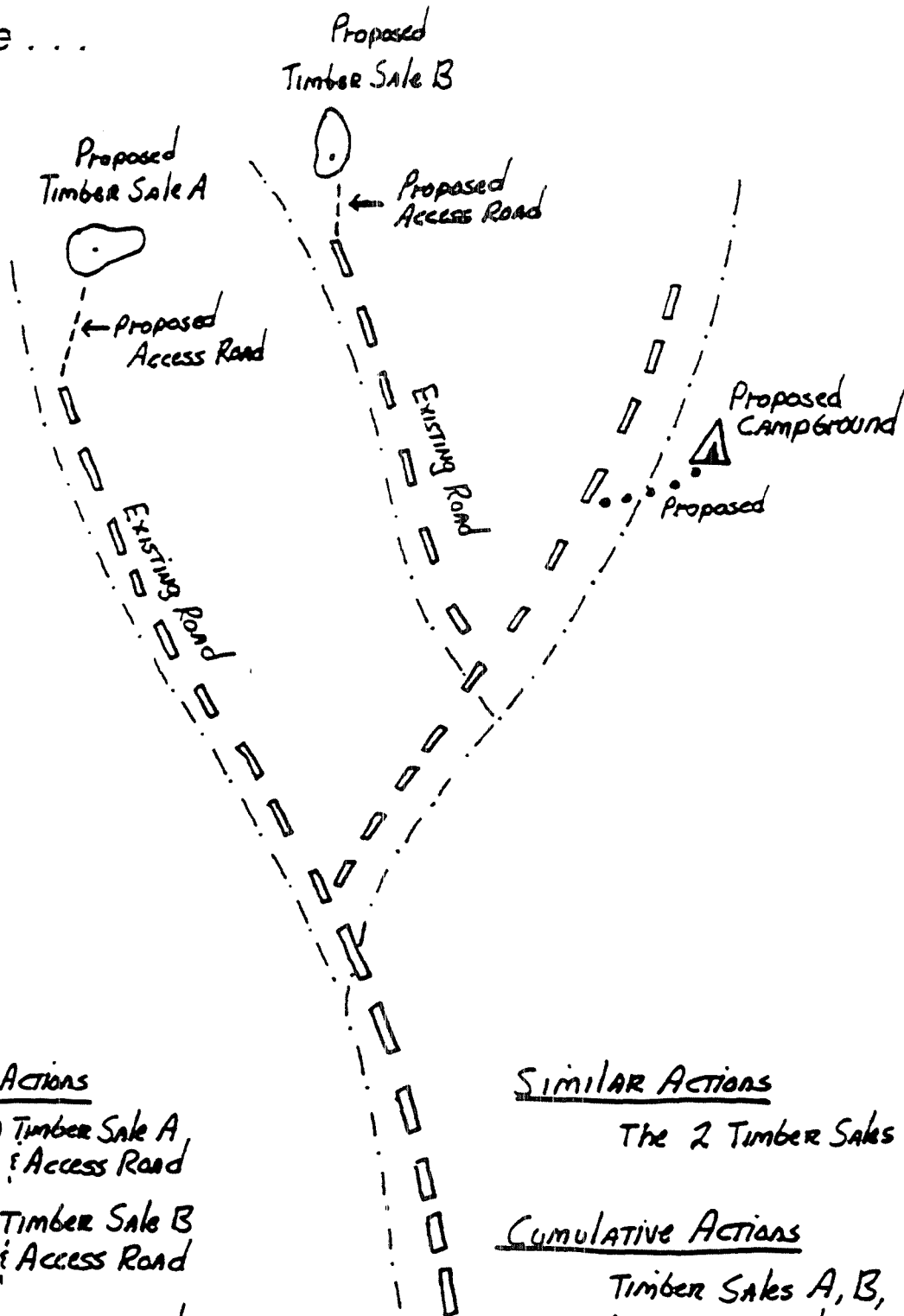
## CUMULATIVE ACTIONS

*40 CFR 1508.25*

Cumulative actions are actions which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.



Example . . .



Connected Actions

- (1) Timber Sale A,  
& Access Road
- OR
- (2) Timber Sale B  
& Access Road
- OR
- (3) Campground  
& Access Road

Similar Actions

The 2 Timber Sales

Cumulative Actions

Timber Sales A, B,  
& Campground

# Comparison of CONNECTED, SIMILAR, and CUMULATIVE ACTIONS

Type of Actions	Include in the Proposed Action?	Analyze Effects in NEPA document?
CONNECTED	Yes	Yes
SIMILAR	Optional	Yes
CUMULATIVE	Optional, but usually No	Yes

# Writing the PROPOSED ACTION

1) Be specific in stating the:

- WHO
- WHAT
- WHEN
- WHERE

2) Must consider:

- connected actions as part of the proposed action if the conditions of 40 CFR 1508.25 are met,
- similar actions, and
- if the actions are "ripe for decision".

3) Exclude actions which are:

- not connected or similar, and
- not "ripe for decision".

# Writing the PURPOSE AND NEED

Describe the NEED FOR and the PURPOSE OF the action.

- Answer the question “Why are we considering this proposed action?”
- Discuss the relationship between the desired condition described in your Forest Plan and the existing condition.

*Demonstration . . .*

## WRITING THE PURPOSE AND NEED

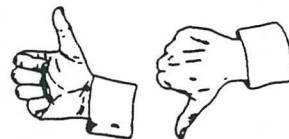
**Desired Condition:** Regularly break 100 for 18 holes, feel good about the quality of my golfing experience.

**Existing Condition:** Regularly shoot a 116 for 18 holes of golf, highly frustrated, and disappointed in quality of my game.

**Proposed Action:** I will practice at my local driving range 3 times per week. This practice will include:

- hitting a large bucket of balls
- spending 1/2 hour on short chip shots
- spending 1/2 hour putting

**CAN YOU STATE A RELATIONSHIP BETWEEN THE EXISTING AND DESIRED CONDITIONS??**



# Common Mistakes in Describing the DECISION TO BE MADE

- The interdisciplinary team goes beyond the scope of the proposed action and expands the decision and analysis into something greater than what the responsible official specified.
- No latitude is given for the no action alternative.



*Demonstration . . .*

## WRITING THE DECISION TO BE MADE

**BACKGROUND:** You have three cars: a 1987 minivan; a 1971 VW Bug; and a brand new Porsche. There is a city bus that runs by your house and goes by a movie theater every thirty minutes.

Your son does not have his own car. He has asked if he could borrow a car for the evening to transport him and his girlfriend to the movie theater and back. The theater is 5 miles from your house.

**PROPOSED ACTION:** I propose to allow my son to use the 1987 minivan to transport him and his girlfriend to the movie theater tonight.

**PURPOSE AND NEED:** I would like for my son and his girlfriend to be able to drive to the movies tonight. Providing him a car would allow him to get to the theater and back.

**DECISION TO BE MADE?:**



# SUMMARY

## PROPOSED ACTION

- Components (who, what, when, where)
- Types of actions (connected, similar, and cumulative)

## PURPOSE and NEED

- The “why” of the proposed action
- Desired condition/existing condition relationship

## DECISION to be MADE

- Allow for the “No Action” alternative
- Effect on project scope. (The need to be specific)

## ROLE of the LINE OFFICER

“GETTING IT RIGHT THE FIRST TIME”

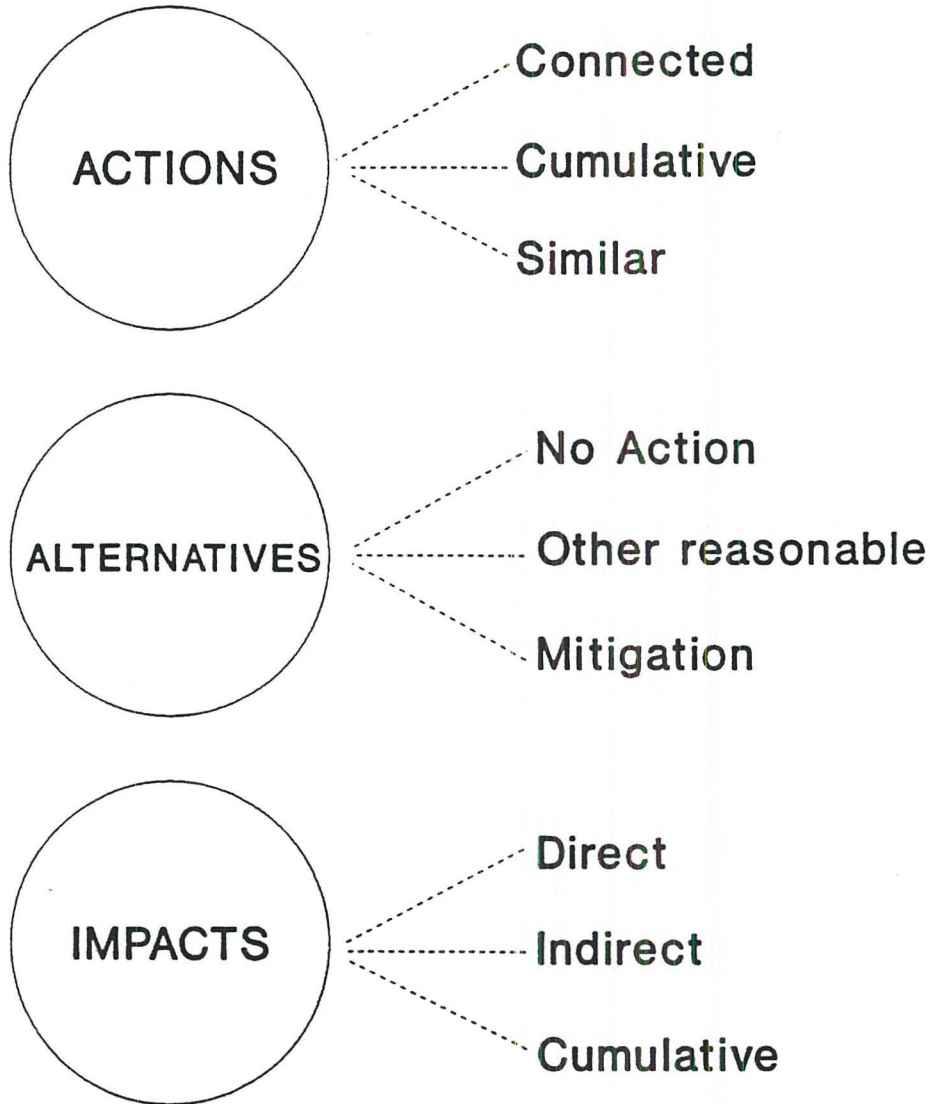




# SCOPE

40 CFR 1508.25

## THE RANGE OF



**TO BE CONSIDERED IN AN ENVIRONMENTAL DOCUMENT.**

# Use SCOPING to:

*40 CFR 1501.7(a)*

- Invite the public
- Guide analysis and documentation
- Identify significant issues
- Assign tasks and identify disciplines
- Find existing documents
- Identify schedules

# Use SCOPING Results to:

- Decide if ID Team is needed
- Decide if work plan is needed
- Identify Team Leader
- Identify characteristics of proposal/nature of decision
- Identify agencies involved
- Identify any existing documents
- Develop public involvement strategy
- Refine issues
- Explore preliminary alternatives
- Refine project design
- Determine data needs
- Formulate analysis/decision criteria
- Receive feedback

# PUBLIC INVOLVEMENT STRATEGY

## NEPA REGULATIONS

*40 CFR 1500-1506*

*1500.1(b)* NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. Most important, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail.

*1500.2(d)* Encourage and facilitate public involvement in decisions which affect the quality of the human environment.

*1501.7(a)(1)* Invite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds)...

*1503.1(a)(3)(4)* Request comments from the applicant, if any. Request comments from the public, affirmatively soliciting comments from those persons or organizations who may be interested or affected.

*1506.6(a)(b)(c)(d)* Make diligent efforts to involve the public in preparing and implementing their NEPA procedures. Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform ... hold or sponsor public hearings or meetings whenever appropriate ... solicit appropriate information from the public.

LOCAL  
IDENTIFICATION



# ISSUES

## ISSUES:

discussion, debate, or dispute  
(about environmental effects)

## SIGNIFICANT ISSUES:

issues used in the environmental  
analysis for formulating  
alternatives, developing mitigation  
and tracking effects

## NONSIGNIFICANT ISSUES:

issues not considered in the  
environmental analysis

# REGULATIONS

40 CFR 1500-1502

Most important, NEPA documents must

- 1500.1(b) ...*concentrate on issues that are truly significant to the action in question, rather than amassing needless detail.*
- 1500.2(b) Implement procedures to make the NEPA process more useful to decisionmakers and the public; to reduce paperwork and the accumulation of extraneous background material; and to *emphasize real environmental issues* and alternatives.
- 1500.4(c) *Discussing only briefly issues other than significant ones.*
- 1500.4(g) Using the scoping process, not only to *identify significant environmental issues* deserving of study, but also to *deemphasize insignificant issues*, narrowing the scope of the environmental impact statement process accordingly.
- 1502.2(b) Impacts shall be discussed in proportion to their significance. There shall be *only brief discussion of other than significant issues*. As in a finding of no significant impact, there should be only enough discussion to show why more study is not warranted.

## SUMMARY

Focus on significant environmental issues related to the proposed action.

Discuss other issues briefly.



## COMMON MISTAKES IN ADDRESSING ISSUES

- We identify issues then ignore them throughout the analysis.
- We try to address too many issues.
- We assume we know the issue instead of clarifying and determining the "real" issue.
- We confuse *issues, concerns, and opportunities* required for Forest Plan development with *environmental issues* required for NEPA.
- We have failed to focus our analysis on the significant issues that need to be addressed.
- We don't make the tie between the issues and the proposed action and purpose and need for the action.

# STEPS IN ISSUE DEVELOPMENT

- 1 - Identify preliminary issues
- 2 - Organize/group issues
- 3 - Clarify issues
- 4 - Identify significant issues
- 5 - Identify units of measure

## *Step 1:*

# IDENTIFY ISSUES

## SOURCES OF ISSUES

- Issues, concerns, and opportunities identified in Forest Plans.
- Issues identified for similar projects (past actions).
- Issues identified in plan to practices stage.
- Issues generated from compliance with laws or regulations.
- Current management (internal) concerns.
- Changes in public uses, attitudes, values, or perceptions.
- Issues raised by the public during scoping.
- Comments from other government agencies.
- Others

## *Step 2:*

# ORGANIZE / GROUP ISSUES

Organize and group issues:

- **COMMON RESOURCE** - water quality, visual quality, soil productivity, and wildlife habitat.
- **LINKED TO CAUSE-EFFECT RELATIONSHIPS** - increased erosion leads to increased sediment in streams which leads to increased sediments in spawning gravels. Three issues: (1) increased erosion, (2) increased sediment, (3) decreased spawning gravels are grouped.
- **COMMON GEOGRAPHY** - trash removal in a campground, and parking in the campground. Given that the campground is one geographic component of the proposed action.
- **LINKED TO THE SAME ACTION** - grouping issues associated with timber harvesting versus road construction versus site preparation.



# ORGANIZE/GROUP ISSUES

## ISSUES

## ISSUE GROUP

- Timber harvesting and road construction creates sediment which may decrease fish populations.
- Sediment from timber harvesting and road construction may plug irrigation structures downstream from project.
- Sediment from proposed activities may increase costs of producing drinking water above what the county can afford.
- Increase in water yield caused by timber harvesting may disrupt channel stability.
- Creating openings with timber harvest may allow earlier melt-off of snow and change the timing of peak flows to non-critical periods.
- The project area is roadless and should be considered for wilderness designation.
- Hauling from the proposed sale will create dust in Glorious Heights subdivision.
- Proposed Activities will contribute to Global Warming.



*Step 3:*

## CLARIFY ISSUES

Issue statements should be written:

- without bias
- to show conflicts or the problem between the proposal and some consequences (i.e. show cause-effect concerns)
- as specific as possible
- keep asking "why"

Go back to the source for clarification

Involve the Line Officer

*Step 4:*

## IDENTIFY SIGNIFICANT ISSUES

Factors for identifying Significant Issues

- **EXTENT** - the geographic distribution of the issue.
- **DURATION** - the length of time the issue is likely to be of interest.
- **INTENSITY** - the level of interest or conflict generated by the issues.

# Reasons for Not Considering ISSUES

- Issue is outside the scope of the proposed action
- Issue already decided (by law or Forest Plan, etc.)
- Issue is irrelevant to the decision
- Issue is not supported by scientific evidence
- Issue is limited in extent, duration, and intensity

## Points to Remember

- Document reasons for dismissal
- Get line officer concurrence on final list of issues
- Inform the public of final list of issues

*Example . . .*

## Eliminating Issues from Detailed Study

ISSUES	ISSUE GROUP
- Timber harvesting and road construction creates sediment which may decrease fish populations.	Water Quality
- Sediment from timber harvesting and road construction may plug irrigation structures downstream from project.	Water Quality
- Sediment from proposed activities may increase costs of producing drinking water above what the county can afford.	Water Quality
- Increase in water yield caused by timber harvesting may disrupt channel stability.	Water Quantity
- Creating openings with timber harvest may allow earlier melt-off of snow and change the timing of peak flows to non-critical periods.	Water Quantity
- The project area is roadless and should be considered for wilderness designation.	Wilderness
- Hauling from the proposed sale will create dust in Glorious Heights subdivision.	Dust
- Proposed Activities will contribute to Global Warming.	Global Warming

*Step 5:*

## IDENTIFY UNITS OF MEASURE

Select units of measure that are:

- Quantitative, where possible
- Measurable
- Predictable
- Responsive to the issue
- Linked to cause-effect relationships



# SUMMARY

## Five Steps for Issue Development:

- Identify preliminary issues
- Organize/group issues
- Clarify issues
- Identify significant issues
- Identify units of measure

## Issue Statements Should be Written:

- Without bias
- To show conflicts
- As specifically as possible

## Issue Measures Should be:

- Quantitative, where possible
- Measurable
- Predictable
- Responsive to the issue
- Linked to cause-effect relationships

*Exercise . . .*

# CREATIVITY

Your name: \_\_\_\_\_

Problem: \_\_\_\_\_

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Most outrageous solution: \_\_\_\_\_

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Most practical solution: \_\_\_\_\_

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Most economical solution: \_\_\_\_\_

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Most acceptable solution for all involved:

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# ALTERNATIVES SECTION

*40 CFR 1502.14*

- Heart of the document
- Compares impacts
- Sharply defines issues
- Clear basis for choice

In this section agencies shall:

- (a) Evaluate all reasonable alternatives and explain reasons for eliminating some alternatives from detailed study
- (b) Give substantial treatment to alternatives considered in detail
- (c) Include alternatives outside our jurisdiction
- (d) Include the no action alternative
- (e) Identify the preferred alternative (for EISs)
- (f) Include mitigation

# REASONABLE ALTERNATIVES TO THE PROPOSED ACTION

All reasonable alternatives will,

- Fulfill the purpose and need
- Address significant issues

# FOREST PLAN GUIDANCE

How Forest Plans guide alternative formulation:

- By reflecting laws and regulations
- By stipulating mitigation
- By helping establish the purpose and need



# NO ACTION ALTERNATIVE

Two interpretations;

- No change from current management
- Proposed project does not take place

The no action alternative provides a basis (point of reference) for evaluating environmental effects.

It provides a comparison of environmental conditions without the proposal.

Use the interpretation of a no action alternative that results in the least change to the environment from the current situation --both favorable and unfavorable.

# ALTERNATIVES OUTSIDE OUR JURISDICTION

- Actions the Forest Service cannot impose
- Actions which must be imposed by another agency or entity

These alternatives should:

- fulfill the purpose and need, and
- address significant issues.

# Ways to Generate ALTERNATIVES

- Where there is substantial disagreement, provide an alternative for each point of view (address each issue)
- Identify the no action alternative early
- Combine parts of alternatives logically
- Discuss all possible combinations of issues
- Emphasize different opportunities (e.g. commodity vs. non-commodity)

## Possible Reasons to Eliminate an ALTERNATIVE

- Illegal
- Fails to meet purpose and need
- Technologically infeasible
- Clearly unreasonable
- Duplication
- Decision already made
- Unreasonable environmental harm
- Cannot be implemented
- Remote or speculative
- Other

Note: The no action alternative **MUST** be considered, even if it fails to meet the purpose and need or is illegal.

# Role of the LINE OFFICER (DECISIONMAKER) in Alternative Development

Requires range of alternatives meet the purpose and need, and defines the issues.

Approves alternatives before analysis of effects.



# MITIGATION

*40 CFR 1508.20*

Measures designed to reduce or prevent undesirable effects.

## WAYS TO MITIGATE

- Avoid the impact by not taking action
- Minimize the impact by limiting action
- Rectify the impact by rehabilitation
- Reduce the impact by maintenance
- Compensate for the impact by replacement

*Exercise . . .*

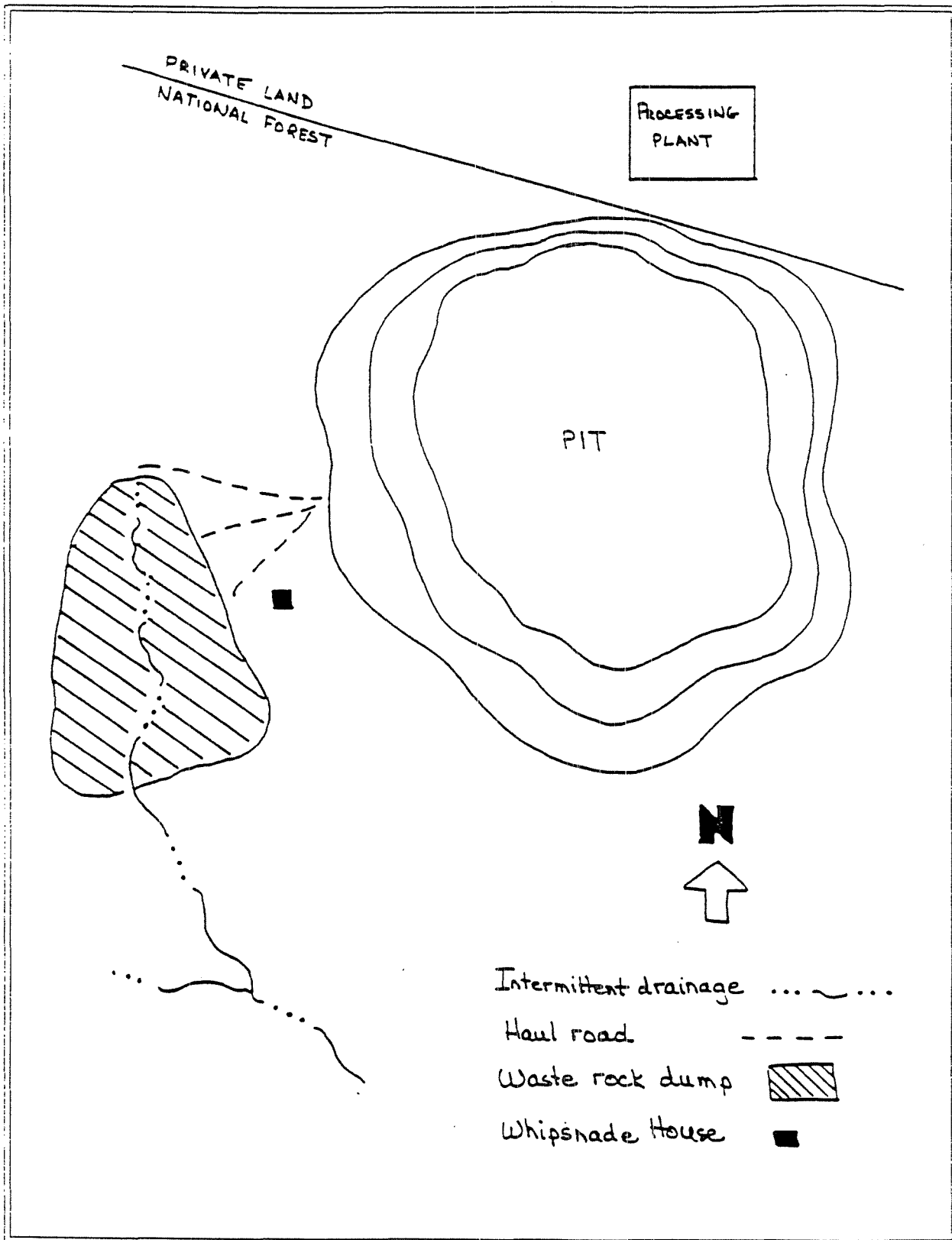
## **ZX MINE**

**PURPOSE AND NEED** - The ZX Mining Corporation wants to extract gold-bearing ore from their mining claims on National Forest system land. The gold-bearing ore lies within 30 feet of the surface and extends down to 1,500 feet below the surface.

**PROPOSED ACTION** - ZX has submitted an operating plan for an open pit mine. The pit would affect 400 acres. Waste rock would be dumped at the head of an intermittent drainage. When operations are complete, the waste rock would be covered with stockpiled topsoil and revegetated. The pit itself would remain. It would be approximately 1,500 feet deep, and because it intercepts the water table, water would collect in the pit to a probable depth of 1,000 feet (in other words, the surface of the water in the pit would be 500 feet below the rim of the pit). The pit and waste rock dump would be on National Forest land.

### **SIGNIFICANT ISSUES**

- Some people consider the whole project an inappropriate use of National Forest land and want it prohibited. They say mining commits National Forest land to a single use, and prevents or interferes with wildlife use, recreation and timber production.
- After mining is complete, water in the pit could leach heavy metals from the surrounding rock, degrading ground water quality. The quality of surface water flowing through the waste rock into the intermittent drainage could fall below state standards.
- After mining is done, the open pit will be a safety hazard for humans and wildlife.
- The mine operation and reclamation will cause a change in habitat type from riparian/spruce to grassland/shrub.
- Whipsnade House, a historic structure eligible to the National Register, could be damaged. It lies between the pit location and the waste rock dump site.



### ASSIGNMENT - As ID teams,

- Assign someone on your team to be the recorder and someone to be group spokesperson.
- Develop a range of at least four alternatives:
  - no action
  - three other alternatives, at least one of which is outside Forest Service jurisdiction to implement
- Decide what mitigation should be applied to the alternatives
- If you considered some alternatives, but eliminated them from detailed study, explain why.

- HINTS**
- Begin with the significant issues. Decide which issues can be resolved through mitigation and which issues warrant separate alternatives. Each issue should be addressed by mitigation or at least one alternative.
  - Do not get hung up on what the 1872 Mining Law does and does not allow.
  - Assume that underground mining is technologically infeasible, because the mine ceilings would collapse.
  - The Forest Supervisor has authority to approve the operating plan or approve it with modifications. The State Department of Extraction bonds and issues permits for all mining operations in the state; the Department has jurisdiction over air and water quality protection measures.

- NOTES**
- Handout 9.17(4) is a form you can use to record results.
  - Hang onto the alternatives you develop. You'll need them for another exercise.

# ZX MINE EXERCISE

## Alternatives and Mitigation

### PROPOSED ACTION

Open pit mine and waste rock dump on National Forest system land. Pit would be 1,500 feet deep. Waste rock dump at head of intermittent drainage.

After mining, pit would remain. Water would refill to within 500 feet of the rim of the pit. Water would be 1,000 feet deep.

### MITIGATION

After mining, waste rock dump would be covered with stockpiled topsoil and revegetated.

### ALTERNATIVE 1 (No Action)

MITIGATION

### ALTERNATIVE 2

MITIGATION

### ALTERNATIVE 3

MITIGATION

### ALTERNATIVE 4

MITIGATION





# SUBSTANTIAL TREATMENT of Alternatives

*40 CFR 1502.14(b)*

Devote substantial treatment to each alternative (including the proposed action) so that reviewers may evaluate their comparative merits.

- Include in your alternative descriptions whether or not each alternative is consistent with the Forest Plan.
- The description of each alternative should be equal and site-specific.
- Alternatives should be described objectively.

## What to include in ALTERNATIVE COMPARISON

- What the decisionmaker needs for a reasoned choice.
- What the public needs to understand the choice.

## ITEMS TO COMPARE

- Environmental effects
- Response to significant issues
- Forest Plan consistency
- Production of goods and services
- Achievement of Forest Plan goals
- Compliance with legal obligations
- Economic effects
- Social effects
- Any other items the line officer wants compared

# COMPARISON OF ALTERNATIVES

## ZX MINING CORPORATION PROPOSAL

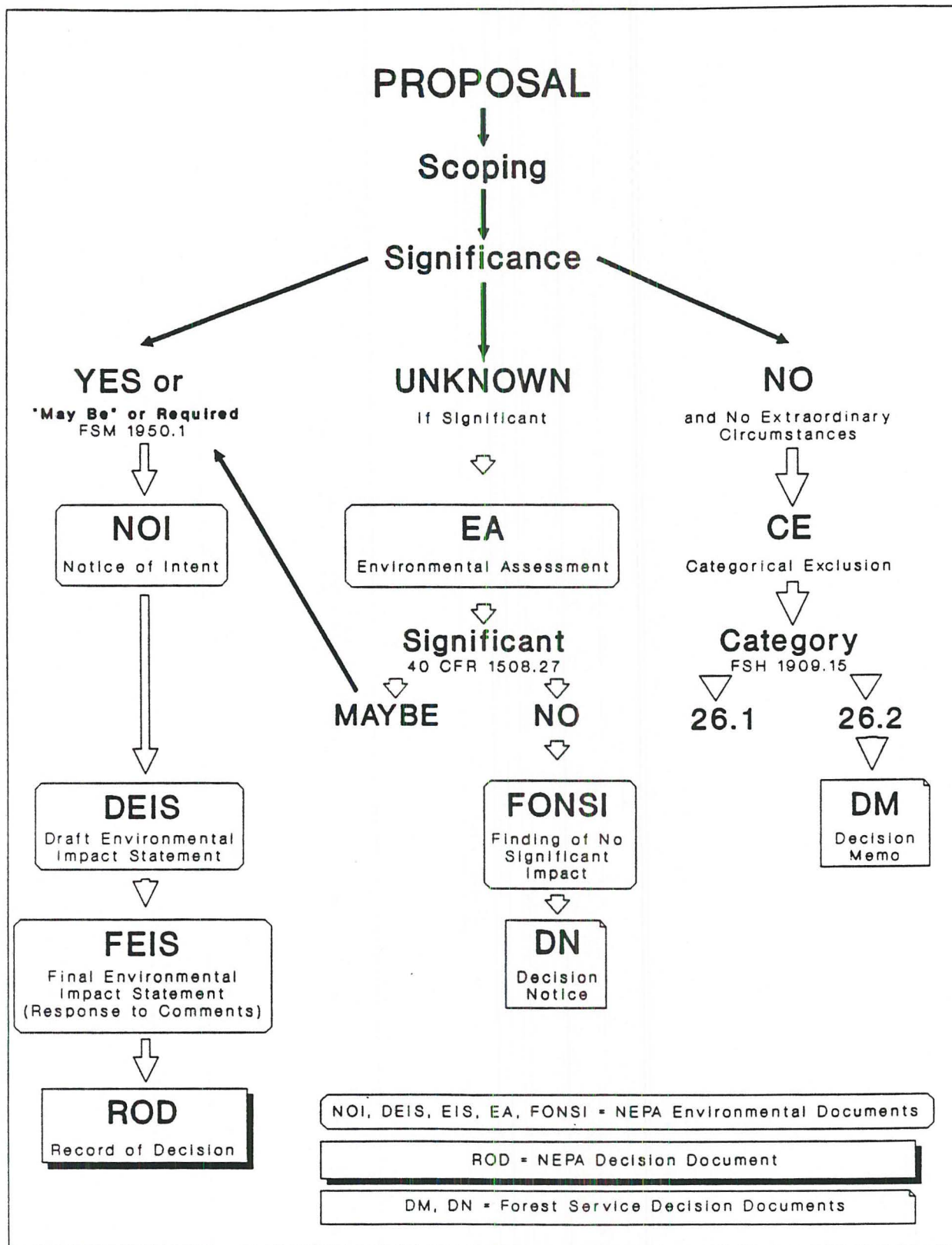
Items to be compared	Proposed Action	Alternative 1 (No Action)	Alternative 2	Alternative 3	Alternative 4
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# SUMMARY OF ALTERNATIVE DEVELOPMENT

- Begin with purpose and need
- Examine significant issues
- Alternatives must fulfill purpose and need and address significant issues
- Include no action alternative
- Describe alternatives eliminated from detailed study and reasons why
- Make every alternative detailed (flesh them out)
- Add mitigation
- Compare alternatives







# SIGNIFICANTLY

*40 CFR 1508.27*

*"Significantly"* as used in NEPA requires considerations of both context and intensity.

*(a) Context.* This 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 locale rather than in the world as a whole. Both short- and long-term effects are relevant.

*(b) Intensity.* This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

(1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.

(2) The degree to which the proposed action affects public health or safety.

(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

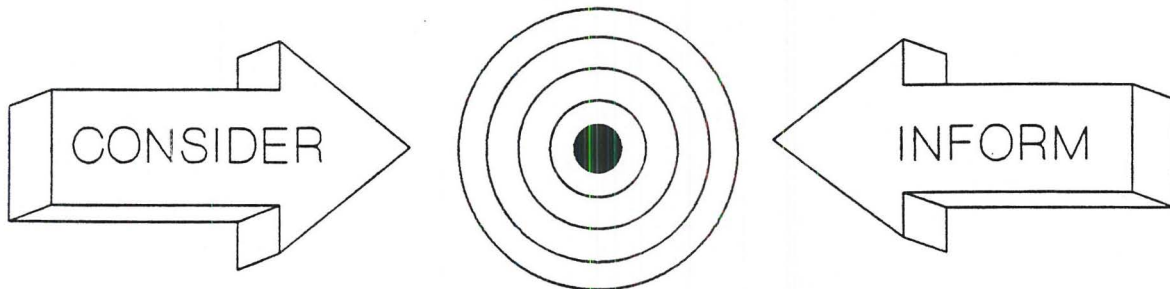
(8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

(10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.



# TWIN AIMS OF NEPA



“Agencies have the obligation to consider every significant aspect of the environmental impacts of a proposed action.”

SUCCESSFUL DECISIONS!

“Agencies will inform the public that environmental concerns have been considered in the decisionmaking process.”

NO SURPRISES!

“This doesn’t mean that agencies need to elevate environmental concerns over other considerations. Rather, NEPA only requires that the agency take a “hard look” at the environmental effects before taking a major federal action . . .”

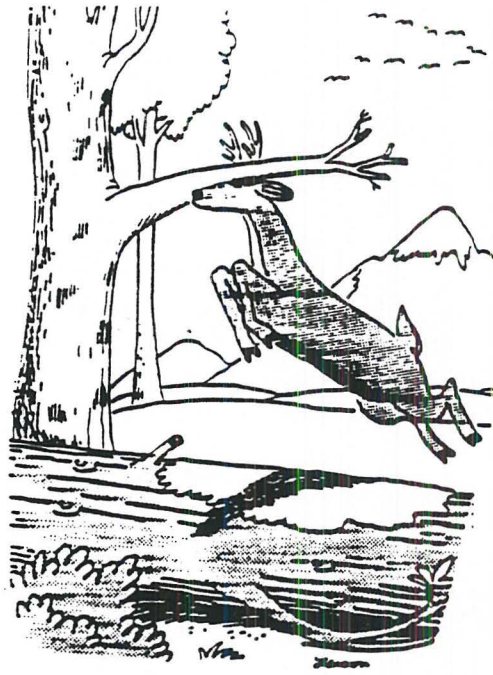
## Comparison of ENVIRONMENTAL EFFECTS of Alternatives

When conducting an environmental effects analysis, use effects that:

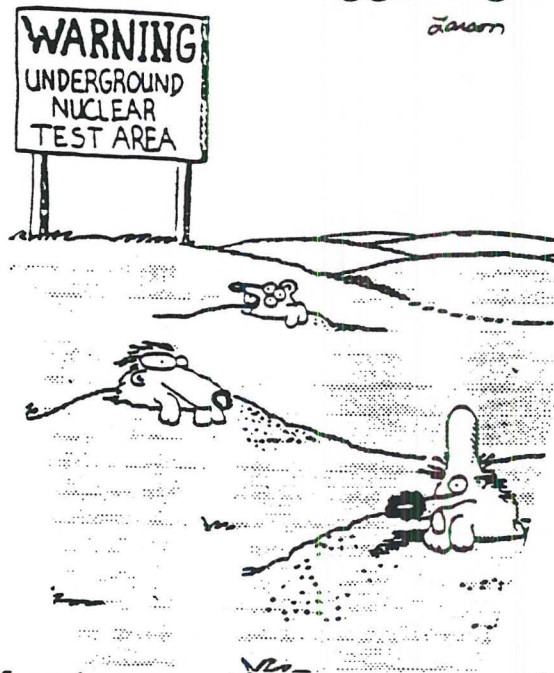
- Display a sharp contrast between the alternatives.
- Provide a comparison of alternatives with respect to significant environmental issues.
- Provide a clear basis for choice among options.

For additional discussion on the difference between the section in the EIS on alternatives and environmental effects, see question #7 in CEQ's Forty Most Asked Questions.





***Direct effects*** are those occurring at the same time and place as the triggering action.



***Indirect effects*** are those occurring at a later time or distance from the triggering action.

**CUMULATIVE EFFECTS EQUATION**  
For ACTIONS both Federal and Non-Federal

*PAST  
ACTIONS* +  
*PROPOSED  
ACTION* +  
*PRESENT  
ACTIONS* +  
*REASONABLY  
FORESEEABLE  
ACTIONS* =  
*CUMULATIVE  
EFFECTS*

*Demonstration . . .*

## The Snack Analogy

**ASSIGNMENT:** Estimate the effects (the total calorie intake) of the three alternatives, considering past, present, and future actions.

**Alternative 1:** No Action/No snack

**Alternative 2:** Chips without dip

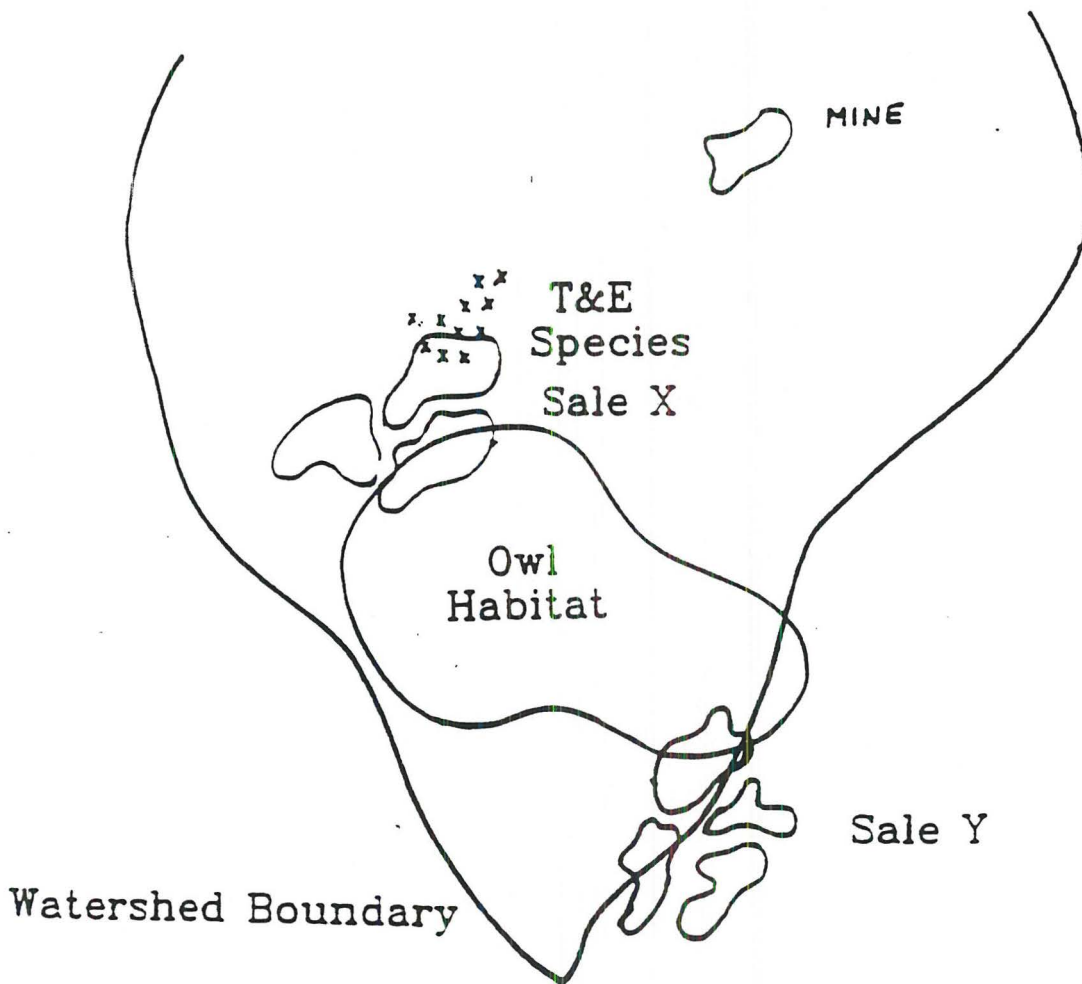
**Alternative 3:** Chips with dip



# CUMULATIVE EFFECTS ANALYSIS

## Location and Timing Overlap

Watershed, T & E plants, and owl habitat issues



# Important Aspects of CUMULATIVE AFFECTS ANALYSIS

Identifying reasonably foreseeable future actions;

- Use the NFMA analysis for possible management practices
- Estimate future off-forest actions by past trends in and around the project area
- Use expertise outside the Forest Service
- Use State and local plans
- Consult private owners
- General discussions of effects are adequate for speculative foreseeable actions

Bounding the cumulative effects analysis area in both time and space;

- The environmental effects of any project that overlap in time and location with the effects of the project under consideration should be included in the analysis.
- Continue to expand your area of analysis until a trend is established showing a stable or decreasing influence from the project, or the effects from the project diminish to very low levels.
- When identifying the geographic boundaries of the cumulative effects analysis, look at the effects of the proposed action, rather than administrative or ownership boundaries.
- Make assumptions as necessary, provide your best estimate of effects, and document your rationale. If your analysis indicates that there are no cumulative effects, document this determination.



# STRESS ASSESSMENT TEST

Check any of the events listed that have occurred in your life in the past 12 months. Add up the point value in the personal score column for your total.

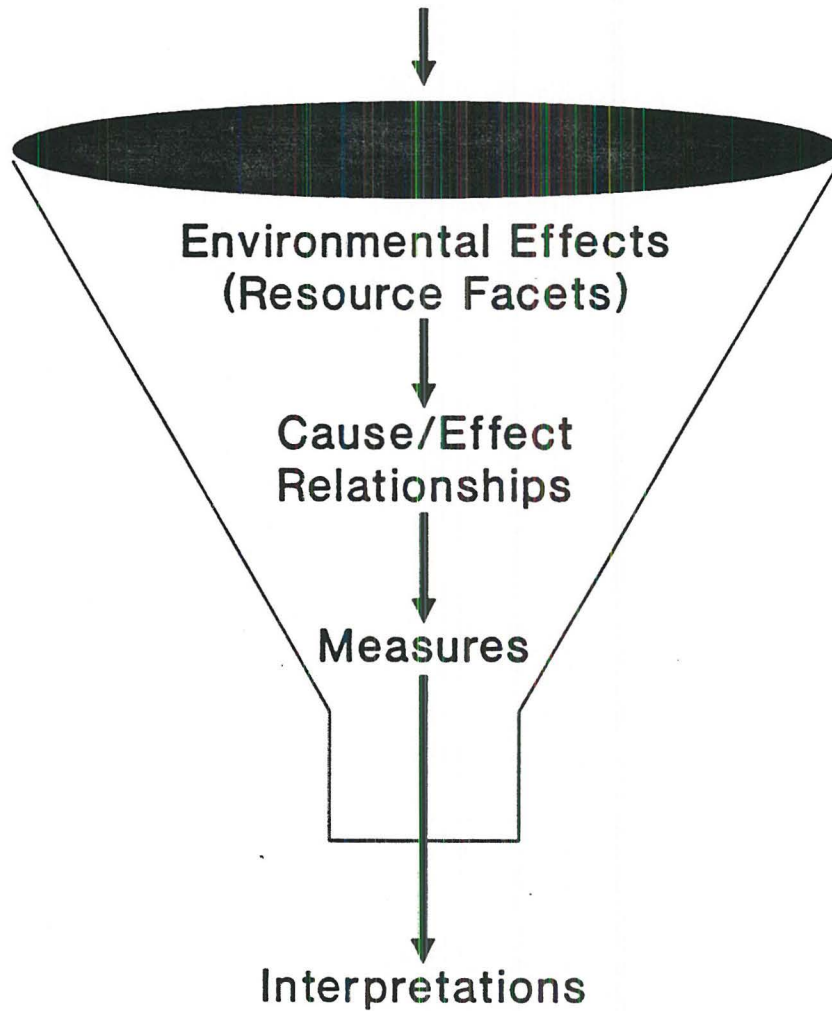
LIFE EVENT	MEAN VALUE	PERSONAL SCORE
1. Death of a spouse	100	_____
2. Divorce	73	_____
3. Assigned as ID Team Leader	63	_____
4. Personal injury or illness	53	_____
5. Marriage	50	_____
6. Accident in government rig	47	_____
7. New Oil & Gas regs issued	45	_____
8. Pregnancy	40	_____
9. Gain a new family member	39	_____
10. Change in financial state	38	_____
11. Appellants file lawsuit	36	_____
12. More than usual arguments with spouse	35	_____
13. Foreclosure of mortgage or loan	30	_____
14. Appeal remand by WO	29	_____
15. Son or daughter leaving home	29	_____
16. Outstanding personal achievement	28	_____
17. Spouse begins or stops work	26	_____
18. Assigned as writer/editor on ID Team	26	_____
19. Trouble with new staff director	23	_____
20. Change in work hours or conditions	20	_____
21. Change in job	20	_____
22. Change in social activities	18	_____
23. Mortgage or loan less than \$100,000	17	_____
24. Change in sleeping habits	16	_____
25. DG system down for a week	15	_____
26. Vacation	13	_____
27. Minor violations of the law	12	_____
28. Urgent DG message from the Chief	11	_____
29. Take Forest Plan Implementation Course	10	_____
TOTAL		_____

Your total score measures the amount of stress you have been subjected to and can be used to predict your chances of suffering serious illness within the next two years. A total score of less than 100 means you have only 35% chance of suffering poor health. A score between 100-250 = 51% chance of becoming ill; over 250 = 80% chance.

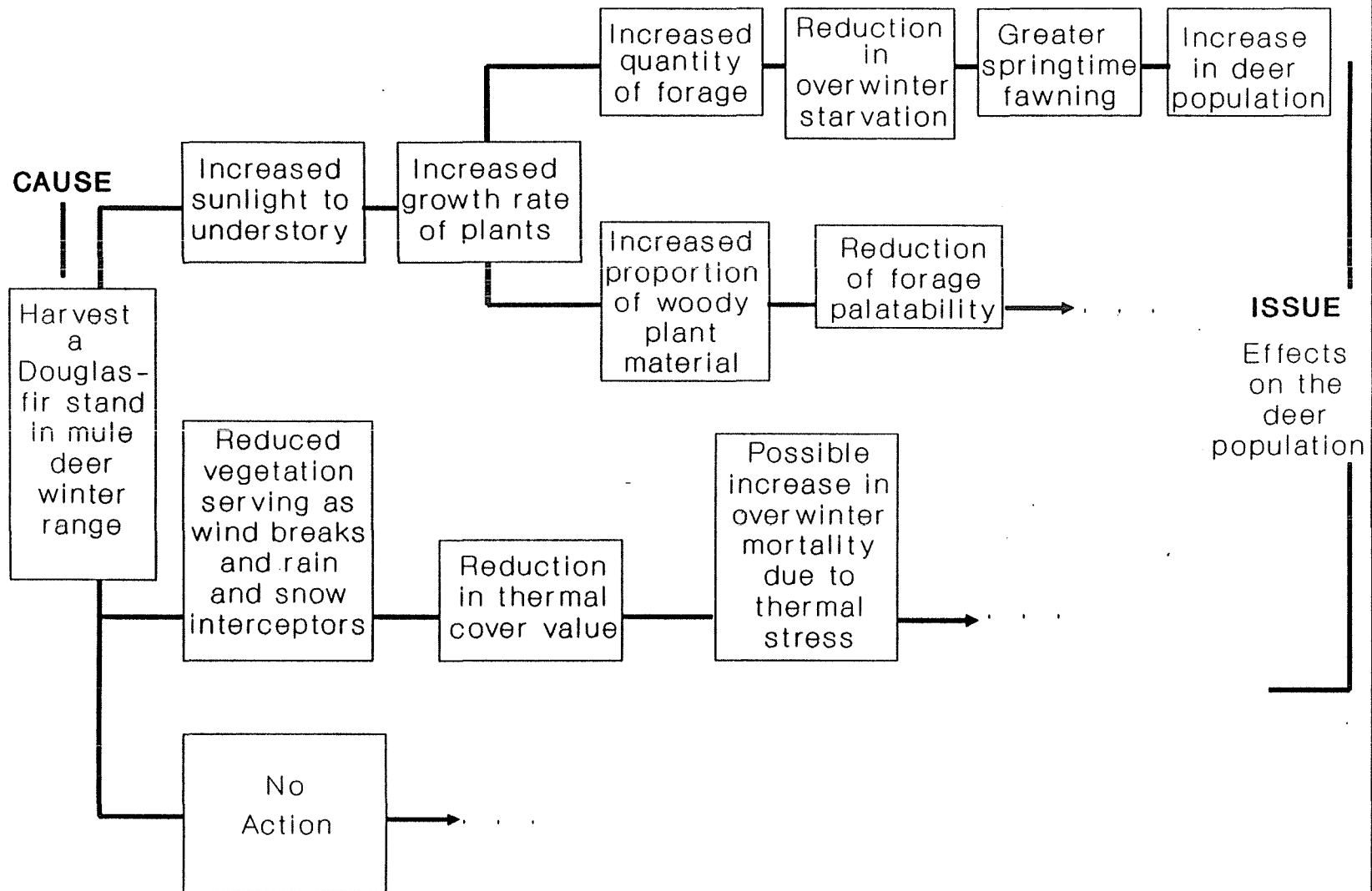


# EFFECTS ANALYSIS REQUIREMENTS

Existing Condition  
Alternatives  
Forest Plan Standards & Guidelines  
Laws and Regulations  
Issues



# Cause and Effect Relationship for One Issue



# Building CAUSE/EFFECT Relationships

- Determine appropriate level of effects analysis
- Match analytical models with effects being analyzed
- Refine and test models by testing relationships
- Provide for mitigation in analysis

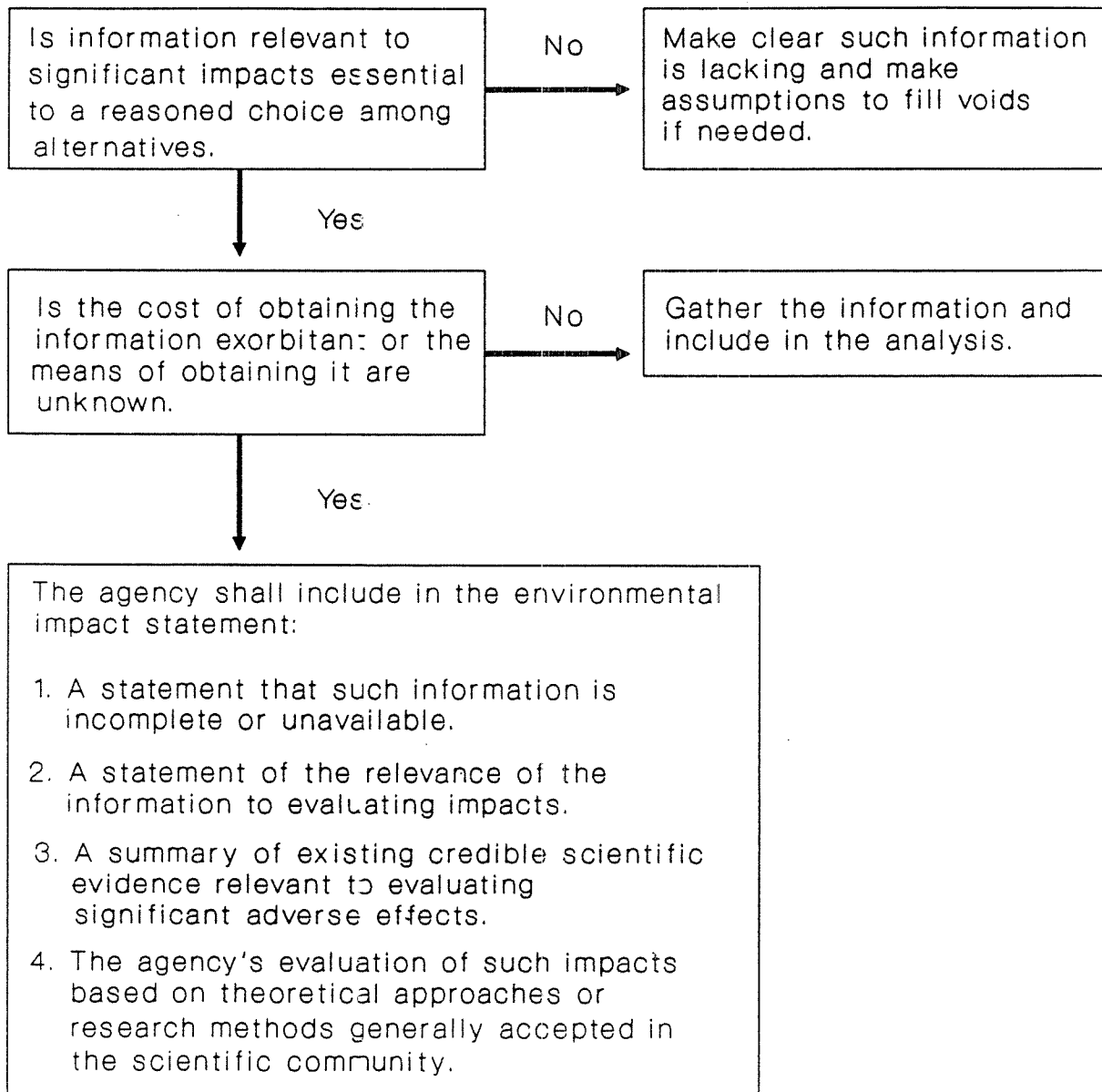
*Exercise . . .*

## Cause and Effect Relationship



# INCOMPLETE or UNAVAILABLE INFORMATION

40 CFR 1502.22



# Key Points for Displaying Effects

- *Direction of Effect*  
Will it increase or decrease?
- *Magnitude or Intensity of Effect*  
How much will it change?
- *Duration of Effect*  
How long will the impact last?
- *Changes in qualitative aspects of the resource*
- *Be site-specific*  
The effects analysis should stand on its own. "Rule of thumb", if taken out of the context of the environmental document, you should be able read the effects analysis and know what specific area is being affected.

# INTERPRETING EFFECTS

1. Explain cause-effect relationships. Organize your discussions, tables, charts, etc. so the reader can easily track the effects of each alternative and how those effects relate to the issues. Reference research, publications and other NEPA documents that support the conclusions and rationale of your cause-effect relationships and effects analysis. Don't just use a scientific reference, but summarize the findings of research or the conclusions you are drawing from the reference. Don't forget your Forest Plan EIS.
2. Use a reference point. (No Action Alternative/Existing Condition) Sometimes an effect of implementing an action can be most clearly described by showing changes in a resource component relative to the No Action alternative and the existing condition. Where possible use quantitative changes from the reference point and not relative measures such as minimal, substantial, significant, etc.
3. Avoid relying on numbers exclusively. Qualitative aspects of the effects are all important. These aspects need to be supplemented by narrative descriptions to make them meaningful. They must be translated into the real physical and biological consequences. Reservations such as: "may affect", and "might alter somewhat" should be used only when supported by rationale.
4. Avoid technical jargon. Interpret effects in simple terms if at all possible. Remember, most readers are not technical specialists.
5. Use graphic displays. Graphs, diagrams, drawings, and photographs can be very useful and effective.
6. Be objective. Don't express personal opinions, or any opinions such as bad, good, or acceptable.

# SUMMARY TABLE

## Resource Issues & Objectives

Alternatives	Age Class				Total
	Wildlife	Visuals	Dist.	I&D	
A-No Harvest	2	2	0	0	4
B-Harvest with timber emphasis	1	1	4	4	10
C-Harvest with wildlife emphasis	3	2	1	3	9

Key: 0 = Does not meet objective  
1 = Does little to meet objective  
2 = Partially meets objective  
3 = Substantially meets objective  
4 = Fully meets objective

# SUMMARY TABLE

	ALT 1 No-Action	ALT 2 Proposed Action	ALT 3
• Water quality in Gravey Creek (% fines by stream reach)			
Stream Reach A	25	32.5	
Stream Reach B	15	17	
Stream Reach C	22	28.7	
• Forage/Cover Ratio % of area in openings			
MA 4 (winter range)	3	23	
• Forage production in elk range C			
Total M lbs production	2,655	3,158	
% increase above baseline	0	22	
• Elk security (summer range)			
% of MA 1 providing secure elk habitat	58	50	
• Insect and disease treatment			
Acres of infested stand treated	0	316	



# WHAT WE'VE LEARNED

- Relationship of environmental effects to other phases of NEPA.
- Content requirements for EIS chapter on environmental effects.
- Definition - direct, indirect, and cumulative effects.
- Cumulative effects - location and timing limits.
- Estimating environmental effects.
- Interpreting environmental effects.

# SUMMARY

- Evaluate direct, indirect and cumulative effects considering past, present, and reasonably foreseeable actions.
- Build cause-effect relationships that help define paths of effects in the analysis. Use units measure in these relationships that are relevant, quantifiable, and descriptive.
- Present effects in a logical, understandable fashion with analytic and scientific rationale.

MONITORING

# NEPA / NFMA MONITORING REQUIREMENTS

## NATIONAL ENVIRONMENTAL POLICY ACT MONITORING REQUIREMENTS

40 CFR 1505.2 Contents of a Record of Decision State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation.

40 CFR 1505.3 Agencies may provide for monitoring to assure that their decisions are carried out and should do so in important cases.

40 CFR 1505.3(d) Upon request, make available to the public results of relevant monitoring.

## NATIONAL FOREST MANAGEMENT ACT MONITORING REQUIREMENTS

### Process Requirements

36 CFR 219.5(a)(7) The standards and requirements by which planning and management activities will be monitored and evaluated must be established by an ID Team.

36 CFR 219.7(f) Determine the effects of National Forest management on land, resources, and communities adjacent to or near the Forest.

36 CFR 219.11(d) Monitoring and evaluation requirements will provide a basis for a periodic determination and evaluation of the effects of management practices.

36 CFR 219.12(k) At intervals established in the Plan, implementation shall be evaluated on a sample basis to determine how well objectives have been met and how closely management standards have been applied.

36 CFR 219.12(k) Based on the evaluation, the ID Team shall recommend such changes as are deemed necessary.



## Monitoring Requirements (continued)

Forest Plan monitoring requirements shall provide for:

36 CFR 219.12(k)(1) A quantitative comparison of planned versus actual outputs and services.

36 CFR 219.12(k)(2) Documentation of the measured effects of prescriptions, including significant changes in land productivity.

36 CFR 219.12(k)(4) Identifying the actions, effects or resources to be measured, frequency of measurement, expected precision and reliability of monitoring, and the time when evaluation will be reported.

36 CFR 219.19(a)(6) Determine population trends of the management indicator species and relationship to habitat changes.

36 CFR 219.28(a) Identifying research needs during monitoring of implementation of the Forest Plan.

### Compliance Requirements

36 CFR 219.12(k)(5)(i) Determine if lands are adequately restocked.

36 CFR 219.12(k)(5)(ii) Determine, at least every ten years, if lands identified as unsuitable for timber production have become suitable.

36 CFR 219.12(k)(5)(iii) Determine whether maximum size limits for harvest areas should be continued.

36 CFR 219.12(k)(5)(iv) Ensure that destructive insects and disease organisms do not increase to potentially damaging levels following management activities.



# Monitoring Requirements (continued)

## Other Monitoring Requirements

**Water Quality (Best Management Requirements) -** The Forest Service and many State water quality agencies enter into agreements to monitor and evaluate the effectiveness of best management practices.

**Wildlife and Fish (Threatened and Endangered Species) -** Certain wildlife and fish species, particularly threatened and endangered species, require joint monitoring between the Forest Service, Fish and Wildlife Service, and State fish and game agencies.

**Air Quality -** Monitoring of air quality often involves numerous agencies and large areas of lands. The Forest Service is required to monitor air quality in Class 1 airsheds (wilderness).

# TOTAL MONITORING

## VALIDATION

Are the Forest Plan goals and objectives appropriate? Is the long term desired condition where we still want to go?

## EFFECTIVENESS

Are management practices effective in meeting the intent of the standards and guidelines?  
Is there a more efficient method to achieve the intent of the standards and guidelines?

## IMPLEMENTATION

Are projects implemented according to Forest Plan management direction?

# LEVELS OF MONITORING

**IMPLEMENTATION MONITORING** - Implementation monitoring determines if plans, programs, prescriptions, projects, and activities are implemented as designed and in compliance with Forest Plan objectives and standards and guidelines.

**EFFECTIVENESS MONITORING** - Effectiveness monitoring determines if plans, prescriptions, projects and activities are effective in meeting management direction, objectives, and standards and guidelines. This is a two-fold objective. First, do projects implemented according to the Forest Plan or NEPA meet the intent of that direction? Second, if they do meet the intent of that direction, are they the most efficient methods to meet that direction?

**VALIDATION MONITORING** - Validation monitoring is conducted to determine if management actions are resolving the issues and concerns identified in the Forest Plan or project level scoping. Validation monitoring can take many forms and may be done sequentially or independent of implementation and effectiveness monitoring. Normally, validation monitoring is conducted to determine if the initial assumptions and coefficients used in the development of the Forest Plan are correct. This includes testing and evaluating predictive models such as wildlife habitat relationships or water quality impacts. Cooperative studies with research can aid in testing and improving these models. Normal inventory operations also provide information to aid in evaluating the coefficients used.



# CRITERIA FOR IDENTIFYING MONITORING NEEDS

**PROJECT IMPLEMENTATION** - Implementing projects as designed and consistent with the Forest Plan is one of the keys to our credibility with the public and ourselves. This monitoring is routinely done for many projects and it is a high priority.

**SIGNIFICANT ISSUES TO BE RESOLVED** - Projects and Forest Plans are designed to resolve issues. One part of monitoring is to determine if issues are being resolved. This can require all forms of monitoring: implementation monitoring to assure the public that we did what we said; effectiveness monitoring to show our practices are achieving our intent; and validation monitoring to show that our management is resolving the issue overall.

**CRITICAL MITIGATION MEASURES** - The NEPA regulations specifically point out the need to monitor the implementation and effectiveness of critical mitigation measures necessary to avoid or minimize environmental harm.

**NEW MANAGEMENT TECHNIQUES** - When new management techniques are employed, they should be monitored to determine their effectiveness.

**ACTIONS WITH HIGH RISKS** - When a project requires the use of management actions that have high risk to environmental values or historically have had high risk of failure, they should be a high priority for monitoring.

**KEY ASSUMPTIONS** - Often the decision on a project is based on assumptions of coefficients that are used to predict goods and services or environmental effects. Monitoring these items will validate or improve decisionmaking.

**FOREST PLAN MONITORING REQUIREMENTS** - A project may be picked to monitor specific items to meet the overall Forest Plan monitoring requirements. This will normally be identified outside the project analysis process.

# MONITORING FORM

DISTRICT:

PROJECT NAME:

SITE LOCATION:

MONITORING OBJECTIVE:

MONITORING TYPE:

PRIORITY:

PARAMETERS:

METHODOLOGY:

FREQUENCY/DURATION:

DATA STORAGE:

REPORT:

PROJECTED COSTS:

PERSONNEL NEEDED:

RESPONSIBLE INDIVIDUAL:

PREPARED BY:

DATE:



# SUMMARY

Purpose, Value and Costs of Monitoring

Where in NEPA/NFMA Process to Monitor

Legal Requirements for Monitoring

Three Levels of Monitoring

- Implementation  
*Did we do what we intended?*
- Effectiveness  
*Did our actions accomplish what we intended?*
- Validation  
*Are our goals and objectives appropriate?*

Criteria for Identifying Monitoring Needs

Sample Monitoring Form



# RESPONSE TO COMMENTS

Public response analysis after the comment period identifies:

- Public opinions and values
- New information about:
  - resources
  - geographic areas
  - alternatives
  - issues

See FSH 1609.13, Chapter 27,  
Public Participation Handbook.

# REGULATIONS ON INVITING COMMENTS

*40 CFR 1503.1*

Obtain comments of Federal agencies which have:

- jurisdiction by law
- special expertise
- authorization to develop and enforce standards

Request comments from:

- State and local agencies
- Native Americans
- Agencies requesting statement
- Applicant
- Public

# REGULATIONS ON RESPONSE TO COMMENTS

*40 CFR 1503.4*

What to do with public comments?

- Modify alternatives including the proposed action.
- Develop and evaluate alternatives not previously given serious consideration.
- Supplement, improve, or modify its analyses.
- Make factual corrections.
- Explain why the comments do not warrant further response.



# SUMMARY OF RESPONSE TO PUBLIC COMMENT

## Red Squirrel EIS, Coronado NF

### Example: Develop and Evaluate Alternatives Not Previously Given Serious Consideration

*Alternative G's objectives follow the U.S. Fish and Wildlife Service's Reasonable and Prudent Alternative #3 as outlined in their Biological Opinion (July 14, 1988). This alternative allows astrophysical development. "Section 7 regulations have defined reasonable and prudent alternatives as alternate actions identified during formal consultation that can be implemented in a manner consistent with the intended purpose of the action, that can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction, that is economically and technologically feasible, and that the Service believes would avoid the likelihood of jeopardizing the continued existence of listed species or result in the destruction or adverse modification of critical habitat." (From USFWS Biological Opinion, July 14, 1988, page 26. Alternative G is a new alternative.*

### Example: Supplement, Improve, or Modify Its Analysis

*Some of the features outlined in the Biological Opinion put added restrictions on recreational opportunities on Mt. Graham. The public has not had an opportunity to comment fully on these restrictions; therefore, a 60 day public comment period will be provided for review and comment on the Final EIS. The comments received will be analyzed and used in the Forest Service's selection and*

implementation of an alternative. A Record of Decision will be prepared after the 60 day comment period. The Record of Decision will identify the Forest Service selected alternative and rationale for the selection.

**Example: Assess and Consider Comments Individually and Collectively**

Public comments received by the U.S.D.A. Forest Service on the DEIS totalled over 1,300 separate letters. In addition over 500 pages of testimony were recorded at the public meetings on November 5 (Tucson) and November 6 (Thatcher), 1986. Some persons speaking at the meetings also submitted written statements. *All were considered during preparation of this Final Environmental Impact Statement (FEIS) even though many letters were received after the formal comment period ended. Many changes have been made in the final EIS in response to comments made by the public on the draft EIS.* The Forest Service responses indicate where changes have been made. The Biological Opinion issued by the USFWS (July 14, 1988) also resulted in changes to the Final EIS. The major change was the addition of Alternative G.

*All public comments received were responded to in one of the following three sections.*

**Section #1:**

*Selected letters and testimony that were generally broad in nature although they did address specific common points of the DEIS. Many only expressed an opinion about astrophysical development vs. no development or favored one alternative over the others. Selected letters from individuals and organizations have been reproduced in their entirety to represent this category of comments. The Agency response is in the form of a set of standard responses that*



covers the range of comments included in this category.

**Section #2:**

*Selected letters and testimony that included comments addressing specific points of the Draft Environmental Impact Statement. Some of these contained specific challenges to the DEIS which are answered in the Agency response. Some resulted in changes to the DEIS. The ones reproduced in their entirety along with Agency responses were selected to represent the entire range of specific comments.*

**Section #3:**

*All letters and testimony from local, state, and federal government agencies and elected officials. These comments have been reproduced in their entirety, followed by the Agency response, to meet requirements of the National Environmental Policy Act.*

**Example: Modify Alternatives including the Proposed Action**

The following summary is of changes suggested since the release of the Draft EIS. All of these changes are incorporated into the Final EIS.

**1 - Modify the Agency Preferred Alternative to:** The final environmental impact statement (EIS) displays the Agency Preferred Alternative (G). The new Alternative G is described below. An additional public comment period will be allowed before a final decision is issued by the Forest Service.

**2 - Modify Alternative B to:** The modified B alternative includes a wilderness designation (approximately 743 acres) and a research natural area designation

(approximately 470 acres). In addition Forest Road 669 would be closed and allowed to reforest. Road 507 is closed at milepost 1.8 and also allowed to reforest. Non-motorized recreation use is emphasized.

**3 - Modify Alternative C to:** The modified C alternative is essentially the same as in the draft EIS. The modification includes a research natural area rather than a zoological-botanical area as displayed in the DEIS. This research natural area covers the entire spruce-fir ecosystem found within the study area. Road 507 is closed at Swift Trail.

**4 - Modify Alternative E to:** The modified E alternative is the amended astrophysical proposal from the University of Arizona. It is similar to alternative E displayed in the Draft EIS in that it involves astrophysical land allocation for both High Peak and Emerald Peak. The number of telescopes is reduced from eleven to seven. Actual telescope placement has been changed to maximize astronomical research and minimize environmental effects.

**5 - Modify all alternatives to:** Add changes resulting from additional management requirements proposed for the endangered Mt. Graham red squirrel and its habitat.

**6 - Add a new alternative identified as "G":** Alternative G is based on the U.S. Fish and Wildlife Service Biological Opinion dated July 14, 1988 (Reasonable and Prudent Alternative #3). It provides for limited astrophysical development on Emerald Peak. Three instruments are allowed. Both astrophysical site testing and biological studies are allowed to continue to determine the feasibility of placing an additional four instruments on Emerald Peak in the future. A new access road is required and Forest Roads 507 and 669 are eventually closed.



**7 - Drop the Preferred Alternative (PA) and Alternative D:** These alternatives are no longer considered in detail in the EIS. They do not represent a scientifically or economically viable observatory to the University of Arizona. Rationale is provide in the EIS section on "Alternatives Considered but Eliminated from Detailed Study."

**8 - Consider the following alternatives and provide rationale in the FEIS for eliminating them:** (1) recommend the entire study area for wilderness and (2) create a National Park on Mt. Graham.

**9 - Add additional explanation in the FEIS why alternative astrophysical sites other than Mt. Graham were not analyzed detail as part of this environmental study.**

**10 - Include the proposed spruce-fir forest research natural area in appropriate alternatives considered in detail.**

**11 - Drop the proposals for a zoological-botanical area in all alternatives. Rationale is provided in Final EIS section on "Alternatives Considered but Eliminated from Detailed Study."**

**12 - Comments offering technical additional and corrections or pointing out inconsistencies were used to revise the FEIS.**

**13 - Comments questioning the analysis or rationale were used to strengthen the analysis or answered in responses to the comments.**

**Example: Make Factual Corrections**

The proposed Mt. Graham Astrophysical Area has often been referred to as the "3,500-acre area." This acreage figure was widely used in the early stages of planning. The

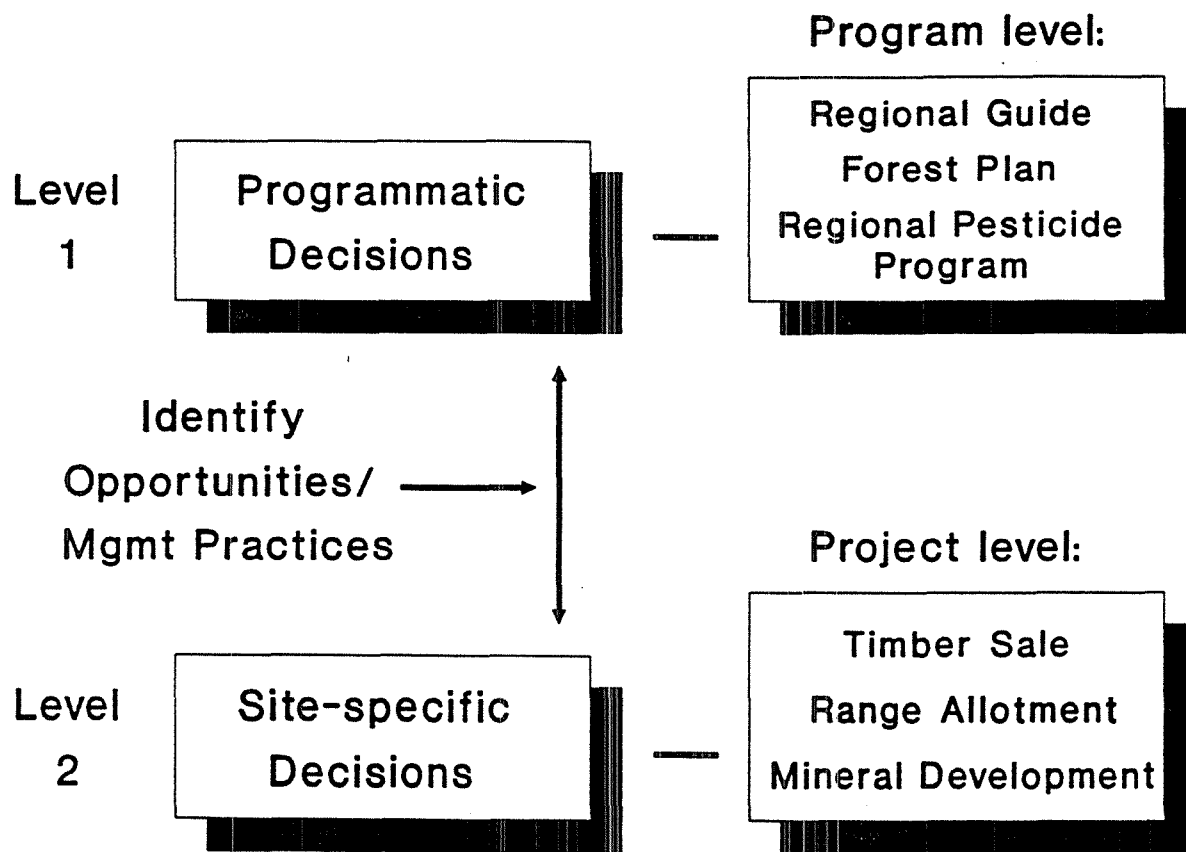


actual acreages now calculated within the proposed Mt. Graham astrophysical area are likely to be between 3,000 and 3,200 acres. *Analysis of acreages for the expanded biological assessment that were made from a habitat polygon map overlaid on USGS quadrangle sheets did identify 3,071 acres within the boundaries of the proposed Mt. Graham Astrophysical Area.* In this Final EIS, the Mt. Graham Astrophysical Area is now referred to as Management Area 2A (see alternative maps, Chapter 2 of the Final EIS).

When the proposal was first made, Steward Observatory represented the University of Arizona. *Notification that the University of Arizona took the lead in the proposal came too late to be changed in the Mt. Graham Draft Environmental Impact Statement (DEIS).* The Final EIS recognizes this change. Their needs are one and the same and are used interchangeably in the Final EIS.



# TWO DECISION LEVELS



# Contents of the ENVIRONMENTAL IMPACT STATEMENT

## *EIS*

*40 CFR 1502.10*

- Cover sheet
- Summary
- Table of contents
- Purpose 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
- Index
- Appendix

# Contents of the ENVIRONMENTAL ASSESSMENT

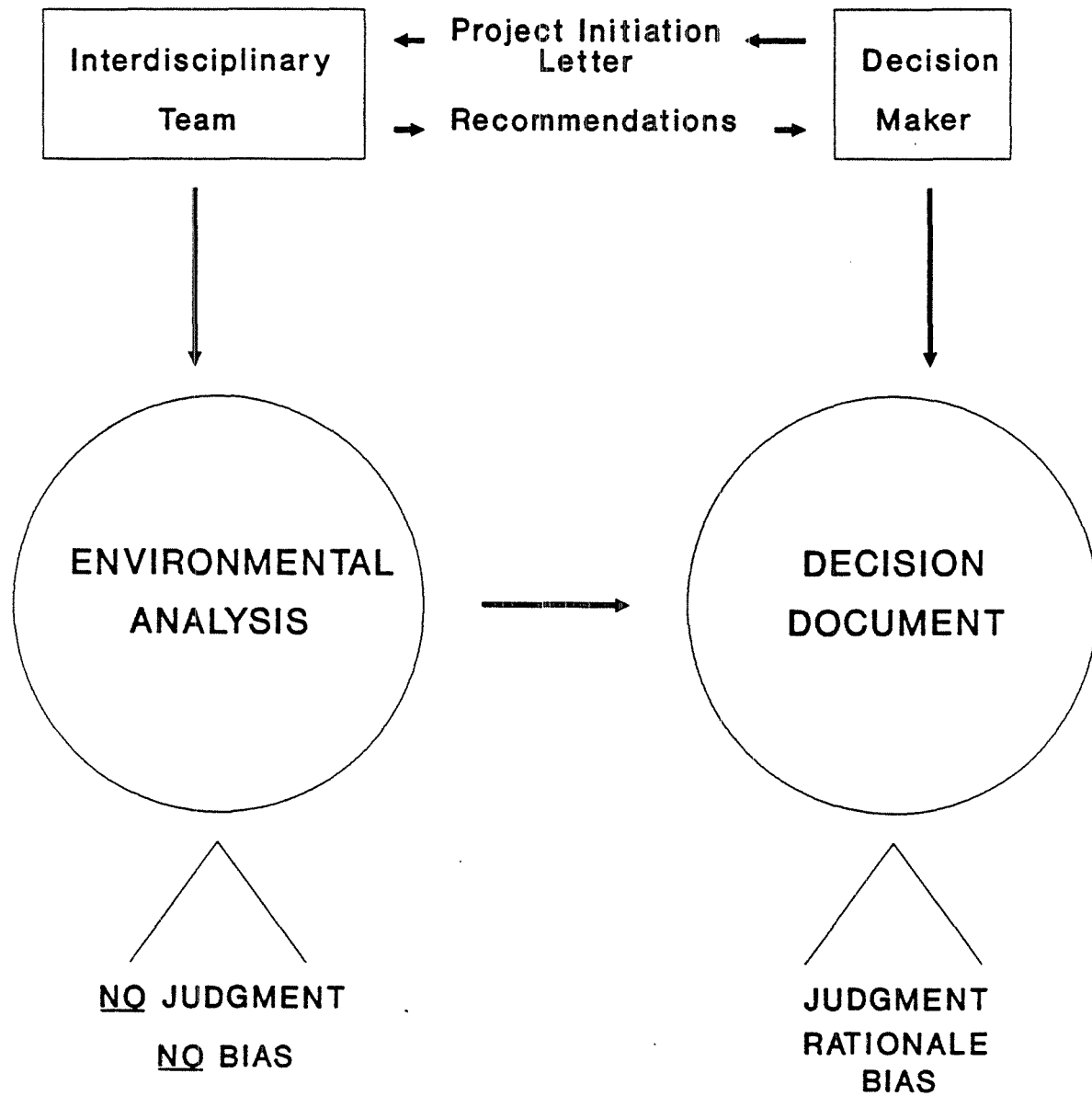
*EA*

*40 CFR 1508.9*

- The proposed action and need for the proposal
- Alternatives required by Section 102(2)(e) of NEPA
- Environmental impacts of proposed action and alternatives
- A list of agencies and persons consulted



# DECISIONMAKING



# DECISION DOCUMENTS

## Format and Content

	DM	DN	ROD
HEADING	X	X	X
DECISION(S) AND REASONS FOR DECISION(S)	X	X	X
PUBLIC INVOLVEMENT AND SCOPING	X	X	X
ALTERNATIVES CONSIDERED		X	X
ENVIRONMENTALLY PREFERABLE ALTERNATIVE			X
FINDING OF NO SIGNIFICANT IMPACT		X	
FINDINGS REQUIRED BY OTHER LAWS	X	X	X
IMPLEMENTATION DATE	X	X	X
APPEAL RIGHTS STATEMENT	X	X	X
CONTACT PERSON	X	X	X
SIGNATURE AND DATE	X	X	X

# DECISION DOCUMENT

## CONTENT

### Heading

- Agency
- Type of decision
- Title
- Location

### Decision and reasons for the decision

- Describe decision
- Applicable laws, regulations
- Factors considered in decisionmaking process
- Decision Memo: identify category

### Public Involvement

- Issues
- Summarize public participation
- Viewpoints expressed

### Alternatives considered

- No action
- Relevant mitigation
- Monitoring requirements
- Alternatives not considered in detail
- Environmentally Preferable Alternative - ROD

### Findings required by NFMA and other laws

### Implementation date

- ROD - 30 days after publication in federal register (FSH 1909.15, Chapter 50)
- Wetlands/floodplains - 30 days after signature (FSH 1909.15, Chapter 50)
- All decisions - 7 days after publication in newspaper (36 CFR 217)

### Appeal rights statement

- Cite regulation - 45 day period
- Responsible official
- State where appeal may be filed

### Contact person

- Name, address, and phone number

### Signature and date

- Must have authority to sign

# Contents of the RECORD OF DECISION

## *ROD*

### *40 CFR 1505.2*

#### Heading, must identify

- Agency
- Type of document
- Title of proposed action
- Location - administrative unit, county, state and legal land description, if appropriate

#### Decision, describes the decision being made including

- Permits, grants, licenses or authorizations needed to implement
- Specific location (including legal land description, if pertinent)
- Mitigation or monitoring program

#### Public involvement

#### Alternatives considered

#### Reasons for the decision

- Applicable laws, regulations and policies
- How environmental issues were considered and addressed
- Factors other than environmental consequences considered
- Environmental and other documents read and considered

#### Findings required by other laws and regulations

#### Environmentally preferable alternatives

#### Implementation date

#### Administrative review or appeal opportunities

#### Contact person

#### Signature and date

# Contents of the DECISION NOTICE

*DN*

*FSM 1950 Sec.33.1*

Heading, must identify

- Agency
- Title of proposed action
- Location - administrative unit, county, state, and legal land description, if appropriate

Decision and reasons for the Decision

- Applicable laws, regulation policies
- How issues were considered
- Factors, other than environmental effects, considered in making the decision
- Environmental documents read and considered
- How the above were weighed and balanced in making the decision

Alternatives considered

Public involvement

FONSI - Finding Of No Significant Impact

Findings required by other laws and regulations

Implementation date

Administrative review or appeal opportunities

Contact person

Signature and date



# Contents of the DECISION MEMO

*DM*

*FSH 1909 (27.1)*

## Heading, must identify

- Title of document - Decision Memo
- Location - administrative unit, county, state, and legal land description, if appropriate

## Proposed Action

- Describe the proposed action
- Discuss the decision to be implemented
- Provide the rationale for the decision

## Results of any scoping or public involvement

## Reasons for categorically excluding the proposed action

- Identify the category into which the proposed action falls
- Include the finding that no extraordinary circumstances exist that might cause the action to have significant effects

## Findings required by other laws and regulations

## Implementation date

## Administrative review or appeal opportunities

## Contact person

## Signature and date

# Contents of the DM PROJECT FILE

*FSH 1909.15 (26.2a)*

- Names of interested and affected people, groups, and agencies contacted during scoping
- The results of the environmental analysis
- The determination that no extraordinary circumstances exist
- The Decision Memo
- A copy of the legal notice and other notices used to inform interested and affected persons of the decision to proceed with or to implement an action

# FINDING OF NO SIGNIFICANT IMPACT

## *FONSI*

- Applies only to EAs
- Specifies reasons the action has no significant effects, and why an EIS will not be prepared
- Must be based on the analysis of effects disclosed in the EA
- Responds to the applicable significance criteria in *40 CFR 1508.27*



# SIGNIFICANCE FACTORS

Reasons why an action will not have a significant effect on the human environment with consideration given to the criteria of 40 CFR 1508.27 to verify the finding of no significant impact.

## Context

- Society as a whole
- Affected region
- Affected interests
- The locality
- Short- and long-term effects

## Intensity and severity of the impacts

- Impacts that may be both beneficial and adverse.
- Degree to which public health or safety may be affected.
- Unique characteristics of geographic area.
- Degree to which effects are likely to be highly controversial.
- Degree to which effects are highly uncertain or involve unique or unknown risks.
- Degree to which action may set precedent for future actions with significant effects or represents a decision in principle about a future consideration.
- Whether the action is related to other actions with individually insignificant but cumulatively significant impacts.
- Degree the action may adversely affect historic places or loss of scientific, cultural, or historic resources.
- Degree the action may affect endangered or threatened species or its critical habitat under the ESA of 1973.
- Whether the action threatens a violation of Federal, State, or local laws that protect the environment.

# PUBLIC NOTIFICATION CEQ Regulations

*40 CFR 1500-1508*

The agency shall make the finding of no significant impact available to the affected public as specified in 1506.6.

*40 CFR 1501.4(e)(1)*

At the time of its decision...each agency shall prepare a concise public record of decision...

*40 CFR 1505.2*





# SUMMARY OF PURPOSE FOR DOCUMENTATION

- Leads to reasoned decisions
- Maintains agency credibility
- Ensures defensible decisions
- Required by regulations
- Better project implementation

# TYPES OF RECORDS

Project Record



Appeal Record



Certified Administrative Record

# LITIGATION AND DOCUMENTATION

- Short time frames involved with litigation necessitate an organized, readily accessible record.
- The scope of litigation is usually limited to the administrative record, so the record must be complete.
- Records should be organized in a systematic manner.

FSH 1909.15 - ENVIRONMENTAL POLICY AND PROCEDURES HANDBOOK  
Region 10 Supplement 1909.15-91-1  
Effective July 5, 1991

Requirements for development and maintenance of planning records are set forth in 36 CFR 217.2 "Decision Documentation" and "Decision," 36 CFR 219.8(g), 36 CFR 219.10(h), 40 CFR 1506.6(f), 40 CFR 1508.4, and FSM 1950.3(4).

04 - RESPONSIBILITY. Line officers are responsible for the decisionmaking according to the procedures in this Handbook. However, for easy reference, this is a consolidation of the authorities for the approval of the National Environmental Policy Act (NEPA) documents. The authority to approve NEPA documents are the same authorities required to approve the proposed project. A summarization of the authorities located elsewhere in the Forest Service Manual and Handbooks as they pertain to the Alaska Region are found in 04 - Exhibit 01.

05 - DEFINITIONS. The definitions are listed chronologically in order of record creation.

37. Administrative Process Records.

a. Planning Record. Detailed, formal account of the planning process and is the responsibility of the Interdisciplinary Team leader.

b. Appeal Record. The relevant decision documentation and pertinent records for appeals covered under 36 CFR 217 and 36 CFR 251 that identify and index where the documentation addresses the issues raised in the notice of appeal. The documentation and index is transmitted to the Reviewing Officer within 30 days.

c. Implementation Record. Includes documents implementing the decision such as correspondence, special reports, bond, contracts, contract modifications, inspection reports, approval, acceptance, layout, design, the results of monitoring, validation, record of mitigation measure, and closure letter.

38. Litigation Process Records.

a. Certified Administrative Record. Records compiled in preparation for National Environmental Policy Act (NEPA) litigation and marked for certification of completeness in Federal District Court.

b. Litigation Report. A privileged communication between the Forest Service and its attorneys made in preparation for litigation. This report is compiled from selected documents found primarily in the planning records, but may also include documents from the Implementation Record and Appeal Record, as well as documents used in response to issues broached by the plaintiffs which were not covered in the NEPA process.



	NAME	SUB-GROUP	ACTIVITY DESCRIPTION	WO	RF	S	DR	FSM/FSH REFERENCE
1	1. RECREATION	DEVELOPED	Site Plan Development for more than 10 PAOT's	-	X	-	-	FSM 2330.41 R-10 #43
2	-	-	Nonstandard Facility Design	-	X	-	-	FSM 7310 R-10 #10
3	-	-	Site Plan in Special Interest Area (Portage, Ward	-	X	-	-	FSM 2330.41 R-10 #43
4	-	-	Lake, Mendenhall, Blind Slough, Russian River)	-	-	-	-	-
5	-	-	Water & Sanitation Systems	-	X	-	-	FSM 7413 R-10 #8
6	-	-	-	-	-	-	-	-
7	-	DISPERSED	All site plans in existing or proposed Wilderness,	-	X	-	-	FSM 2330.41 R-10 #43
8	-	-	National Monument, Wild & Scenic River	-	-	-	-	-
9	-	-	-	-	-	-	-	-
10	-	TRAILS	Approve Forest Development Trail System	-	X	-	-	FSM 2350.04f
11	-	-	National Recreation Trails	-	-	-	-	-
12	-	-	National Scenic and Historic Trails (USDI/USDA)	-	-	-	-	-
13	-	-	-	-	-	-	-	-
14	-	-	Standard design and trail structures per FSM	-	-	X	-	FSM 7721
15	-	-	Special Designs	-	-	X	-	FSM 7723.1 R-10 #44
16	-	-	-	-	-	-	-	-
17	-	WILD & SCENIC RIVERS	Management Plan	-	X	-	-	FSH 1909.12 Ch 8.41
18	-	-	Projects fully compatible with Plan	-	-	X	-	-
19	-	-	Projects in conflict with the Plan	-	X	-	-	-
20	-	-	-	-	-	-	-	-
21	-	WILDERNESS	ANILCA Authorized Wilderness Activities:	-	-	-	-	FSM 2323.04c
22	-	-	Permanent fisheries research, enhance & rehab.	-	X	-	-	-
23	-	-	Temporary fisheries research, enhance & rehab.	-	-	X	-	-
24	-	-	Permanent facilities	-	X	-	-	-
25	-	-	Temp. facilities for taking of fish & wildlife	-	-	X	-	-
26	-	-	Tree use involving mechanical or motor equip	-	X	-	-	-
27	-	-	Subsistence tree use/mech. & motorized equip	-	-	X	-	-
28	-	-	Beach Log Salvage	-	-	X	-	-
29	-	-	Transport & supply by helicopter & motor equip	-	X	-	-	-
30	-	-	Emergencies and temporary need	-	-	X	-	-
31	-	-	Exploration & devel. of mineral rights	-	-	X	-	-
32	-	-	Minerals assessments	-	-	X	-	-
33	-	-	O&M Navigation aids, communications sites &	-	-	-	-	-
34	-	-	existing facilities	-	-	X	-	-
35	-	-	Helicopter landing sites	-	X	-	-	-
36	-	-	Access to State & Private lands	-	X	-	-	-
37	-	-	-	-	-	-	-	-
38	2. TIMBER	COMMERCIAL SALES &	Long-term sales: APC & KPC	-	X	-	-	FSM 2404.28
39	-	ASSOCIATED SAB &	Timber export applications	-	X	-	-	-
40	-	BD PROJECTS	Tongass NF up to 50,000 MBF	-	-	X	-	-
41	-	-	Chugach NF up to 10,000 MBF	-	-	X	-	-
42	-	-	Up to \$2,000 appraised value	-	-	-	X	-
43	-	-	-	-	-	-	-	-
44	-	MISC. FOREST PRODUCT	Up to \$10,000 appraised value	-	-	X	-	-
45	-	-	Up to \$2,000 appraised value	-	-	-	X	-
46	-	-	-	-	-	-	-	-
47	-	ADMINISTRATIVE USE	Free up to 20 MBF, charge up to 50,000 MBF	-	-	X	-	-
48	-	-	Up to 1,000 MBF beach logs & non-merch. residue	-	-	X	-	-
49	-	-	-	-	-	-	-	-
50	-	FREE USE IN ALASKA	10 MBF or 25 cords	-	-	X	X	-
51	-	-	-	-	-	-	-	-
52	-	FEDERAL FREE USE	Up to \$5,000 appraised value	-	-	X	-	-
53	-	-	-	-	-	-	-	-
54	3. WATERSHED	IMPROVEMENT	-	-	-	-	-	No Formal Authority
55	-	-	-	-	-	-	-	-
56	4. WILDLIFE/FISH	WILDLIFE	Project Proposals	-	-	X	-	No Formal Authority
57	-	-	-	-	-	-	-	-
58	-	FISH	Approve conceptual plans for all structural fish	-	X	-	-	FSM 7505
59	-	-	habitat improvement projects; fish ladders,	-	-	-	-	-



	SUB-GROUP	ACTIVITY DES	WO	RF	DR	FSM/FSH REFERENC
119	-	Retaining walls over 6 ft in height.....	-	-	-	-
120	-	-	-	-	-	-
121	10. LANDS ADJUSTMNT	GRANTS & AGREEMENTS	-	X	-	FSM 1236.14
122	-	Grants, agreements, memoranda of understanding with Fed. Agencies, State Authorities, private organizations.	-	-	-	-
123	-	-	-	-	-	-
124	-	STATE SELECTIONS	-	X	-	-
125	-	NATIVE SELECTIONS	-	X	-	-
126	-	EXCHANGES	-	X	-	FSM 5403.1(7)
127	-	Land/timber over \$250,000 (Secretary approval 1st)	-	X	-	" " (8)
128	-	All Timber/timber (WO review/concurrence 1st)	-	X	-	" " (10)
129	-	All timber/land (WO review/concurrence 1st)	-	X	-	" 5404.13(6g)
130	-	All unequal value (ANILCA/ANCSA) (WO review 1st)	-	X	-	FSH 5409.13(13.2)
131	-	All administrative sites (Secretary approval 1st)	-	-	-	-
132	-	-	-	-	-	-
133	-	COST SHARE	-	X	-	-
134	-	Agreements	-	X	-	-
135	-	Supplements	-	-	X	-
136	-	Maintenance agreements	-	-	-	-
137	-	-	-	-	-	-
138	-	LAND ADJUSTMENT	-	X	-	FSH 5409.13(24)
139	-	Accept donations (some WO review/concurrence)	-	X	-	" " " (13.2)
140	-	Donation, administrative site(Secy approval 1st)	-	X	-	" " (13.2)
141	-	Purchase, administrative site( " " " )	-	X	-	" " (11)
142	-	Purchase, all others	-	-	-	-
143	-	-	-	-	-	-
144	-	EASEMENTS	-	X	-	FSM 2731
145	-	ROAD & TRAIL	-	X	-	FSM 2732
146	-	Dept. of Transportation or State of Alaska EIS/EA	-	-	-	-
147	-	Terminate FRTA Easements w/consent of grantee	-	X	-	-
148	-	Terminate FRTA Easements w/consent of grantee	-	X	-	-
149	-	FRTA Easement to Public road agency, cost share	-	-	-	-
150	-	FLPMA	-	X	-	FSM 2733
151	-	Road rights-of-way under TITLE V of FLPMA	-	X	-	-
152	-	Reservation to U.S.	-	-	-	-
153	12. FIRE	PRESCRIBED FIRE	-	X	-	FSM 5140.41(4)
154	-	Use of prescribed fire, management ignited	-	X	-	FSM 5140.41(3)
155	-	Use of prescribed fire, natural ignitions	-	-	-	-
156	13. SOLID WASTE	-	-	X	-	-
157	DISPOSAL	Review & approve criteria, design, & operational plans for Forest Service and Special Uses	-	-	-	-
158	-	-	-	-	-	-
159	-	-	-	-	-	-

07 - FILING PRACTICES.

1. PLANNING RECORDS.

a. Guiding Principles. The following principles govern planning records for Categorical Exclusions (CE's), Environmental Assessments (EA's), and Environmental Impact Statements (EIS's) and their organization for Regional, Forest, and District planning.

(1) Organize and index planning records in a manner that allows easy access and retrieval. Place documents under headings where it makes sense for them to be located.

(2) Clearly indicate the date and author or person responsible for the content of each document in the record and, when appropriate, to whom the document was made available. Anonymous documents serve little purpose and create confusion.

(3) Include in the planning records all data and information used in the analysis to arrive at the final decision.

(4) Mark each page of all draft documents as "draft".

(5) Documents should be legible and standard size when possible.

b. Contents of a Planning Record. The planning record includes:

(1) A copy of all notices appearing in the Federal Register.

(2) All formal recommendations and directions from Line Officers, Staff Directors, the IDT Leader, or other entities and all formal requests for such recommendations or directions.

(3) All records of consultation with the public, interest groups, and other agencies.

(4) A record of all announcements for public participation activities including a copy of the announcement, the date of the announcement, the medium or source used to make the announcement (newspaper, magazine, television, or radio), the area of circulation, and a copy of the announcement as published in each source.

(5) A record of each major public participation activity including the date and location of the activity, names of participants or contributors, purpose of the activity, and a summary of accomplishments of the activity (public comments, questions, suggestions, and decisions or agreements). Include hearing transcripts and tapes.

(6) Any draft of a work product or other document if it is clear that 1) the draft was used in the planning/decisionmaking process (Example: an unsigned draft wilderness plan which was used for its technical content), or 2) the draft was circulated externally for comment (Example: drafts provided to State agencies or interest groups for comment).

(7) All transmittal memorandums or letters enclosing or documenting circulation of any of the above products.

(8) All decision documents and any accompanying news releases, circulation or mailing lists, or other attachments, summaries, and so forth.

(9) Published final and draft EIS's, EA's, Record of Decision (ROD), Decision Notice (DN), Decision Memo (DM), and any maps, charts, summaries, and so forth, made publicly available with these documents.

(10) Documents referenced (including other NEPA documents or decisions) in a draft, supplemental or final EIS, ROD, EA, DN, or DM. If the references are lengthy, include a copy of the cover and the specific chapter, section, or page referenced along with identifying information including the author, title, and date. Documents which are not readily available should be included in their entirety.

(11) All completed work products, which may or may not be marked as final, including IDT, specialist or resource reports, studies, inventories, or study plans prepared by the Forest Service or other entities.

(12) Electronic data frozen at a date specified, such as the date of use in the decision or the date of the decision. Include electronically generated data in the planning record, either as hard copy or on electronic storage media, such as disks to tapes suitable for producing a hard copy on demand.

(13) Forms indicating the location and physical description (dimensions, number of pages, color, edition, and so forth) of any document not physically included in the planning record due to size, bulk, volume, or availability and examples of such documents, if available.

(14) Both formal and informal selection criteria for determining membership on the interdisciplinary planning team.

(15) Each IDT team member's specific qualifications, including expertise, years of experience and education, and the specific contribution the team member makes to the development of the guide or plan. Document when IDT members join and leave the team.



(16) Minutes of interdisciplinary team meetings, management team meetings, or other staff meetings, including the date, all participants or contributors, their titles and/or positions, and a summary of major happenings such as accomplishments, agreements, and decisions.

(17) Documentation of all coordination activities with adjacent Regions and National Forests, including the date, major participants or contributors, their titles and/or positions, and a summary of major happenings such as accomplishments, agreements, and decisions.

(18) Records of each meeting or activity involving external coordination, including other Federal, State, county, local governments, Indian tribes, and special interest groups, including the type, date, location of the activity, all participants or contributors, purpose of the activity, summary of accomplishments, including information exchanged, comments, questions, suggestions received, and decisions or agreements.

(19) A dated copy of all agreements with Indian tribes and State or other Federal agencies.

(20) Final computer runs used in the analysis. (See section 07 b.(12).)

c. Documents Not Included in the Planning Record. The documents listed below are part of the work process and may have some value as background or historical information. These work documents should either be destroyed or be clearly disassociated from the formal planning record.

The planning record should not include:

(1) Drafts of any document, except as specified above.

(2) Informal, preliminary internal deliberations, such as comments on internal drafts, informal notes of internal IDT meetings, and so forth.

(3) Other notes for which there is no documentation of circulation or adoption as final recommendations, direction, inventory, or analysis.

(4) Preliminary computer runs which were not used in the final decisionmaking process.

(5) Personnel documents, other than IDT team selection records and fiscal documents.

d. Organization and Structure. Establish the organizational structure for the planning record, put it in writing, and then follow it, modifying where necessary. Organize documents in chronological order within each subdivision. Designate one person responsible for compiling, maintaining, and indexing the planning record.

implementation. Many documents will logically fit in several subtitles. The location of documents is not obvious to persons not involved with the original planning process. See 07 - Exhibit 02.

Another type of subject index format is based on the Forest Service file designation system. This format facilitates the filing and retrieval of documents by subject, but not by agency/author. Documents covering several subjects may be difficult to locate unless copies are filed under dual designations. See 07 - Exhibit 03.

e. Assembling the Final Planning Record.

(1) Index of Individual Documents. Develop a planning record index listing each document in the record. For each document in the index, include the following information:

- (a) Date
- (b) Number of pages
- (c) Document type
- (d) Author (last name & title)
- (e) Recipient (last name & title)
- (f) Document title
- (g) Brief description of the document
- (h) FOIA exempt status, if applicable

List attachments and enclosures to documents separately under the respective document. When possible, index large records using electronic query systems (DATALIB) to facilitate search and retrieval, and for ease in developing any index including a certifiable index. Example:

The size of the planning record will determine the most efficient organization.

(1) Small Planning Records. DM project files, most EA's, and some EIS's result in planning records which contain less than 100 documents. Organize and file documents in small planning records chronologically and/or subdivide by document source. Index each subdivision so that the organization and content is obvious at a glance. Example of subdivisions for a small planning record:

- (a) Public Participation/Response to Scoping
- (b) Forest Service authors
- (c) Other agency authors
- (d) Laws and Regulations
- (e) Correspondence from the proponent
- (f) References

(2) Large Planning Records. Some EA's and most EIS's result in planning records which contain more than 100 documents. The planning records index should be self-explanatory and clearly show the hierarchy of subdivisions.

For large planning records, standardized indexing facilitates processing of appeals and litigation, and promotes use during project implementation.

An index structure may be based on subject matter, process, or a combination of both, and time. Each structure has advantages and disadvantages depending on the expertise and information needs of the user. An index subdivided primarily by subject matter facilitates filing and retrieval of documents for a single resource or topic, but does not reflect the location of the document within the NEPA process. An index subdivided primarily according to the NEPA process distributes specific resource information at various places in the record and is somewhat more difficult to use for persons not familiar with NEPA.

The most efficient and usable index structure for implementation, appeal, and litigation appears to be an index based on process, subdivided into subject matter, and organized chronologically.

The subject index format seems to be the most useful for appeals and litigation. It is also easy to use by persons not involved in the original planning process or familiar with the NEPA process. See 07 - Exhibit 01.

The process index format uses the table of contents of the NEPA document to form the main headings and subtitles. This format does not lend itself to easy retrieval of specific documents by agency/author or tracking a specific issue during project

INDEX OF:	SEIS					
TITLE:	FOLDER 1010					
SUBTITLE:						PAGE 1 OF 2
NUMBER	DATE	TYPE	DL	PGS	TITLE/DESCRIPTION	
( )	AUG 8, 1947	LAW/POLICY	5920	3	JOINT RESOLUTION TO AUTHORIZE DOA TO SELL TIMBER WITHIN TONGASS NF	
( )	DEC 10, 1980	MEMO	5060	1	MEMO TRANSMITTING LEGISLATIVE HISTORY OF ANILCA (4 PGS) INDEX (40 PGS) CONGRESSIONAL RECORD	
AUTHOR: BEASLEY, J.L. RECIP: NOT GIVEN						

Place a complete index in the front of the planning record. Also, place a copy of the portion of the index for the respective documents included in the front of each binder. Planning record documents are not given a specific document number.

At any point until the planning record is certified as the Administrative Record for litigation purposes, documents used in the planning process and dated prior to the decision date may be added to the planning record and the index amended accordingly. In the event it is needed, adding additional documents after certification of the record requires at least notice to the court.

(2) Document Specifications.

(a) Documents in the planning record must be 8-1/2" by 11" or be capable of being folded to that size for placement in the record. Where possible, reduce oversized material to 8-1/2" by 11" to facilitate copying of the record.

(b) Signatures on documents must be an original, a carbon, or Xerox machine copy. Documents with electronic indication of signature (/s/) are not admissible in court and should not be placed in the planning record unless the signed copy has been lost or destroyed.

(c) All documents should have a minimum of a 1-inch, left-hand margin to allow for left-side binding.

(d) Attach photographs and negatives to 8-1/2" by 11" paper. Identify each photograph indicating the subject, location, date, time, and photographer.

(e) Reproduce large graphics, such as maps and charts, which cannot be folded to an 8-1/2" by 11" format as slides or photographs. Ensure that all details of the original graphic are legible in the reduced form. Label slides and photographs to clearly identify the subject, location, date, time, and photographer.

(f) Write a letter to the file, identifying by subject and location, any data stored and filed on electronic media which cannot be physically included in the planning record.

(g) Do not place duplex (double-sided) documents in the planning record. Replace duplex documents with single-sided copies. Exceptions to this rule are voluminous documents, such as Draft Environmental Impact Statements (DEIS's), Final Environmental Impact Statements (FEIS's), Tongass Land Management Plan (TLMP), and other books and references, when copies are readily available for inclusion in the record.

(h) Each page of each document should be consecutively numbered in the lower right-hand corner, including the cover and blank pages. Each document is numbered beginning with the cover as number 1.

(i) Within each subdivision, place documents in chronological order with the oldest document in front or on top. Planning records read in the same order as a book, from beginning to end.

(j) Retype documents which cannot be clearly reproduced and indicate that it is a duplicate document. Include both the duplicate document and the original document in the planning record.

(3) Binding. Bind the closed planning record in 8-1/2" by 11" binders using three-ring binders, Acco binders, file folders, and so forth. Remove all staples, paperclips, and bands from documents before binding. Binders should not prevent removal of documents for examination or copying. To minimize damage to documents during use, binders should not be more than 2 inches thick unless absolutely necessary. Using a large hole punch will facilitate removal of documents and reduce damage. Documents must be side-bound only.

Label each binder to prevent the loss of documents and to make it easier for the public to review the record. Label the binder cover with the project name and description of the contents of the binder. Number each binder consecutively, indicating the volume number and total number of binders (Example: 1 of 67).

f. Filing and Retention.

(1) Responsibility. The IDT Leader is responsible for compilation and maintenance of the planning record from initiation of the NEPA process until the decision document is signed. Following the decision, the planning record is the responsibility of the records management system of the unit preparing the document and the respective Line Officer.



Following the resolution of appeals, security of the planning record is the responsibility of the records management system on the unit.

(2) Storage. Evaluate planning records for long-term disposition according to the requirements found in FSH 6209.11 - Records Management Handbook. Maintain planning records until the project is implemented, including reclamation and monitoring, and until any litigation is completed.

(3) Labeling. Label and store the planning record in a secure location to prevent damage and loss. Store and maintain the planning record on the administrative unit where the activity is taking place. Where a decision relates to several administrative units, store and maintain the planning record at one location.

(4) Freedom of Information Act (FOIA). Planning records are subject to public availability according to the requirements of the Freedom of Information Act of 1974, as amended, and implementing regulations. Refer to FSM 6270 for guidance on the application of both the FOIA and the Privacy Act of 1974 and its implementing regulations.

## 2. APPEAL RECORD.

a. Authority. Revised regulations (36 CFR 217) became effective on April 5, 1990, which provide a process by which a person or organization may obtain review of an intended action by a higher level official. Unless excluded in 36 CFR 217, Section 217.4, written decisions governing plans, projects, and activities to be carried out on the National Forest System that result from analysis, documentation, and other requirements of NEPA and National Forest Management Act (NFMA), and the implementing regulations, policies, and procedures are subject to appeal.

The revised regulations (36 CFR 217, Section 217.15) require that the Deciding Officer, upon receipt of a notice of appeal, assemble the relevant decision documentation (36 CFR 217, Section 217.15) and pertinent records, index where the documentation addresses the issues raised in the notice of appeal, and transmit the index and documentation to the Reviewing Officer within 30 days. The Appeal Record for appeals processed under 36 CFR 251 shall be assembled, indexed, and transmitted in the same manner as appeals processed under 36 CFR 217. See 07 - Exhibit 04.

It is the responsibility of the Reviewing Officer to maintain, in one location, a file of documents related to the decision and appeal.

b. Contents. The records on which the Reviewing Officer must conduct the review consist of:

- (1) The notice of appeal,
- (2) Any written comments submitted by intervenors,
- (3) The official documentation prepared by the Deciding Officer in the decisionmaking process,
- (4) The Deciding Officer's letter transmitting those documents to the Reviewing Officer, and
- (5) Any appeal related correspondence, including additional information requested by the Reviewing Officer under 36 CFR 217, Section 217.13.

The Appeal Record must include an index to identify the location and content of individual documents. The Appeal Record Index is transmitted to the Reviewing Officer as part of the Appeal Record. Example of an Appeal Record Index:

NO.	DATE	TYPE	DL	PAGES	TITLE/DESCRIPTION
1.	AUG 29, 1989	MEMO	7396	1	TRANSMITS COPIES OF EA, DN & FONSI TO CONCERNED PARTIES. (6 PGS) EA, DN & FONSI AUTHOR: BARTON, M.A. REGIONAL FORESTER RECIP: TIMBER PURCHASERS.
2.	OCT 20, 1989	LTR.	7397	1	APPEAL OF CONTRACT MODIFICATIONS (22 PGS) NOTICE OF APPEAL (1 PG) APC NEWS RELEASE (1 PG) JUNEAU EMPIRE CLIPPING AUTHOR: ADAMS, L.J. MANAGING ATTORNEY RECIP: BARTON, M.A. REGIONAL FORESTER

c. File Organization. Currently, the WO is in the process of revising the Forest Service Appeals Handbook. Until it is completed, all material in the Appeal Record should be organized in chronological order with the most recent documents on top. Do not subdivide the Appeal Record as shown in the current Appeals Handbook. Recent experience with Appeal Records during litigation has shown that the records are most useful when organized chronologically. This format will also assist the Reviewing Officer in tracking the history and resolution of the appeal. See 07 - Exhibit 05.

3. IMPLEMENTATION RECORD.

a. Guiding Principles. The following principles govern the compilation of records documenting implementation of NEPA decisions.

(1) The disposition of all outputs/activities specifically identified in a NEPA decision document must be verified in the Implementation Record.

(2) All changes or deletions of outputs/activities identified in a NEPA decision document must be documented in the Implementation Record regardless of significance in terms of NEPA.

(3) The Implementation Record is the basis for confirming that commitments made in the decision document have been completed as required. It also provides the rationale for modifications to the decision, if necessary.

b. Contents of the Implementation Record. The Implementation Record should include:

(1) All formal authorizations for activities identified in the decision document (Special Use Permits, easements, leases, Memoranda of Understanding).

(2) All formal interagency coordination required by statute or agreements (ADF&G Anadromous Fish Protection).

(3) Verification of compliance with monitoring requirements identified in the decision document, including an analysis of monitoring data.

(4) Verification of compliance with mitigation requirements identified in the decision document including an evaluation of the success of mitigation efforts.

(5) Verification of compliance with reclamation requirements identified in the decision document.

(6) Documentation of completion of outputs/activities identified in the decision document (cutting units, road construction/maintenance, LTF, fishpasses).

(7) Modifications to authorized activities including any associated additional NEPA documentation.

(8) All formal correspondence specifically addressing activities identified in the decision document.

c. Documents Not Included in the Implementation Record.

- (1) Routine correspondence or memoranda which do not specifically address outputs/activities identified in the decision document.
- (2) Deliberations regarding changes to authorized activities, if no changes are ultimately authorized.
- (3) Correspondence concerning fiscal, staffing, or logistical considerations, unless specifically related to the decision document.

4. ADMINISTRATIVE RECORD.

a. Definitions. The Certified Administrative Record is compiled in preparation for NEPA litigation and is marked for certification of completeness in Federal District Court. The Certified Administrative Record includes the closed planning record, except FOIA exempt documents, the Appeal Record, if there are any appeals of the original decision, and sections of the Implementation Record, if implementation has taken place prior to litigation. FOIA exempt documents are removed from both the physical record and as references in the index. Refer to FSM 6270 for guidance on the application of both this Act and the Privacy Act of 1974 and its implementing regulations. A complete index of the Administrative Record is produced for filing with the Federal District Court.

b. Index. Develop an Administrative Record Index listing each document in the record. For each document in the index, include the following information:

- (1) Document number
- (2) Date
- (3) Number of pages
- (4) Document type
- (5) Author (last name & title)
- (6) Recipient (last name & title)
- (7) Document title
- (8) Brief description of the document

List attachments and enclosures to documents separately under the respective documents. With the exception of the document number, the planning record index should include all of the above information. When possible, index large records using electronic query systems (DATALIB) to facilitate search and retrieval. Example of a planning record Index:

INDEX OF: SEIS					
TITLE: FOLDER 1010					
SUBTITLE: PAGE 1 OF 2					
NO.	DATE	TYPE	DL	PAGES	BRIEF DESCRIPTION
1	AUG 8, 1947	LAW/POLICY	5920	1	JOINT RESOLUTION TO AUTHORIZE DOA TO SELL TIMBER WITHIN TONGASS NF
2	DEC 10, 1980	MEMO	5060	2	MEMO TRANSMITTING LEGISLATIVE HISTORY OF ANILCA (4 PGS) INDEX (40 PGS) CONGRESSIONAL RECORD
AUTHOR: BEASLEY, J.L.					
RECIP: NOT GIVEN					

When the Administrative Record Index and Administrative Record are complete, physically number each document and each page of each document, including the cover and blank pages, with a document number and page number in the lower right-hand corner (2-1, 2-2...). The Office of General Counsel has expressed a preference for consecutively numbered documents in the Administrative Record.

c. Copying. After numbering the documents, copy the record. Review all copied material for clarity. The absolute minimum number of copies required are one copy for public viewing and one master copy for reproduction use. The need for additional copies is determined by local need and OGC request. Using predrilled copy paper will greatly facilitate the binding process.

d. Binding. Bind the Certified Administrative Record in 8-1/2" by 11" binders using three-ring binders, Acco binders, file folders, and so forth. Remove all staples and paperclips from documents before binding. Binders should not prevent removal of documents for examination or copying. To minimize damage to documents during use, binders should not be more than 2 inches thick, unless absolutely necessary. Using a large hole punch will facilitate removal of documents and reduce damage. Documents must be side-bound only.

Label each binder to prevent the loss of documents and to make it easier for the public to review the record. Label the binder cover with the project name and description of the contents of the binder. Number each binder consecutively, indicating the volume number and total number of binders (Example: 1 of 67).

e. Use of the Certified Administrative Record. The index for the Certified Administrative Record is filed with the Federal District Court as an exhibit. The complete record is generally not physically filed with the Court, but is used by the attorneys to retrieve documents for exhibits for the Court and for public inspection.



04 - EXHIBIT 01  
NEPA SUMMARIZATION OF SIGNING AUTHORITIES

SEE THE PAPER COPY OF THE MASTER SET  
FOR SECTION 04 - EXHIBIT 01.

04 - EXHIBIT 01 -- Continued  
NEPA SUMMARIZATION OF SIGNING AUTHORITIES

SEE THE PAPER COPY OF THE MASTER SET  
FOR SECTION 04 - EXHIBIT 01.

04 - EXHIBIT 01 -- Continued  
NEPA SUMMARIZATION OF SIGNING AUTHORITIES

SEE THE PAPER COPY OF THE MASTER SET  
FOR SECTION 04 - EXHIBIT 01.

07 - EXHIBIT 01Example of 1989-94 KPC EIS Subject Index Format

1. General
  - a. Study Plan 5/85
  - b. Notice of Intent 12/85
  - c. Newsclips, etc.
  - d. Mailing Lists
2. IDT Activity
  - a. IDT meeting notes
  - b. Wildlife & Fisheries
    1. Endangered Species
    2. Deer
    3. Fisheries
  - c. Subsistence
    1. Hanlon vs. Barton
    2. Related NEPA documents
  - d. Log Transfer Facilities
    1. LTF Guidelines
    2. Field Investigations
    3. LTF Criteria for Design
3. Scoping
  - a. Polk Inlet MAA 1/86
    1. IDT Letter and Study Plan
    2. Public Participation
  - b. Subsistence Inventory 3/86
    1. Questionnaire/Interviews 4/86
    2. Public Participation
  - c. Initial Scoping Package
    1. Invitation to Participate
    2. Public Participation Record
  - d. Mt. Calder Deferral Area
4. Public Involvement
  - a. Alternatives/Issues/Concerns
    1. Invitation to Participate
    2. Public Participation Records
  - b. DEIS 9/88
    1. Invitation to Comment
    2. Meetings and Notices
    3. Comments and Responses
      - a. Internal
      - b. State of Alaska
      - c. Other Federal
      - d. Public
  - c. Subsistence Hearings
    1. Notices and Schedules
    2. Public Participation
    3. Hearing Transcripts
5. FEIS and ROD 5/89-6/89
  - a. FEIS 5/89
  - b. ROD 6/89
6. References (By author)
7. Maps, Inventories, Spreadsheets
8. Computer File Runs

07 - EXHIBIT 02Example of TLMP Administrative Record Process Index Format

- A. Purpose and Need for Action
- B. Alternatives Including the Proposed Action
  - 1. Alternative A
  - 2. Alternative B
- C. Affected Environment
  - 1. Inventory Task Forces
    - a. Landtype/Timber Task Force
    - b. Recreation/Wilderness Task Force
      - 1) Visuals
      - 2) Recreation
- D. Environmental Consequences
  - 1. Alternative A
    - a. Timber
    - b. Recreation
  - 2. Alternative B
    - a. Timber
    - b. Recreation
- E. List of Preparers
- F. Organizations and Persons to Whom Copies of EIS Were Sent
- G. Public Comments and Forest Service Responses
- H. Literature Cited



07 - EXHIBIT 03

Example of 1981-86/1986-90 APC SEIS File Designation Index Format

TITLE A. REGIONAL OFFICE DOCUMENTS

1. Folder 1620: Public Involvement Programs
2. Folder 1950: Environmental Policy & Procedures
3. Folder 2400: Timber Management

TITLE B. STIKINE AREA DOCUMENTS

1. Folder 1620: Public Involvement Programs
2. Folder 1950: Environmental Policy & Procedures
3. Folder 2400: Timber Management

TITLE C. CHATHAM AREA DOCUMENTS

1. Folder 1620: Public Involvement Programs
2. Folder 1950: Environmental Policy & Procedures
3. Folder 2400: Timber Management

07 - EXHIBIT 04Example of Index to Decision DocumentationArgument No. I

Decision Documentation Index No. 6  
Title of Document: Revised Environmental Assessment  
Date of Document: 1/19/90  
Page: 5 Paragraph: All of Item 1  
6 All of Item 1

Decision Documentation Index No. 26  
Title of Document: Gary Peterson to Files  
Date of Document: 10/3/89  
Page: 1 Paragraph: 1, 2, & 3

Argument No. II

Decision Documentation Index No. 30  
Title of Document: 40 CFR Part 1501.4  
Date of Document: 7/19/86  
Page: 6 Paragraph: 1501.4(b) & (d)  
7 1501.4(e)(2)

07 - EXHIBIT 05

Example of Organization of Appeal File

DOCUMENT ORDER	DOCUMENT DATE	DOCUMENT DESCRIPTION
1.	Dates	All or pertinent portions of the planning record
	Dates	If the entire planning record is transmitted this entry will be identified as the index to the planning record. The date will be the date the planning record was closed (Decision Date).
2.	01-25-89	Environmental Assessment/Environmental Impact Statement/Project File and the Decision Document being appealed.
3.	02-10-89	Notice of Appeal
4.	02-11-89	Notice of Intervention
5.	02-12-89	Request for Stay
6.	02-18-89	Reviewing Officer's response to stay request to appellant
7.	02-18-89	Reviewing Officer's response to stay request to intervenor #1
8.	03-04-89	Transmittal Narrative - Appeal Record from Deciding Officer to Reviewing Officer
9.	03-12-89	Comments from intervenor #1
10.	03-15-89	Memo - Reviewing Officer to Deciding Officer requesting additional information
11.	03-20-89	Letter - Reviewing Officer to appellant requesting negotiating meeting.
12.	04-11-89	Appeal decision letter - transmitted to appellant
13.	04-11-89	Appeal decision letter - transmitted to Deciding Officer.
14.	04-11-89	Appeal decision letter - transmitted to intervenor #1.

## COUNCIL ON ENVIRONMENTAL QUALITY

### FORTY MOST ASKED QUESTIONS CONCERNING CEQ'S NATIONAL ENVIRONMENTAL POLICY ACT REGULATIONS (40 CFR 1500 - 1508)

*Printed in: Federal Register Vol. 46, No.55, 18026-18038, 3/23/81*

1. Range of Alternatives
2. Alternatives Outside the Capability of Applicant or Jurisdiction of Agency
3. No-Action Alternative
4. Agency's Preferred Alternative
5. Proposed Action v. Preferred Alternative
6. Environmentally Preferable Alternative
7. Difference Between Sections of EIS on Alternatives and Environmental Consequences
8. Early Application of NEPA
9. Applicant Who Needs Other Permits
10. Limitations on Action During 30-Day Review Period for Final EIS
11. Limitations on Actions by an Applicant During EIS Process
12. Effective Date and Enforceability of the Regulations
13. Use of Scoping Before Notice of Intent to Prepare EIS
14. Rights and Responsibilities of Lead and Cooperating Agencies
15. Commenting Responsibilities of EPA
16. Third Party Contracts
17. Disclosure Statement to Avoid Conflict of Interest
18. Uncertainties About Indirect Effect of a Proposal
19. Mitigation Measures
20. (Worst Case Analysis rescinded April 25, 1986:51 Fed. Reg. 15625(1986))
21. Combining Environmental and Planning Documents
22. State and Federal Agencies as Joint Lead Agencies
23. Conflicts of Federal Proposal With Land Use Plans on Policies and Controls
24. Environmental Impact Statements on Policies, Plans or Programs
25. Appendices and Incorporation by Reference
26. Index and Keyword Index in EISs
27. List of Preparers
28. Advance or Xerox Copies of EIS
29. Responses to Comments
30. Adoption of EISs
31. Application of Regulations to Independent Regulatory Agencies
32. Supplements to Old EISs
33. Referrals
34. Records of Decision
35. Time Required for the NEPA Process
36. Environmental Assessments (EA)
37. Findings of No Significant Impact (FONSI)
38. Public Availability of EAs v. FONSI
39. Mitigation Measures Imposed in EAs and FONSI
40. Propriety of Issuing EA When Mitigation Reduces Impacts



## QUESTIONS AND ANSWERS ABOUT THE NEPA REGULATIONS

- 1a. **Question:Q** *What is meant by "range of alternatives" as referred to in Sec. 1905.1(e)?*

**Answer:A** The phrase "range of alternatives" refers to the alternatives discussed in environmental documents. It includes all reasonable alternatives which must be rigorously explored and objectively evaluated as well as those other alternatives which are eliminated from detailed study, with a brief discussion of the reasons for eliminating them. *Section 1502.14*. A decisionmaker must not consider alternatives beyond the range of alternatives discussed in the relevant environmental documents. Moreover, a decisionmaker must, in fact, consider all the alternatives discussed in an EIS. *Section 1505.1(e)*.

- 1b. **Question:Q** *How many alternatives have to be discussed when there is an infinite number of possible alternatives?*

**Answer:A** For some proposals, there may exist a very large or even an infinite number of possible reasonable alternatives. For example, a proposal to designate wilderness areas within a National Forest could be said to involve an infinite number of alternatives from 0 to 100 percent of the Forest. When there are potentially a very large number of alternatives, only a reasonable number of examples covering the full spectrum of alternatives must be analyzed and compared in the EIS. An appropriate series of alternatives might include dedicating 1, 10, 30, 50, 70, 90 or 100 percent of the Forest to wilderness. What constitutes a reasonable range of alternatives depends on the nature of the proposal and the facts in each case.

- 2a. **Question:Q** *If an EIS is prepared in connection with an application for a permit or other Federal approval, must the EIS rigorously analyze and discuss alternatives that are outside the capability of the applicant or can it be limited to reasonable alternatives that can be carried out by the applicant?*

**Answer:A** Section 1502.14 requires the EIS to examine all reasonable alternatives to the proposal. In determining the scope of alternatives to be considered, the emphasis is on what is "reasonable" rather than on whether the proponent or applicant likes or is itself capable of carrying out a particular alternative. Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant.

- 2b. **Question:Q** *Must the EIS analyze alternatives outside the jurisdiction or capability of the agency or beyond what Congress has authorized?*

**Answer:A** An alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the EIS if it is reasonable. A potential conflict with local or federal law does not necessarily render an alternative unreasonable, although such conflicts must be considered. *Section 1506.2(d)*. Alternatives that are outside the scope of what Congress has approved or funded must still be evaluated in the EIS if they are reasonable because the EIS may serve as the basis for modifying the Congressional approval or funding in light of NEPA's goals and policies. *Section 1500.1(a)*.

3. **Question:Q** *What does the "no action" alternative include? If an agency is under a court order or legislative command to act, must the EIS address the "no action" alternative?*

**Answer:A** Section 1502.14(d) requires the alternatives analysis in the EIS to "include the alternative of no action." There are two distinct interpretations of "no action" that must be considered, depending on the nature of the proposal being evaluated. The first situation might involve an action such as



updating a land management plan where ongoing programs initiated under existing legislation and regulations will continue, even as new plans are developed. In these cases 'no action' is 'no change' from current management direction or level of management intensity. To construct an alternative that is based on no management at all would be a useless academic exercise. Therefore, the 'no action' alternative may be thought of in terms of continuing with the present course of action until the action is changed. Consequently, projected impacts of alternative management schemes would be compared in the EIS to those impacts projected for the existing plan. In this case, alternatives would include management plans of both greater and lesser intensity, especially greater and lesser levels of resource development.

The second interpretation of 'no action' is illustrated in instances involving federal decisions on proposals for projects. 'No action' in such cases would mean the proposed activity would not take place, and the resulting environmental effects from taking no action would be compared with the effects of permitting the proposed activity or an alternative to go forward.

Where a choice of 'no action' by the agency would result in predictable actions by others, this consequence of the 'no action' alternative should be included in the analysis. For example, if denial of permission to build a railroad to a facility would lead to construction of a road and increased truck traffic, the EIS should analyze this consequence of the 'no action' alternative.

In light of the above, it is difficult to think of a situation where it would not be appropriate to address a 'no action' alternative. Accordingly, the regulations require the analysis of the no action alternative even if the agency is under a court order or legislative command to act. This analysis provides a benchmark, enabling decisionmakers to compare the magnitude of environmental effects of the action alternatives. It is also an example of a reasonable alternative outside the jurisdiction of the agency which must be analyzed. *Section 1502.14(c)*. See Question 2 above. Inclusion of such an analysis in the EIS is necessary to inform the Congress, the public, and the President as intended by NEPA. *Section 1500.1(a)*.

**4a. Question:Q What is the "agency's preferred alternative"?**

**Answer:A** The 'agency's preferred alternative' is the alternative which the agency believes would fulfill its statutory mission and responsibilities, giving consideration to economic, environmental, technical and other factors. The concept of the 'agency's preferred alternative' is different from the 'environmentally preferable alternative,' although in some cases one alternative may be both. See Question 6 below. It is identified so that agencies and the public can understand the lead agency's orientation.

**4b. Question:Q Does the "preferred alternative" have to be identified in the Draft EIS and the Final EIS or just in the Final EIS?**

**Answer:A** Section 1502.14(e) requires the section of the EIS on alternatives to 'identify the agency's preferred alternative, if one or more exists, in the draft statement, and identify such alternative in the final statement . . .' This means that if the agency has a preferred alternative at the Draft EIS stage, that alternative must be labeled or identified as such in the Draft EIS. If the responsible federal official in fact has no preferred alternative at the Draft EIS stage, a preferred alternative need not be identified there. By the time the Final EIS is filed, Section 1502.14(e) presumes the existence of a preferred alternative and requires its identification in the Final EIS 'unless another law prohibits the expression of such a preference.'



**4c. Question:Q Who recommends or determines the "preferred alternative"?**

**Answer:A** The lead agency's official with line responsibility for preparing the EIS and assuring its adequacy is responsible for identifying the agency's preferred alternative(s). The NEPA regulations do not dictate which official in an agency shall be responsible for preparation of EISs, but agencies can identify this official in their implementing procedures pursuant to Section 1507.3. Even though the agency's preferred alternative is identified by the EIS preparer in the EIS, the statement must be objectively prepared and not slanted to support the choice of the agency's preferred alternative over the other reasonable and feasible alternatives.

**5a. Question:Q Is the "proposed action" the same thing as the "preferred alternative"?**

**Answer:A** The "proposed action" may be, but is not necessarily, the agency's "preferred alternative." The proposed action may be a proposal in its initial form before undergoing analysis in the EIS process. If the proposed action is internally generated, such as preparing a land management plan, the proposed action might end up as the agency's preferred alternative. On the other hand, the proposed action may be granting an application to a non-federal entity for a permit. The agency may or may not have a "preferred alternative" at the Draft EIS stage (see Question 4 above). In that case the agency may decide at the Final EIS stage, on the basis of the Draft EIS and the public and agency comments, that an alternative other than the proposed action is the agency's "preferred alternative."

**5b. Question:Q Is the analysis of the "proposed action" in an EIS to be treated differently from the analysis of alternatives?**

**Answer:A** The degree of analysis devoted to each alternative in the EIS is to be substantially similar to that devoted to the "proposed action." Section 1502.14 is titled "Alternatives including the proposed action" to reflect such comparable treatment. Section 1502.14(b) specifically requires "substantial treatment" in the EIS of each alternative including the proposed action. This regulation does not dictate an amount of information to be provided but rather prescribes a level of treatment which may in turn require varying amounts of information to enable a reviewer to evaluate and compare alternatives.

**6a. Question:Q What is the meaning of the term "environmentally preferable alternative" as used in the regulations with reference to Records of Decision? How is the term "environment" used in the phrase?**

**Answer:A** Section 1505.2(b) requires that in cases where an EIS has been prepared, the Record of Decision (ROD) must identify all alternatives that were considered, "... specifying the alternative or alternatives which were considered to be environmentally preferable." The environmentally preferable alternative is the alternative that will promote the national environmental policy as expressed in NEPA's Section 101. Ordinarily, this means the alternative that causes the least damage to the biological and physical environment; it also means the alternative which best protects, preserves, and enhances historic, cultural, and natural resources.

The Council recognizes that the identification of the environmentally preferable alternative may involve difficult judgments, particularly when one environmental value must be balanced against another. The public and other agencies reviewing a Draft EIS can assist the lead agency to develop and determine the environmentally preferable alternatives by providing their views in comments on the Draft EIS. Through the identification of the environmentally preferable alternative, the decisionmaker is clearly faced with a choice between that alternative and others, and must consider whether the decision accords with the Congressionally declared policies of the Act.



6b. **Question:Q** *Who recommends or determines what is environmentally preferable?*

**Answer:A** The agency EIS staff is encouraged to make recommendations of the environmentally preferable alternative(s) during EIS preparation. In any event, the lead agency official responsible for the EIS is encouraged to identify the environmentally preferable alternative(s) in the EIS. In all cases, commentors from other agencies and the public are also encouraged to address this question. The agency must identify the environmentally preferable alternative in the ROD.

7. **Question:Q** *What is the difference between the sections in the EIS on "alternatives" and "environmental consequences"? How do you avoid duplicating the discussion of alternatives in preparing these two sections?*

**Answer:A** The "alternatives" section is the heart of the EIS. This section rigorously explores and objectively evaluates all reasonable alternatives including the proposed action. *Section 1502.14*. It should include relevant comparisons on environmental and other grounds. The "environmental consequences" section of the EIS discusses the specific environmental impacts of each of the alternatives including the proposed action. *Section 1502.16*. In order to avoid duplication between these two sections, most of the "alternatives" section should be devoted to describing and comparing the alternatives. Discussion of the environmental impacts of these alternatives should be limited to a concise descriptive summary of such impact in comparative form, including charts or tables, thus sharply defining the issues and providing a clear basis for choice among options. *Section 1502.14*. The "environmental consequences" section should be devoted largely to a scientific analysis of the direct and indirect environmental effects of the proposed action and of each of the alternatives. It forms the analytic basis for the concise comparison in the "alternatives" section.

8. **Question:Q** *Section 1501.2(d) of the NEPA regulations requires agencies to provide for the early application of NEPA to cases where actions are planned by private applicants or non-Federal entities and are, at some stage, subject to federal approval of permits, loans, loan guarantees, insurance, or other actions. What must and can agencies do to apply NEPA early in these cases?*

**Answer:A** Section 1501.2(d) requires federal agencies to take steps toward ensuring that private parties and state and local entities initiate environmental studies as soon as federal involvement in their proposals can be foreseen. This section is intended to ensure that environmental factors are considered at an early stage in the planning process and to avoid the situation where the applicant for a federal permit or approval has completed planning and eliminated all alternatives to the proposed action by the time the EIS process commences or before the EIS process has been completed. Through early consultation, business applicants and approving agencies may gain better appreciation of each other's needs and foster a decisionmaking process which avoids later unexpected confrontations. Federal agencies are required by Section 1507.3(b) to develop procedures to carry out Section 1501.2(d). The procedures should include an "outreach program", such as a means for prospective applicants to conduct pre-application consultations with the lead and cooperating agencies. Applicants need to find out, in advance of project planning, what environmental studies or other information will be required, and what mitigation requirements are likely in connection with the later federal NEPA process. Agencies should designate staff to advise potential applicants of the agency's NEPA information requirements and should publicize their pre-application procedures and information requirements in newsletters and other media used by potential applicants.

Complementing Section 1501.2(d), Section 1506.5(a) requires agencies to assist applicants by outlining the types of information required in those cases where the agency requires the applicant to submit environmental data for possible use by the agency in preparing an EIS. Section 1506.5(b) allows agencies to authorize preparation of environmental assessments by applicants. Thus, the



procedures should also include a means for anticipating and utilizing applicants' environmental studies or "early corporate environmental assessments" to fulfill some of the agency's NEPA obligations. However, in such cases the agency must still evaluate independently the environmental issues and take responsibility for the environmental assessment.

These provisions are intended to encourage and enable private and other non-federal entities to build environmental considerations into their own planning processes in a way that facilitates the application of NEPA and avoids delay.

9. **Question:Q To what extent must an agency inquire into whether an applicant for a federal permit, funding, or other approval of a proposal will also need approval from another agency for the same proposal or some other related aspect of it?**

**Answer:A** Agencies must integrate the NEPA process into other planning at the earliest possible time to ensure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts. Specifically, the agency must "provide for cases where actions are planned by . . . applicants," so that designated staff are available to advise potential applicants of studies or other information that will foreseeably be required for the later federal action; the agency shall consult with the applicant if the agency foresees its own involvement in the proposal; and it shall insure that the NEPA process commences at the earliest possible time. *Section 1501.2(d)*. (See Question 8).

The regulations emphasize agency cooperation early in the NEPA process. *Section 1501.6*. *Section 1501.7* on "scoping" also provides that all affected Federal agencies are to be invited to participate in scoping the environmental issues and to identify the various environmental review and consultation requirements that may apply to the proposed action. Further, *Section 1502.25(b)* requires that the Draft EIS list all the federal permits, licenses and other entitlements that are needed to implement the proposal.

These provisions create an affirmative obligation on federal agencies to inquire early, and to the maximum degree possible, to ascertain whether an applicant is or will be seeking other federal assistance or approval, or whether the applicant is waiting until a proposal has been substantially developed before requesting federal aid or approval.

Thus, a federal agency receiving a request for approval or assistance should determine whether the applicant has filed separate requests for federal approval or assistance with other federal agencies. Other federal agencies that are likely to become involved should then be contacted, and the NEPA process coordinated to ensure an early and comprehensive analysis of the direct and indirect effects of the proposal and any related actions. The agency should inform the applicant that action on its application may be delayed unless it submits all other federal applications (where feasible to do so) so that all the relevant agencies can work together on the scoping process and preparation of the EIS.

- 10a. **Question:Q What actions by agencies and/or applicants are allowed during EIS preparation and during the 30-day review period after publication of a final EIS?**

**Answer:A** No federal decision on the proposed action shall be made or recorded until at least 30 days after the publication by EPA of notice that the particular EIS has been filed with EPA. *Sections 1505.2 and 1506.10*. *Section 1505.2* requires this decision to be stated in a public Record of Decision.

Until the agency issues its Record of Decision, no action by an agency or an applicant shall be taken which would have an adverse environmental impact or limit the choice of reasonable



alternatives. *Section 1506.1(a)*. But this does not preclude preliminary planning or design work which is needed to support an application for permits or assistance. *Section 1506.1(d)*. When the impact statement in question is a program EIS, no major action concerning the program may be taken which may significantly affect the quality of the human environment, unless the particular action is justified independently of the program, is accompanied by its own adequate environmental impact statement and will not prejudice the ultimate decision on the program. *Section 1506.1(c)*.

- 10b. **Question:Q** *Do these limitations on action (described in Question 10a) apply to state and local agencies that have statutorily delegated responsibility for preparation of environmental documents required by NEPA, for example, under the HUD Block Grant program?*

**Answer:A** Yes, these limitations do apply without any variation from their application to federal agencies.

11. **Question:Q** *What actions must a lead agency take during the NEPA process when it becomes aware that a non-federal applicant is about to take an action within an agency's jurisdiction that would either have an adverse environmental impact or limit the choice of reasonable alternatives (e.g., prematurely commit money or other resources towards the completion of the proposal)?*

**Answer:A** The federal agency must notify the applicant that the agency will take strong affirmative steps to ensure that the objectives and procedures of NEPA are fulfilled. *Section 1506.1(b)*. These steps could include seeking injunctive measures under NEPA, or the use of sanctions available under either the agency's permitting authority or statutes setting forth the agency's statutory mission. For example, the agency might advise an applicant that if it takes such action the agency will not process its application.

- 12a. **Question:Q** *What actions are subject to the Council's new regulations and what actions are grandfathered under the old guidelines?*

**Answer:A** The effective date of the Council's regulations was July 30, 1979 (except for certain HUD programs under the Housing and Community Development Act, 42 U.S.C. 5304(h) and certain state highway programs that qualify under Section 102(2)(D) of NEPA for which the regulations became effective on November 30, 1979). All the provisions of the regulations are binding as of that date, including those covering decisionmaking, public participation, referrals, limitations on actions, EIS supplements, etc. For example, a Record of Decision would be prepared even for decisions where the Draft EIS was filed before July 30, 1979.

But in determining whether or not the new regulations apply to the preparation of a particular environmental document, the relevant factor is the date of filing of the draft of that document. Thus, the new regulations do not require the redrafting of an EIS or supplement if the Draft EIS or supplement was filed before July 30, 1979. However, a supplement prepared after the effective date of the regulations for an EIS issued in final before the effective date of the regulations would be controlled by the regulations.

Even though agencies are not required to apply the regulations to an EIS or other document for which the draft was filed prior to July 30, 1979, the regulations encourage agencies to follow the regulations "to the fullest extent practicable"; i.e., if it is feasible to do so in preparing the final document. *Section 1506.12(a)*.

- 12b. **Question:Q** *Are projects authorized by Congress before the effective date of the Council's regulations grandfathered?*



**Answer:**A No. The date of Congressional authorization for a project is not determinative of whether the Council's regulations or former guidelines apply to the particular proposal. No incomplete projects or proposals of any kind are grandfathered in whole or in part. Only certain environmental documents, for which the draft was issued before the effective date of the regulations, are grandfathered and subject to the Councils' former Guidelines.

12c. **Question:**Q *Can a violation of the regulations give rise to a cause of action?*

**Answer:**A While a trivial violation of the regulations would not give rise to an independent cause of action, such a cause of action would arise from a substantial violation of the regulations. *Section 1500.3.*

13. **Question:**Q *Can the scoping process be used in connection with the preparation of an environmental assessment; i.e., before both the decision to proceed with an EIS and publication of a notice of intent?*

**Answer:**A Yes. Scoping can be a useful tool for discovering alternatives to a proposal, or significant impacts that may have been overlooked. In cases where an environmental assessment is being prepared to help an agency decide whether to prepare an EIS, useful information might result from early participation by other agencies and the public in the scoping process.

The regulations state that the scoping process is to be preceded by a Notice of Intent (NOI) to prepare an EIS. But that is only the minimum requirement. Scoping may be initiated earlier, as long as there is appropriate public notice and enough information available on the proposal so that the public and relevant agencies can participate effectively.

However, scoping that is done before the assessment, and in aid of its preparation, cannot substitute for the normal scoping process after publication of the NOI, unless the earlier public notice stated clearly that this possibility was under consideration and the NOI expressly provides that written comments on the scope of alternatives and impacts will still be considered.

14a. **Question:**Q *What are the respective rights and responsibilities of lead and cooperating agencies? What letters and memoranda must be prepared?*

**Answer:**A After a lead agency has been designated (*Section 1501.5*), that agency has the responsibility to solicit cooperation from other federal agencies that have jurisdiction by law or special expertise on any environmental issue that should be addressed in the EIS being prepared. Where appropriate, the lead agency should seek the cooperation of state and local agencies of similar qualifications. When the proposal may affect an Indian reservation, the agency should consult with the Indian tribe. *Section 1508.5.* The request for cooperation should come at the earliest possible time in the NEPA process.

After discussions with the candidate cooperating agencies, the lead agency and the cooperating agencies are to determine by letter or by memorandum which agencies will undertake cooperating responsibilities. To the extent possible at this stage, responsibilities for specific issues should be assigned. The allocation of responsibilities will be completed during scoping. *Section 1501.7(a)(4).*

Cooperating agencies must assume responsibility for the development of information and the preparation of environmental analyses at the request of the lead agency. *Section 1501.6(b)(3).* Cooperating agencies are now required by *Section 1501.6* to devote staff resources that were normally primarily used to critique or comment on the Draft EIS after its preparation, much earlier in the NEPA process primarily at the scoping and Draft EIS preparation stages. If a cooperating agency determines that its resource limitations preclude any involvement, or the degree of



involvement (amount of work) requested by the lead agency, it must so inform the lead agency in writing and submit a copy of this correspondence to the Council. *Section 1501.6(c)*.

In other words, the potential cooperating agency must decide early if it is able to devote any of its resources to a particular proposal. For this reason the regulation states that an agency may reply to a request for cooperation that "other program commitments preclude any involvement or the degree of involvement requested in the action that is the subject of the environmental impact statement" (emphasis added). The regulation refers to the "action," rather than to the EIS, to clarify that the agency is taking itself out of all phases of the federal action, not just draft EIS preparation. This means that the agency has determined that it cannot be involved in the later stages of EIS review and comment, as well as decisionmaking on the proposed action. For this reason, cooperating agencies with jurisdiction by law (those which have permitting or other approval authority) cannot opt out entirely of the duty to cooperate on the EIS. See also Question 15, relating specifically to the responsibility of EPA.

**14b. Question:Q How are disputes resolved between lead and cooperating agencies concerning the scope and level of detail of analysis and the quality of data in impact statements?**

**Answer:A** Such disputes are resolved by the agencies themselves. A lead agency, of course, has the ultimate responsibility for the content of an EIS. But it is supposed to use the environmental analysis and recommendations of cooperating agencies with jurisdiction by law or special expertise to the maximum extent possible, consistent with its own responsibilities as lead agency. *Section 1501.6(a)(2)*.

If the lead agency leaves out a significant issue or ignores the advice and expertise of the cooperating agency, the EIS may be found later to be inadequate. Similarly, where cooperating agencies have their own decisions to make and they intend to adopt the environmental impact statement and base their decisions on it, one document should include all of the information necessary for the decisions by the cooperating agencies. Otherwise they may be forced to duplicate the EIS process by issuing a new, more complete EIS or Supplemental EIS, even though the original EIS could have sufficed if it had been properly done at the outset. Thus, both lead and cooperating agencies have a stake in producing a document of good quality. Cooperating agencies also have a duty to participate fully in the scoping process to ensure that the appropriate range of issues is determined early in the EIS process.

Because the EIS is not the Record of Decision, but instead constitutes the information and analysis on which to base a decision, disagreements about conclusions to be drawn from the EIS need not inhibit agencies from issuing a joint document or adopting another agency's EIS, if the analysis is adequate. Thus, if each agency has its own "preferred alternative," both can be identified in the EIS. Similarly, a cooperating agency with jurisdiction by law may determine in its own ROD that Alternative A is the environmentally preferable alternative even though the lead agency has decided in its separate ROD that Alternative B is environmentally preferable.

**14c. Question:Q What are the specific responsibilities of federal and state cooperating agencies to review draft EISs?**

**Answer:A** Cooperating agencies (i.e., agencies with jurisdiction by law or special expertise) and agencies that are authorized to develop or enforce environmental standards, must comment on environmental impact statements within their jurisdiction, expertise or authority. *Sections 1503.2, 1508.5*. If a cooperating agency is satisfied that its views are adequately reflected in the environmental impact statement, it should simply comment accordingly. Conversely, if the cooperating agency determines that the EIS is incomplete, inadequate or inaccurate, or it has other comments, it



should promptly make such comments, conforming to the requirements of specificity in Section 1503.3.

- 14d. **Question:Q** *How is the lead agency to treat the comments of another agency with jurisdiction by law or special expertise which has failed or refused to cooperate or participate in scoping or EIS preparation?*

**Answer:A** A lead agency has the responsibility to respond to all substantive comments raising significant issues regarding a Draft EIS. *Section 1503.4*. However, cooperating agencies are generally under an obligation to raise issues or otherwise participate in the EIS process during scoping and EIS preparation if they reasonably can do so. In practical terms, if a cooperating agency fails to cooperate at the outset, such as during scoping, it will find that its comments at a later stage will not be as persuasive to the lead agency.

15. **Question:Q** *Are EPA's responsibilities to review and comment on the environmental effects of agency proposals under Section 309 of the Clean Air Act independent of its responsibility as a cooperating agency?*

**Answer:A** Yes. EPA has an obligation under Section 309 of the Clean Air Act to review and comment in writing on the environmental impact of any matter relating to the authority of the Administrator contained in proposed legislation, federal construction projects, other federal actions requiring EISs, and new regulations. *42 U.S.C. Sec. 7609*. This obligation is independent of its role as a cooperating agency under the NEPA regulations.

16. **Question:Q** *What is meant by the term "third party contracts" in connection with the preparation of an EIS? See Section 1506.5(c). When can "third party contracts" be used?*

**Answer:A** As used by EPA and other agencies, the term "third party contracts" refers to the preparation of EISs by contractors paid by the applicant. In the case of an EIS for a National Pollution Discharge Elimination System (NPDES) permit, the applicant, aware in the early planning stages of the proposed project of the need for an EIS, contracts directly with a consulting firm for its preparation. See *40 CFR 6.604(g)*. The "third party" is EPA which, under *Section 1506.5(c)*, must select the consulting firm, even though the applicant pays for the cost of preparing the EIS. The consulting firm is responsible to EPA for preparing an EIS that meets the requirements of the NEPA regulations and EPA's NEPA procedures. It is in the applicant's interest that the EIS comply with the law so that EPA can take prompt action on the NPDES permit application. The "third party contract" method under EPA's NEPA procedures is purely voluntary, though most applicants have found it helpful in expediting compliance with NEPA.

If a federal agency uses "third party contracting," the applicant may undertake the necessary paperwork for the solicitation of a field of candidates under the agency's direction, so long as the agency complies with *Section 1506.5(c)*. Federal procurement requirements do not apply to the agency because it incurs no obligations or costs under the contract, nor does the agency procure anything under the contract.

- 17a. **Question:Q** *If an EIS is prepared with the assistance of a consulting firm, the firm must execute a disclosure statement. What criteria must the firm follow in determining whether it has any "financial or other interest in the outcome of the project" which would cause a conflict of interest?*

**Answer:A** *Section 1506.5(c)*, which specifies that a consulting firm preparing an EIS must execute a disclosure statement, does not define "financial or other interest in the outcome of the project." The Council interprets this term broadly to cover any known benefits other than general enhancement



of professional reputation. This includes any financial benefit such as a promise of future construction or design work on the project as well as indirect benefits the consultant is aware of (e.g., if the project would aid proposals sponsored by the firm's other clients). For example, completion of a highway project may encourage construction of a shopping center or industrial park from which the consultant stands to benefit. If a consulting firm is aware that it has such an interest in the decision on the proposal, it should be disqualified from preparing the EIS, to preserve the objectivity and integrity of the NEPA process.

When a consulting firm has been involved in developing initial data and plans for the project, but does not have any financial or other interest in the outcome of the decision, it need not be disqualified from preparing the EIS. However, a disclosure statement in the draft EIS should clearly state the scope and extent of the firm's prior involvement to expose any potential conflicts of interest that may exist.

- 17b. **Question:Q** *If the firm in fact has no promise of future work or other interest in the outcome of the proposal, may the firm later bid in competition with others for future work on the project if the proposed action is approved?*

**Answer:A** Yes.

18. **Question:Q** *How should uncertainties about indirect effects of a proposal be addressed, for example, in cases of disposal of federal lands, when the identity or plans of future landowners is unknown?*

**Answer:A** The EIS must identify all the indirect effects that are known and make a good faith effort to explain the effects that are not known but are "reasonably foreseeable." *Section 1508.8(b)*. In the example, if there is total uncertainty about the identity of future land owners or the nature of future land uses, then of course, the agency is not required to engage in speculation or contemplation about their future plans. But, in the ordinary course of business, people do make judgments based upon reasonably foreseeable occurrences. It will often be possible to consider the likely purchasers and the development trends in that area or similar areas in recent years; or the likelihood that the land will be used for an energy project, shopping center, subdivision, farm or factory. The agency has the responsibility to make an informed judgment, and to estimate future impacts on that basis, especially if trends are ascertainable or potential purchasers have made themselves known. The agency cannot ignore these uncertain but probable effects of its decisions.

- 19a. **Question:Q** *What is the scope of mitigation measures that must be discussed?*

**Answer:A** The mitigation measures discussed in an EIS must cover the range of impacts of the proposal. The measures must include such things as design alternatives that would decrease pollution emissions, construction impacts, esthetic intrusion, as well as relocation assistance, possible land use controls that could be enacted, and other possible efforts. Mitigation measures must be considered even for impacts that by themselves would not be considered "significant." Once the proposal itself is considered as a whole to have significant effects, all of its specific effects on the environment (whether or not "significant") must be considered, and mitigation measures must be developed where it is feasible to do so. *Sections 1502.14(f), 1502.16(h), 1508.14.*

- 19b. **Question:Q** *How should an EIS treat the subject of available mitigation measures that are (1) outside the jurisdiction of the lead or cooperating agencies, or (2) unlikely to be adopted or enforced by the responsible agency?*



**Answer:A** All relevant, reasonable mitigation measures that could improve the project are to be identified, even if they are outside the jurisdiction of the lead agency or the cooperating agencies, and thus would not be committed as part of the RODs of these agencies. Sections 1502.16(h), 1505.2(c).

This will serve to alert agencies or officials who can implement these extra measures, and will encourage them to do so. Because the EIS is the most comprehensive environmental document, it is an ideal vehicle in which to lay out not only the full range of environmental impacts but also the full spectrum of appropriate mitigation. However, to ensure that environmental effects of a proposed action are fairly assessed, the probability of the mitigation measures being implemented must also be discussed. Thus the EIS and Record of Decision should indicate the likelihood that such measures will be adopted or enforced by the responsible agencies. Sections 1502.16(h), 1505.2. If there is a history of nonenforcement or opposition to such measures, the EIS and Record of Decision should acknowledge such opposition or nonenforcement. If the necessary mitigation measures will not be ready for a long period of time, this fact, of course, should also be recognized.

21. **Question:Q** *Where an EIS or an EA is combined with another project planning document (sometimes called "piggybacking"), to what degree may the EIS or EA refer to and rely upon information in the project document to satisfy NEPA's requirements?*

**Answer:A** Section 1502.25 of the regulations requires that draft EISs be prepared concurrently and integrated with environmental analyses and studies required by other federal statutes. In addition, Section 1506.4 allows any environmental document prepared in compliance with NEPA to be combined with any other agency document to reduce duplication and paperwork. However, these provisions were not intended to authorize the preparation of a short summary or outline EIS, attached to a detailed project report or land use plan containing the required environmental impact data. In such circumstances, the reader would have to refer constantly to the detailed report to understand the environmental impacts and alternatives which should have been found in the EIS itself.

The EIS must stand on its own as an analytical document which fully informs decisionmakers and the public of the environmental effects of the proposal and those of the reasonable alternatives. Section 1502.1. But, as long as the EIS is clearly identified and is self-supporting, it can be physically included in or attached to the project report or land use plan, and may use attached report material as technical backup.

Forest Service environmental impact statements for forest management plans are handled in this manner. The EIS identifies the agency's preferred alternative, which is developed in detail as the proposed management plan. The detailed proposed plan accompanies the EIS through the review process, and the documents are appropriately cross-referenced. The proposed plan is useful for EIS readers as an example, to show how one choice of management options translates into effects on natural resources. This procedure permits initiation of the 90-day public review of proposed forest plans, which is required by the National Forest Management Act.

All the alternatives are discussed in the EIS, which can be read as an independent document. The details of the management plan are not repeated in the EIS and vice versa. This is a reasonable functional separation of the documents: the EIS contains information relevant to the choice among alternatives; the plan is a detailed description of proposed management activities suitable for use by land managers. This procedure provides for concurrent compliance with the public review requirements of both NEPA and the National Forest Management Act.

Under some circumstances, a project report or management plan may be totally merged with the EIS, and the one document labeled as both 'EIS' and 'management plan' or 'project report'. This



may be reasonable where the documents are short, or where the EIS format and the regulations for clear, analytical EISs also satisfy the requirements for a project report.

22. **Question:** *Q May state and federal agencies serve as joint lead agencies? If so, how do they resolve law, policy and resource conflicts under NEPA and the relevant state environmental act? How do they resolve differences in perspective where, for example, national and local needs differ?*

**Answer:** *A Under Section 1501.5(b), federal, state or local agencies, as long as they include one federal agency, may act as joint lead agencies to prepare an EIS. Section 1506.2 also strongly urges state and local agencies to cooperate fully with each other. This should cover joint research and studies, planning activities, public hearings, environmental assessments and the preparation of joint EISs under NEPA and the relevant 'little NEPA' state laws, so that one document will satisfy both laws.*

The regulations also recognize that certain inconsistencies may exist between the proposed federal action and any approved state or local plan or law. The joint document should discuss the extent to which the federal agency would reconcile its proposed action with such plan or law. *Section 1506.2(d)*. (See Question 23).

Because there may be differences in perspectives as well as conflicts among federal, state and local goals for resources management, the Council has advised participating agencies to adopt a flexible, cooperative approach. The joint EIS should reflect all of their interests and missions, clearly identified as such. The final document would then indicate how state and local interests have been accommodated or would identify conflicts in goals (e.g., how a hydroelectric project, which might induce second home development, would require new land use controls). The EIS must contain a complete discussion of scope and purpose of the proposal, alternatives, and impacts so that the discussion is adequate to meet the needs of local, state and federal decisionmakers.

- 23a. **Question:** *Q How should an agency handle potential conflicts between a proposal and the objectives of Federal, state or local land use plans, policies and controls for the area concerned? See Section 1502.16(c).*

**Answer:** *A The agency should first inquire of other agencies whether there are any potential conflicts. If there would be immediate conflicts, or if conflicts could arise in the future when the plans are finished (see Question 23(b) below), the EIS must acknowledge and describe the extent of those conflicts. If there are any possibilities of resolving the conflicts, these should be explained as well. The EIS should also evaluate the seriousness of the impact of the proposal on the land use plans and policies, and whether, or how much, the proposal will impair the effectiveness of land use control mechanisms for the area. Comments from officials of the affected area should be solicited early and should be carefully acknowledged and answered in the EIS.*

- 23b. **Question:** *Q What constitutes a 'land use plan or policy' for purposes of this discussion?*

**Answer:** *A The term 'land use plans' includes all types of formally adopted documents for land use planning, zoning, and related regulatory requirements. Local general plans are included, even though they are subject to future change. Proposed plans should also be addressed if they have been formally proposed by the appropriate government body in a written form, and are being actively pursued by officials of the jurisdiction. Staged plans, which must go through phases of development such as the Water Resources Council's Level A, B, and C planning process should also be included even though they are incomplete.*



The term "policies" includes formally adopted statements of land use policy as embodied in laws or regulations. It also includes proposals for action such as the initiation of a planning process, or a formally adopted policy statement of the local, regional or state executive branch, even if it has not been formally adopted by the local, regional or state legislative body.

- 23c. **Question:Q** *What options are available for the decisionmaker when conflicts with such plans or policies are identified?*

**Answer:A** After identifying any potential land use conflicts, the decisionmaker must weigh the significance of the conflicts among all the other environmental and non-environmental factors that must be considered in reaching a rational and balanced decision. Unless precluded by other law from causing or contributing to any inconsistency with the land use plans, policies or controls, the decisionmaker retains the authority to go forward with the proposal, despite the potential conflict. In the Record of Decision, the decisionmaker must explain what the decision was, how it was made, and what mitigation measures are being imposed to lessen adverse environmental impacts of the proposal, among the other requirements of Section 1505.2. This provision would require the decisionmaker to explain any decision to override land use plans, policies or controls for the area.

- 24a. **Question:Q** *When are EISs required on policies, plans or programs?*

**Answer:A** An EIS must be prepared if an agency proposes to implement a specific policy, to adopt a plan for a group of related actions, or to implement a specific statutory program or executive directive. *Section 1508.18*. In addition, the adoption of official policy in the form of rules, regulations and interpretations pursuant to the Administrative Procedures Act, treaties, conventions, or other formal documents establishing governmental or agency policy which will substantially alter agency programs, could require an EIS. *Section 1508.18*. In all cases, the policy, plan, or program must have the potential for significantly affecting the quality of the human environment in order to require an EIS. It should be noted that a proposal "may exist in fact as well as by agency declaration that one exists." *Section 1508.23*.

- 24b. **Question:Q** *When is an area-wide or overview EIS appropriate?*

**Answer:A** The preparation of an area-wide or overview EIS may be particularly useful when similar actions, viewed with other reasonably foreseeable or proposed agency actions, share common timing or geography. For example, when a variety of energy projects may be located in a single watershed, or when a series of new energy technologies may be developed through federal funding, the overview or area-wide EIS would serve as a valuable and necessary analysis of the affected environment and the potential cumulative impacts of the reasonably foreseeable actions under that program or within that geographical area.

- 24c. **Question:Q** *What is the function of tiering in such cases?*

**Answer:A** Tiering is a procedure which allows an agency to avoid duplication of paperwork through the incorporation by reference of general discussions and relevant specific discussion from an environmental impact statement of broader scope into one of lesser scope or vice versa. In the example given in Question 24b, this would mean that an overview EIS would be prepared for all of the energy activities reasonably foreseeable in a particular geographic area or resulting from a particular development program. This impact statement would be followed by site-specific or project-specific EISs. The tiering process would make each EIS of greater use and meaning to the public as the plan or program develops without duplication of the analysis prepared for the previous impact statement.



**25a. Question:Q When is it appropriate to use appendices instead of including information in the body of an EIS?**

**Answer:A** The body of the EIS should be a succinct statement of all the information on environmental impacts and alternatives that the decisionmaker and the public need, in order to make the decision and to ascertain that every significant factor has been examined. The EIS must explain or summarize methodologies of research and modeling and the results of research that may have been conducted to analyze impacts and alternatives.

Lengthy technical discussions of modeling methodologies, baseline studies, or other work are best reserved for the appendix. In other words, if only technically trained individuals are likely to understand a particular discussion then it should go in the appendix, and a plain language summary of the analysis and conclusions of that technical discussion should go in the text of the EIS.

The final statement must also contain the agency's responses to comments on the draft EIS. These responses will be primarily in the form of changes in the document itself, but specific answers to each significant comment should also be included. These specific responses may be placed in the appendix. If the comments are especially voluminous, summaries of the comments and responses will suffice. (See Question 29 regarding the level of detail required for responses to comments.)

**25b. Question:Q How does an appendix differ from incorporation by reference?**

**Answer:A** First, if at all possible, the appendix accompanies the EIS, whereas the material which is incorporated by reference does not accompany the EIS. Thus the appendix should contain information that reviewers will be likely to want to examine. The appendix should include material that pertains to preparation of a particular EIS. Research papers directly relevant to the proposal, lists of affected species, discussion of the methodology of models used in the analysis of impacts, extremely detailed responses to comments, or other information would be placed in the appendix.

The appendix must be complete and available at the time the EIS is filed. Five copies of the appendix must be sent to EPA with five copies of the EIS for filing. If the appendix is too bulky to be circulated, it instead must be placed in conveniently accessible locations or furnished directly to commentors upon request. If it is not circulated with the EIS, the Notice of Availability published by EPA must so state, giving a telephone number to enable potential commentors to locate or request copies of the appendix promptly.

Material that is not directly related to preparation of the EIS should be incorporated by reference. This would include other EISs, research papers in the general literature, technical background papers or other material that someone with technical training could use to evaluate the analysis of the proposal. These must be made available either by citing the literature, furnishing copies to central locations, or sending copies to commentors directly upon request.

Care must be taken in all cases to ensure that material incorporated by reference, and the occasional appendix that does not accompany the EIS, are in fact available for the full minimum public comment period.

**26a. Question:Q How detailed must an EIS index be?**

**Answer:A** The EIS index should have a level of detail sufficient to focus on areas of the EIS of reasonable interest to any reader. It cannot be restricted to the most important topics. On the other hand, it need not identify every conceivable term or phrase in the EIS. If an agency believes that a reader is reasonably likely to be interested in a topic, it should be included.



**26b. Question:Q Is a keyword index required?**

**Answer:A** No. A keyword index is a relatively short list of descriptive terms that identifies the key concepts or subject areas in a document. For example, it could consist of 20 terms which describe the most significant aspects of an EIS that a future researcher would need: type of proposal, type of impacts, type of environment, geographical area, sampling or modelling methodologies used. This technique permits the compilation of EIS data banks, by facilitating quick and inexpensive access to stored materials. While a keyword index is not required by the regulations, it could be a useful addition for several reasons. First, it can be useful as a quick index for reviewers of the EIS, helping to focus on areas of interest. Second, if an agency keeps a listing of the keyword indexes of the EISs it produces, the EIS preparers themselves will have quick access to similar research data and methodologies to aid their future EIS work. Third, a keyword index will be needed to make an EIS available to future researchers using EIS data banks that are being developed. Preparation of such an index now when the document is produced will save a later effort when the data banks become operational.

**27a. Question:Q If a consultant is used in preparing an EIS, must the list of preparers identify members of the consulting firm as well as the agency NEPA staff who were primarily responsible?**

**Answer:A** Section 1502.17 requires identification of the names and qualifications of persons who were primarily responsible for preparing the EIS or significant background papers, including basic components of the statement. This means that members of a consulting firm preparing material that is to become part of the EIS must be identified. The EIS should identify these individuals even though the consultant's contribution may have been modified by the agency.

**27b. Question:Q Should agency staff involved in reviewing and editing the EIS also be included in the list of preparers?**

**Answer:A** Agency personnel who wrote basic components of the EIS or significant background papers must, of course, be identified. The EIS should also list the technical editors who reviewed or edited the statements.

**27c. Question:Q How much information should be included on each person listed?**

**Answer:A** The list of preparers should normally not exceed two pages. Therefore, agencies must determine which individuals had primary responsibility and need not identify individuals with minor involvement. The list of preparers should include a very brief identification of the individuals involved, their qualifications (expertise, professional disciplines) and the specific portion of the EIS for which they are responsible. This may be done in tabular form to cut down on length. A line or two for each person's qualifications should be sufficient.

**28. Question:Q May an agency file xerox copies of an EIS with EPA pending the completion of printing the document?**

**Answer:A** Xerox copies of an EIS may be filed with EPA prior to printing only if the xerox copies are simultaneously made available to other agencies and the public. Section 1506.9 of the regulations, which governs EIS filing, specifically requires federal agencies to file with EPA no earlier than the EIS is distributed to the public. However, this section does not prohibit xeroxing as a form of reproduction and distribution. When an agency chooses xeroxing as the reproduction method, the EIS must be clear and legible to permit ease of reading and ultimate microfiching of the EIS. Where color graphs are important to the EIS, they should be reproduced and circulated with the xeroxed copy.



**29a. Question:Q What response must an agency provide to a comment on a draft EIS which states that the draft EIS's methodology is inadequate or inadequately explained? For example, what level of detail must an agency include in its response to a simple postcard comment making such an allegation?**

**Answer:A** Appropriate responses to comments are described in Section 1503.4. Normally the responses should result in changes to the text of an EIS, not simply a separate answer at the back of the document. But, in addition, the agency must state what its response was, and if the agency decides that no substantive response is necessary, it must explain briefly why.

An agency is not under an obligation to issue a lengthy reiteration of its methodology for any portion of an EIS if the only comment addressing the methodology is a simple complaint that the EIS methodology is inadequate. But agencies must respond to comments, however brief, which are specific in their criticism of agency methodology. For example, if a commentator on an EIS said that an agency's air quality dispersion analysis or methodology was inadequate, and the agency had included a discussion of the analysis in the EIS, little if anything need be added in response to such a comment. However, if the commentator said that the dispersion analysis was inadequate because of its use of a certain computational technique, or that a dispersion analysis was inadequately explained because computational techniques were not included or referenced, then the agency would have to respond in a substantive and meaningful way to such a comment.

If a number of comments are identical or very similar, agencies may group the comments and prepare a single answer for each group. Comments may be summarized if they are especially voluminous. The comments or summaries must be attached to the EIS regardless of whether the agency believes they merit individual discussion in the body of the final EIS.

**29b. Question:Q How must an agency respond to a comment on a draft EIS that raises a new alternative not previously considered in the draft EIS?**

**Answer:A** This question might arise in several possible situations. First, a commentator on a draft EIS may indicate that there is a possible new alternative which, in the agency's view, is not a reasonable alternative. *Section 1502.14(a)*. If that is the case, the agency must explain why the comment does not warrant further agency response, citing authorities or reasons that support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response. *Section 1503.4(a)*. For example, a commentator on a draft EIS on a coal-fired power plant may suggest the alternative of using synthetic fuel. The agency may reject the alternative with a brief discussion (with authorities) of the unavailability of synthetic fuel within the time frame necessary to meet the need and purpose of the proposed facility.

A second possibility is that an agency may receive a comment indicating that a particular alternative, while reasonable, should be modified somewhat, for example, to achieve certain mitigation benefits or for other reasons. If the modification is reasonable, the agency should include a discussion of it in the final EIS. For example, a commentator on a draft EIS for a proposal for a pumped storage power facility might suggest that the applicant's proposed alternative should be enhanced by the addition of certain reasonable mitigation measures including the purchase and set aside of a wildlife preserve to substitute for the tract to be destroyed by the project. The modified alternative including the additional mitigation measures should be discussed by the agency in the final EIS.

A third slightly different possibility is that a comment on a draft EIS will raise an alternative which is a minor variation on one of the alternatives discussed in the draft EIS, but this variation was not given any consideration by the agency. In such a case, the agency should develop and evaluate the new alternative, if it is reasonable, in the final EIS. If it is qualitatively within the spectrum of alternatives that were discussed in the draft, a supplemental draft will not be needed. For example,



a commentator on a draft EIS to designate a wilderness area within a National Forest might reasonably identify a specific tract of the forest and urge that it be considered for designation. If the draft EIS considered designation of a range of alternative tracts which encompassed forest area of similar quality and quantity, no supplemental EIS would have to be prepared. The agency could fulfill its obligation by addressing that alternative in the final EIS.

As another example, an EIS on an urban housing project may analyze the alternatives of constructing 2,000, 4,000, or 6,000 units. A commentator on the draft EIS might urge the consideration of constructing 5,000 units utilizing a different configuration of buildings. This alternative is within the spectrum of alternatives already considered and therefore could be addressed in the final EIS.

A fourth possibility is that a commentator points out an alternative which is not a variation of the proposal or of any alternative discussed in the draft impact statement, and is a reasonable alternative that warrants serious agency response. In such a case, the agency must issue a supplement to the draft EIS that discusses this new alternative. For example, a commentator on a draft EIS on a nuclear power plant might suggest that a reasonable alternative for meeting the projected need for power would be through peak load management and energy conservation programs. If the permitting agency has failed to consider that approach in the Draft EIS, and the approach cannot be dismissed by the agency as unreasonable, a supplement to the Draft EIS, which discusses that alternative, must be prepared. (If necessary, the same supplement should also discuss substantial changes in the proposed action or significant new circumstances or information, as required by Section 1502.9(c)(1) of the Council's regulations).

If the new alternative was not raised by the commentator during scoping, but could have been, commentators may find that they are unpersuasive in their efforts to have their suggested alternative analyzed in detail by the agency. However, if the new alternative is discovered or developed later, and it could not reasonably have been raised during the scoping process, then the agency must address it in a supplemental draft EIS. The agency is, in any case, ultimately responsible for preparing an adequate EIS that considers all alternatives.

30. **Question:** *Q When a cooperating agency with jurisdiction by law intends to adopt a lead agency's EIS and it is not satisfied with the adequacy of the document, may the cooperating agency adopt only the part of the EIS with which it is satisfied? If so, would a cooperating agency with jurisdiction by law have to prepare a separate EIS or EIS supplement covering the areas of disagreement with the lead agency?*

**Answer:** *A Generally, a cooperating agency may adopt a lead agency's EIS without recirculating it if it concludes that its NEPA requirements and its comments and suggestions have been satisfied. Section 1506.3(a),(c). If necessary, a cooperating agency may adopt only a portion of the lead agency's EIS and may reject that part of the EIS with which it disagrees, stating publicly why it did so. Section 1506.3(a).*

A cooperating agency with jurisdiction by law (e.g., an agency with independent legal responsibilities with respect to a proposal) has an independent legal obligation to comply with NEPA. Therefore, if the cooperating agency determines that the EIS is wrong or inadequate, it must prepare a supplement to the EIS, replacing or adding any needed information, and must circulate the supplement as a draft for public and agency review and comment. A final supplemental EIS would be required before the agency could take action. The adopted portions of the lead agency EIS should be circulated with the supplement. Section 1506.3(b). A cooperating agency with jurisdiction by law will have to prepare its own Record of Decision for its action, in which it must explain how it reached its conclusions. Each agency should explain how and why its conclusions differ, if that is the case, from those of other agencies which issued their Records of Decision earlier.



An agency that did not cooperate in preparation of an EIS may also adopt an EIS or portion thereof. But this would arise only in rare instances, because an agency adopting an EIS for use in its own decision normally would have been a cooperating agency. If the proposed action for which the EIS was prepared is substantially the same as the proposed action of the adopting agency, the EIS may be adopted as long as it is recirculated as a final EIS and the agency announces what it is doing. This would be followed by the 30-day review period and issuance of a Record of Decision by the adopting agency. If the proposed action by the adopting agency is not substantially the same as that in the EIS (i.e., if an EIS on one action is being adapted for use in a decision on another action), the EIS would be treated as a draft and circulated for the normal public comment period and other procedures. *Section 1506.3(b)*.

- 31a. **Question:Q** *Do the Council's NEPA regulations apply to independent regulatory agencies like the Federal Energy Regulatory Commission (FERC) and the Nuclear Regulatory Commission?*

**Answer:A** The statutory requirements of NEPA's Section 102 apply to "all agencies of the federal government." The NEPA regulations implement the procedural requirements of NEPA as set forth in NEPA's Section 102(2) for all agencies of the federal government. The NEPA regulations apply to independent regulatory agencies, however, they do not direct independent regulatory agencies to make decisions in any particular way or in a way inconsistent with an agency's statutory charter. *Sections 1500.3, 1500.6, 1507.1, and 1507.3.*

- 31b. **Question:Q** *Can an Executive Branch agency like the Department of the Interior adopt an EIS prepared by an independent regulatory agency such as FERC?*

**Answer:A** If an independent regulatory agency such as FERC has prepared an EIS in connection with its approval of a proposed project, an Executive Branch agency (e.g., the Bureau of Land Management in the Department of the Interior) may in accordance with Section 1506.3 adopt the EIS or a portion thereof for its use in considering the same proposal. In such a case the EIS must, to the satisfaction of the adopting agency, meet the standards for an adequate statement under the NEPA regulations (including scope and quality of analysis of alternatives) and must satisfy the adopting agency's comments and suggestions. If the independent regulatory agency fails to comply with the NEPA regulations, the cooperating or adopting agency may find that it is unable to adopt the EIS, thus forcing the preparation of a new EIS or EIS Supplement for the same action. The NEPA regulations were made applicable to all federal agencies in order to avoid this result, and to achieve uniform application and efficiency of the NEPA process.

32. **Question:Q** *Under what circumstances do old EISs have to be supplemented before taking action on a proposal?*

**Answer:A** As a rule of thumb, if the proposal has not yet been implemented, or if the EIS concerns an ongoing program, EISs that are more than 5 years old should be carefully reexamined to determine if the criteria in Section 1502.9 compel preparation of an EIS supplement.

If an agency has made a substantial change in a proposed action that is relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts, a supplemental EIS must be prepared for an old EIS so that the agency has the best possible information to make any necessary substantive changes in its decisions regarding the proposal. *Section 1502.9(c)*.



**33a. Question:Q When must a referral of an interagency disagreement be made to the Council?**

**Answer:A** The Council's referral procedure is a pre-decision referral process for interagency disagreements. Hence, Section 1504.3 requires that a referring agency must deliver its referral to the Council not later than 25 days after publication by EPA of notice that the final EIS is available (unless the lead agency grants an extension of time under Section 1504.3(b)).

**33b. Question:Q May a referral be made after this issuance of a Record of Decision?**

**Answer:A** No, except for cases where agencies provide an internal appeal procedure which permits simultaneous filing of the final EIS and the Record of Decision (ROD). Section 1506.10(b)(2). Otherwise, as stated above, the process is a pre-decision referral process. Referrals must be made within 25 days after the notice of availability of the final EIS, whereas the final decision (ROD) may not be made or filed until after 30 days from the notice of availability of the EIS. Sections 1504.3(b), 1506.10(b). If a lead agency has granted an extension of time for another agency to take action on a referral, the ROD may not be issued until the extension has expired.

**34a. Question:Q Must Records of Decision (RODs) be made public? How should they be made available?**

**Answer:A** Under the regulations, agencies must prepare a "concise public record of decision," which contains the elements specified in Section 1505.2. This public record may be integrated into any other decision record prepared by the agency or it may be separate if decision documents are not normally made public. The Record of Decision is intended by the Council to be an environmental document (even though it is not explicitly mentioned in the definition of "environmental document" in Section 1508.10). Therefore, it must be made available to the public as required by Section 1506.6(b). However, there is no specific requirement for publication of the ROD itself, either in the Federal Register or elsewhere.

**34b. Question:Q May the summary section in the final Environmental Impact Statement substitute for or constitute an agency's Record of Decision?**

**Answer:A** No. An environmental impact statement is supposed to inform the decisionmaker before the decision is made. Sections 1502.1, 1505.2. The Council's regulations provide for a 30-day comment period after notice is published that the final EIS has been filed with EPA before the agency may take further action. During that period, in addition to the agency's own internal final review, the public and other agencies can comment on the final EIS prior to the agency's final action on the proposal. In addition, the Council's regulations make clear that the requirements for the summary in an EIS are not the same as the requirements for a ROD. Sections 1502.12 and 1505.2.

**34c. Question:Q What provisions should Records of Decision contain pertaining to mitigation and monitoring?**

**Answer:A** Lead agencies "shall include appropriate conditions (including mitigation measures and monitoring and enforcement programs) in grants, permits or other approvals" and shall "condition funding of actions on mitigation." Section 11505.3. Any such measures that are adopted must be explained and committed in the ROD.

The reasonable alternative mitigation measures and monitoring programs should have been addressed in the draft and final EIS. The discussion of mitigation and monitoring in a Record of Decision must be more detailed than a general statement that mitigation is being required but not so detailed as to duplicate discussion of mitigation in the EIS. The Record of Decision should



contain a concise summary identification of the mitigation measures which the agency has committed itself to adopt.

The Record of Decision must also state whether all practical mitigation measures have been adopted and if not, why not. *Section 1505.2(c)*. The Record of Decision must identify the mitigation measures and monitoring and enforcement programs that have been selected and plainly indicate that they are adopted as part of the agency's decision. If the proposed action is the issuance of a permit or other approval, the specific details of the mitigation measures shall then be included as appropriate conditions in whatever grants, permits, funding or other approvals are being made by the federal agency. *Section 1505.3(a),(b)*. If the proposal is to be carried out by the federal agency itself, the Record of Decision should delineate the mitigation and monitoring measures in sufficient detail to constitute an enforceable commitment, or incorporate by reference the portions of the EIS that do so.

**34d. Question:Q What is the enforceability of a Record of Decision?**

**Answer:A** Pursuant to generally recognized principles of federal administrative law, agencies will be held accountable for preparing Records of Decision that conform to the decisions actually made and for carrying out the actions set forth in the Record of Decision. This is based on the principle that an agency must comply with its own decisions and regulations once they are adopted. Thus, the terms of a Record of Decision are enforceable by agencies and private parties. A Record of Decision can be used to compel compliance with or execution of the mitigation measures identified therein.

**35. Question:Q How long should the NEPA process take to complete?**

**Answer:A** When an EIS is required, the process will obviously take longer than when an EA is the only document prepared. But the Council's NEPA regulations encourage streamlined review, adoption of deadlines, elimination of duplicative work, eliciting suggested alternatives and other comments early through scoping, cooperation among agencies, and consultation with applicants during project planning. The Council has advised agencies that under the new NEPA regulations even large complex energy projects would require only about 12 months for the completion of the entire EIS process. For most major actions, this period is well within the planning time that is needed in any event, apart from NEPA.

The time required for the preparation of program EISs may be greater. The Council also recognizes that some projects will entail difficult long-term planning and/or the acquisition of certain data which of necessity will require more time for the preparation of the EIS. Indeed, some proposals should be given more time for the thoughtful preparation of an EIS and development of a decision which fulfills NEPA's substantive goals.

For cases in which only an environmental assessment will be prepared, the NEPA process should take no more than 3 months, and in many cases substantially less, as part of the normal analysis and approval process for the action.

**36a. Question:Q How long and detailed must an environmental assessment (EA) be?**

**Answer:A** The environmental assessment is a concise public document which has three defined functions. (1) It briefly provides sufficient evidence and analysis for determining whether to prepare an EIS; (2) it aids an agency's compliance with NEPA when no EIS is necessary; i.e., it helps to identify better alternatives and mitigation measures; and (3) it facilitates preparation of an EIS when one is necessary. *Section 1508.9(a)*.



Since the EA is a concise document, it should not contain long descriptions or detailed data which the agency may have gathered. Rather, it should contain a brief discussion of the need for the proposal, alternatives to the proposal, the environmental impacts of the proposed action and alter natives, and a list of agencies and persons consulted. *Section 1508.9(b)*.

While the regulations do not contain page limits for EAs, the Council has generally advised agencies to keep the length of EAs to not more than approximately 10-15 pages. Some agencies expressly provide page guidelines (e.g., 10-15 pages in the case of the Army Corps). To avoid undue length, the EA may incorporate by reference background data to support its concise discussion of the proposal and relevant issues.

**36b. Question:Q Under what circumstances is a lengthy EA appropriate?**

**Answer:A** Agencies should avoid preparing lengthy EAs except in unusual cases, where a proposal is so complex that a concise document cannot meet the goals of Section 1508.9 and where it is extremely difficult to determine whether the proposal could have significant environmental effects. In most cases, however, a lengthy EA indicates that an EIS is needed.

**37a. Question:Q What is the level of detail of information that must be included in a finding of no significant impact (FONSI)?**

**Answer:A** The FONSI is a document in which the agency briefly explains why an action will not have a significant effect on the human environment and, therefore, why an EIS will not be prepared. *Section 1508.13*. The finding itself need not be detailed, but must succinctly state the reasons for deciding that the action will have no significant environmental effects and, if relevant, must show which factors were weighted most heavily in the determination. In addition to this statement, the FONSI must include, summarize, or attach and incorporate by reference, the environmental assessment.

**37b. Question:Q What are the criteria for deciding whether a FONSI should be made available for public review for 30 days before the agency's final determination whether to prepare an EIS?**

**Answer:A** Public review is necessary, for example, (a) if the proposal is a borderline case; i.e., when there is a reasonable argument for preparation of an EIS; (b) if it is an unusual case, a new kind of action, or a precedent setting case such as a first intrusion of even a minor development into a pristine area; (c) when there is either scientific or public controversy over the proposal; or (d) when it involves a proposal which is or is closely similar to one which normally requires preparation of an EIS. *Sections 1501.4(e)(2), 1508.27*. Agencies also must allow a period of public review of the FONSI if the proposed action would be located in a floodplain or wetland. *E.O. 11988, Sec. 2(a)(4); E.O. 11990, Sec. 2(b)*.

**38. Question:Q Must (EAs) and FONSI's be made public? If so, how should this be done?**

**Answer:A** Yes, they must be made available to the public. *Section 1508.8* requires agencies to involve the public in implementing their NEPA procedures, and this includes public involvement in the preparation of EAs and FONSI's. These are public "environmental documents" under *1506.6(b)*, and, therefore, agencies must give public notice of their availability. A combination of methods may be used to give notice, and the methods should be tailored to the needs of particular cases. Thus, a Federal Register notice of availability of the documents with notices in national publications and mailed to interested national groups might be appropriate for proposals that are national in scope. Local newspaper notices may be more appropriate for regional or site-specific proposals.



The objective, however, is to notify all interested or affected parties. If this is not being achieved, then the methods should be reevaluated and changed. Repeated failure to reach the interested or affected public would be interpreted as a violation of the regulations.

39. **Question:Q Can an EA and FONSI be used to impose enforceable mitigation measures, monitoring programs, or other requirements, even though there is no such requirement in the regulations in such cases for a formal Record of Decision?**

**Answer:A** Yes. In cases where an environmental assessment is the appropriate environmental document, there still may be mitigation measures or alternatives that would be desirable to consider and adopt even though the impacts of the proposal will not be "significant." In such cases, the EA should include a discussion of these measures or alternatives to "assist agency planning and decisionmaking" and to "aid an agency's compliance with [NEPA] when no environmental impact statement is necessary." *Section 1501.3(b), 1508.9(a)(2)*. The appropriate mitigation measures can be imposed as enforceable permit conditions, or adopted as part of the agency final decision in the same manner mitigation measures are adopted in the formal Record of Decision that is required in EIS cases.

40. **Question:Q If an environmental assessment indicates that the environmental effects of a proposal are significant but that, with mitigation, those effects may be reduced to less than significant levels, may the agency make a finding of no significant impact rather than prepare an EIS? Is that a legitimate function of an EA and scoping?**

**Answer:A** Mitigation measures may be relied upon to make a finding of no significant impact only if they are imposed by statute or regulation, or submitted by an applicant or agency as part of the original proposal. As a general rule, the regulations contemplate that agencies should use a broad approach in defining significance and should not rely on the possibility of mitigation as an excuse to avoid the EIS requirement. *Sections 1508.8 and 1508.27*.

If a proposal appears to have adverse effects which would be significant, and certain mitigation measures are then developed during the scoping or EA stages, the existence of such possible mitigation does not obviate the need for an EIS. Therefore, if scoping or the EA identified certain mitigation possibilities without altering the nature of the overall proposal itself, the agency should continue the EIS process and submit the proposal and the potential mitigation for public and agency review and comment. This is essential to ensure that the final decision is based on all the relevant factors and that the full NEPA process will result in enforceable mitigation measures through the Record of Decision.

In some instances, where the proposal itself so integrates mitigation from the beginning that it is impossible to define the proposal without including the mitigation, the agency may then rely on the mitigation measures in determining that the overall effects would not be significant (e.g., where an application for a permit for a small hydro dam is based on a binding commitment to build fish ladders, to permit adequate down stream flow, and to replace any lost wetlands, wildlife habitat and recreational potential). In those instances, agencies should make the FONSI and EA available for 30 days of public comment before taking action. *Section 1501.4(e)(2)*.

Similarly, scoping may result in a redefinition of the entire project, as a result of mitigation proposals. In that case, the agency may alter its previous decision to do an EIS, as long as the agency or applicants resubmits the entire proposal and the EA and FONSI for 30 days of review and comment. One example of this would be where the size and location of a proposed industrial park are changed to avoid affecting a nearby wetland area.