

# National Park Service NEPA Handbook



2015



## ACRONYMS

<b>ACHP</b>	Advisory Council on Historic Preservation
<b>CE</b>	categorical exclusion
<b>CEQ</b>	Council on Environmental Quality
<b>CFR</b>	Code of Federal Regulations
<b>DM</b>	Departmental Manual
<b>DO-12</b>	Director's Order 12
<b>DO-75A</b>	Director's Order 75A
<b>DOI</b>	Department of the Interior
<b>DEIS</b>	draft environmental impact statement
<b>EA</b>	environmental assessment
<b>ECM</b>	environmental compliance memorandum
<b>EIS</b>	environmental impact statement
<b>EO</b>	executive order
<b>EPA</b>	Environmental Protection Agency
<b>EQD</b>	Environmental Quality Division
<b>ERM</b>	environmental review memorandum
<b>ESA</b>	Endangered Species Act
<b>ESF</b>	environmental screening form
<b>ESM</b>	environmental statement memorandum
<b>FEIS</b>	final environmental impact statement
<b>FONSI</b>	finding of no significant impact
<b>GMP</b>	general management plan
<b>NEPA</b>	National Environmental Policy Act
<b>NHPA</b>	National Historic Preservation Act
<b>NOA</b>	notice of availability
<b>NOI</b>	notice of intent to prepare an environmental impact statement
<b>NPOMA</b>	National Parks Omnibus Management Act of 1998
<b>NPS</b>	National Park Service
<b>OEPC</b>	Office of Environmental Policy and Compliance (Department of the Interior)
<b>PEPC</b>	Planning, Environment and Public Comment
<b>REC</b>	regional environmental coordinator
<b>ROD</b>	record of decision
<b>SOF</b>	statement of findings
<b>USC</b>	United States Code
<b>WASO</b>	Washington Support Office (National Park Service)



# CONTENTS

ACRONYMS .....	I
HANDBOOK USER'S GUIDE.....	1
CHAPTER 1: INTRODUCTION TO THE NATIONAL ENVIRONMENTAL POLICY ACT .....	5
1.1 INTRODUCTION .....	5
1.2 LEGAL AND POLICY OVERVIEW .....	5
A. <i>A Procedural Act</i> .....	5
B. <i>NEPA and the Council on Environmental Quality</i> .....	6
C. <i>Department of the Interior NEPA Regulations and Policies</i> .....	7
D. <i>National Park Service NEPA Policies and Procedures</i> .....	7
1.3 DETERMINING WHETHER NEPA APPLIES.....	9
A. <i>Actions Requiring NEPA Review</i> .....	9
B. <i>Actions Exempt from NEPA Review</i> .....	11
C. <i>Emergency Actions</i> .....	11
1.4 NEPA FUNDAMENTALS .....	12
A. <i>Characteristics of NEPA Review</i> .....	12
B. <i>Timing of NEPA Review</i> .....	14
C. <i>Specificity and Quality of Data Needed</i> .....	15
1.5 THE NEPA PATHWAYS.....	16
A. <i>Categorical Exclusion for which No Documentation is Required</i> .....	16
B. <i>Categorical Exclusion for which Documentation is Required</i> .....	17
C. <i>Environmental Assessment</i> .....	17
D. <i>Environmental Impact Statement</i> .....	18
E. <i>Actions that Normally Require an Environmental Impact Statement</i> .....	19
1.6 CONSIDERING WHETHER A PROPOSAL HAS THE POTENTIAL FOR SIGNIFICANT IMPACTS .....	19
CHAPTER 2: USING EXISTING NEPA ANALYSES .....	23
2.1 INTRODUCTION .....	23
2.2 MEMORANDUM TO FILE .....	23
2.3 INCORPORATION BY REFERENCE.....	24
2.4 TIERING.....	25
2.5 ADOPTING ANOTHER AGENCY'S EXISTING ENVIRONMENTAL ASSESSMENT OR ENVIRONMENTAL IMPACT STATEMENT .....	26
CHAPTER 3: CATEGORICAL EXCLUSIONS .....	29
3.1 INTRODUCTION .....	29
3.2 CATEGORICAL EXCLUSIONS FOR WHICH NO DOCUMENTATION IS REQUIRED .....	30
3.3 CATEGORICAL EXCLUSIONS FOR WHICH DOCUMENTATION IS REQUIRED .....	33
3.4 PROCESS FOR CATEGORICAL EXCLUSIONS REQUIRING DOCUMENTATION .....	38

3.5	EXTRAORDINARY CIRCUMSTANCES.....	40
3.6	USE OF CATEGORICAL EXCLUSIONS FOR ONGOING AND RECURRING ACTIONS ...	41
<b>CHAPTER 4: THE NEPA PROCESS FOR ENVIRONMENTAL ASSESSMENTS AND ENVIRONMENTAL IMPACT STATEMENTS .....</b>		<b>43</b>
4.1	INTRODUCTION .....	43
4.2	SCOPING.....	43
A.	<i>Identifying Purpose, Need, and Objectives.....</i>	47
B.	<i>Defining the Proposed Action (the Proposal).....</i>	48
C.	<i>Identifying Connected and Similar Actions.....</i>	49
D.	<i>Identifying Environmental Issues and Impact Topics .....</i>	50
E.	<i>Determining Whether to Retain Issues for Detailed Analysis.....</i>	51
4.3	ALTERNATIVES.....	52
A.	<i>Range of Alternatives .....</i>	52
B.	<i>The No-Action Alternative .....</i>	55
C.	<i>The Preferred Alternative .....</i>	56
D.	<i>The Environmentally Preferable Alternative.....</i>	57
E.	<i>Mitigation.....</i>	58
F.	<i>Adaptive Management .....</i>	58
4.4	DESCRIBING THE AFFECTED ENVIRONMENT .....	60
4.5	IMPACT ANALYSIS .....	61
A.	<i>Direct Impacts .....</i>	62
B.	<i>Indirect Impacts.....</i>	62
C.	<i>Cumulative Impacts .....</i>	62
4.6	CIRCULATING ENVIRONMENTAL ASSESSMENTS AND ENVIRONMENTAL IMPACT STATEMENTS, SOLICITING PUBLIC COMMENTS, AND RESPONDING TO COMMENTS.....	64
A.	<i>Circulating an Environmental Assessment and Responding to Comments .....</i>	65
B.	<i>Circulating an Environmental Impact Statement and Responding to Comments.....</i>	66
4.7	CONCLUDING THE NEPA PROCESS AND DOCUMENTING A DECISION .....	67
A.	<i>Environmental Assessments .....</i>	68
B.	<i>Environmental Impact Statements .....</i>	70
4.8	IMPLEMENTING A DECISION.....	71
A.	<i>Finding of No Significant Impact .....</i>	71
B.	<i>Record of Decision.....</i>	71
4.9	THE DECISION FILE.....	71
4.10	SUPPLEMENTS TO DRAFT AND FINAL ENVIRONMENTAL IMPACT STATEMENTS ..	72
4.11	TERMINATING THE NEPA PROCESS PRIOR TO COMPLETION.....	73
A.	<i>Environmental Assessments .....</i>	73
B.	<i>Environmental Impact Statements .....</i>	73
4.12	USING CONTRACTORS.....	74
4.13	WORKING WITH OTHER AGENCIES AND ENTITIES .....	74
A.	<i>Lead Agencies .....</i>	74
B.	<i>Cooperating Agencies .....</i>	75

4.14	INTEGRATING NEPA WITH OTHER ENVIRONMENTAL REVIEW AND CONSULTATION REQUIREMENTS .....	76
<b>CHAPTER 5: NPS REVIEW OF EXTERNAL ENVIRONMENTAL REVIEW DOCUMENTS.....</b>		<b>81</b>
5.1	INTRODUCTION .....	81
5.2	DOI AND NPS EXTERNAL ENVIRONMENTAL REVIEW PROCESSES .....	81
5.3	COMMENTING ON EXTERNAL ENVIRONMENTAL REVIEW DOCUMENTS.....	82
A.	<i>Scope of Comments</i> .....	82
B.	<i>Substance of Comments</i> .....	82
C.	<i>Commenting on NEPA Documents as a Reviewing Agency</i> .....	83
5.4	REVIEW OF DRAFT VS. FINAL DOCUMENTS .....	83
5.5	FORMAT OF COMMENTS FOR EXTERNAL ENVIRONMENTAL REVIEWS .....	84
<b>GLOSSARY .....</b>		<b>87</b>
<b>APPENDIX A: ENVIRONMENTAL ASSESSMENT REQUIRED CONTENT AND ADDITIONAL CONSIDERATIONS .....</b>		<b>91</b>
<b>APPENDIX B: ENVIRONMENTAL IMPACT STATEMENT REQUIRED CONTENT AND RECOMMENDED FORMAT .....</b>		<b>93</b>





# HANDBOOK USER'S GUIDE

This handbook synthesizes the legal and policy requirements and considerations related to the National Environmental Policy Act (NEPA) (42 United States Code (USC) 4321 et seq.) and associated guidance applicable to the National Park Service (NPS). It contains the information necessary to comply with NEPA and conduct sound environmental planning.

This handbook, along with supplemental guidance that will be issued on an as-needed basis to address specific NEPA-related topics, is intended to assist you in carrying out your NEPA responsibilities. The handbook will be maintained electronically; only a limited number of hard copies will be distributed. It will be modified and reissued periodically based on changes to Council on Environmental Quality (CEQ) and Department of the Interior (DOI) regulations and guidance, as well as NPS policy. The most up-to-date version of the handbook can be accessed on the NPS policy website: <http://www.nps.gov/applications/npspolicy/DOrders.cfm>.

In addition to managing units of the national park system, the NPS administers programs that serve the conservation and recreation needs of the nation but are not directly related to the national park system. Examples include the Land and Water Conservation Fund Grants Program; the Rivers, Trails, and Conservation Assistance Program; and the National Heritage Areas Program. Pursuant to *Director's Order 12: Conservation Planning, Environmental Impact Analysis, and Decision-making* (DO-12), these programs may develop their own program-specific NEPA guidance. However, where other directives or guidelines appear to differ from the information in this handbook, this handbook takes precedence (DO-12, 4.2).

This handbook is intended only to improve the internal management of the National Park Service and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person.

**Chapter 1: Introduction to the National Environmental Policy Act** provides a general overview of several aspects of the act, including how NEPA relates to the NPS mission, the circumstances that trigger the need to comply with NEPA, the basic characteristics of a NEPA review, and the methods for documenting compliance with NEPA.

**Chapter 2: Using Existing NEPA Analyses** describes options and procedures for using existing NEPA analyses to meet a proposal's NEPA documentation and analysis requirements, either in full or in part.

**Chapter 3: Categorical Exclusions** provides information about the use of categorical exclusions to meet NEPA review requirements for certain types of NPS actions and the process for applying and documenting categorical exclusions.

**Chapter 4: The NEPA Process for Environmental Assessments and Environmental Impact Statements** describes the elements of the NEPA planning and analysis process for environmental assessments and environmental impact statements in detail.

**Chapter 5: NPS Review of External Environmental Review Documents** discusses how the National Park Service provides comments on other agencies' environmental review documents through a formal process required by DOI.

Although this handbook is intended to be comprehensive, it is not an all-inclusive, step-by-step NEPA “cookbook.” Therefore, in addition to becoming familiar with this handbook, you are encouraged to pursue opportunities for NEPA training and to seek NEPA-related advice, when needed, from your regional environmental coordinator (REC) and the Environmental Planning and Compliance Branch of the Washington Support Office (WASO) Environmental Quality Division (EQD).

This handbook contains numerous references to NEPA, the CEQ NEPA regulations and *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations* (40 Questions), the DOI NEPA regulations and Departmental Manual (DM), and DO-12. The guidance provided in this handbook is derived primarily from these authorities. The nature of these authorities is discussed in Section 1.1 of this handbook. Although this handbook has been written with these authorities in mind, if a conflict should be found between the handbook and these authorities, the authorities take precedence. These authorities are cited as follows:

NEPA – The referenced section number is in parentheses: (sec. 101(b))

CEQ regulations – The referenced section number from 40 *Code of Federal Regulations* (CFR) Parts 1500–1508 is in parentheses: (1500.2)

40 Questions – The number of the question referenced is in parentheses: (Q23)

DOI NEPA regulations – The referenced section number from 43 CFR Part 46 is in parentheses: (46.30)

Departmental Manual – The referenced chapter from part 516 of the DM is in parentheses as 516 DM followed by the relevant chapter: (516 DM 2)

Director's Order 12 – The referenced section number from the Director's Order is in parentheses as DO-12 followed by the relevant section: (DO-12, 4.2)

Guidance found in the DOI Office of Environmental Policy and Compliance (OEPC) Environmental Statement Memorandum (ESM) series is also incorporated throughout the handbook.

This handbook uses the pronoun “you” to address the reader. While the guidance in this handbook is intended for use by NPS personnel, it may be consulted by other

agencies, tribal representatives, applicants, contractors, and members of the public who are involved with the NPS NEPA process.

The “NEPA process” refers to all measures taken in order to meet NEPA-related legal and policy requirements associated with a particular NPS action. The term “NEPA review” is used to refer to the process, analyses, and documents developed under NEPA to inform a decision. “NEPA document” generally refers to an environmental assessment (EA) or environmental impact statement (EIS), and can also refer to documentation that is prepared for a categorical exclusion (CE).

The terms “must” and “should” appear throughout this handbook. “Must” is used in association with requirements imposed on the NPS by law, regulation, or policy. “Should” is used in association with instructions that are not explicitly required by law, regulation, or policy, but are “best practices” to be followed in most cases, and are intended to help ensure that NPS NEPA practice meets both the letter and spirit of NEPA-related requirements. The same is true for references to “standard” and “recommended” NPS NEPA practices. You are encouraged to consult with your REC if you have questions about any particular requirements or instructions.

As with the CEQ regulations (1508.8), this handbook uses the terms “impact” and “effect” interchangeably. When the term “resource” or “environmental resource” is used, it should be understood to mean an element of the human environment. The human environment includes the natural and physical environment and the relationship of people with that environment (1508.14).

*The terms “must” and “should” appear throughout this handbook. “Must” is used in association with requirements imposed on the NPS by law, regulation, or policy. “Should” is used in association with instructions that are not explicitly required by law, regulation, or policy, but are “best practices” to be followed in most cases, and are intended to help ensure that NPS NEPA practice meets both the letter and spirit of NEPA-related requirements.*



# CHAPTER 1: INTRODUCTION TO THE NATIONAL ENVIRONMENTAL POLICY ACT

## 1.1 INTRODUCTION

The NEPA process is intended to, “help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment” (1500.1). The stated purposes of NEPA include (42 USC 4321):

- declaring a national policy which will encourage productive and enjoyable harmony between man and his environment;
- promoting efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man;
- enriching the understanding of the ecological systems and natural resources important to the Nation; and
- establishing the Council on Environmental Quality.

The purposes of NEPA and the mission of the NPS express very similar goals. Both contain language designed to result in the conservation and protection of our nation’s resources for the benefit of future generations.

This chapter provides a general overview of several aspects of NEPA, including the circumstances that trigger the need to comply with NEPA, the basic characteristics of a NEPA review, and the methods for documenting compliance with NEPA. The sections discussing these topics are:

- 1.2 Legal and Policy Overview
- 1.3 Determining Whether NEPA Applies
- 1.4 NEPA Fundamentals
- 1.5 NEPA Pathways
- 1.6 Considering Whether a Proposal has the Potential for Significant Impacts

## 1.2 LEGAL AND POLICY OVERVIEW

### A. A Procedural Act

NEPA includes the declaration of a national policy that encourages harmony between human beings and the environment and the promotion of efforts to prevent or eliminate environmental harm. As a means of furthering its purposes, it requires federal agencies to fully consider the impacts of proposals that would affect the human environment prior to deciding to take an action. NEPA also requires federal agencies to involve the interested and affected public in decision-making processes.

NEPA is a “procedural” or process-oriented law rather than a “substantive” or substance-oriented one. It defines a process that federal agencies must follow when

proposing to take actions that have environmental impacts. NEPA does not, however, dictate what decision an agency must make with regard to actions affecting the environment. If meeting an agency's goal requires taking actions with adverse environmental impacts, even severe ones, such actions are not prohibited under NEPA.

### ***Relationship to Decision-making***

Although NEPA is purely a procedural statute, it is important to note that the NPS Organic Act, which is a substantive statute, and NPS *Management Policies 2006*, which set forth the NPS interpretation of the Organic Act, prohibit the NPS from taking any action that would result in impairment of park resources or values (NPS *Management Policies 2006*, 1.4.4). Furthermore, while the NPS has discretion to allow adverse impacts, NPS managers must always seek ways to avoid, or to minimize to the greatest extent practicable, adverse impacts on park resources and values (NPS *Management Policies 2006*, 1.4.3). The conclusions regarding impacts to park resources and values that are reached during the NEPA process are used by NPS managers when making decisions about NPS-administered resources, including when assessing whether or not an action would result in impairment to park resources. A written non-impairment determination for the selected action must be appended to each finding of no significant impact (FONSI) and record of decision (ROD) (NPS *Management Policies 2006*, 1.4.3; *NPS Guidance for Non-Impairment Determinations and the NEPA Process*)<sup>1</sup>.

### **B. NEPA and the Council on Environmental Quality**

When NEPA was signed into law in 1970, it created the White House Council on Environmental Quality, part of the Executive Office of the President, to be the "caretaker" of NEPA. In 1978, CEQ promulgated regulations (40 CFR 1500–1508) that apply to all federal agencies and that provide instruction to agencies regarding compliance with the procedural requirements of NEPA. To elaborate on its regulations, CEQ periodically issues NEPA guidance, most notably the *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations*, published in 1981. In recent years, CEQ has issued guidance on a number of NEPA-related topics, including the establishment and use of CEs, use of mitigation, use of programmatic NEPA reviews, and improving the process for preparing timely and efficient NEPA reviews. This guidance is available on the CEQ website.

CEQ also oversees federal agency implementation of NEPA and CEQ regulations; provides assistance in developing environmental policies and proposed legislation as requested by the president; consults with federal agencies regarding legislation and litigation; mediates interagency disputes; acts on referrals to CEQ; and interprets NEPA and CEQ regulations for agencies and citizens.

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<sup>1</sup> NPS program activities unrelated to managing units of the national park system are not subject to the provisions of the Organic Act or NPS *Management Policies 2006* (DO-12, 2; *Management Policies 2006*, Introduction). Therefore, a written non-impairment determination is not required for actions related to those programs unless an action would have environmental effects on an NPS unit.

### **C. Department of the Interior NEPA Regulations and Policies**

The CEQ regulations direct federal agencies to “implement procedures to make the NEPA process more useful to agency decision makers and the public” (1500.2; 1507.3). In 2008, DOI promulgated regulations (43 CFR Part 46) to establish procedures applicable to DOI bureaus and offices for complying with NEPA. The DOI NEPA regulations supplement, and are intended to be used in conjunction with, the CEQ regulations. DOI provides further guidance on NEPA implementation in Part 516, chapters 1–4, of the DM. Additionally, DOI OEPC provides NEPA-related information and explanatory guidance in its ESM series.

Most of the requirements found in the DOI NEPA regulations and policies are included in this handbook. If an issue is addressed by the DOI regulations or policies but is not addressed in this handbook or some other NPS policy, you should consult with your REC in order to determine the best way to comply with the DOI regulations and policies.

#### ***Departmental Manual Chapter 12, Part 516***

516 DM 12 provides supplementary requirements for implementing the DM that are specific to the NPS. It delegates certain responsibilities related to NEPA and establishes actions that normally require preparation of an EIS and NPS-specific CEs.

### **D. National Park Service NEPA Policies and Procedures**

#### ***Director’s Order 12 and Accompanying Handbook***

*Director’s Order 12: Conservation Planning, Environmental Impact Analysis, and Decision-making* sets forth the policy and procedures by which the NPS will comply with NEPA and assigns the roles and responsibilities of NPS organizations and employees for carrying out NPS NEPA obligations. This DO-12 Handbook provides an overview of the legal and policy framework that the NPS uses to implement NEPA. Taken together, DO-12, the handbook, and the supplemental guidance will help you meet the requirements of NEPA. If you have additional questions after reviewing these sources, you should consult your REC.

#### ***Roles and Responsibilities***

As set forth in DO-12, Section 5:

**The Associate Director for Natural Resource Stewardship and Science** is responsible for issuing and updating procedures for implementing DO-12 and for working with others to ensure training, technical assistance, and other resources are available to implement the requirements of DO-12.

**The WASO Environmental Quality Division** is the servicewide focal point for NEPA-related matters and other related environmental mandates. The division provides technical assistance to parks and regions, coordinates NPS review of EAs and EISs prepared by other agencies, and provides policy review and clearance for EISs on a case-by-case basis.

**Regional Directors** are responsible to the NPS Director for integrating the NEPA process into all regional activities and for NEPA planning in their regions. Regional directors are specifically responsible for:

- accepting or rejecting requests for the NPS to be a cooperating or joint lead agency on another agency's EA or EIS;
- approving EAs for public release and signing FONSI's;
- approving most EISs for public release and signing most RODs<sup>2</sup>; and
- approving emergency actions that would normally require an EA or an EIS [See Section 1.3 C: *Emergency Actions*.]

**Regional Environmental Coordinators**, subject to the direction of the regional director, are responsible for:

- having functional oversight responsibility for all environmental compliance activities within a given region;
- in most cases, serving as the point of contact with the Washington Office and Department of the Interior offices, such as the Office of the Solicitor, on significant environmental issues;
- providing policy review for all NPS NEPA documents within their region;
- coordinating review of non-NPS environmental documents for the region; and
- serving as a resource to other NPS professionals for understanding the various environmental requirements under which the NPS operates.

**Park Superintendents** are responsible for day-to-day implementation of NEPA for activities related to parks under their administration, which includes the following:

- designating a park resource specialist (or other park employee with the appropriate background and training) to serve as coordinator for NEPA and related impact analysis activities;
- ensuring that within-park actions are adequately analyzed, an adequate range of alternatives is considered, and the public and other agencies are appropriately involved;
- ensuring that ample resource information appropriate to a decision is available, and the technical and scientific studies appropriate to analyze proposed actions are conducted;
- approving actions that fall under established NPS CEs;
- approving emergency actions that would normally require a CE [See Section 1.3 C: *Emergency Actions*.];
- recommending EAs, EISs, FONSI's, and RODs for approval by the regional director;

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<sup>2</sup> The Director retains signature and approval authority for proposals of nationwide application and may assume signature and approval authority for any proposal that is unusually controversial or that involves major policy issues.



- ensuring that resource conflicts and allocations are adequately resolved before projects are implemented;
- ensuring that all actions approved under a FONSI or ROD are implemented;
- ensuring that mitigation measures are included in projects once they are approved (this means ensuring mitigation measures committed to in a FONSI or ROD are implemented);
- emergency actions that would normally require a CE; and
- ensuring that park comments on external project proposals are consistent with NPS guidelines for review of non-NPS NEPA documents.

**Park Resource Specialists**, subject to the direction of the superintendent, are responsible for:

- having knowledge of existing technical and scientific information on park resources and the quality of such information;
- identifying additional resource information needs and technical and scientific studies necessary to ensure that ample resource information appropriate to analyze proposed actions is available;
- serving as park NEPA coordinator to facilitate conservation planning and impact analysis (this role could also be filled by another park employee who is not a resource specialist);
- having knowledge of impact analysis processes and procedures;
- working with the park superintendent and other park staff to ensure consideration of potential resource impacts in park proposals; and
- working with contracting officers to ensure that mitigating measures identified in environmental documents are included in the subsequent contract documents implementing projects.

**Project Managers and Contracting Officers** are responsible for working with park staff to ensure that mitigation measures and other items identified in environmental documents to provide for resource protection are included in the subsequent documents implementing projects.

### **1.3 DETERMINING WHETHER NEPA APPLIES**

This section provides the background you need to determine if a proposed NPS activity is subject to or exempt from NEPA review. It also provides specific guidance on how to comply with the procedural requirements of NEPA when you must take an action in response to an emergency.

#### **A. Actions Requiring NEPA Review**

Regardless of the nature of the action, the first consideration when determining if the NPS must undertake a NEPA review is to assess whether or not the procedural requirements of the act are triggered.

NEPA applies to a broad range of federal actions, which include (1508.18(b)):

1. Adoption of official policy such as rules, regulations, and interpretations adopted pursuant to the Administrative Procedure Act, 5 USC 551 et seq.; treaties and international conventions or agreements; formal documents establishing an agency's policies that will result in or substantially alter agency programs.
2. Adoption of formal plans, such as official documents prepared or approved by federal agencies, which guide or prescribe alternative uses of federal resources on which future agency actions will be based.
3. Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.
4. Approval of specific projects, such as construction or management activities, located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as federal and federally assisted activities.

Whether or not NEPA applies depends on the extent to which the NPS exercises control and responsibility over a proposed action and whether NPS funding or approval is necessary to implement it. The greater the NPS control and responsibility, or degree of NPS funding required to implement an action, the more likely it is that NEPA would apply. In instances where the NPS provides funding with no control over the expenditure of funds by the recipient, NEPA does not apply (46.100).

Examples of the types of actions described above that would trigger NEPA include:

- promulgation of a special regulation;
- approval or adoption of plans whose implementation would result in environmental impacts such as a general management plan, fire management plan, or wildlife management plan;
- construction of a visitor contact station or trail system;
- building and road maintenance activities;
- issuance of commercial use authorizations or special use permits;
- approval of National Heritage Area management plans; and
- approval of specific actions for funding on non-NPS lands, such as providing grants, when NPS has control over how the funds will be spent.

Although the level of documentation and analysis required for these examples would vary, some level of NEPA review—CE, EA, or EIS—would be required for all of these actions.

In addition to new projects and programs, “continuing activities” are also subject to NEPA’s procedural requirements (1508.18). For continuing activities, the procedural requirements of NEPA are triggered if the NPS is affirmatively making a decision to

continue an activity subject to NEPA and for which either a NEPA review was never conducted or for which the documentation produced by a previous NEPA review is inadequate or outdated.

If you have questions regarding whether a proposed action triggers the procedural requirements of NEPA, you should consult with your REC.

## **B. Actions Exempt from NEPA Review**

Some actions are exempt from NEPA review; however, such instances are rare. If you believe a particular action or proposal may be exempt from NEPA review, you should consult with your REC. Furthermore, whenever you are interpreting legislation to determine whether an action is exempt from NEPA, you should seek advice from the DOI Office of the Solicitor.

### ***Actions Exempted by Statute***

Some actions are specifically exempted from NEPA compliance by Congress. In such instances, the exemption is applicable only to the specific action or actions addressed in the relevant statutory language.

### ***Actions Required by Statute***

Sometimes the NPS is required by law to take or allow a specific action. The question of whether NEPA applies to a statutorily required action hinges largely on the level of decision-making discretion retained by the NPS in carrying out the action. If the law essentially removes all NPS decision-making discretion with regard to the action, NEPA likely does not apply. However, if the NPS maintains some level of discretion regarding how a required action is carried out, NEPA likely would apply. For instance, several national park system units have enabling legislation that requires them to allow hunting pursuant to state law, and authorizes them to enact certain types of restrictions (to protect park resources and values, or for other reasons). In such cases, a NEPA review is not required to allow hunting consistent with state law since hunting has been mandated by Congress. However, NEPA would be triggered if the unit were to implement restrictions on hunting beyond those included in state law, because setting restrictions on hunting is a discretionary activity that is authorized, but not mandated, in the enabling legislation.

## **C. Emergency Actions**

Actions taken in response to an emergency are not exempt from NEPA review. However, the CEQ and DOI NEPA regulations provide procedures for taking emergency response actions, when necessary, without first completing a NEPA review. If an emergency exists, you may take immediate actions that are urgently needed to mitigate harm to life, property, or important natural, cultural, or historic resources (46.150). When taking an emergency action, the environmental impacts of the response actions must be mitigated to the extent practicable (46.150(a)). If you believe there is an emergency situation, you should consult with EQD through your REC as soon as possible.

As set forth in the DOI NEPA regulations, the Responsible Official determines whether an emergency exists (46.150). For emergency actions that would normally require an EA or EIS, the Responsible Official is the regional director. For emergency

*For emergency actions that would normally require an EA or EIS, the Responsible Official is the regional director. For emergency actions that typically would be covered by a CE, the Responsible Official is the superintendent.*

actions that typically would be covered by a CE, the Responsible Official is the superintendent. The Responsible Official is required to document in writing that an emergency exists and describe the actions taken in response to the emergency (46.150(b)).

Follow-up actions that are taken in response to an emergency, but that are beyond the scope of actions needed to control immediate harm to life, property, or resources presented by the emergency, are subject to the normal NEPA process. However, if you believe that the follow-up actions must be taken before a NEPA review can be completed, alternative arrangements for complying with NEPA may be granted by DOI in cases where follow-up actions would normally require an EA, and by CEQ in cases where the follow-up actions would normally require an EIS. You are required to coordinate consultations for alternative arrangements through WASO (46.150(c)). To do so, contact EQD through your REC. EQD will facilitate consultations with DOI OEPC who, in turn, will facilitate discussions with CEQ when necessary. [For more information on emergency actions and details regarding the process for requesting alternative arrangements, see supplemental guidance: *Complying With NEPA When Taking Emergency Actions*; see also *ESM 13-3: NEPA Compliance in Emergency Situations*.]

## **1.4 NEPA FUNDAMENTALS**

### **A. Characteristics of NEPA Review**

NEPA reviews that follow both the letter and spirit of the law display several key characteristics:

#### ***Part of Planning and Decision-Making***

Within the NPS, planning takes place on many different levels. NEPA is the environmental analysis component of agency planning (NPS *Management Policies 2006*, 2.3). While various aspects of planning may take place prior to initiating the NEPA process, the appropriate level of NEPA review must be completed before the NPS takes an action that has the potential to affect the quality of the human environment. The CEQ regulations direct agencies to “integrate the NEPA process with other planning at the earliest possible time to ensure that planning and decisions reflect environmental values” (1501.2). [See *Section 1.4 B: Timing of NEPA Review*.]

#### ***Part of a Public Process***

Public involvement is a key component of the NEPA process. The CEQ regulations require agencies to “encourage and facilitate public involvement” to the fullest extent possible in making decisions that would have environmental impacts and to make diligent efforts to involve the public in the NEPA process (1500.2(d); 1506.6(a)). Though you should always seek ways to involve the interested and affected public in the NEPA process, the type and extent of public involvement will vary depending on the nature of a proposed action, its impacts, the degree to which the public is interested and affected, and the level of NEPA review. As set forth in *Director’s Order 75A: Civic Engagement and Public Involvement (DO-75A)*, NPS decision makers are required to plan early for appropriate opportunities for public

involvement when decisions are made for actions or policies that will significantly affect or interest the public.

### ***Based on an Interdisciplinary Approach***

NEPA requires the use of an “interdisciplinary approach” in planning and decision-making (sec. 102(2) (A)). This interdisciplinary approach is meant to ensure that information from a variety of appropriate disciplines, including the natural and social sciences and cultural resources, is integrated into the analysis and decision-making process (1502.6). When conducting NEPA reviews, you should encourage the participation of specialists from a variety of backgrounds who can contribute their relevant expertise. Members of an interdisciplinary team can come from park and other NPS offices and could also include contractors and individuals from other federal, state, and local government agencies.

*Even for simple actions with limited NEPA review, there should be some degree of interdisciplinary involvement in the process.*

The requirement to use an interdisciplinary approach does not mean that you must assemble a large group of specialists for every NEPA review. It means that the information you use as the basis for your decision comes from the appropriate disciplines and covers the scope of analysis and the issues to be examined. Even for simple actions with limited NEPA review, there should be some degree of interdisciplinary involvement in the process. One convenient way of gathering input from interdisciplinary team members without the need for in-person meetings is to use the NPS Planning, Environment, and Public Comment (PEPC) system.

### ***Inclusive***

NEPA requires analysis and disclosure of the impacts an agency’s actions would have on the human environment. The CEQ regulations define human environment as “the natural and physical environment and the relationship of people with that environment” (1508.14). In addition to evaluating the impacts of an action on natural and cultural resources, agencies must evaluate social and economic impacts of that action when they are interrelated with natural or physical environmental effects. It is important to note, however, that the CEQ regulations state that social or economic impacts, by themselves, are not intended to require preparation of an EIS (1508.14). This means that when an action would cause significant adverse impacts only in relation to socioeconomic concerns and not to any other part of the human environment, an EIS is not required. [See Section 1.6: *Considering Whether a Proposal has the Potential for Significant Impacts.*]

Agencies are required to consider direct, indirect, and cumulative impacts and connected and similar actions during a NEPA review (1508.25) and are specifically prohibited from segmenting projects. “Proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action” are to be evaluated in a single NEPA document (1502.4).

### ***Focused and Concise***

Although NEPA imposes numerous procedural and documentary requirements on federal agencies, the CEQ regulations direct agencies to prepare NEPA documents that are “concise, clear, and to the point” (1500.2(b)). NEPA reviews should focus on important environmental issues and avoid “amassing needless detail” (1500.1(b)). Although it can be challenging to produce a focused analysis, CEQ has stated,

*The CEQ regulations direct agencies to prepare NEPA documents that are “concise, clear, and to the point” (1500.2(b)).*

“NEPA’s purpose is not to generate paperwork—even excellent paperwork—but to foster excellent action” (1500.1(c)).

Environmental analysis should focus on significant issues (meaning pivotal issues, or issues of critical importance), discussing insignificant issues only briefly (1500.4(c)). Impacts should be discussed in proportion to their significance, and if the impacts are not deemed significant there should be only enough discussion to show why more study is not warranted (1502.2(b)). EAs and EISs should be written in plain language so that decision makers and the public can understand them (1502.8). Scoping, incorporation by reference, and integrating other environmental analyses are additional methods that may be used to avoid redundant or repetitive discussion of issues (1500.4). [See *Section 2.3: Incorporation by Reference, Section 2.4: Tiering, and Section 4.2: Scoping; see also supplemental guidance: Writing Impact Analysis Sections for EAs and EISs, and supplemental guidance: Preparing Focused and Concise EAs.*]

### **Objective and Science-Informed**

To support excellent decision-making, the NEPA process must be objective. The CEQ regulations require the use of “high quality” information during the NEPA process (1500.1(b)) and require agencies to ensure the professional and scientific integrity of information and analyses used in the NEPA process (1502.24). If you rely on the professional judgment of a specialist or expert, this judgment should be based on data, education, or experience and should be substantiated with literature or other experts’ opinions. [See *Section 1.4 C: Specificity and Quality of Data Needed.*]

### **Ultimately Site Specific**

NEPA reviews may address broad actions such as adoption of a policy or program, or very specific ones like building a new visitor contact station at a park. The analysis contained in a NEPA document will vary in specificity according to the nature of the proposal being analyzed. However, before implementing any action, environmental effects must be analyzed in “adequate detail” so as to inform decision making (1501.2(b)). For site-specific actions, this means site-specific detail. Depending on the situation, it may be appropriate to conduct a programmatic NEPA review in order to provide a basis for a broad decision and a later, site-specific NEPA review to provide a basis for implementing a particular component of that decision. This step-wise approach to planning and compliance is called “tiering” (1508.28; 46.140).

For example, adoption of a general management plan (GMP) may be a broad-based decision informed by a NEPA review that is often correspondingly broad. However, implementation of a particular action called for in a GMP such as construction of a visitor contact station, will often require an additional, site-specific NEPA review that is tiered from the GMP. [See *Section 1.4 C: Specificity and Quality of Data Needed, and Section 2.4: Tiering.*]

## **B. Timing of NEPA Review**

The CEQ regulations state that agencies must apply NEPA early in the planning and decision-making process (1501.2). The NEPA process should begin when the NPS has a goal for which it is actively preparing to make a decision and has developed a proposal to the point where its environmental impacts can be meaningfully analyzed

(1508.23; 46.100(b)). This means that you do not need to begin the NEPA process if your park unit or program is examining the feasibility of taking an action. For instance, if your park unit is considering whether to prepare a wildlife management plan, you should consider the feasibility of adopting and implementing such a plan and whether NPS policies would support such an action before beginning a NEPA review.

You may meet with interested parties prior to initiating the NEPA process to gather input on a proposed action, the purpose and need for taking action, and other issues. In some cases, such interactions can be useful in determining whether to move forward with a proposal. [See Section 4.2 B: Defining the Proposed Action; see also DO-75A: Civic Engagement and Public Involvement.] As set forth in DO-75A, parks and programs should engage in continuous, ongoing civic engagement outside of the NEPA process in order to reinforce the commitment of both NPS and the public to the preservation of heritage resources, both cultural and natural, and strengthen public understanding of the full meaning and contemporary relevance of these resources (DO-75A, V).

*You may meet with interested parties prior to initiating the NEPA process to gather input on a proposed action, the purpose and need for taking action, and other issues. In some cases, such interactions can be useful in determining whether to move forward with a proposal.*

Determining when to begin a NEPA process can be difficult. You must start early enough to ensure that all steps of the NEPA process are finished “so that it can serve practically as an important contribution to the decision-making process” and to ensure that the process is not “used to rationalize or justify decisions already made” (1502.5). However, a NEPA review should begin only after a proposed action is developed. [See Section 4.2 B: Defining the Proposed Action.]

Although the NEPA process will not begin until you have developed a proposed action, you should begin considering requirements related to NEPA as soon as you determine you may need to take an action because in many cases it is necessary to gather data or to conduct feasibility studies or other analyses prior to beginning a NEPA review. These activities often take a considerable amount of time but can be invaluable in defining a realistic goal or proposal and ensuring there is sufficient data to complete impact analyses. Depending on the level of complexity, controversy, and availability of data, funding and staff time, the NEPA process can take a number of years to complete, so it is important to consider many factors when addressing timelines for making decisions.

Developing and putting forth a proposed action is necessary to the NEPA process and is not pre-decisional. [See Section 4.2 B: Defining the Proposed Action.] However, you may not take an action that is the subject of a NEPA review or that would limit the choice of alternatives until the NEPA process is complete (1506.1). Put another way, agencies may not commit resources that prejudice the selection of alternatives before completing the NEPA process (1502.2(f)). To do so would be pre-decisional. For example, if your proposed action is to build a visitor contact station, you may not begin construction or any related work on a construction site until the NEPA review is complete and a decision document is signed.

### **C. Specificity and Quality of Data Needed**

The CEQ regulations require information of “high quality” and professional integrity (1500.1; 1502.24). The National Parks Omnibus Management Act of 1998 (NPOMA)

states that park management generally should be guided by “the highest quality science and information” and requires the NPS to use the results of scientific study when considering management decisions pertaining to national park system units (54 USC 100702, 100706).

The specificity of data needed for analysis will vary according to the nature of the action. For actions of a more programmatic or broad nature, such as development of a parkwide facilities management plan, the NEPA review and the data on which it is based may be correspondingly broad. For site-specific projects such as construction of a new picnic area or rehabilitation of a parking lot, the data on which analyses are based should be correspondingly specific.

Ultimately, you must be able to carry out a meaningful analysis of impacts based on the available data in order to support a decision to take an action. Analyses should be substantiated by information included in the decision file, and peer review should be used when appropriate. [See Section 4.9: *The Decision File*; see also supplemental guidance: *Compiling a Decision File for NEPA Reviews*.] If there are key uncertainties regarding the environmental effects of an action under consideration, an adaptive management approach should be used when appropriate (46.145). [See Section 4.3 F: *Adaptive Management*.]

In cases where you have no data or poor quality data, you are required to obtain additional information that is “relevant to reasonably foreseeable significant adverse impacts,” if it is “essential to a reasoned choice among alternatives,” and if “the overall costs of obtaining it are not exorbitant” (1502.22(a)). The costs of obtaining additional information are measured not only in money, but also in time (to complete a research study or survey, for instance).

If essential information is unavailable or if the costs of obtaining it are exorbitant, an EIS must include statements to inform the public of this lack of information and its effect on the ability of the NPS to predict environmental impacts. When information cannot be obtained, existing credible scientific evidence must be summarized and the impact predicted based on this evidence (1502.22(b)). When preparing an EA, you should take the same approach. Lack of data can be an important consideration when preparing an EA because if you do not have enough reliable data to support a finding at the conclusion of the EA process that there will be no significant adverse impacts as a result of implementing the selected action, an EIS will need to be prepared.

## **1.5 THE NEPA PATHWAYS**

The NPS uses four pathways, or levels of analysis and documentation, to comply with NEPA. A brief description of each pathway is included below. More detailed information about the pathways can be found in Chapters 3 and 4.

### **A. Categorical Exclusion for which No Documentation is Required**

This pathway is applicable to actions that have been found to have no potential for significant environmental impacts under ordinary circumstances and whose potential for environmental impacts of any kind is so minimal the NEPA review does



not require formal documentation. The source of these CEs is the DOI NEPA regulations; they apply to all DOI bureaus (46.215). [See Section 3.2: *Categorical Exclusions for which No Documentation is Required.*]

### **B. Categorical Exclusion for which Documentation is Required**

This pathway is applicable to actions that have been found to have no potential for individual or cumulative significant environmental impacts under ordinary circumstances, but whose potential for environmental impacts warrants some level of analysis and formal documentation. The source of these CEs is the NPS-specific chapter of the DM (516 DM 12). [See Section 3.3: *Categorical Exclusions for which Documentation is Required.*]

### **C. Environmental Assessment**

This pathway is applicable to a variety of situations. Although an EA was originally envisioned as a tool for determining whether to prepare an EIS and is still used this way in some instances, in most cases the EA has become a distinct pathway. An EA is a means for documenting compliance with NEPA and assisting in the planning and decision-making process when a CE is not appropriate but an EIS is not necessary.

Any of the following indicates a need to prepare an EA:

- the proposal has no applicable CE, is not an action that normally requires preparation of an EIS, and is unlikely to result in significant adverse environmental impacts;
- the proposal has an applicable CE but may trigger an extraordinary circumstance (46.205) [See Section 3.5: *Extraordinary Circumstances.*]; or
- it is unknown whether the proposal would result in significant adverse environmental impacts (i.e., the preparation of the EA is to determine whether an EIS is necessary).

In addition to the circumstances above, an EA may be prepared when it would assist with or inform agency planning and decision-making (1501.3(b); 46.300(b)).

It is important to understand some fundamental differences between EAs and EISs in order to prevent the EA document and process from simply becoming an “EIS in disguise.” An EIS is meant to be a “detailed written statement” on the environmental impacts of major actions significantly affecting the environment (1508.11). Its fundamental purpose is to promote detailed consideration and disclosure of the environmental costs and benefits of a proposal.

An EA, on the other hand, while still analytical and explanatory, is meant to be a “brief” and “concise” document at a level of detail limited to that necessary to demonstrate that the proposal would not result in significant environmental impacts (1508.9; 46.310(e)). It should be kept brief by carefully developing the scope to identify pivotal issues; focusing discussions and analysis on the relevant issues and dismissing issues that are not meaningful to the decision; discussing impacts in proportion to their importance; and using tiering and incorporation by reference techniques, when appropriate, to minimize bulk. You should strive to keep an EA to no more than 50 pages, and closer to 15 pages when you are preparing an EA for

*An EA should be kept brief by carefully developing the scope to identify pivotal issues; focusing discussions and analysis on the relevant issues and dismissing issues that are not meaningful to the decision; discussing impacts in proportion to their importance; and using tiering and incorporation by reference techniques, when appropriate, to minimize bulk.*

situations where you are reasonably sure there is no potential for significant adverse impacts (such as when there is an activity that has minimal impact but does not fit within any established CEs). On the other hand, an EA may be longer than 50 pages where the issues involved are controversial or very complex (assuming, of course, there is still no potential for significant adverse impacts that would trigger the need for an EIS). In all cases, the length of an EA should be sufficient to demonstrate that NPS has taken a hard look at the environmental impacts of the proposed action and any alternatives.

*[For more information, see Section 2.3: Incorporation by Reference, and Section 2.4: Tiering; see also supplemental guidance: Preparing Focused and Concise EAs, supplemental guidance: Writing Impact Analysis Sections for EAs and EISs, and CEQ guidance: Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act. For information on the required content for an EA, see Appendix B: Environmental Assessment Required Content and Additional Considerations.]*

#### **D. Environmental Impact Statement**

This pathway is applicable to proposals that could result in significant adverse environmental impacts. An EIS is a detailed written statement required by Section 102(2)(C) of NEPA (1508.11). There are several circumstances that indicate an EIS is the appropriate NEPA pathway:

- the proposal is designated by the NPS as an action normally requiring preparation of an EIS;
- the proposal is expected to or has the potential to result in significant adverse environmental impacts;
- there is incomplete or unavailable information to the extent that a FONSI cannot be supported [*See Section 4.7: Concluding the NEPA Process and Documenting a Decision.*];
- there is a high degree of controversy over the environmental impacts of a proposed action [*For more information on controversy, see Section 1.6: Considering Whether a Proposal has the Potential for Significant Impacts.*];  
or
- an EIS is legislatively or judicially mandated.

You should strive to keep an EIS to no more than 150 pages, and for proposals of unusual scope or complexity to less than 300 pages (1502.7). As with EAs, you should carefully develop the scope to identify pivotal issues; focus discussions and analysis on the relevant issues and dismiss issues that are not meaningful to the decision; discuss impacts in proportion to their importance; and use tiering and incorporation by reference techniques, when appropriate, to minimize bulk.

*[For more information, see Section 2.3: Incorporation by Reference, and Section 2.4: Tiering; see also Writing Impact Analysis Sections for EAs and EISs, and CEQ guidance: Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act. For information on the required content for an*

*EIS, see Appendix B: Environmental Impact Statement Required Content and Recommended Format.]*

## **E. Actions that Normally Require an Environmental Impact Statement**

The CEQ regulations require that agencies designate actions that normally require preparation of an EIS (1507.3(b)(2)(i)). For the NPS, an EIS is normally required for the following types of actions (516 DM 12):

- proposals to designate Wild and Scenic Rivers, National Trails, or Wilderness;
- GMPs for major national park system units;
- grants, including multi-year grants whose size and/or scope will result in major natural or physical changes, including interrelated social and economic changes and residential and land use changes within the project area or its immediate environs; and
- grants which foreclose other beneficial uses of mineral, agricultural, timber, water, energy, or transportation resources important to national or state welfare.

While the actions listed above normally require preparation of an EIS, an EIS is not required in every case. If you are able to document that there is no potential for significant adverse impacts as a result of implementing one of those actions, you may prepare an EA. However, if you prepare an EA for an action that normally requires an EIS, you must make the FONSI available for public review for 30 days prior to making a final determination whether to prepare an EIS and may not implement the selected action until after the 30-day period has passed (1501.4(e)(2)).

It is important to note that *NPS Management Policies 2006* require an EIS to be prepared for wilderness studies that will result in recommendations for designation, and therefore a waiver from that requirement would need to be obtained in order to prepare an EA rather than an EIS for such studies (*NPS Management Policies 2006*, 6.2.2). *NPS Management Policies 2006* also state that in most cases an EIS will be prepared for GMPs, but provide for a regional director to approve an exception to that general rule after consulting with EQD through the Associate Director, Natural Resource Stewardship and Science when: (1) scoping indicates there is no public controversy concerning environmental effects; and (2) preliminary impact analysis clearly indicates there is no potential for significant impacts from any alternative under consideration (*NPS Management Policies 2006*, 2.3.1.7).

## **1.6 CONSIDERING WHETHER A PROPOSAL HAS THE POTENTIAL FOR SIGNIFICANT IMPACTS**

The concept of significance is central to NEPA reviews. If an action has the potential to result in significant adverse impacts and applying mitigation measures cannot ensure that significant adverse impacts will be avoided, an EIS must be prepared. Although evaluation of significance often relies on subjective judgment, the CEQ

*Although evaluation of significance often relies on subjective judgment, the CEQ regulations require that evaluations of significance consider both an impact's context and intensity (1508.27).*

regulations require that evaluations of significance consider both an impact's context and intensity (1508.27).

### **Context**

An impact's significance is influenced by the importance of the resource or value being impacted, the geographic location and timing, and other relevant factors that provide context for more fully understanding the severity of the impact. For example, a ground disturbance that takes place in a previously disturbed maintenance area of a park would be less likely to have a significant adverse impact than the same ground disturbance in an area containing important archeological resources.

The context in which impacts are considered should generally be specific to the area and resources being affected. For most NPS actions, this means considering impacts in the context of the affected locale, such as a national park system unit as opposed to the state, country, or world as a whole (1508.27(a)), although in many cases it is also appropriate to consider the role of a park unit in the larger landscape. The relationship of an affected resource to a park unit's purpose and significance can be an important factor when considering context.

### **Intensity**

Intensity refers to the severity of an impact (1508.27(b)), which may be direct, indirect, or cumulative (1508.25(c)). When evaluating intensity, the CEQ regulations require you to consider (1508.27(b)):

*Impacts that may be both beneficial and adverse. A significant impact may exist even if the federal agency believes that on balance the effect will be beneficial.*

This means that even in situations where beneficial impacts outweigh adverse ones, or where the ultimate environmental outcomes of an action may be beneficial, it is possible that adverse impacts associated with taking the action can be significant when considered in context and therefore trigger the need to prepare an EIS. Only those actions with the potential to cause significant adverse impacts require preparation of an EIS.

*The degree to which the proposed action affects public health or safety.*

For example, consider impacts related to hazardous and solid wastes, air and water quality, and their relation to public health and safety.

*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.*

Most actions taken by the NPS affect park lands that protect many of the unique characteristics mentioned. This does not mean that an EIS must be prepared for every action the NPS takes. When assessing whether an impact would be significant, consider the magnitude of the impact in the context of the particular resource.

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

Controversy does not refer simply to the existence of opposition to a proposal whose effects are relatively undisputed (46.30). Rather, the term “controversial” refers to cases where a substantial dispute exists as to the nature of the environmental consequences of a proposed action. This consideration specifically references effects that are “highly controversial.” While in many cases there will be some disagreement about the nature of the effects of a proposed action, the mere existence of controversy does not necessarily equate to significance. However, substantial dispute within the scientific community about the effects of a proposed action would indicate that the effects are likely to be highly controversial and therefore likely significant.

***The degree to which the potential impacts are highly uncertain or involve unique or unknown risks.***

There will often be some uncertainty about the impacts of management actions and some level of associated risk. The focus of this consideration is on high levels of uncertainty and risks that are unique or unknown, which would make it difficult or impossible to reasonably predict impacts of an action. When a high level of uncertainty over potential impacts involves an important resource or value, there is increased potential for impacts to be significant and thus require analysis in an EIS.

***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.***

This consideration should be limited to those future considerations that are reasonably foreseeable, as defined in the DOI NEPA regulations, “. . . activities not yet undertaken, but sufficiently likely to occur, that a Responsible Official of ordinary prudence would take such activities into account in reaching a decision” (46.30). Reasonably foreseeable future actions do not include those actions that are highly speculative or indefinite.

***Whether the action is related to other actions with individually insignificant but cumulatively significant impacts.***

When considering whether your proposal has significant impacts, you must look at the incremental impacts of your proposal plus the impacts of other past, present, and reasonably foreseeable future actions and determine whether or not the total (i.e., cumulative) impact on a specific resource is significant, even if the impact of your proposal, by itself, may not be significant. [See Section 4.5 C: Cumulative Impacts.] If significant cumulative adverse impacts already exist as a result of past, present, or reasonably foreseeable actions and the incremental adverse impacts of your action will make existing impacts worse but will not take the resource past an environmental or regulatory “tipping point” (e.g., causing a violation of the National Ambient Air Quality Standards), then your action would not be considered to result in significant cumulative adverse impacts and you would not need to prepare an EIS.

***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.***

A finding of adverse effect under the National Historic Preservation Act (NHPA) Section 106 consultation process does not necessarily trigger the need to prepare an EIS; a determination of effect is made according to different criteria than a determination regarding significance. When assessing whether an impact would be significant, consider the magnitude of the impact in the context of the particular resource.

***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.***

A finding under the Endangered Species Act (ESA) Section 7 consultation process that an action is likely to adversely affect a listed species or designated critical habitat does not necessarily trigger the need to prepare an EIS; a determination of effect is made according to different criteria than a determination regarding significance. As with Section 106 above, you must consider the magnitude of an impact in the context of the particular resource to determine whether or not there would be a significant impact.

***Whether the action threatens a violation of federal, state, or local law or requirements imposed for the protection of the environment.***

Not every violation of environmental requirements imposed by other governmental entities constitutes a significant impact, especially when the violation is trivial or the impacts of the violation can be mitigated.

## CHAPTER 2: USING EXISTING NEPA ANALYSES

### 2.1 INTRODUCTION

This chapter describes options and procedures for using existing NEPA analyses to meet a current proposal's NEPA documentation and analysis requirements, either in full or in part. The CEQ and DOI NEPA regulations encourage the use of existing NEPA analyses to the extent possible and appropriate to reduce unnecessary analysis and paperwork (1502.20; 1502.21; 46.120). This chapter discusses several ways of doing so. Section 2.2 describes the use of the memorandum to file, which documents a determination that an existing NPS NEPA document provides complete and accurate documentation sufficient to cover a specific proposal. Section 2.3 describes the use of incorporation by reference, which can be used to reduce the amount of text included in a NEPA document and to facilitate the use of existing scientific studies and environmental reviews prepared by state and local governments. Section 2.4 discusses tiering, which is a specific type of incorporation by reference that can be used to focus the scope of a proposal and its consequent NEPA documentation and analysis. Section 2.5 discusses options and procedures for adopting an existing EA or EIS prepared by another agency to serve as NEPA documentation for an NPS action.

*The CEQ and DOI NEPA regulations encourage the use of existing NEPA analyses to the extent possible and appropriate to reduce unnecessary analysis and paperwork (1502.20; 1502.21; 46.120).*

### 2.2 MEMORANDUM TO FILE

A memorandum to file (memo to file) is used to document that a specific proposal and its impacts were adequately described and analyzed in site-specific detail in an existing NPS NEPA document, meaning that additional NEPA review is not required.

A memo to file should be used when an NPS NEPA review was previously completed for a specific proposal, but its implementation was delayed because of unavailability of funds or other reasons. For example, if your park unit completed an EA five years ago that resulted in a decision to construct new park housing but funding was not available and construction could not proceed as intended, when you receive the funding you should review the EA and FONSI to ensure that the action and its impacts are still accurately described. You would then document the adequacy of the existing NEPA review through preparation of a memo to file. A memo to file may also be used when an action is being taken that is not specifically called out in an existing NPS NEPA document, but it logically falls within the effects of substantially similar actions that have been evaluated in site-specific detail in an existing NPS NEPA document. When preparing a memo to file, you should consider whether information regarding other required consultation processes (such as ESA Section 7, NHPA Section 106, and tribal consultations) needs to be updated. If so, depending on the outcome of additional consultations, a new NEPA review may need to be initiated. [See Section 4.14: *Integrating NEPA with Other Environmental Review and Consultation Requirements.*]

There is no required format for a memo to file. However, it should at a minimum contain the following:

- a description of the current action;

- the name and date of the existing NPS NEPA document that describes and analyzes the action;
- identification of the associated decision document;
- a statement that the existing NPS NEPA document has been reviewed and that there are no substantive differences between the current proposal and its associated environmental impacts and the proposal and impacts as described in the existing NEPA document and associated decision document;
- a reference to correspondence documenting updated consultation if other required consultation processes have been updated; and
- approval (signature) of the park superintendent or his/her designee.

When reviewing an existing NPS NEPA document to determine if it covers your current action, consider the following questions:

- Is the action as currently proposed the same or essentially the same as the action described in the existing NEPA document and associated decision document?
- Is the project location as currently proposed the same or essentially the same as that described in the existing NEPA document and associated decision document?
- Is the range of alternatives in the existing NEPA document appropriate with respect to the current action? For example, if there is a substantially different option for meeting the purpose and need of the proposal that was not available, and therefore not analyzed at the time the existing NEPA document was prepared, the answer would be “no.”
- Are current resource conditions substantially the same as those described in the NEPA document and associated decision document? For example, if there is a threatened or endangered species currently present in the project area that was not listed, and therefore not analyzed at the time the existing NEPA document was prepared, the answer would be “no.”
- Are the direct, indirect, and cumulative impacts associated with the action as currently proposed the same or essentially the same as those described in the existing NEPA document and associated decision document?
- Is consultation that was completed for the action covered by the earlier NEPA review (e.g., ESA Section 7 and NHPA Section 106) still adequate?

If you are able to answer “yes” to all of these questions, a memo to file would be appropriate. If you are unable to answer “yes” to all of these questions, you will likely need to complete an additional NEPA review. If you have questions regarding whether a memo to file is appropriate or whether additional consultation with other agencies is necessary, you should consult with your REC.

### **2.3 INCORPORATION BY REFERENCE**

Incorporation by reference is the citation and summary of reasonably available material that addresses actions, issues, resources, or impacts that are relevant to the



actions under consideration in your NEPA review. Incorporation by reference allows such material to be briefly summarized rather than extensively repeated in the NEPA document. The purpose of incorporation by reference is to “cut down on bulk without impeding agency and public review of the action” (1502.21).

Many different types of material may be incorporated by reference, including written material of all kinds, conversations, taped public meetings or workshops, etc. Specific examples of materials that might be incorporated by reference into a NEPA document include other NEPA documents, species lists relevant to the project area, scientific studies, monitoring data, and environmental reviews prepared by state and local governments. For material to be incorporated by reference, the analysis and assumptions used in the incorporated document must be appropriate for the analysis at hand (46.135(a)). In addition, the incorporated material must be “reasonably available for inspection by potentially interested persons within the time allowed for comment” on the NEPA document (1502.21). There are many options available to make referenced material readily available, such as placing material on a park unit’s website or PEPC, notifying the public that the referenced material is available at a park unit’s headquarters upon request, and placing materials in local libraries or facilities accessible to the public. Material that is not or cannot be made reasonably available, such as proprietary information, may not be incorporated by reference (1502.21).

Incorporating by reference is accomplished through two steps: (1) citing the incorporated material, and (2) summarizing its content. Citation consists of identifying the material in as specific a manner as possible to inform the reader of what material is being incorporated. Summarizing the material consists of briefly describing its content and placing the material and its use in the context of your specific NEPA review. Citations of specific information or analysis from incorporated material should include pertinent page numbers or other relevant identifying information (46.135(b)). All documents incorporated by reference must be listed in a bibliography (46.135(c)) and copies of materials incorporated by reference should be included in the decision file. [See Section 4.9: *The Decision File*; see also supplemental guidance: *Compiling a Decision File for NEPA Reviews*.]

## 2.4 TIERING

Tiering is using the coverage of general matters in broader or programmatic NEPA documents in subsequent, more narrowly focused NEPA documents (1508.28). The purpose of tiering is to eliminate repetitive discussions across NEPA documents and focus successive NEPA processes on the particular issues ripe for decision (1502.20). The broad NEPA document to which a subsequent, more narrowly focused NEPA document is tiered may be an EA or EIS. [See *CEQ guidance: Effective Use of Programmatic NEPA Reviews*.] You should use tiering in situations when an action is proposed that, although addressed in general or program-level terms in a previous, valid NEPA document, requires additional refinement and site-specific analysis prior to implementation.

For example, suppose your park unit recently completed an EIS for a GMP and the selected action includes construction of a visitor contact station within one particular

management zone. Although the analysis in the EIS is up-to-date and accurate, the EIS does not contain a site-specific analysis of the proposed visitor contact station because details, such as exact location and size, were not available at the time the EIS was prepared. In this situation, you would need to complete a site-specific NEPA review before the visitor contact station could be constructed. By tiering the subsequent site-specific NEPA review to the EIS prepared for the GMP, the scope of the subsequent NEPA review could be narrowed to address the particulars of the visitor contact station, such as where specifically to site it within the area designated in the GMP and how large it should be. This narrow scope for the site-specific NEPA review would be proper because the question of whether to build a visitor contact station has already been decided based on the earlier, broader EIS and therefore does not need to be addressed again so soon.

A NEPA document that is tiered to a previous, broader NEPA document must include a finding that environmental conditions and impacts as described in the earlier NEPA document are still valid; or if not, address any exceptions (46.140). If conditions or impacts have changed, the tiered document must explain this and provide any updated information or analysis (46.140(b)). Tiering is not appropriate when the previous, broader NEPA document is outdated because new information or changed conditions require that the original decision and analysis be revisited. Consider the example above involving the visitor contact station and the GMP. Suppose that some years pass between adoption of the GMP and the park unit's ability to proceed with the proposed visitor contact station. In the intervening years, park staff discover that there has been an unforeseen increase in visitation, making the previous visitor contact station location unsuitable because of access and parking limitations. In this instance, the decision regarding whether and where to build a visitor contact station should be revisited and tiering would not be appropriate.

Tiering is essentially a specific form of incorporation by reference. When tiering a new NEPA document to an existing one, you must state that you are tiering to another NEPA document, give a brief description of the earlier document, and state where the earlier document is available. Following the procedures for incorporation by reference, cite and summarize the relevant portions of the broader document to which the new NEPA document is tiered (1502.20; 1502.21).

*A finding of no significant impact other than those already disclosed and analyzed in the EIS to which the EA is tiered may also be called a "finding of no new significant impact" (46.140(c)).*

An EA may be prepared for a proposed action with significant effects if the EA is tiered to a broader EIS that fully analyzed those significant effects. In such a case, a FONSI could be prepared as long as any previously unanalyzed effects are not significant. A finding of no significant impact other than those already disclosed and analyzed in the EIS to which the EA is tiered may also be called a "finding of no new significant impact" (46.140(c)).

## **2.5 ADOPTING ANOTHER AGENCY'S EXISTING ENVIRONMENTAL ASSESSMENT OR ENVIRONMENTAL IMPACT STATEMENT**

When available, the NPS should use existing NEPA documents and analyses to evaluate the impacts of a proposed action and any alternatives (46.120). The NPS may adopt an EA or EIS prepared by another agency or entity, including an applicant, as the basis for an NPS decision if the document meets all NEPA

requirements applicable to the NPS and the NPS takes full responsibility for its content. When determining whether an existing EA or EIS is sufficient for purposes of the NPS action under consideration, the NPS must consider whether new circumstances, new information, or changes in the action or its impacts not previously analyzed may result in significantly different environmental effects (46.120(c)).

Scoping is not required when the NPS adopts another agency's EA or EIS. However, parks and programs are expected to consult, cooperate, and coordinate with other federal, state, local, and tribal governments and other bureaus and federal agencies whenever possible (46.155). Furthermore, when adopting another agency's EA or EIS, the NPS is responsible for providing the appropriate level of public review, as discussed further below, and for completing other required consultation processes (such as ESA Section 7, NHPA Section 106, and tribal consultations). [*See Section 4.14: Integrating NEPA with Other Environmental Review and Consultation Requirements.*] If you are considering adopting an existing EA or EIS, you should consult with your REC.

In the event that adoption is not appropriate because the existing document is only partially relevant or applicable to the NPS action, you should still make the best use of existing information by supplementing, tiering to, and incorporating by reference relevant or applicable portions of the existing EA or EIS in order to avoid redundancy and unnecessary paperwork (46.120(d)). [*See Section 2.3: Incorporation by Reference, and Section 2.4: Tiering.*]

#### ***Adopting an Environmental Assessment***

The NPS may adopt another federal agency's EA as the basis for a FONSI and decision on an NPS action if it covers the NPS action and the NPS independently reviews the existing EA and determines that it meets all NEPA requirements applicable to the NPS (e.g., the CEQ and DOI NEPA regulations, DO-12, etc.). You should use an interdisciplinary approach to determine the applicability and adequacy of the existing EA in relation to the NPS proposal. When appropriate, the NPS may augment an EA prepared by another federal agency to be consistent with an NPS proposed action. When doing so, the augmented EA must cite to the original EA (46.320). Prior to adopting an existing EA, the NPS must also ensure that its own public involvement requirements have been met (46.320(d)). [*See Section 4.6: Circulating Environmental Assessments and Environmental Impact Statements, Soliciting Public Comments, and Responding to Comments.*] If the NPS elects to adopt an existing EA, it must prepare and approve its own FONSI and must notify the public of the availability of a FONSI once it is signed (516 DM 1.2; 46.305(c)). [*See Section 4.7: Concluding the NEPA Process and Documenting a Decision.*]

#### ***Adopting an Environmental Impact Statement***

As with EAs, the NPS may adopt another federal agency's EIS as the basis for a decision on an NPS action as long as it adequately covers the NPS action and meets all NEPA requirements applicable to the NPS (e.g., the CEQ and DOI NEPA regulations, DO-12, etc.). As with adoption of an EA, you should use an interdisciplinary approach to determine the applicability and adequacy of the existing EIS in relation to the NPS proposal. If the NPS elects to adopt an existing

EIS, it must sign its own ROD and make it available to the public through appropriate notice (1506.6(b), Q30). [*See Section 4.7: Concluding the NEPA Process and Documenting a Decision.*]

The applicable procedures for adopting another agency's EIS depend on whether the NPS participated as a cooperating agency during preparation of the EIS. [*See Section 4.13 B: Cooperating Agencies.*] If the NPS participated as a cooperating agency it may adopt the EIS without recirculating the document, provided that all NPS comments and suggestions were addressed in a satisfactory manner during preparation and it meets all NEPA requirements applicable to the NPS (1506.3). In such a case, the NPS would adopt the document and issue its own ROD (Q30). If the EIS prepared by another agency does not adequately address NPS comments or does not meet NPS NEPA requirements, all or portions of the EIS may be adopted, supplemented to meet NPS requirements, and circulated as a draft EIS (DEIS) for public comment prior to issuing a final EIS and signing a ROD (1506.3; Q30).

In the event that the NPS did not participate as a cooperating agency in the preparation of the existing EIS, the NPS may adopt the final EIS as long as the NPS proposed action is substantially the same as the action addressed in the existing EIS. In this instance, the NPS would be required to recirculate the existing EIS as an NPS final EIS (FEIS) and issue its own ROD (1506.3; Q30). If the NPS did not participate as a cooperating agency and the NPS proposed action is not substantially the same as the actions analyzed in the existing EIS (i.e., if an EIS for one action is being adapted for use in a decision on another action) or requires additional information in order to meet NEPA requirements applicable to the NPS, the NPS would need to augment and recirculate the EIS that is being adopted as a DEIS, and seek public comment prior to issuing a final EIS and signing its own ROD (1506.3; Q30).

## CHAPTER 3: CATEGORICAL EXCLUSIONS

### 3.1 INTRODUCTION

A CE describes a category or type of actions that do not cumulatively or individually have the potential for significant environmental impacts (1508.4). If an action fits within a CE it is not exempt from NEPA; however, it is exempted from the requirement to prepare an EA or EIS. You are encouraged to use CEs when applicable, in order to reduce paperwork and delays associated with approvals of certain federal actions (1500.4; 1500.5).

*If an action fits within a CE it is not exempt from NEPA; however it is exempted from the requirement to prepare an EA or EIS (1508.4)*

The NPS categorizes CEs into two types based on documentation requirements associated with the CE: (1) CEs for which no documentation is required; and (2) CEs for which documentation is required.

CEs applicable to NPS actions come from two sources:

1. The DOI NEPA regulations (46.210), which include CEs available for use by all DOI bureaus and offices.
2. The NPS chapter of the DM (516 DM 12), which includes additional CEs available specifically to the NPS.

These CEs are listed below. You may rely on the CE lists included in this handbook and cite the CEs listed below by referring to chapter 3.2 or 3.3 and the CE letter/number, for example, “CE 3.2Y” or “CE 3.3 A.4.,” rather than citing to the DOI NEPA regulations or the DM.

Information regarding when a CE may be used, approval authority for CEs, and public involvement considerations is included in this section. Other sections in this chapter describe the various NPS actions that may be categorically excluded and discuss associated documentation requirements and procedures, consideration of extraordinary circumstances, and use of CEs for ongoing and recurring actions. The sections discussing these topics are:

- 3.2 Categorical Exclusions for which No Documentation is Required
- 3.3 Categorical Exclusions for which Documentation is Required
- 3.4 Process for Categorical Exclusions Requiring Documentation
- 3.5 Extraordinary Circumstances
- 3.6 Use of Categorical Exclusions for Ongoing and Recurring Actions

#### ***Determining Whether a Categorical Exclusion May be Used***

In order to use a CE, you must ensure a proposed action fits within the category of actions described in a specific CE. A proposed action is “the bureau activity under consideration” (46.30). The proposed action does not have to be specifically mentioned in the text of a CE, but should easily fit into the category of actions described by the CE. Many of the CEs listed below include guidance that is intended to help you understand how they should best be applied. Where the guidance provides examples of actions that would be appropriate under a specific CE, the examples are meant to be illustrative and not exclusive. If the proposed action does

not fit within the category of actions described in a CE you must either modify the proposal so that it does, or prepare an EA or EIS (46.205). If multiple CEs are required to cover different elements of the proposed action that is a sign that a CE is likely not appropriate.

Once you determine that a proposed action fits within a CE, you must consider whether any of the extraordinary circumstances listed in the DOI NEPA regulations apply. [See Section 3.5: *Extraordinary Circumstances*.] If extraordinary circumstances do apply, you may not use a CE. In such circumstances you must either modify the proposal so that extraordinary circumstances no longer apply, or prepare an EA or EIS (46.205).

As long as the proposed action fits within a CE and no extraordinary circumstances apply, you should use the CE as your pathway for complying with NEPA.

### ***Approval of Categorical Exclusions***

Authority for categorically excluding an action rests with the park unit's superintendent (DO-12, 5.4).

Prior to the approval of a CE, all other necessary consultation and coordination (such as ESA Section 7, NHPA Section 106, and tribal consultations) should be completed and related documentation should be included in the decision file. If the action under consideration triggers the need to comply with Section 106 of the NHPA, you must complete the Section 106 consultation before the CE is approved. You may implement an action that is categorically excluded immediately upon approval of the CE by the superintendent as long as all other necessary consultation and coordination requirements have been completed. [See Section 4.14: *Integrating NEPA and other Environmental Requirements*.]

### ***Public Involvement***

Public comment is not required when using a CE. However, you may wish to seek public comment in situations where there is a high degree of public interest or uncertainty regarding potential effects of a proposed action. Public input can help identify environmental issues [See Section 4.2 D: *Identifying Environmental Issues and Impact Topics*] and provide information that will help determine whether any extraordinary circumstances exist. If you decide to seek public comment regarding the use of a CE, you generally should provide only a short period for the public to submit written comments.

Regardless of whether or not you seek public comment, when using a CE that requires documentation, you should consider notifying the public once the CE is approved by the superintendent. This can be accomplished by posting a brief notice on PEPC or your park unit or program's website, or by other means.

## **3.2 CATEGORICAL EXCLUSIONS FOR WHICH NO DOCUMENTATION IS REQUIRED**

A variety of CEs exist to cover actions that typically have little or no potential for environmental impacts of any kind, let alone potential for significant adverse

impacts. For such actions, documentation regarding use of a CE is generally not required. These types of actions typically have such little potential to cause environmental impacts that in many instances, NPS personnel may not even realize they are taking an action to which NEPA applies.

While the CEs in this section may be applied without any associated documentation, there may be some instances where documentation is desired for administrative purposes. In such cases, you may prepare documentation following the procedures described in Section 3.4 or document use of the CE in some other way such as a memorandum to the project file. Voluntary documentation of CEs that do not require documentation should be considered on a case-by-case basis. If documentation is prepared for a CE that does not require documentation, it should not be considered to set a precedent for the need to document the use of that same CE in the future.

Although no documentation is required for the purposes of NEPA, if the proposed action triggers the need to comply with other laws, such as the ESA or NHPA, you should develop a decision file for the CE and include the results of any studies or consultations related to other laws.

#### Available CEs:

- A. Personnel actions and investigations and personnel services contracts.
- B. Internal organizational changes and facility and bureau reductions and closings.
- C. Routine financial transactions including such things as salaries and expenses, procurement contracts (e.g., in accordance with applicable procedures and executive orders for sustainable or green procurement), guarantees, financial assistance, income transfers, audits, fees, bonds, and royalties.
- D. Departmental legal activities including, but not limited to such things as arrests, investigations, patents, claims, and legal opinions. This does not include bringing judicial or administrative civil or criminal enforcement actions which are outside the scope of NEPA in accordance with 40 CFR 1508.18(a).
- E. Routine and continuing government business, including such things as supervision, administration, operations, maintenance, renovations, and replacement activities having limited context and intensity (e.g., limited size and magnitude or short-term effects).

*Guidance: Examples of routine and continuing maintenance and operations include trash removal, sweeping parking lots, cleaning restrooms, fixing machinery, snow removal, and small-scale building repairs and renovations.*

- F. Management, formulation, allocation, transfer, and reprogramming of the department's budget at all levels. (This does not exclude the preparation of environmental documents for proposals included in the budget when otherwise required).

- G. Legislative proposals of an administrative or technical nature (including such things as changes in authorizations for appropriations and minor boundary changes and land title transactions) or having primarily economic, social, individual, or institutional effects, and comments and reports on referrals of legislative proposals.
- H. Policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature, or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.

*Guidance: Consider documenting this CE if you are promulgating a regulation.*

- I. Activities that are educational, informational, advisory, or consultative to other agencies, public and private entities, visitors, individuals, or the general public.
- J. Land and boundary surveys.
- K. Preparation and issuance of publications.
- L. Technical assistance to other federal, state, and local agencies or the general public.
- M. Routine reports required by law or regulation.
- N. Issuance of individual hunting and/or fishing licenses in accordance with state and federal regulations.
- O. Changes in interpretive and environmental education programs.
- P. Plans, including priorities, justifications and strategies, for non-manipulative research, monitoring, inventorying, and information gathering.

*Guidance: This CE also applies to agreements between NPS offices and other federal and state agencies for plans and studies.*

- Q. Authorization, funding, or approval for the preparation of statewide comprehensive outdoor recreation plans.

*Guidance: This CE applies to equivalent plans such as comprehensive statewide historic preservation plans.*

- R. Adoption or approval of surveys, studies, reports, plans, and similar documents which will result in recommendations or proposed actions which would cause no or only minimal environmental impact.
- S. Sanitary facilities operation.

*Guidance: This may also include upgrades to equipment to incorporate new technologies.*

- T. Development of standards for, and identification, nomination, certification, and determination of eligibility of properties for listing in the National Register of Historic Places and the National Historic Landmark and National Natural Landmark Programs.



*Guidance: This CE also applies to biosphere reserves.*

- U. Statements for management, outlines of planning requirements, and task directives for plans and studies.

*Guidance: Statements for management and outlines of planning requirements are now known as foundation statements and assessments of planning needs, respectively.*

- V. Preparation of internal reports, plans, studies, and other documents containing recommendations for action which NPS develops preliminary to the process of preparing a specific Service proposal or set of alternatives for decision.
- W. Documents which interpret existing mineral management regulations and policies and do not recommend action.
- X. Stabilization by planting native plant species in disturbed areas.
- Y. Day-to-day resource management and research activities.

### **3.3 CATEGORICAL EXCLUSIONS FOR WHICH DOCUMENTATION IS REQUIRED**

A variety of CEs exist for actions that generally result in some level of environmental impact but that do not have the potential to cause significant adverse impacts under normal circumstances. For such actions, documentation is required indicating that the action fits within a CE and that no extraordinary circumstances exist. Documenting the use of a CE provides the NPS an opportunity to demonstrate why a decision to use a CE is appropriate.

#### **Available CEs:**

##### **A. Actions Related to General Administration.**

1. Changes or amendments to an approved action when such changes would cause no or only minimal environmental impact.
2. Minor boundary changes.

*Guidance: This CE applies to boundary changes that are accomplished through existing statutory authorities, such as including an area within a park boundary and maintaining the area as open space, or including a historic structure within the boundaries of a park unit and retaining that structure.*

3. Reissuance/renewal of permits, rights-of-way, or easements not involving new environmental impacts.
4. Conversion of existing permits to rights-of-way when such conversions do not continue or initiate unsatisfactory environmental conditions.
5. Issuances, extensions, renewals, reissuances, or minor modifications of concession contracts or permits not entailing new construction.
6. Commercial use licenses involving no construction.

*Guidance: Commercial use licenses are now known as commercial use authorizations.*

7. Leasing of historic properties in accordance with 36 CFR Part 18 and NPS-38.

*Guidance: NPS-38 is now Director's Order 38: Real Property Leasing.*

8. Modifications or revisions to existing regulations or the promulgation of new regulations for NPS-administered areas, provided the modifications, revisions, or new regulations do not:
  - a. increase public use to the extent of compromising the nature and character of the area or causing physical damage to it,
  - b. introduce noncompatible uses that might compromise the nature and characteristics of the area or cause physical damage to it,
  - c. conflict with adjacent ownerships or land uses, or
  - d. cause a nuisance to adjacent owners or occupants.

*Guidance: "Area" should be interpreted to mean NPS unit.*

9. At the direction of the NPS Responsible Official, actions where NPS has concurrence or co-approval with another bureau and the action is a categorical exclusion for that bureau.

**B. Plans, Studies, and Reports.**

1. Changes or amendments to an approved plan, when such changes would cause no or only minimal environmental impact.
2. Cultural resources maintenance guides, collection management plans, and historic furnishings reports.

*Guidance: This CE also applies to equivalent documents related to cultural resources.*

3. Interpretive plans (interpretive prospectuses, audio-visual plans, museum exhibit plans, wayside exhibit plans).

*Guidance: This CE also applies to equivalent documents related to interpretation.*

4. Land protection plans which propose no significant change to existing land or visitor use.

**C. Actions Related to Development.**

1. Land acquisition within established park boundaries.
2. Land exchanges which will not lead to significant changes in the use of land.

*Guidance: Land exchanges under this CE include transfers of jurisdiction in the District of Columbia.*

3. Routine maintenance and repairs to non-historic structures, facilities, utilities, grounds, and trails.
4. Routine maintenance and repairs to cultural resource sites, structures, utilities, and grounds under an approved Historic Structures Preservation

Guide or Cyclic Maintenance Guide; or if the action would not adversely affect the cultural resource.

5. Installation of signs, displays, kiosks, etc.

*Guidance: Other examples include wayside exhibits, small solar collectors on poles, boundary marking signs, and small solar or wind generator system installations on a building.*

6. Installation of navigation aids.

7. Establishment of mass transit systems not involving construction, experimental testing of mass transit systems, and changes in operation of existing systems (e.g., routes and schedule changes).

8. Replacement in kind of minor structures and facilities with little or no change in location, capacity, or appearance.

*Guidance: Examples of minor structures and facilities include comfort stations, pit toilets, fences, kiosks, signs, sheds, foot logs, small trail bridges, and campfire circles.*

9. Repair, resurfacing, striping, installation of traffic control devices, repair/replacement of guardrails, etc., on existing roads.

*Guidance: This CE also applies to road maintenance, rehabilitation, repaving, and reconstruction on existing roads within the existing road prism. Actions taken under this CE may also include repair or replacement of culverts, signs, surfacing of right-turn lanes at intersections in previously disturbed areas, seal coating a parking lot, maintenance of an existing gravel road in the same footprint, routine roadside brushing, routine ditching, adding gravel, grading, and other modifications.*

10. Installation of wells, comfort stations, and pit toilets in areas of existing use and in developed areas.

*Guidance: Other examples include pump houses and vault toilets.*

11. Minor trail relocation, development of compatible trail networks on logging roads or other established routes, and trail maintenance and repair.

12. Upgrading or adding new overhead utility facilities to existing poles or replacement poles which do not change existing pole line configurations.

13. Issuance of rights-of-way for overhead utility lines to an individual building or well from an existing line where installation will not result in significant visual intrusion and will involve no clearance of vegetation other than for placement of poles.

*Guidance: This CE also applies to the installation of overhead poles and utility lines that meet the other requirements of the CE (not just the issuance of a right-of-way permit for another entity).*

14. Issuance of rights-of-way for minor overhead utility lines not involving placement of poles or towers and not involving vegetation management or significant visual intrusion in an NPS-administered area.

15. Installation of underground utilities in previously disturbed areas having stable soils or in an existing utility right-of-way.
16. Landscaping and landscape maintenance in previously disturbed or developed areas.
17. Construction of fencing enclosures or boundary fencing posing no effect on wildlife migrations.

*Guidance: Other examples include installation or construction of exclosures or other internal fencing that may be used to control adverse effects of wildlife. This CE may also be used for security fencing around park buildings or facilities.*

18. Construction of minor structures, including small improved parking lots, in previously disturbed or developed areas.

*Guidance: Some examples of minor structures include adding a small support building such as a pump house or small equipment cache in an existing maintenance yard, bus stop (transportation) or picnic shelters, comfort stations, or similar small-scale structures; walkways, ramps, signs, or other small features incidental to the use of a developed area or to improve accessibility; small-scale development of new parking spaces adjacent to existing parking areas; addition or relocation of a small number of camping spaces in an existing campground or picnic sites in an existing picnic area and small, compatible additions to existing buildings (such as making an "L" into a "T").*

19. Construction or rehabilitation in previously disturbed or developed areas, required to meet health or safety regulations, or to meet requirements for making facilities accessible for the handicapped.

**D. Actions Related to Visitor Use.**

1. Carrying capacity analysis.
2. Minor changes in amounts or types of visitor use for the purpose of ensuring visitor safety or resource protection in accordance with existing regulations.
3. Minor changes in programs and regulations pertaining to visitor activities.
4. Issuance of permits for demonstrations, gatherings, ceremonies, concerts, arts and crafts shows, etc., entailing only short-term or readily mitigable environmental disturbance.
5. Designation of trailside camping zones with no or minimal improvements.

**E. Actions Related to Resource Management and Protection.**

1. Archeological surveys and permits involving only surface collection or small-scale test excavations.
2. Restoration of noncontroversial native species into suitable habitats within their historic range and elimination of exotic species.
3. Removal of park resident individuals of non-threatened/endangered species which pose a danger to visitors, threaten park resources, or become a

nuisance in areas surrounding a park when such removal is included in an approved resource management plan.

*Guidance: Resource management plan should be interpreted broadly.*

4. Removal of non-historic materials and structures in order to restore natural conditions.
5. Nondestructive data collection, inventory (including field, aerial, and satellite surveying and mapping), study, research, and monitoring activities.

*Guidance: Some examples include vegetation plots and monitoring, soil surveys, species monitoring, and other nondestructive research activities that require a research permit. This CE should be used for activities that are not covered under the CE for day-to-day resource management. [See CE 3.2 Y.]*

6. Designation of environmental study areas and research natural areas.

#### **F. Actions Related to Grant Programs.**

1. Proposed actions essentially the same as those listed in paragraphs A–E above.

*Guidance: This CE applies to approval of a grant by the NPS that would result in actions taken by others that are the same or similar to those listed in paragraphs A–E above.*

2. Grants for acquisition of areas that will continue in the same or lower density use with no additional disturbance to the natural setting.
3. Grants for replacement or renovation of facilities at their same location without altering the kind and amount of recreational, historical, or cultural resources of the area, or the integrity of the existing setting.
4. Grants for construction of facilities on lands acquired under a previous NPS or other federal grant provided that the development is in accord with plans submitted with the acquisition grant.
5. Grants for the construction of new facilities within an existing park or recreation area, provided that the facilities will not:
  - a. conflict with adjacent ownerships or land use, or cause a nuisance to adjacent owners or occupants, e.g., extend use beyond daylight hours;
  - b. introduce motorized recreation vehicles;
  - c. introduce active recreation pursuits into a passive recreation area;
  - d. increase public use or introduce noncompatible uses to the extent of compromising the nature and character of the property or causing physical damage to it; or
  - e. add or alter access to the park from the surrounding area.
6. Grants for the restoration, rehabilitation, stabilization, preservation, and reconstruction (or the authorization thereof) of properties listed on or

eligible for listing on the National Register of Historic Places at their same location and provided that such actions:

- a. will not alter the integrity of the property or its setting;
- b. will not increase public use of the area to the extent of compromising the nature and character of the property; and
- c. will not cause a nuisance to adjacent property owners or occupants.

#### **G. Actions Related to Hazardous Fuels Reduction and Post-fire Rehabilitation.<sup>3</sup>**

1. Post-fire rehabilitation activities not to exceed 4,200 acres (such as tree planting, fence replacement, habitat restoration, heritage site restoration, repair of roads and trails, and repair of damage to minor facilities such as campgrounds) to repair or improve lands unlikely to recover to a management-approved condition from wildland fire damage, or to repair or replace minor facilities damaged by fire. Such activities must comply with the following (Refer to the ESM Series for additional, required guidance.):
  - a. shall be conducted consistent with bureau and departmental procedures and applicable land and resource management plans;
  - b. shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure; and
  - c. shall be completed within three years following a wildland fire.

### **3.4 PROCESS FOR CATEGORICAL EXCLUSIONS REQUIRING DOCUMENTATION**

*The steps described below should be accomplished through an internal scoping process that uses an interdisciplinary approach.*

This section details the process for applying and documenting CEs described in Section 3.3. The steps described below should be accomplished through an internal scoping process that uses an interdisciplinary approach.

#### **1. Define the Proposed Action, Identify Issues, and Evaluate Associated Impacts**

The first steps in the process should be to define the proposed action, identify potential issues, and evaluate associated impacts. Be certain to consider whether there are any connected or similar actions that should be considered as part of the proposal. [See Section 4.2 D: *Identifying Environmental Issues and Impact*, and Section 4.2 C: *Identifying Connected and Similar Actions*.]

You should complete this step with input from subject matter experts. You may wish to use an environmental screening form (ESF), which can be generated in PEPC, to assist with identifying issues and impacts, although you are not required to do so.

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<sup>3</sup> The DOI NEPA regulations include an additional CE for hazardous fuels reduction activities (43 CFR 46.210 (k)) that is not listed here. That hazardous fuels reduction CE is not available for use in areas within the jurisdiction of the U.S. Court of Appeals for the 9th Circuit Court at this time, as discussed in the preamble to the final rule (73 FR 61305 October 15, 2008). As a matter of policy, NPS does not currently use this CE.

When evaluating impacts, be sure to consider cumulative impacts in addition to direct and indirect impacts. If your evaluation of impacts indicates there is a potential for significant adverse impacts as a result of implementing the proposed action, a CE may not be used unless the proposal is modified to reduce impacts to a level below significance.

**2. *Determine Whether There is a CE That Could Apply to the Proposed Action***

After defining the proposed action and determining that there is no potential for significant adverse impacts, you should review the CE list to determine whether there is a CE that applies. As stated in Section 3.1, the proposed action does not have to be specifically described, but should easily fit into the category of actions described by the CE. If you are unsure whether a CE applies, you should consult with your REC.

**3. *Determine Whether Any Extraordinary Circumstances Exist***

Prior to categorically excluding an action, you must consider the extraordinary circumstances listed in the DOI NEPA regulations and determine whether any apply. [See Section 3.5: *Extraordinary Circumstances*.] If any of the extraordinary circumstances apply, you may not use a CE. In such circumstances you must either modify the proposal so that extraordinary circumstances no longer apply, or prepare an EA or EIS (46.205).

**4. *Document the Potential Impacts of the Action Covered by the CE***

When using a CE that requires documentation, you must create a concise record that identifies the CE being used and which should document: (1) that the proposed action fits within the category of actions described in the CE; and (2) no extraordinary circumstances exist. [See *CEQ guidance: Final Guidance for Federal Departments and Agencies on Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act*.] The standard NPS practice is to use a Categorical Exclusion Documentation Form, which can be generated in PEPC, in order to document the required information.

In addition to the information above, if you decide to use an ESF, you should include it in the decision file. Furthermore, if the proposed action triggers the need to comply with other laws, such as the ESA or NHPA, you should include the results of any studies or consultations related to other laws in the decision file. You may also include additional documentation pertinent to the action, such as notes from internal scoping meetings, photographs or field notes documenting a site visit, and documents generated from public involvement efforts (press releases, newsletters, public comments received, etc.). [See Section 4.9: *The Decision File*; see also *supplemental guidance: Compiling a Decision File for NEPA Reviews*.] The documentation you prepare should be as concise as possible in order to avoid unnecessary delays and administrative burdens. However, the level of detail, length of discussions, and amount of materials you include in the decision file will vary based on the type of action involved, the potential for extraordinary circumstances to apply, and the compliance requirements of other laws.

The superintendent must provide written approval of a CE that requires documentation (typically by signing the Categorical Exclusion Documentation

Form), and other required consultation processes (such as ESA Section 7, NHPA Section 106, and tribal consultations) must be complete prior to implementing an action covered by a documentable CE. [See Section 4.14: Integrating NEPA with Other Environmental Review and Consultation Requirements.]

### 3.5 EXTRAORDINARY CIRCUMSTANCES

As described in Section 3.1 above, CEs apply under normal circumstances. When applying CEs, you must consider the impacts of the action in question to ensure that no extraordinary circumstances exist. If extraordinary circumstances do exist a CE may not be used and an EA or EIS must be prepared (46.205(c)). If you determine that extraordinary circumstances exist that preclude the use of a CE, you can modify the proposed action or apply mitigation so that extraordinary circumstances would no longer apply, and then use the CE. Significant impacts as referred to in the list of extraordinary circumstances below should be interpreted to mean significant adverse impacts.

The DOI NEPA regulations establish the following extraordinary circumstances and mandate that prior to categorically excluding an action, the NPS must consider whether the action would (46.215):

- a. have significant impacts on public health or safety;
- b. have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation, or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (EO 11990); floodplains (EO 11988); national monuments; migratory birds; and other ecologically significant or critical areas;
- c. have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources (Sec. 102(2)(E));
- d. have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks;
- e. establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects;
- f. have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects;
- g. have significant impacts on properties listed or eligible for listing in the National Register of Historic Places as determined by the bureau;
- h. have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species or have significant impacts on designated critical habitat for these species;
- i. violate a federal law, or a state, local, or tribal law or requirement imposed for the protection of the environment;



- j. have a disproportionately high and adverse effect on low income or minority populations (EO 12898);
- k. limit access to and ceremonial use of Indian sacred sites on federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (EO 13007); or
- l. contribute to the introduction, continued existence, or spread of noxious weeds or nonnative invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and EO 13112).

### **3.6 USE OF CATEGORICAL EXCLUSIONS FOR ONGOING AND RECURRING ACTIONS**

Many NPS actions, especially routine activities related to park administration and maintenance, are of an ongoing or recurring nature. Some examples of these types of actions include routine maintenance and repair of non-historic structures (CE 3.3 C.4) and trail maintenance and repair (CE 3.3 C.11). Such activities, although routine, are at the same time subject to NEPA. In the case of these examples and similar actions, a CE with documentation would typically be required. However, you may avoid preparing separate CE documentation for each instance that one of these types of activities is conducted by making use of “programmatic CEs.” Programmatic CEs provide NEPA documentation for multiple instances of an ongoing or recurring activity, when the activity or activities and the impacts that result, are predictable. For example, if your park unit routinely makes repairs to non-historic structures, you could develop a programmatic CE that serves as the NEPA review for routine maintenance and repairs rather than preparing CE documentation each time a repair is made.

When a CE is used in this manner, you should clearly describe the specific activities that are meant to be covered and describe any conditions that must be met for the CE to apply to a particular activity. Although a programmatic CE can be established to cover activities for some time, you should periodically review and updated the CE as necessary to ensure the documentation is still accurate and that no circumstances have changed that would warrant additional NEPA review. While in some cases an annual review may be appropriate, CEs used for ongoing and recurring actions should be reviewed every five years at a minimum, consistent with CEQ guidance regarding supplementation of EISs for ongoing programs (Q32).

You must also consider cumulative impacts and other required consultation processes when preparing and reviewing programmatic CEs. You are encouraged to consult with your REC if you have any questions about developing and using programmatic CEs.



# CHAPTER 4: THE NEPA PROCESS FOR ENVIRONMENTAL ASSESSMENTS AND ENVIRONMENTAL IMPACT STATEMENTS

## 4.1 INTRODUCTION

This chapter discusses the elements of the NEPA process for EAs and EISs in detail and describes a number of important requirements that must be met for NEPA reviews involving EAs and EISs. The first part of the chapter, Sections 4.2 through 4.11, is organized by key steps in the NEPA process that generally apply to both EAs and EISs. Because specific requirements for EAs and EISs differ in many cases, when applicable, this chapter provides specific guidance for EAs and EISs separately within each section.

Although there is a general sequence to the NEPA process, many of the steps are iterative; it is common to find yourself revisiting earlier steps in the process to make refinements. For example, after developing alternatives or receiving public input, you may realize that an issue you initially thought would require detailed analysis in fact does not, or that an issue that you had initially dismissed, should be analyzed.

*Although there is a general sequence to the NEPA process, many of the steps are iterative; it is common to find yourself revisiting earlier steps in the process to make refinements.*

Sections 4.2 through 4.11 provide detail regarding the following key steps in the process for preparing EAs and EISs:

- 4.2 Scoping
- 4.3 Alternatives
- 4.4 Describing the Affected Environment
- 4.5 Impact Analysis
- 4.6 Circulating Environmental Assessments and Environmental Impact Statements, Soliciting Public Comments, and Responding to Comments
- 4.7 Concluding the NEPA Process and Documenting a Decision
- 4.8 Implementing a Decision
- 4.9 The Decision File
- 4.10 Supplements to Draft and Final EISs
- 4.11 Terminating the NEPA Process Prior to Completion

The second part of this chapter, Sections 4.12 through 4.14, highlights additional important considerations to think about when conducting a NEPA review for EAs and EISs. Those sections are:

- 4.12 Using Contractors
- 4.13 Working with other Agencies and Entities
- 4.14 Integrating NEPA and other Environmental Requirements

## 4.2 SCOPING

Scoping is “an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action”

(1501.7). The scoping process should be focused on determining the extent and nature of issues and alternatives that should be considered during a NEPA review. The scoping process includes both internal and external (other agency and public) elements and should continue throughout the planning and early stages of preparation of an EA or EIS.

### ***Internal Scoping***

Internal scoping refers to the use of NPS staff to accomplish the outcomes discussed above. An interdisciplinary team that is familiar with the issues and affected resources is essential to a successful internal scoping process. To ensure that all relevant issues and alternatives are considered early in the NEPA process, you should encourage the participation of and consult with staff that has a variety of expertise in natural resources, cultural resources, law enforcement, facilities management, interpretation, planning, and other disciplines.

During internal scoping, NPS staff should identify the purpose and need for taking action; describe the proposed action; identify environmental issues requiring detailed analysis; eliminate issues that are not important; identify data needs; identify connected, similar, and cumulative actions; and determine or confirm the appropriate NEPA pathway. You may wish to use an ESF, which can be generated in PEPC, to assist with identifying issues, although you are not required to do so [See *Section 4.2 D: Identifying Environmental Issues and Impact Topics.*]

The development of alternatives is also part of the scoping process, but for purposes of this handbook, alternatives are addressed separately from scoping. [See *Section 4.3: Alternatives.*]

### ***Agency Scoping***

When preparing an EIS, you must use scoping to engage potentially affected federal, state, and local agencies and tribal governments in order to gather input regarding their concerns, potential impacts, sources of data, and alternatives that should be considered (1501.7; 46.235(a)). At a minimum, you should notify and invite the input of potentially affected agencies and tribes in writing. Depending on the issues relating to affected agencies or tribes, you may choose to hold agency scoping meetings.

While scoping is not required for an EA, parks and programs are expected to consult, cooperate, and coordinate with other federal, state, local, and tribal governments and other bureaus and federal agencies whenever possible (46.235; 46.155). Therefore, when preparing an EA, you should, at a minimum, contact all potentially affected federal, state, and local agencies and tribal governments early in the process to discuss information related to the EA.

At the time you reach out to other agencies and tribal governments regarding NEPA-related issues, you should also initiate contact with relevant agencies or entities regarding other required consultation (such as ESA Section 7 or NHPA Section 106) or from whom you might require a permit (such as the US Army Corps of Engineers for Clean Water Act Section 404). While you may not have all the information you need to consult at that time, engaging at that point in the process can help identify

potential issues early on and may save you time later. Note that engaging tribal governments during agency scoping may be part of, but is not a substitute for, government-to-government consultation that may be required by other authorities. [See Section 4.14: Integrating NEPA with Other Environmental Review and Consultation Requirements.]

### **Public Scoping**

Public scoping refers to the engagement of the interested and affected public early in the process on matters related to the proposed action, environmental issues that should be addressed, potential alternatives, and sources of data that should be considered. To be most helpful, public scoping should take place after internal scoping so that the public can see the purpose and need for action, and consider the proposed action and any preliminary alternatives or alternative elements put forward by the NPS. When preparing an EIS, you are required to include a proposed action and possible alternatives, to the extent they are developed, in a notice of intent to prepare an EIS (NOI) that formally announces the beginning of the public scoping period (1501.7; 1508.22). [See Section 4.2 B: Defining the Proposed Action.]

Whether you are preparing an EA or EIS you are encouraged to identify a preliminary range of alternatives or preliminary alternative elements, including the proposed action that NPS intends to consider, at the public scoping phase; it is not pre-decisional to do so. Including such information can enhance the value of public scoping comments and create efficiencies by allowing you to address the public's concerns about a proposed action and alternatives while you are still developing them, rather than waiting until a proposal and alternatives are fully developed. When preparing an EIS, allowing the public to comment on a preliminary range of alternatives may alleviate the need to issue a supplemental draft EIS later in the process, by reducing the chances that a member of the public will suggest an additional alternative that must be addressed after the draft EIS is issued (Q29b).

*Whether you are preparing an EA or EIS you are encouraged to identify a preliminary range of alternatives or preliminary alternative elements, including the proposed action that NPS intends to consider, at the public scoping phase; it is not pre-decisional to do so.*

Public scoping, like scoping in general, is a process rather than a single event or meeting. You have flexibility to determine how exactly to engage the public and are encouraged to use a variety of means to solicit early input, including public notices, public meetings, direct or electronic mailings, and solicitation of comments through the PEPC system. The standard NPS practice is to accept written comments by mail, at public meetings if applicable, at a park unit headquarters, and online through the PEPC system. The preferred method for receiving public comments is through the PEPC system; this should be clearly communicated in public outreach materials requesting comments. If minority or low-income populations exist that could be affected by a proposed action, be sure to use suitable media, such as local newspapers and radio programs, to provide notification about the proposed action and the scoping process. In such instances, you should provide multiple forms of communication (written, oral, pictorial), as appropriate, to accommodate varied levels of reading proficiency and also provide translation service, as appropriate, to facilitate meaningful engagement.

*The preferred method for receiving public comments is through the PEPC system; this should be clearly communicated in public outreach materials requesting comments.*

All public scoping comments that are received should be reviewed and substantive comments should be considered. You are not required to provide responses to public scoping comments and standard NPS practice is not to do so. Instead, you

should address the issues that are raised in public scoping comments during the process of preparing your EA or EIS; most issues should be addressed to some degree in the text of the EA or EIS itself. Addressing scoping comments in this manner is sufficient to demonstrate that NPS has reviewed and considered the comments. If you have questions about public scoping for a specific proposal, you are encouraged to consult with your REC.

### ***Public Scoping for Environmental Assessments***

The DOI NEPA regulations require that public notification and public involvement be conducted to the “extent practicable” when an EA is being prepared (46.305(a)). Therefore, public scoping for an EA is strongly encouraged. The recommended practice with regard to public scoping for EAs is a comment period announced on PEPC and through a press release, direct or electronic mailings, or other effective means of communication. In some instances, public meetings during the scoping period may be helpful or appropriate, but they are not required.

There is no required minimum length for a public scoping comment period for an EA. However, a comment period of 30 days is recommended. In certain situations, less than 30 days may be appropriate. Although a closing date for public scoping is typically established, comments received after the closing date should be considered when feasible.

### ***Public Scoping for Environmental Impact Statements***

Public scoping is required when preparing an EIS, as is publication of a NOI in the *Federal Register* (1501.7; 46.235). Publication of a NOI initiates the formal public scoping period, although it is possible to begin scoping activities in advance of publication (Q13). Contact your REC to determine specific procedures for initiating the NOI process in your region. In addition to publication of the NOI, it is standard NPS practice to announce public scoping on PEPC and through a press release, direct or electronic mailings, or other effective means of communication.

A NOI must, at a minimum, (1508.22):

- describe the proposed action and possible alternatives;
- describe the public scoping process; this typically includes instructions on how to submit scoping comments and a date by which comments should be submitted;
- indicate whether, when, and where any public meetings will be held; and
- include the name and address of an NPS contact who can answer questions about the proposed action and the EIS.

In many cases, complete alternatives are not developed by the time a NOI is published, since that represents the beginning of the public scoping process for an EIS. In such cases, you should include alternative concepts or elements of alternatives that the NPS intends to consider.

As with EAs, public scoping meetings for EISs may be helpful or appropriate in certain circumstances, but they are not required. If public meetings are held, you

should include the dates, times, and locations of those meetings in the NOI if that information is known. In many cases, meeting locations and times are yet to be determined at the time the NPS publishes a NOI. In such cases, a description of how and where meeting locations and dates will be announced should be included in the NOI instead.

As with EAs, there is no required length for the public scoping comment period for an EIS. The standard NPS practice is a comment period of 30 days; however, depending on a number of factors, including the degree of public interest, a longer or shorter period may be appropriate. As with EAs, although a closing date is typically established for the public scoping period, comments received after the closing date should be considered when feasible.

### **A. Identifying Purpose, Need, and Objectives**

A key part of the scoping process is the development and refinement of the purpose and need for taking action.

#### ***Purpose and Need***

The CEQ and DOI NEPA regulations require a brief discussion in an EIS of the underlying purpose and need for taking action (1502.13; 46.415; 46.420(a)). For EAs, the regulations require a discussion of the need for taking action, however in some cases development of a purpose statement can be helpful (1508.9; 46.310).

The regulations do not require that you distinguish purpose from need in an EIS. However, it may be helpful for you to do so in order to better convey why the NPS is proposing an action and what that action is meant to achieve. Treated distinctly:

- Purpose is a broad statement of goals that the NPS intends to fulfill through taking action and should be stated in terms of the desired outcome, to the extent possible (46.420(a)).
- The need for action is the underlying problem or opportunity to which the NPS is responding and may include factors such as existing conditions that need to be changed, problems that need to be remedied, decisions that need to be made, and/or policies or mandates that need to be implemented.

Put another way, purpose answers the question of what the NPS intends to accomplish through taking action, while need answers the question of why the NPS is proposing to take an action at this time. The purpose and need set the parameters for determining which alternatives are considered reasonable and must therefore be analyzed in detail in an EA or EIS. [See Section 4.3 A: *Range of Alternatives*.]

Regardless of whether you address purpose and need separately, you should clearly explain why the NPS is proposing an action and what that action is intended to accomplish. Ideally, you should be able to describe your purpose and need in one or two direct, unambiguous statements. In many cases, the basis for these statements may be elaborated upon in detail to provide more context for the reader.

Federal agencies have great latitude in defining the purpose and need for action. There are several considerations you should bear in mind as you begin developing a

*Purpose and need should not discuss the purpose or need for preparing an EA or EIS or for “doing NEPA.”*

purpose and need for your EA or EIS. First, purpose and need reflect the purpose and need for taking action. Purpose and need should not discuss the purpose or need for preparing an EA or EIS or for “doing NEPA.” Second, purpose and need represent the NPS purpose and need in taking action. Therefore, in the case of externally generated proposals, such as an application for an NPS permit, the purpose and need should reflect the NPS purpose and need (e.g., determining whether to issue a permit for a cell tower) as opposed to the applicant’s need for the permit (e.g., enhance cell coverage by building a new tower) (46.420(a)(2)).

You should not define purpose and need too narrowly or too broadly. Defining purpose and need too narrowly could hinder the development of a full range of alternatives. At its most extreme, an overly narrow purpose and need could result in an insufficient NEPA review because options for taking action could be restricted to a point where it appears that a decision was already made prior to completion of the NEPA review. On the other hand, defining your purpose and need too broadly could lead to an unwieldy range of alternatives that do not need to be considered in order to achieve your goals for taking action. [See Section 4.3 A: *Range of Alternatives*.]

### **Objectives**

Purpose and need statements articulate broad goals that an action is meant to achieve. If your proposal has more specific goals, you should consider developing objectives, which are more specific statements of purpose that provide additional bases for comparing the effectiveness of alternatives in achieving the desired outcomes of the action. You are not required to develop objectives as part of the NEPA process; however, it may be helpful to do so, especially for more complex actions.

### **B. Defining the Proposed Action (the Proposal)**

A proposed action is “the bureau activity under consideration” (46.30). Put another way, a proposed action is the initial NPS proposal to address a purpose and need. A proposed action is one option (alternative) for addressing purpose and need. When preparing an EA or EIS, you will develop alternatives to the proposed action that constitute different ways to address purpose and need. The terms “proposed action” and “proposal” are synonymous (Q5a).

A proposed action must be clearly described in order to proceed with NEPA analysis, and is required to be included in EAs and EISs (46.30; 46.310; 46.415). However, the level of detail of a proposed action can vary. While you are encouraged to include as much detail as possible in the description of the proposed action, in many cases you will not know all of the details at the scoping phase, and therefore your description may be vague at that time. As the NEPA process moves forward and additional details are developed, you should update the description of the proposed action so that by the time an EA or draft EIS is released, the proposed action constitutes an alternative that is developed to the same level of detail as the other alternatives under consideration (Q5b). In cases where specific details are not known at the scoping phase, your scoping materials should still include, to the extent practicable, information regarding what action is being proposed and how, when, and where it could be implemented.



A proposed action is not necessarily, but may become during the NEPA process, the preferred and/or environmentally preferable alternative (46.30). While you will start the NEPA process with a proposed action, during the development of alternatives and impact analysis you may determine that there are other, better or less impactful ways to address the purpose and need and ultimately one of those other alternatives may become the preferred alternative. [See Section 4.3 C: *The Preferred Alternative.*]

You are encouraged to include a proposed action in the materials you share with the public during public scoping and are required to include a proposed action in a NOI when preparing an EIS (1501.7; 1508.22). A description of the proposed action at the beginning of the NEPA process can be beneficial for a number of reasons. It can lead to better identification of potential issues and impacts, early input on a range of alternatives, and a more focused NEPA review. You should make sure to communicate to the public in your scoping materials: (1) that the proposed action is only an initial proposal; and (2) that no decision to implement any action can be made until the NEPA process, which in most cases requires the NPS to develop and consider reasonable alternatives to the proposed action, is complete.

### **C. Identifying Connected and Similar Actions**

CEQ requires that agencies consider connected and similar actions during a NEPA review. Failure to do so creates a risk of overlooking important issues related to the proposed action and alternatives under consideration. Agencies are specifically prohibited from segmenting projects. “Proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action” are to be evaluated in a single NEPA document (1502.4).

#### ***Connected Actions***

Connected actions are actions that are closely related to the proposal and should be analyzed in the same NEPA document. Actions are connected if they automatically trigger other actions, cannot or will not proceed unless other actions have been taken previously or simultaneously, or are interdependent parts of a larger action and depend on the larger action for justification (1508.25(a)(1)). For example, if there is a proposal to construct new park housing on an existing parking lot, resulting in the need to move the existing parking lot, the parking lot relocation is an action connected to the proposal to build the housing. The impacts of removing the existing parking lot and relocating it must be addressed as part of the same NEPA analysis as the housing. Because of their nature, connected actions should generally be considered as part of the proposed action and alternatives.

#### ***Similar Actions***

Similar actions are those with similar geography, timing, purpose, or other features that provide a basis for evaluating the combined impacts in a single NEPA review (1508.25(a)(3)). Similar actions are those that can proceed independently from the proposed action and have independent utility. For example, if there is a proposal to build a new visitor contact station in your park unit and there are also proposals for a new trail and a new campground in the same vicinity, because of the similarities related to geography, timing, and purpose, all three would be considered similar actions. While you are not required to analyze similar actions in one NEPA document, you should do so when the best way to assess the combined impacts of

*You should make sure to communicate to the public in your scoping materials: (1) that the proposed action is only an initial proposal; and (2) that no decision to implement any action can be made until the NEPA process, which in most cases requires the NPS to develop and consider reasonable alternatives to the proposed action, is complete.*

*Connected actions are actions that are closely related to the proposal and should be analyzed in the same NEPA document.*

*Similar actions are those that can proceed independently from the proposed action and have independent utility.*

similar actions or reasonable alternatives to such actions is to address them together (1508.25(a)(3)). If similar actions are not combined into a single NEPA document, those similar actions that are not included in your proposal should be addressed as cumulative actions in your NEPA review. For instance, in the example above, if the visitor contact station is addressed in its own EA or EIS, the impacts of the trail and campground proposals should be considered in the cumulative impact analysis.

#### **D. Identifying Environmental Issues and Impact Topics**

Identifying significant issues related to a proposed action is an important part of scoping (1501.7(a)(3)). In the context of NEPA reviews, “issues” or “environmental issues” can be problems, concerns, conflicts, obstacles, or benefits that would result if the proposed action or alternatives, including the no-action alternative, are implemented. Issues may be raised by the NPS, other agencies, tribal governments, or the public. You should use an interdisciplinary approach to identify issues during internal scoping. In many cases, it may be helpful to begin thinking about issues in terms of what resources would be affected by the proposed action and alternatives under consideration.

Identifying issues will allow you to emphasize the important environmental concerns related to a proposal and will help focus your impact analysis. When describing issues, you should do so in terms of the relationship between the potential impacts of an action and specific resources that would be affected. For example, if there is a proposal involving construction of a new visitor contact station in your park unit, an associated issue might be “construction activities could temporarily displace native bird species in the project area during critical nesting seasons” or “the contact station is proposed to be built on the edge of a cultural landscape and would intrude on the historic viewshed.”

Public opposition to a project, when the environmental effects are relatively undisputed, should not be considered an environmental issue. However, if the public is opposed to a project because of concerns about impacts to water quality or increased traffic in a neighborhood, then you would consider issues related to water quality and visitor use or local traffic patterns during your NEPA review.

Ultimately, it is important for decision makers and the public to be able to understand the impacts that each of the alternatives under consideration would have on specific resources. Therefore, even though a NEPA review should focus on significant issues, when preparing a NEPA document, you should clearly indicate which resources would be affected by each issue and organize the discussions of the affected environment and environmental consequences by resource, as described below. For NPS NEPA reviews, the standard practice is to use “impact topics” as headings that represent specific resources that would be affected if the proposed action or alternatives under consideration are implemented. Using these headings consistently throughout the NEPA document allows the reader to track the issues, current condition and potential impacts related to a specific resource.

Depending on how broadly or narrowly your issue is stated, an impact topic could apply to one resource generally, several specific species, or one specific species. For instance, an issue associated with the example of building a new visitor contact

*In the context of NEPA reviews, “issues” or “environmental issues” can be problems, concerns, conflicts, obstacles, or benefits that would result if the proposed action or alternatives, including the no-action alternative, are implemented.*

*Impact topics are a means of organizing the discussion of issues and analysis of impacts.*

station discussed above is that construction activities could temporarily displace native bird species in the project area during critical nesting seasons. In that example, the analysis of the issue should be focused on the impacts to the resource involved, e.g., the impact topic of “native bird species.” However, if the issue was focused more narrowly on displacement of bald eagles, the impact topic should be correspondingly narrow, e.g., “bald eagles.” Conversely, if the issue was stated more broadly in terms of impacts to all wildlife species in the area that would be affected by construction activities, the impact topic should be correspondingly broad, e.g., “wildlife.”

In cases where you focus your impact topics narrowly, an issue could apply to more than one impact topic, e.g., “native bird species” and “threatened and endangered bird species”. Generally, you should lump or split affected resources into impact topics in a manner that is most useful for creating a concise, focused document that avoids repetition. In instances where an issue applies to more than one impact topic, you should note that in the NEPA document.

You may wish to use an ESF as a tool to help identify issues and impact topics related to your particular NEPA review. An ESF can be generated in PEPC, and is intended to be customized to include resources relevant to your park unit and the specific action under consideration.

#### **E. Determining Whether to Retain Issues for Detailed Analysis**

Analysis in an EA or EIS should focus on significant issues (meaning pivotal issues, or issues of critical importance) and only discuss insignificant issues briefly (1502.2(b)). Therefore, you should determine whether issues that are identified should be retained for detailed analysis or dismissed. When doing so, you should use an interdisciplinary approach to ensure that all relevant concerns are considered.

During scoping, you may initially identify numerous issues associated with a proposal and will make an initial determination regarding whether or not to retain them for detailed analysis. It is important as you progress through the NEPA review to revisit issues, as necessary, to determine whether you should reconsider your initial determination based on new information. Likewise, you should consider whether there are additional issues associated with the proposal that were not identified during the scoping phase that should be addressed.

As a general rule, issues should be retained for consideration and discussed in detail if:

- the environmental impacts associated with the issue are central to the proposal or of critical importance;
- a detailed analysis of environmental impacts related to the issue is necessary to make a reasoned choice between alternatives;
- the environmental impacts associated with the issue are a big point of contention among the public or other agencies; or
- there are potentially significant impacts to resources associated with the issue.

If none of the considerations above apply to an issue, you should dismiss it from detailed analysis. When dismissing an issue, you should be sure to indicate which specific resources or impact topics are included in the dismissal for that issue. While you may decide not to carry an issue forward for detailed analysis, environmental impacts to specific resources can still be discussed in some detail in your dismissal, as appropriate. The level of detail for a dismissal will vary according to the nature of the issue, but remember that the CEQ regulations emphasize that NEPA reviews should be focused on the important issues and that the treatment of issues dismissed should be limited to a brief discussion of why related environmental impacts do not warrant detailed analysis (1501.7(a)(3); 1502.2(b)).

Not all issues discussed by an interdisciplinary team need to be explicitly dismissed in a NEPA document. You should only include a dismissal of the issues that were initially thought to be relevant to your NEPA review but were later determined to be insignificant. For example, if your park unit is rehabilitating a parking lot in a previously disturbed area, the interdisciplinary team may have briefly discussed whether museum collections could be affected while completing an ESF; however, there is no need to explicitly dismiss impacts to museum collections if there are no issues or impacts related to museum collections from the proposed parking lot rehabilitation or alternatives under consideration.

### **4.3 ALTERNATIVES**

The alternatives section is often referred to as the heart of an EIS (1502.1; Q7a). Alternatives represent different means of solving the problems and meeting the goals articulated in the purpose and need for action.

#### **A. Range of Alternatives**

The term “range of alternatives” refers to the set of all reasonable alternatives as well as other alternatives considered but eliminated from detailed analysis (46.420(c); Q1a). The range of alternatives will vary based on the complexity of the proposal and extent of related environmental issues. Suggestions for alternatives can be generated from within the NPS, the public, or other agencies.

Alternatives are distinguished based on differences in their approach to resolving the purpose and need for action and the environmental impacts of implementing them, not on mere differences in cost, technical elements, etc. Put another way, alternatives should represent substantively different options for the decision maker to consider, as opposed to simply representing different designs of a substantively equivalent option.

For example, if there is a need to provide an exhibit space for a large object from a park unit’s museum collection that is not currently on display to the public due to a lack of suitable space, the purpose for taking action could be to provide a location to display the museum collection and the proposed action could be building a new structure in a specific location to provide the necessary space. Designs for a less expensive structure and a more expensive structure, each with substantially the same location, footprint, and character, would not constitute distinct alternatives under NEPA, as their differences are not based on their approach to resolving the purpose

and need, nor on the difference in environmental impacts that would result from selecting one alternative over the other. Possible alternatives that would meet the purpose and need that are truly distinct might include an alternative to build a structure similar in design but in a substantially different location in the park, modifying an existing structure in the park to be capable of displaying the object, or coordinating with a museum in a nearby town to provide space to display the object in the museum. Each of these alternatives would have different implications with regard to the environmental impacts relevant to the proposal and would present substantively different options to the decision maker.

Although the CEQ and DOI NEPA regulations require consideration of all reasonable alternatives, in situations involving a very large number of possible alternatives, a limited number of alternatives encompassing the full spectrum of options may be evaluated in lieu of every conceivable possibility (46.420(c); Q1b). For example, if your park unit proposes to establish a daily limit for snowshoe trips on a popular backcountry trail and you determine that to meet the purpose and need for action the daily limit needs to be between 25 and 100 trips, there are 76 distinct options for the daily limit. However, rather than evaluate every possibility, you might choose to look at alternatives involving limits of 25, 50, 75, and 100 daily trips. Such an approach would allow you to evaluate the full spectrum of reasonable options without looking at every individual approach.

### ***Reasonable Alternatives***

Reasonable alternatives are those alternatives that meet the purpose and need for action and are technically and economically feasible (46.420(b)). An alternative is not considered reasonable if technical, economic, or jurisdictional obstacles make the ability to implement the alternative remote and speculative.

*Reasonable alternatives are those alternatives that meet the purpose and need for action and are technically and economically feasible (46.420(b)).*

Reasonable alternatives must be rigorously explored and objectively evaluated during the decision-making process (1505.1(e); 46.420(c)). When developing alternatives, you should not exclude alternatives just because they are not the easiest, cheapest, or most popular solution; an alternative is not rendered unreasonable simply because it would be challenging or expensive to implement. In some situations, it may be appropriate for you to consider a proposed action or alternative that may be outside NPS jurisdiction (Q2b). For example, if your park unit is considering an application to place a telecommunications facility just inside the unit's boundary, depending on a number of factors, you may consider alternative sites outside of the boundary (i.e., outside of NPS jurisdiction). However, an alternative that would require a major change to a law, regulation, or policy should not be considered reasonable in most cases. If you are considering such an alternative, you should consult with your REC.

### ***Alternatives Considered but Dismissed from Detailed Analysis***

Included in the range of alternatives are those alternatives considered during the NEPA process but eliminated from detailed analysis (46.420(c)). This category may include alternative elements (specific proposals that would alter an alternative but not completely change it) as well as completely developed alternatives. You are required to briefly discuss the reasons for eliminating alternatives from detailed discussion in an EIS (1502.14.(a)) and are encouraged to do so in an EA.

Alternatives and alternative elements may be eliminated from detailed analysis for a variety of reasons. However, it is important that you do not pare the list of reasonable alternatives down to only those alternatives that are cheap, easy, or represent your park unit management's favorite approach.

Alternatives and alternative elements may be dismissed for the following reasons:

- technical or economic infeasibility. This means the alternative could not be implemented if it were selected or would be unreasonably expensive;
- inability to resolve the purpose and need for taking action, to a large degree;
- duplication with other, less environmentally damaging or less expensive alternatives;
- the alternative conflicts with an up-to-date and valid park plan, statement of purpose and significance, or other policy, such that a major change in the plan or policy would be needed.
- the alternative would require a major change to a law, regulation, or policy;
- too great of an environmental impact;
- the alternative addresses issues beyond the scope of the NEPA review; and
- if the alternative would not be allowed by another agency from which a permit is required, it should be eliminated as “environmentally infeasible.”

Above all, when eliminating an alternative from detailed analysis, be sure that you can explain why you are eliminating it. If you dismiss specific alternative elements, consider including those in the description of alternatives considered but dismissed as well. However, you do not need to dismiss every option that is considered throughout the process in the NEPA document itself, as long as the decision file reflects those additional options that were considered.

### ***Range of Alternatives for an Environmental Assessment***

Generally, development of a range of alternatives is required when preparing an EA, as is a description of the no-action alternative (46.310). There is no minimum number of alternatives that must be developed when preparing an EA. In some cases, the range of alternatives for an EA can be two—the proposal and the no-action alternative.

Furthermore, in instances where it is determined that there are “no unresolved conflicts about the proposed action with respect to alternative uses of available resources,” the requirement to consider a range of alternatives, including the no-action alternative, does not apply (46.310(b)). In such circumstances, an EA need only evaluate the impacts of the proposed action. This would be most likely to occur for simple proposals that would have limited environmental impacts, but for which there is not an existing CE. If you are involved with preparation of an EA for which you believe 46.310(b) applies, you should consult with your REC to discuss the appropriateness of using that provision.

## ***Range of Alternatives for an Environmental Impact Statement***

Development of a range of alternatives is required when preparing an EIS, as is a description of the no-action alternative (1502.14; 46.415(b)). In almost all cases, an EIS will include multiple action alternatives retained for detailed analysis in addition to the no-action alternative; however no specific number of alternatives is prescribed (46.415).

### ***Consensus-Based Alternative***

The DOI NEPA regulations require bureaus to incorporate consensus-based management whenever practicable (46.110(c)). Consensus-based management involves outreach to persons, organizations, or communities who may be interested in or affected by a proposed action and seeks to achieve agreement from diverse interests regarding proposed actions (46.110(a)). To be selected for implementation, a consensus-based alternative must be consistent with NEPA, the CEQ regulations, all applicable statutory and regulatory provisions, and NPS and DOI policies and guidance (46.110(b)). If a consensus-based alternative is carried forward for detailed analysis and is not identified as the preferred alternative in an EA or EIS, the document must state the reasons the consensus-based alternative is not preferred (46.110(d)). When practicing consensus-based management, you must ensure that its use is in accordance with the Federal Advisory Committee Act and all other applicable laws (46.110(e)). [See *ESM 13-12: Incorporating Consensus-Based Management in Agency Planning and Operations*; see also *DO-75A: Civic Engagement and Public Involvement and The National Park Service Guide to the Federal Advisory Committee Act.*]

### **B. The No-Action Alternative**

If you are preparing an EIS, you must describe and analyze the alternative of “no action” (1502.14). Except in limited circumstances (when there are no unresolved conflicts with respect to alternative uses of available resources), you must also describe and analyze the no-action alternative when preparing an EA (46.310(b)).

The term “no action” has two interpretations. It may mean “no change” from a current management direction or level of management intensity, which would be the case for proposals involving an update to an existing plan, policy, or ongoing management program. Alternatively, it may mean “no project” in cases where a new project, such as construction of a visitor contact station is proposed for implementation (46.30).

It is important to accurately define the no-action alternative. One reason is so that you can accurately describe the environmental impacts of not taking an action under consideration. This is important because the no-action alternative provides a benchmark for a decision maker to compare what would happen to the environment if current management were to continue, versus what would happen to the environment if one of the action alternatives were selected for implementation. A second reason is that the no-action alternative is often a viable choice for a decision maker. This is especially true in the case of applicant-generated proposals.

*The term “no action” has two interpretations. It may mean “no change” from a current management direction or level of management intensity, which would be the case for proposals involving an update to an existing plan, policy, or ongoing management program. Alternatively, it may mean “no project” in cases where a new project, such as construction of a visitor contact station is proposed for implementation (46.30).*

It is important to note that the no-action alternative is different than the baseline used for predicting changes to the condition of resources. The current state of the resources affected (typically what is described in the affected environment section of a NEPA document) serves as the baseline for predicting changes to the human environment that could occur if any of the alternatives under consideration, including the no-action alternative, are implemented. [See *Section 4.4: Describing the Affected Environment.*] While in many cases the impacts of no action may essentially be the same as the baseline, meaning there would be no change to current conditions under the no-action alternative, the two concepts are distinct. The no-action alternative describes what would happen if current management were to continue into the future and an analysis of the no-action alternative should discuss how the current condition of affected resources would change if current management were to continue. For example, if your park unit currently makes routine repairs to a road, and is considering a road rehabilitation project, the no-action alternative would be to continue making routine repairs. In that scenario, the impact analysis of the no-action alternative would disclose what would happen if the rehabilitation project does not take place (e.g., the routine repairs may eventually not be adequate and the road will continue to deteriorate, which could create the need to reconstruct the road in the future).

Because it is required to be included by the CEQ regulations, the no-action alternative does not need to be reasonable in order to be carried forward for detailed analysis. If choosing a true no-action alternative would violate laws, regulations, or policies, you may want to add a “minimum management” alternative to your range, which would represent current management with the minimum amount of changes required to bring management into compliance with laws, policies, or regulations. A “minimum management” alternative should be considered in addition to, not instead of, a no-action alternative.

### **C. The Preferred Alternative**

A preferred alternative is the alternative that “would best accomplish the purpose and need of the proposed action while fulfilling [the NPS] statutory mission and responsibilities, giving consideration to economic, environmental, technical, and other factors” (46.420(d)). It is standard NPS practice to identify the preferred alternative in EAs and is required by the CEQ regulations in most instances for DEISs and in all instances for final EISs unless another law prohibits the expression of a preference (46.425(b)). The only instances where a preferred alternative does not need to be identified in a DEIS is when the NPS truly does not have a preferred alternative at the time the DEIS is released or when another law prohibits the expression of a preference (46.425(a)). You should consult with your REC if you intend to release an EA or DEIS without a preferred alternative.

Identification of a preferred alternative is within the sole discretion of the NPS decision maker. Within the NPS, generally, decision-making authority for an EA or EIS is delegated to the regional director (DO-12, 5.3). A preliminary impact analysis should be complete prior to identifying a preferred alternative. While there is no required process for identifying a preferred alternative, pursuant to DO-12, a superintendent may make recommendations to the regional director regarding the identification of a preferred alternative. Prior to making a recommendation, a



superintendent should consider the input of the project team (referred to in DO-12 as interdisciplinary teams or project review teams), which includes resource and compliance specialists who have worked on and provided input into the NEPA review. The preferred alternative need not, however, reflect a consensus or majority opinion of the project team.

It is important to note that a preferred alternative is not “selected,” and identification of a preferred alternative is not a final agency action. The purpose of identifying a preferred alternative is to let the public know which alternative the agency is leaning toward selecting at the time an EA, DEIS, or FEIS is released. There is no requirement to provide a rationale as to why a particular alternative is identified as the preferred alternative. It is only when an alternative is selected for implementation in a FONSI or ROD that a rationale is required to explain why that particular alternative was selected.

Because identification of a preferred alternative is within the sole discretion of the NPS decision maker and no decision is made when identifying a preferred alternative, structured decision-making processes such as “choosing by advantages” and other value analysis processes should not be relied upon to identify a preferred alternative. [*See supplemental guidance: Identifying a Preferred Alternative.*]

#### **D. The Environmentally Preferable Alternative**

The environmentally preferable alternative is the alternative developed and analyzed during the NEPA process “that causes the least damage to the biological and physical environment and best protects, preserves, and enhances historical, cultural, and natural resources” (46.30). An environmentally preferable alternative must be identified in a ROD and may be identified in EAs, FONSIs, and draft and final EISs (1505.2(b); 46.450).

When identifying an environmentally preferable alternative, you should briefly document the rationale for why you identified the particular alternative as environmentally preferable (i.e., why that alternative would cause the least damage to the environment and best protect resources). The environmentally preferable alternative does not need to be the NPS preferred alternative, nor does it need to be the alternative that is ultimately selected for implementation (46.420; 46.450). When you identify an environmentally preferable alternative, you are not required to explain why other alternatives are not environmentally preferable.

*The environmentally preferable alternative does not need to be the NPS preferred alternative, nor does it need to be the alternative that is ultimately selected for implementation*

In limited circumstances, it is possible that you may identify more than one environmentally preferable alternative if different alternatives have different impacts on affected resources (46.30). For example, if one alternative in the EA or EIS is highly protective of biological resources but has substantial impacts to cultural resources, and another alternative is highly protective of cultural resources but has substantial impacts to biological resources, the former alternative may be identified as environmentally preferable with regard to biological resources while the latter may be identified as environmentally preferable with regard to cultural resources.

## **E. Mitigation**

NEPA promotes efforts to prevent or eliminate environmental harm. Mitigation often plays a central role in the avoidance or minimization of adverse environmental impacts. The CEQ regulations define mitigation as including (1508.20):

- avoidance of an impact through not taking an action or parts of an action;
- minimizing impacts through limiting the degree or magnitude of an action;
- rectifying impacts by repairing, rehabilitating, or restoring the affected environment;
- reduction or elimination of impacts by preservation and maintenance operations during the life of the action; and
- compensation for the impact by replacing or providing substitute resources or environments.

The CEQ regulations require inclusion of appropriate mitigation measures in alternatives (1502.14(f)). In most cases, mitigation measures should be developed and incorporated as integral elements of the alternatives. Often, mitigation consists of best management practices designed to minimize impacts that are included as elements common to all alternatives. Although not common in the NPS, it is possible to develop a “mitigation alternative” for consideration and analysis in the NEPA process. This would most likely occur in association with an applicant-generated proposal.

When developing mitigation measures, you should ensure that the NPS has the authority to carry out the measures and that there is a reasonable expectation of having the human and capital resources needed to perform the mitigation and monitoring to ensure mitigation is effective. The mitigation measures that you develop should be reasonable, effective, and feasible ways to reduce, eliminate, or compensate for impacts to one or more affected resources.

For example, if you are considering constructing a new parking lot in your park unit, a mitigation measure that you might identify to reduce impacts to air quality might involve using water to suppress fugitive dust during construction. Such a measure would likely constitute a reasonable, effective, and feasible mitigation. But if the parking lot is proposed in a location that would require felling numerous 400-year-old trees, a mitigation measure involving the planting of saplings in a nearby location to compensate for the loss of the old-growth trees would not, by contrast, constitute reasonable or effective mitigation because saplings cannot adequately replace or substitute for the ecosystem functions provided by the old-growth trees.

## **F. Adaptive Management**

Adaptive management is “a system of management practices based on clearly identified outcomes and monitoring to determine whether management actions are meeting desired outcomes; and if not, facilitating management changes that will best ensure that outcomes are met or re-evaluated” (46.30). Adaptive management addresses the fact that our knowledge of natural systems is incomplete and uncertainty often exists with respect to whether actions will achieve desired

outcomes. Through use of adaptive management, it is possible to adjust management actions over time as knowledge of the natural system is gained through monitoring, thereby allowing management actions to more fully achieve the intended results. Adaptive management is a structured and iterative process. It is not “trial and error” management.

*Adaptive management is a structured and iterative process. It is not “trial and error” management.*

A framework for adaptive management should include a variety of components. Some central components are described below. [See *Adaptive Management: The U.S. Department of the Interior Technical Guide*.] At a minimum, an adaptive management framework must include (ESM 13-11):

- desired outcomes of the management actions that are clearly defined;
- initial management actions aimed at achieving the desired outcome;
- activities that are monitored to determine whether the desired outcome is being achieved; and
- adaptive actions that will be taken if monitoring indicates that desired outcomes are not being achieved.

You should use adaptive management as appropriate (46.145). Adaptive management is most appropriate in situations where there are key uncertainties about the long-term implications of management actions and monitoring can be used to determine whether adjustments should be made to future implementation decisions. For example, if you are preparing a wildlife management plan where there is a close relationship between deer browsing and vegetation regeneration, using adaptive management would likely be appropriate. As part of the plan, you might define a particular level of vegetation regeneration as the key desired outcome of deer management activities. An adaptive management framework would describe how monitoring would be used to determine whether initial management actions achieve desired outcomes, and describe and evaluate the environmental impacts of additional management actions to take if desired outcomes are not met.

Adaptive management is less appropriate in situations where the impacts of management actions are relatively certain or there is little opportunity to adjust the implementation of the action in the future. For example, if there is a proposal involving construction of a new parking lot in your park unit, you are not likely to use adaptive management because the impacts of the action are likely well understood and the action, once taken, does not easily lend itself to subsequent adjustments.

If you propose using adaptive management, an adaptive management framework should be incorporated as an element of one or more of the alternatives under consideration. Regardless of whether adaptive management is included in multiple alternatives or exists as a stand-alone alternative, you should make sure the description and analysis of the adaptive management framework in your NEPA document describes and analyzes the central adaptive management components discussed above.

If the adaptive management framework and its impacts, including those of potential subsequent actions, are clearly pre-specified and described, then in most cases

actions may be adjusted during implementation without the need for further NEPA review (46.310(d); 46.415(b)(3)).

#### 4.4 DESCRIBING THE AFFECTED ENVIRONMENT

The affected environment consists of “the environment of the area(s) to be affected or created by the alternatives under consideration” (1502.15). Put another way, the affected environment describes the existing condition of the resources that could be impacted by implementing any of the alternatives. You should organize the discussion of resources in the affected environment by impact topics; only impact topics that are related to issues carried forward for detailed analysis should be included in the affected environment. When applicable, the affected environment should discuss resource condition trends and identify contributing factors, such as climate change. Such information can provide a basis for considering how a changing, dynamic environment could affect conclusions that are reached regarding the environmental consequences of implementing any of the alternatives under consideration.

*The affected environment serves as the baseline for predicting changes to the human environment that could occur if any of the alternatives under consideration (including no action) are implemented.*

The affected environment serves as the baseline for predicting changes to the human environment that could occur if any of the alternatives under consideration, including the no-action alternative, are implemented. The affected environment is separate and distinct from the no-action alternative, which describes current management rather than the current state of affected resources, and discloses how the current condition of affected resources would change if current management were to continue. [See Section 4.3 B: *The No-Action Alternative.*]

As you refine the proposed action and develop alternatives, you should define a boundary for analysis that consists of the area in which the proposal’s impacts on a resource would be felt. The analysis boundary may be different for the various resources affected by the proposal. For example, if there is a small sewage treatment plant proposed for a park unit, two issues associated with the proposal might be that grading the construction site could impact vegetation and that wastewater discharge associated with plant operation could impact water quality. The affected environment for vegetation might be confined to the construction footprint whereas the affected environment for water quality might extend beyond the boundary of the park unit from the site of the discharge to where effects are no longer discernible. If you were evaluating multiple sites for the plant, you would need to be sure to include the areas that would be affected by each site under consideration in your analysis boundary.

In order to describe the affected environment (and ultimately analyze environmental impacts), you should collect and compile information on the resources that could be affected by the proposed action and alternatives. As a first step, consider existing sources in which the affected environment is already described. The CEQ regulations encourage incorporation by reference as a means to limit the amount of material included in a NEPA document.

As you collect and compile information on the affected environment, remember that descriptions of the affected environment “shall be no longer than is necessary to

understand the effects” and that “[d]ata and analyses in a statement shall be commensurate with the importance of the impact” (1502.15). This means that your description of the affected environment should focus on the condition of resources that are expected to be impacted most by the proposed action or alternatives. For example, there is no value to including several pages of detail on the chemical and physical properties of a stream when the only expected impact on water quality is the potential to discharge a small amount of sediment that would only affect turbidity in a very small area of the stream for a short amount of time. Additionally, consider appending any highly technical material or background material to your EA or EIS or incorporating it by reference, rather than including it as part of the affected environment description. [See Section 2.3: *Incorporation by Reference*, and Section 2.4: *Tiering*.]

## 4.5 IMPACT ANALYSIS

NEPA reviews must take a “hard look” at impacts that alternatives under consideration would have on the human environment if implemented. This means that there must be evidence that the NPS considered all foreseeable direct, indirect, and cumulative impacts, used sound science and best available information, and made a logical, rational connection between the facts presented and the conclusions drawn.

Analyzing impacts means considering how the condition of a resource would change, either negatively or positively, as a result of implementing each of the alternatives under consideration. A written impact analysis that focuses on significant issues should be included in the environmental consequences section of a NEPA document. As with the affected environment section, while your analysis should remain focused on significant issues, you should organize the environmental consequences section by impact topic so that the reader can track the current condition and potential impacts related to specific resources throughout the NEPA document. A written impact analysis should:

- describe the impacts that each of the alternatives under consideration would have on affected resources;
- use quantitative data to the extent practicable;
- discuss the importance of impacts through consideration of their context and intensity; and
- provide a clear, rational link between the facts presented and the conclusions drawn.

When conducting an impact analysis, you must consider the potential direct, indirect, and cumulative impacts of actions and must also consider adverse and beneficial impacts (1508.7; 1508.8). You should not combine adverse and beneficial impacts of a proposed action or alternatives into a single, net impact. Rather, you should assess adverse and beneficial impacts separately because an action may result in a significant adverse impact even though there may be an overall beneficial effect (1508.27).

You should address issues related to climate change, when applicable. There are two distinct ways that climate change may be relevant to an impact analysis: 1) an action's contribution to climate change through GHG emissions; and 2) the implications of climate change effects on an action and its environmental impacts.

For an EA, the level of detail and depth of analysis should normally be limited to the minimum needed to determine whether there would be significant environmental effects (46.310(e)). The analysis of the impacts of the preferred alternative forms the basis for the decision of whether to prepare an EIS or a FONSI (1508.9(a)(1)).

*[For more information, see supplemental guidance: Preparing Focused and Concise EAs, and supplemental guidance: Writing Impact Analysis Sections for EAs and EISs.]*

### **A. Direct Impacts**

Direct impacts are impacts “which are caused by the action and occur at the same time and place” (1508.8(a)). For example, if there is a proposal to construct a new transit center in your park unit in order to encourage more visitors to use a shuttle system, construction activities might directly affect wildlife due to noise and ground disturbance, and air quality through equipment-related exhaust emissions and production of fugitive dust.

### **B. Indirect Impacts**

Indirect impacts are impacts “which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable” (1508.8(b)). For example, consider the transit center proposal discussed above. A reasonably foreseeable consequence of taking the action might be a reduction of private vehicles on park roads and a corresponding decrease in related vehicle exhaust emissions. The resulting impact on air quality (in this instance, a beneficial one) would represent an indirect impact. It would occur later in time and at a greater distance than the action of building the transit center, but would nonetheless be a consequence of the proposal.

You do not need to differentiate direct impacts from indirect impacts. However, you may choose to do so if you wish. Regardless of how you present the information, you should make sure to distinctly describe all direct and indirect impacts that could occur from implementation of each of the alternatives under consideration.

### **C. Cumulative Impacts**

In addition to direct and indirect impacts, you are required to analyze the cumulative impacts of each alternative (1508.25(c)). A cumulative impact is an “impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions” (1508.7). A cumulative impact analysis must consider the overall effects of the direct and indirect impacts of the proposed action, when added to the impacts of past, present, and reasonably foreseeable actions on a given resource. This is typically described as:

direct and indirect effects of the proposed action + impacts of past, present, and reasonably foreseeable future actions = cumulative impacts.

If there are no direct or indirect effects from an action on a particular resource, there can be no cumulative effects on that resource from that action.

In order to accurately assess cumulative impacts, you will need to identify past, present, and reasonably foreseeable future actions that affect the same resources as the proposed action or alternatives. Past, present, and reasonably foreseeable future actions are not limited to NPS actions, but could be actions taken or proposed by any federal, state, or local government or a private entity, and are actions that are not included in the proposal or alternatives under consideration. To be considered under the cumulative analysis section of your EA or EIS, past actions should have ongoing impacts that are presently occurring. Reasonably foreseeable future actions include those federal and non-federal activities not yet undertaken, but sufficiently likely to occur, that a decision maker should take such activities into consideration in reaching a decision. This includes, but is not limited to, activities for which there are existing decisions, funding, or proposals. Reasonably foreseeable future actions do not include those actions that are highly speculative or indefinite (46.30).

For example, if there is a small sewage treatment plant proposed for your park unit that would impact water quality by discharging treated wastewater into a river, the scope of your impact analysis should include analysis of the incremental impacts of past, present, and reasonably foreseeable future actions on water quality, combined with the impact of your proposal. Suppose in this example that cattle ranching on public land immediately upstream of the park has resulted in and continues to result in impacts to the river's water quality. Inside the park, future road construction activities are expected to have impacts on the river's water quality. Immediately downstream of the park there is agricultural use on private land that contributes additional impacts to the river's water quality. These represent past, present, and reasonably foreseeable future actions; although they are not part of the sewage treatment plant proposal, their collective impact on the river's water quality must nonetheless be analyzed in combination with those of the plant in the cumulative impact analysis performed as part of the NEPA review of the plant (1508.7; 1508.25(a)(2)).

It is important to note that past, present, and reasonably foreseeable future actions are limited to human actions, meaning they are attributable to specific individuals or entities. Naturally occurring incidents, such as storm events or floods, are not actions per se and therefore the effects of these types of incidents should be considered as part of the affected environment rather than as part of a cumulative impact analysis. Similarly, changes to the environment that are not attributable to specific actions, such as general urban encroachment or population growth, should be addressed as part of the affected environment. [*See Section 4.4: Describing the Affected Environment.*]

When characterizing cumulative impacts, it is generally not necessary to individually list and analyze the effects of each past cumulative action. Rather, it is appropriate to discuss them in sum. [*See CEQ guidance: Guidance on the Consideration of Past Actions in Cumulative Effects Analysis.*] When describing cumulative impacts in an EA or EIS, you should separate the cumulative impact analysis from the analysis of direct and indirect impacts. While the cumulative impact analysis should include the same

elements of a written impact analysis discussed above, in many cases due to the nature of available information, the description of cumulative impacts may be less detailed than description of direct and indirect impacts. [For more information on cumulative impact analysis, see CEQ guidance: *Considering Cumulative Effects under the National Environmental Policy Act.*]

#### **4.6 CIRCULATING ENVIRONMENTAL ASSESSMENTS AND ENVIRONMENTAL IMPACT STATEMENTS, SOLICITING PUBLIC COMMENTS, AND RESPONDING TO COMMENTS**

The CEQ regulations require that agencies involve the public in decisions that would have environmental impacts to the fullest extent possible (1500.2(d)). Furthermore, DO-75A requires NPS managers to involve the public when making discretionary decisions where, “(1) the public has an identifiable interest or is likely to be interested, (2) there may be applicable knowledge or expertise likely to be available only through public consultation, or (3) there are complex or potentially controversial issues.” (DO-75A, IV). One way to meet these requirements is by making EAs and EISs available for public review and comment.

##### ***Soliciting Comments***

There are a variety of mechanisms for notifying the public of the availability of EAs and EISs, including the Federal Register, direct or electronic mailings, press releases, website updates, newsletters, and on PEPC. You are encouraged to use electronic communications and digital media whenever possible to facilitate public review and comment. One tool that is particularly useful for disseminating information and facilitating public comments is the PEPC system, which is specifically designed to help with collection, management, and analysis of public comments. The standard NPS practice is to accept written comments by mail, at public meetings if applicable, at a park unit headquarters, and online through the PEPC system. The preferred method for receiving comments is through the PEPC system; this should be clearly communicated in public outreach materials requesting comments.

Requests for an extension of a comment period should be considered on a case-by-case basis. When considering whether to extend a comment period, you should consider the length of the original comment period, the time frame in which a decision is needed, and any extenuating circumstances that would warrant additional time (such as a natural disaster during the comment period in the area of the NPS unit). For EISs, in most cases where the comment period is 60 days or more, there should be no need to extend the comment period. If a comment period is extended for an EIS, it should be done formally through the Environmental Protection Agency (EPA); an NPS *Federal Register* notice is not required. Extensions of comment periods for an EA should be accomplished by providing notice to the public in the same or similar manner that the original comment period was announced.

##### ***Responding to Comments***

The NPS is required to respond to substantive comments submitted during the public review period for DEISs (1503.4). For EAs, the NPS must consider all comments that are timely received, and the standard NPS practice is to respond to



substantive comments that are submitted during the public review period for EAs (46.305(a)(1)).

Substantive comments are those that:

- question, with reasonable basis, the accuracy of the information in the NEPA document;
- question, with reasonable basis, the adequacy of the environmental analysis;
- present reasonable alternatives other than those presented in the NEPA document; or
- cause changes or revisions in the proposal.

In other words, substantive comments raise, debate, or question a point of fact or analysis. Comments that merely support or oppose a proposal or that merely agree or disagree with NPS policy are not considered substantive and do not require a formal response.

Responding to substantive comments in many cases means more than just providing a written response and can include:

- making factual corrections in the EA or EIS;
- supplementing, improving, or modifying the analysis;
- modifying alternatives;
- developing and evaluating new alternatives; and
- explaining why the comments do not warrant further response by citing sources, authorities, or reasons in support of the NPS position.

When preparing written responses, you do not necessarily need to respond to every individual substantive comment received; it is acceptable to summarize similar comments and create a single response (Q29a). In most cases you should use the PEPC system to help with organizing and responding to comments. PEPC can be particularly helpful when there are a large number of comments.

#### **A. Circulating an Environmental Assessment and Responding to Comments**

The NPS must provide for public involvement in an EA process to the extent practicable (46.305(a)). In all cases, the NPS is required to notify the public of the availability of an EA (46.305(c)). The DOI NEPA regulations state that the NPS may seek public comment on an EA when deemed appropriate, such as when public interest or uncertainty of effects warrants (46.305(b)), and require consideration of comments received on EAs whether they are specifically solicited or not (46.305(a)(1)).

DO-75A sets forth the philosophy of the NPS with respect to public involvement, which is to “do more than meet the minimum legal requirements for public involvement in our decisions and activities” and commits the NPS to seek public input into discretionary decision-making (DO-75A, I). Therefore, unless there is a

specific situation that precludes it, public review and comment should be sought for every EA. The standard practice for EAs is to allow for a public review period of 30 days that is announced on PEPC and through a press release, direct or electronic mailings, or other effective means of communication. The comment period should commence on the day you announce the availability of the EA.

In some instances public meetings to present information on the EA and solicit comments may be helpful to or appropriate for the planning effort. If there is known public interest in the proposal or if a cooperating agency expresses a desire for a public meeting, you should hold one. If you do hold public meetings, notice of those meetings should be included as part of the announcement of EA availability. When practicable, you should provide notice at least 15 days prior to the meeting dates.

Following the close of the comment period, if necessary, you should make changes and respond to substantive comments in errata rather than reissuing the EA. If a large number of changes need to be made as a result of public comments, you may issue a revised EA with comment responses appended. A revised EA may be issued without the need to initiate another comment period (46.305). If, prior to releasing an EA, you anticipate that substantial changes could be necessary following a public review and comment period, you may wish to circulate a draft EA, make necessary changes based on comments received, and then issue a final EA. A final EA should include an appendix containing responses to comments and does not require another comment period.

## **B. Circulating an Environmental Impact Statement and Responding to Comments**

The CEQ regulations require issuance of both draft and final versions of an EIS (1502.9). The regulations also require agencies to make a DEIS available for public review, invite comments, and affirmatively solicit comments from those persons or organizations who may be interested or affected (1503.1).

EISs (both draft and final) must be filed with the EPA at the time of public release (1506.9; 46.415(c)). Upon filing, the EPA publishes a notice of availability (NOA) of the draft or final EIS in the *Federal Register* (1506.10(a)). Copies of the EIS must also be sent to the appropriate EPA regional office for review and comment pursuant to Section 309 of the Clean Air Act.

The CEQ regulations require a DEIS public comment period of at least 45 days (1506.10(c)) after publication of the EPA NOA in the *Federal Register* (1506.10(a)). In the NPS, however, consistent with the philosophy and policies set forth in DO-75A, the standard practice is to allow a 60-day comment period. If you are considering a comment period of less than 60 days, you should consult with your REC. Depending on the level of controversy, interest, and complexity, a comment period longer than 60 days may be appropriate for some actions.

The standard NPS practice is to hold public meetings to present information on the DEIS and to solicit comments, although public meetings are not required. When determining whether to hold public meetings or hearings, the CEQ regulations require consideration of factors such as the level of environmental controversy

*The CEQ regulations require a DEIS public comment period of at least 45 days (1506.10(c)) after publication of the EPA NOA in the Federal Register (1506.10(a)). In the NPS, however, consistent with the philosophy and policies set forth in DO-75A, the standard practice is to allow a 60-day comment period.*

associated with the proposal, the level of public interest in meetings or hearings, and requests by other agencies for meetings or hearings (1506.6(c)). Meetings or hearings may be conducted in any format, but should be planned with a goal of facilitating submission of substantive comments on the DEIS.

If public meetings are held, you should provide notice at least 15 days prior to the meeting dates when practicable. It is standard NPS practice to announce meetings or hearings on PEPC and through a press release, direct or electronic mailings, or other effective means of communication.

The NPS must respond to substantive comments on a DEIS (1503.4). Responses to comments must be included in the FEIS and factual changes should also be made in the text of the FEIS wherever possible (1502.9; Q29a; 1503.4). If comments on a DEIS lead to the discovery of substantial new information or substantive changes to the proposal with environmental ramifications, preparation of a supplemental DEIS may be required. [See Section 4.10: *Supplements to Draft and Final EISs.*]

The release of a FEIS and publication of the EPA NOA for the FEIS is followed by a 30-day period during which the NPS cannot make a final decision; i.e., a ROD cannot be signed until at least 30 days after publication of the EPA NOA. This is commonly called the “30-day no action period.” It is not a formal comment period; however, agencies or members of the public may make comments before a final decision is made. If you receive comments on a FEIS, you should consider them to the extent practicable, but you are not required to respond to or affirmatively address the comments. [See Section 4.7: *Concluding the NEPA Process and Documenting a Decision.*]

#### ***Abbreviated Final Environmental Impact Statement***

In situations where comments on a DEIS result in minor changes involving only factual corrections or explanations of why comments do not warrant further response, an abbreviated FEIS may be prepared (1503.4(c)). In the case of an abbreviated FEIS, the DEIS is not updated and republished as a full-length FEIS. Rather, responses to comments and text changes are made in errata.

An abbreviated FEIS should include a cover sheet, an explanation of what the abbreviated FEIS contains, substantive comments received, comment responses, and errata sheets. As long as the draft EIS is incorporated by reference and is readily available to agencies and the public through PEPC or other means, there is no need to circulate it along with the abbreviated final EIS. If an abbreviated FEIS is prepared in this format, it should be filed with the EPA along with copies of the original DEIS. If you are considering the use of an abbreviated FEIS, you should consult with your REC to discuss this option in more detail.

## **4.7 CONCLUDING THE NEPA PROCESS AND DOCUMENTING A DECISION**

For the NPS, FONSI and RODs are formal decision documents resulting from NEPA reviews. Once a FONSI or ROD is signed by the regional director, the NEPA process formally ends. In some circumstances, the NEPA process can be terminated

without issuing a decision. [See Section 4.11: Terminating the NEPA Process Prior to Completion.] Pursuant to the NPS Guidance for Non-Impairment Determinations and the NEPA Process, a non-impairment determination must be appended to a FONSI or a ROD.

### **A. Environmental Assessments**

The EA process concludes with one of the following (46.325):

- the signing of a FONSI by the regional director;
- a decision to switch to preparation of an EIS for the proposal and publication of a NOI to prepare an EIS in the Federal Register; or
- a decision that no further action will be taken on the proposal [See Section 4.11: Terminating the NEPA Process Prior to Completion.]

It is important to note that although alternatives under consideration in an EA may have the potential for significant adverse impacts, an EIS would not need to be prepared if an alternative that does not have significant adverse impacts is selected for implementation or if the impacts of the selected alternative can be mitigated to a level below significance.

#### ***Finding of No Significant Impact***

A FONSI serves two functions in the NPS. First, it documents the NPS decision on a proposal evaluated in an EA. Second, it documents the conclusion that implementation of the selected action would not result in significant adverse impacts. A FONSI is typically signed by the regional director and should be signed only after all EA process requirements and other consultation requirements (such as ESA Section 7 and NHPA Section 106) have been met. [See Section 4.14: Integrating NEPA with Other Environmental Review and Consultation Requirements.]

There are two instances when a FONSI should be prepared:

1. The analysis contained in the EA shows that the alternative selected for implementation would not have significant effects.
2. The analysis contained in the EA shows the alternative selected for implementation would have no significant effects beyond those already analyzed in an EIS to which the EA is tiered. This may be referred to as a “finding of no new significant impact” (46.140(c)). When preparing a finding of no new significant impact, you should affirmatively state that the EA has been tiered from an earlier EIS and that there are no significant adverse impacts beyond those already disclosed in the EIS. [See Section 2.4: Tiering.]

#### ***FONSI Content***

Neither the CEQ nor DOI NEPA regulations provide detailed requirements for the content of FONSI. The standard content of NPS FONSI is reflective of the dual purposes described above.

The FONSI must include, summarize, or attach and incorporate by reference, the EA. It should then do the following:

- clearly identify and describe the selected alternative; if the selected alternative has been changed since release of the EA as a result of public or agency comments, briefly describe the changes, the reasons for the changes, and whether and how the changes alter the impact analysis that was included in the EA;
- discuss the rationale for the decision reached;
- state any mitigation measures that are not included as an integral part of implementation of the selected action; and
- succinctly state why implementation of the selected action would not result in significant adverse impacts
- this discussion should provide a rational basis for the finding as opposed to simply making conclusory statements regarding the absence of significant adverse impacts
- if relevant, state which factors for significance included in the CEQ NEPA regulations were weighted most heavily in the consideration (1508.27; Q37a).

A non-impairment determination must be appended to the FONSI (*See NPS Guidance for Non-Impairment Determinations and the NEPA Process*). Errata sheets and comment responses, if applicable, should be appended to the FONSI.

#### ***Mitigated FONSI***

A mitigated FONSI can be signed when a project's adverse environmental effects will be reduced below the significance threshold by the application of specific mitigation measures included in the FONSI. A mitigated FONSI must include a commitment by the NPS to enforce the mitigation measures and to monitor the effectiveness of the mitigation measures. [*See CEQ guidance: Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact.*]

#### ***Public Notification of a FONSI***

The NPS must notify the public of the availability of a FONSI once it is signed (46.305(c); Q38). The standard NPS practice to meet this requirement is to announce its availability on PEPC and through a press release, direct or electronic mailings, or other effective means of communication. You may wish to post the FONSI on PEPC as well.

For actions with effects of national concern, the NPS must publish a NOA for the FONSI in the *Federal Register* and provide notice to organizations reasonably expected to be interested in the matter (1506.6(b)). In practice, most actions selected in a FONSI should not be considered to have effects of national concern.

The NPS must make a FONSI available for public review for 30 days prior to making a final determination whether to prepare an EIS and may not implement the selected action until after the 30-day period has passed in the following circumstances: (1) the proposed action is, or is closely similar to, one which normally requires the

preparation of an EIS; or (2) the nature of the proposed action is one without precedent (1501.4(e)(2)).

## **B. Environmental Impact Statements**

### ***Record of Decision***

A ROD documents the NPS decision on a proposal evaluated in an EIS. A ROD is typically signed by the regional director and should be signed only after all EIS process requirements and other consultation requirements (such as ESA Section 7 and NHPA Section 106) have been met. [See Section 4.14: *Integrating NEPA with Other Environmental Review and Consultation Requirements.*] In rare cases, signature authority may be elevated to the NPS director or to the assistant secretary level within DOI. A non-impairment determination must be appended to a ROD (See *NPS Guidance for Non-Impairment Determinations and the NEPA Process*).

### ***ROD Content***

The ROD, which typically begins with a brief summary or background of the proposal, must do the following (1505.2):

- clearly identify and describe the selected action/alternative; if the selected alternative has been changed since release of the FEIS as a result of public or agency comments, briefly describe the changes, the reasons for the changes, and whether and how the changes alter the impact analysis that was included in the FEIS;
- briefly describe other alternatives considered and analyzed in detail;
- discuss the rationale for the decision reached (i.e., why the alternative was chosen as the selected action);
- identify the environmentally preferable alternative. A brief discussion of the rationale for the identification should be provided;
- state any mitigation measures that are not inherently integral to the selected action's implementation and a summary of any monitoring or enforcement programs associated with the mitigation; and
- include a statement of whether all practical means to avoid or minimize environmental harm from the selected action have been adopted, and if not, why.

### ***Public Notification of a ROD<sup>4</sup>***

A signed ROD must be made available to the public through appropriate notice (1506.6(b); Q34a). It is standard NPS practice to announce the availability of a ROD on PEPC and through a press release, direct or electronic mailings, or other effective means of communication. You may wish to post the ROD on PEPC as well.

For actions with effects of national concern, the NPS must publish a NOA for the ROD in the *Federal Register* and provide notice to organizations reasonably expected

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<sup>4</sup> Note that in some instances, NPS policies not related to NEPA may require notice of a ROD be published in the Federal Register. For example, Director's Order 41: Wilderness Stewardship requires a Federal Register notice for RODs associated with wilderness studies.

to be interested in the matter (1506.6(b)). As with EAs, although NPS lands are managed for the use and enjoyment of the American public, most actions should not be considered to have effects of national concern. Large-scale projects at iconic park units (e.g., uranium mining at Grand Canyon National Park) are more likely to have effects of national concern than adopting a wildlife management plan at a smaller national park system unit.

## 4.8 IMPLEMENTING A DECISION

### A. Finding of No Significant Impact

In general, once the availability of the signed FONSI is announced to the public, you can immediately begin implementing the selected action. If changes to the selected action occur after the FONSI is signed but before the action is implemented, additional NEPA review may be required. If the changes are minor, then a memorandum to file or a CE may be prepared to document the changes. On the other hand, if changes would represent implementation of a substantially different action than that analyzed in the EA and selected in the FONSI or would give rise to new impacts not considered in the EA, then it would likely be necessary to prepare a new EA and FONSI. This underscores the importance of broad and thorough public and agency involvement throughout the NEPA process. You should consult with your REC if you have questions about changes to a selected action after a FONSI is signed.

### B. Record of Decision

For most actions, implementation of the selected action may commence once the ROD is signed and proper notice of its availability is announced to the public. If changes to the selected action occur after the ROD is signed but before the action is implemented, additional NEPA review may be required, as discussed above for FONSI. You should consult with your REC if you have questions about changes to a selected action after a ROD is signed.

## 4.9 THE DECISION FILE

The decision file consists of the collection of documents that, taken together, detail and support the NEPA review and decision-making process. The decision file contains the “story” of the decision-making process and provides a basis for explaining the decision reached. Though the decision file is sometimes referred to as the administrative record, the NPS prefers the term “decision file.” “Administrative record” has a specific meaning under the Administrative Procedure Act: it is the record prepared after litigation is initiated. While an administrative record is generally drawn from the decision file, it does not necessarily include the entire decision file, and it is only prepared in the event of litigation.

*The decision file contains the “story” of the decision-making process and provides a basis for explaining the decision reached.*

The decision file should include substantive information that was relied on during the NEPA process and should document that the process met relevant requirements and led to a reasoned decision. Documents that should be placed in the decision file include, but are not necessarily limited to the following:

- NEPA and decision documents, including draft versions or sections that demonstrate the evolution of the analysis and decision-making process;
- documentation of compliance with other environmental requirements such as NHPA Section 106 and ESA Section 7;
- documents cited or incorporated by reference in the text of the NEPA document that are not otherwise publicly available;
- notes of interdisciplinary meetings or discussions where key decisions on the NEPA process were reached, such as on purpose and need, issues to be retained for detailed analysis, alternatives, etc.;
- correspondence, such as e-mails or phone call notes among the interdisciplinary team addressing similar key decisions;
- documentation of public involvement efforts;
- public comments; and
- memos to the decision file that clarify confusing elements of other records in the file, explain the resolution of points of internal disagreement, or “close the loop” on outstanding issues.

The decision file should be created and maintained throughout the NEPA process and new information that was not considered during the NEPA process should not be added to the decision file after a FONSI or ROD is signed unless the decision requires additional steps, such as rulemaking, before it can be implemented.

*[For more information, see supplemental guidance: Compiling a Decision File for NEPA Reviews.]*

#### **4.10 SUPPLEMENTS TO DRAFT AND FINAL ENVIRONMENTAL IMPACT STATEMENTS**

A supplement to a DEIS or FEIS must be prepared if, after circulation of a DEIS or FEIS but prior to an action’s implementation, one of the following situations occurs (1502.9(c)):

- substantial changes are made to the proposal that are relevant to environmental concerns;
- significant new circumstances or information arise that are relevant to environmental impacts or that have bearing on the proposal; or
- the NPS determines that preparing a supplemental EIS would further the purposes of NEPA.

Substantial changes to the proposal requiring supplementation may include the addition of an entirely new alternative for detailed analysis or changes in design, location, or timing of an existing alternative that give rise to substantially new impacts not analyzed in the original EIS. Supplementation is generally not necessary in the case of changes to alternatives that do not give rise to new impacts outside the



range of impacts analyzed in the original EIS, as long as the analysis in the original EIS is still accurate and up-to-date.

The term “significant new circumstances or information” should be interpreted to mean that the new circumstances or information relate to potentially significant environmental impacts. For example, new circumstances or information requiring supplementation may include the listing of a species under the ESA that was not analyzed in the original EIS but may be significantly impacted by the action, or discovery of a resource present in the analysis area that was not considered in the original EIS but may be significantly impacted by the action.

A supplemental EIS must be circulated in the same manner as a DEIS or FEIS (1502.9(c)(4)). Provided that the original DEIS or FEIS is reasonably available to the public, the supplement may be circulated independently. However, if the supplement is prepared for an EIS that is not reasonably available to the public, the supplement and the EIS itself should be circulated together. Scoping is not required when preparing a supplemental EIS (1502.9(c)(4)).

You should consult with your REC if you have questions about whether a particular case requires supplementation of a DEIS or FEIS, or if you have questions regarding the preparation of a supplemental EIS.

#### **4.11 TERMINATING THE NEPA PROCESS PRIOR TO COMPLETION**

##### **A. Environmental Assessments**

If, after announcing and conducting scoping or issuing an EA document for public review and comment, you decide not to take any further action on the proposal, you should formally terminate the EA process. Terminating an EA process can be done through an announcement circulated by the same means that you used to announce scoping and availability of the document. Once the announcement has been issued, the EA process is formally concluded.

##### **B. Environmental Impact Statements**

Termination of an EIS occurs when preparation of a DEIS or FEIS for which a NOI has been published in the Federal Register stops. Termination may result from a decision to prepare an EA in lieu of the already initiated EIS or from abandonment of the proposal. If a DEIS has already been released, termination would typically only result from abandonment of the proposal.

If an EIS is terminated, it is standard NPS practice to publish a notice in the Federal Register announcing the termination. The notice should include a brief description of the proposal, a reference to the previously published NOI, a discussion of the NEPA process completed to date, and the reason for termination. If the reason for termination is the abandonment of the proposal, the notice should indicate that the NEPA process will be re-initiated if the proposal is revived at a future date. The appearance of the termination notice in the Federal Register formally concludes the EIS process.

If an EIS is terminated for a proposal that normally requires preparation of an EIS and an EA and FONSI are prepared instead, there is a required 30-day waiting period between public notice of the signed FONSI and implementation of the selected action. [See Section 4.7: *Concluding the NEPA Process and Documenting a Decision*, and Section 1.5 D: *Environmental Impact Statement*.]

## **4.12 USING CONTRACTORS**

An EA or EIS may be prepared by a contractor for proposals that are generated either internally or by an applicant, provided that no conflict of interest exists between the particular contractor and the particular project. If a contractor is to prepare a NEPA document, the contractor must sign a disclosure statement prepared by the NPS stating that the contractor has “no financial or other interest in the outcome of the project” (1506.5(c)). When a contractor prepares a NEPA document, the NPS remains responsible for its accuracy and adequacy (1506.5; 46.105).

## **4.13 WORKING WITH OTHER AGENCIES AND ENTITIES**

The CEQ and DOI regulations emphasize the importance of consulting, coordinating, and cooperating with other agencies during the NEPA process (1501.6; 46.155). The NPS must consult, coordinate, and cooperate with other federal, state, local, and tribal governments and other bureaus and federal agencies whenever possible concerning actions and environmental impacts within the jurisdictions of, or of interest to those entities (46.155). Furthermore, the CEQ regulations encourage cooperation with non-federal agencies that have requirements similar to NEPA to combine efforts with a goal toward reducing duplication (1506.2). Consultation and coordination must begin as early as feasible during the NEPA process (46.200).

Note that in addition to the responsibility to coordinate with other agencies and entities under NEPA, there are a variety of other environmental review and consultation requirements that may also require consulting and coordinating with other federal, state, local, and tribal governments and other bureaus and federal agencies. [See Section 4.14: *Integrating NEPA with Other Environmental Review and Consultation Requirements*.]

### **A. Lead Agencies**

In cases where more than one federal agency is involved in the same proposal, a single NEPA document should be prepared and one of the agencies should be designated as the lead agency. Although federal agencies may act as joint leads, this arrangement should be used sparingly<sup>5</sup>. In most cases a single agency should be designated as the lead agency with any other involved agencies designated as cooperating agencies (1501.5; 46.220(a); 516 DM 1.9 D). Generally, the lead agency should be the one with the greatest level of involvement with the proposal (1501.5(c)). For NPS actions, the NPS is the lead agency for the NEPA review, except for rare instances when there is a compelling reason for another agency to be a joint

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<sup>5</sup> One exception is that in general, pursuant to an agreement with the Federal Highway Administration (FHWA), the NPS is to be a joint lead with FHWA for EISs prepared for Federal Lands Highway Program for Park Roads and Parkways projects.

lead. If a joint lead agency relationship is established for preparation of an EIS, one agency must be identified as the agency responsible for filing the EIS with the EPA (46.220(c)).

In cases where a non-federal agency has an action to approve that is connected to the NPS proposal, and the non-federal agency must comply with state or local requirements that are comparable to NEPA, the NPS and non-federal agency may act as joint lead agencies (46.220(b)).

## **B. Cooperating Agencies**

### ***When the NPS is the Lead Agency***

The role of the cooperating agency is to collaborate, under the coordination of the lead agency, throughout the NEPA process, on issues relating to the cooperating agency's jurisdiction or special expertise. Specific elements of the NEPA process to which the cooperating agency may contribute include, but are not limited to identification of environmental issues, alternatives development, compilation and analysis of data, and impact analysis (46.230).

An agency (federal, state, local or tribal government) is eligible to become a cooperating agency during the development of an EA or EIS if it has jurisdiction by law over actions included in an NPS proposal or alternatives under consideration, or special expertise regarding environmental issues related to an NPS proposal or alternatives under consideration (1501.6; 46.225). When the NPS is the lead agency for an EIS, it must invite eligible governmental entities to participate as cooperating agencies. When preparing an EA, the NPS may invite eligible governmental entities to participate as cooperating agencies (46.225). Typically, invitations to other governmental entities to become a cooperating agency are issued by a park unit's superintendent.

Jurisdiction by law means the ability to “approve, veto, or finance all or part of the proposal” (1508.15). The CEQ regulations state that an agency with jurisdiction by law shall be a cooperating agency (1501.6). Special expertise is defined as “statutory responsibility, agency mission, or related program experience” (1508.26). Any agency with special expertise may become a cooperating agency upon the request of a lead agency. Furthermore, if an agency believes it has either jurisdiction by law or special expertise, the agency itself may make a request to the lead agency to designate it as a cooperating agency (1501.6). The NPS must consider any request by an eligible governmental entity to become a cooperating agency during preparation of an EIS. If the NPS denies a request to become a cooperating agency or determines it is inappropriate to invite an eligible agency to cooperate in preparing an EIS, the NPS must state the reasons for the denial or decision not to extend an invitation in the EIS (46.225(c)).

Cooperating agency relationships, including respective roles and commitments, should be established in writing through a memorandum of understanding (46.225(d)). In the case of a cooperating relationship with a non-federal agency, the DOI NEPA regulations require that a memorandum of understanding be developed and adopted and require that it include a commitment to maintain confidentiality of

*An agency (federal, state, local or tribal government) is eligible to become a cooperating agency during the development of an EA or EIS if it has jurisdiction by law over actions included in an NPS proposal or alternatives under consideration, or special expertise regarding environmental issues related to an NPS proposal or alternatives under consideration (1501.6; 46.225).*

documents and deliberations prior to the NEPA document's public release (46.225(d)). A cooperating agency is normally expected to use its own funds to carry out its responsibilities (1501.6(b)(5)).

### ***When Another Agency is the Lead Agency***

Whenever another agency proposes to take an action that could affect NPS resources or values, the NPS should consider becoming a cooperating agency for the other agency's NEPA review. It is to the NPS's advantage to participate and comment at the earliest possible time during the process. Input and technical assistance at the scoping stage or earlier will increase the NPS's ability to influence the proposal and enhance the credibility of NPS comments on documents developed later in the process. As a cooperating agency, the NPS typically has a much greater ability to shape the proposal and analysis and provide input in advance of public review and comment periods than it would if it were not a cooperating agency. In many cases, as a cooperating agency, the NPS will be able to offer substantial input on internal draft documents before they are released to the public.

In most cases, the NPS will be invited by the lead agency to participate as a cooperating agency. If the NPS has jurisdiction by law over the proposal, the NPS is required to participate as a cooperating agency. If the NPS has special expertise, it should participate as a cooperating agency for the reasons noted above (1501.6). In the NPS, regional directors accept or reject invitations to become cooperating agencies (DO-12, 5.3). In instances where it is not invited, the NPS may request that a lead agency grant NPS cooperating agency status.

The role of the NPS as a cooperating agency is no different than the role of cooperating agencies when the NPS is the lead: to collaborate, under the coordination of the lead agency, throughout the NEPA process on issues relating to the NPS's jurisdiction and special expertise. Specific elements of the NEPA process to which the NPS may contribute as a cooperating agency include, but are not limited to, identification of environmental issues, alternatives development, compilation and analysis of data, and impact analysis (46.230). Typically, NPS comments on other agency documents should be limited to issues for which the NPS has jurisdiction or special expertise. When the NPS is a cooperating agency, you should comment directly to the lead agency; you are not required to submit your comments as part of the DOI external environmental review process. [See *Section 5.2: DOI and NPS External Environmental Review Process*.]

As is the case when the NPS is the lead agency, the establishment of NPS's role as a cooperating agency should be done in writing, and a memorandum of understanding, including respective roles and commitments, should be developed (46.225(d)). As a cooperating agency, the NPS is normally expected to use its own funds to carry out its responsibilities (1501.6(b)(5)).

## **4.14 INTEGRATING NEPA WITH OTHER ENVIRONMENTAL REVIEW AND CONSULTATION REQUIREMENTS**

There are a variety of federal, state, and local environmental review and consultation requirements that can overlap with the NEPA process. The CEQ and DOI

regulations direct that NEPA reviews should be integrated with analyses used to meet such other requirements (1502.25(a); 46.430(b)). Often, a single document may be used to satisfy the requirements of multiple authorities. If you are using a NEPA document to meet the other environmental review and consultation requirements, the document must clearly identify and discuss the analysis relied on as part of that review and consultation process. These analyses must be included in the document itself or be otherwise readily accessible by the public (46.430(a)). Any federal permits, licenses, or approvals that must be obtained in order to implement a proposal must be listed in a DEIS (1502.25(b); 46.430(b)). If you are uncertain as to whether or not a permit, license, or other approval is necessary, you must disclose that in a DEIS (1502.25(b)).

Some of the most commonly encountered federal environmental review and consultation requirements are listed and described below. During the scoping process, you should be certain to determine any review and consultation requirements applicable to your proposal. Although such review and consultation requirements should be coordinated and integrated with NEPA to the greatest extent possible, bear in mind that completion of NEPA does not substitute for meeting additional, separate requirements.

You should ensure that all required consultations with other entities are complete prior to signing a decision document (note that for NHPA Section 106 you must complete consultation prior to signing a decision document). If you do not do so, there is a risk that once consultation is complete, you will be unable to implement a selected action and that additional, supplemental NEPA review would be required prior to implementing an action.

### ***Endangered Species Act***

Section 7 of the ESA requires federal agencies to consult with the US Fish and Wildlife Service or the National Marine Fisheries Service when taking an action that may affect federally listed threatened or endangered species or designated critical habitat. An EA or EIS (or selected sections) may provide sufficient information to serve as a biological assessment for ESA Section 7 consultation purposes. If a separate biological assessment is prepared, it should be included or referenced in the NEPA document. Until the Section 7 consultation process is complete, the NPS may not make any irreversible or irretrievable commitment of resources that could foreclose the formulation or implementation of reasonable and prudent alternative measures to address issues arising under the ESA. The standard NPS practice is to complete Section 7 consultation before signing a decision document. If you are unable to do so, you should consult with your REC and the DOI office of the Solicitor.

### ***National Historic Preservation Act***

Section 106 of the NHPA requires federal agencies to consider the effects of their undertakings on historic properties and to provide state historic preservation officers, tribal historic preservation officers, and, as necessary, the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to review and comment on the effects of agency actions. An EA or EIS may be used to serve as documentation of the Section 106 process if appropriate processes are followed. ACHP regulations at 36 CFR 800.8 describe requirements related to the coordination of the Section 106

process with NEPA. You must complete Section 106 consultation before a FONSI or ROD can be signed. [See *CEQ guidance: NEPA and NHPA: A Handbook for Integrating NEPA and Section 106, 2013 (citing 36 CFR Part 800).*]

### ***Executive Order 11988, Floodplain Management; Executive Order 11990, Wetland Protection***

The Floodplain Management and Wetland Protection executive orders direct federal agencies to avoid, to the extent possible, the long- and short-term adverse impacts associated with occupying or modifying floodplains and wetlands. They also require federal agencies to avoid direct or indirect support of floodplain or wetland development whenever there is a practical alternative. Director's Order 77-1: *Wetland Protection* and Director's Order 77-2: *Floodplain Management*, which provide direction on complying with the executive orders, require preparation of a statement of findings (SOF) when a proposal would result in adverse impacts on floodplains or wetlands and detail the requirements and procedural elements associated with SOFs. All SOFs must receive some level of public review and comment.

### ***Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations***

This executive order directs federal agencies to assess whether their actions have disproportionately high and adverse human health or environmental effects on minority and low-income populations. EAs and EISs must specifically discuss and evaluate the impact of the proposal on minority and low-income populations and communities, as well as the equity of the distribution of the benefits and risk of the decision. If the issue is dismissed from detailed analysis, the EA or EIS must specifically indicate this. [See *OEPC's Environmental Compliance Memorandum (ECM) 95-3: NEPA Responsibilities Under the Departmental Environmental Justice Policy.*]

### ***Consultation with Tribal Governments***

If an NPS proposal would have substantial effects on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or the distribution of power and responsibilities between the federal government and Indian tribes, the NPS is required by Executive Order 13175 to initiate government-to-government consultation with affected tribes. In the NPS, government-to-government consultation typically takes place between the park unit's superintendent and tribal leader. Although Executive Order 13175 requires consultation under limited circumstances, the NPS should, in general, consult with potentially affected tribal governments to the greatest extent practicable any time a proposal could affect those tribes.

### ***Departmental Responsibilities for Indian Trust Resources and Indian Sacred Sites on Federal Lands***

Departmental planning must explicitly consider effects of its actions on Indian trust resources (512 DM 2). NPS EAs and EISs must include either an analysis of impacts to Indian sacred sites or a specific dismissal of the issue from detailed analysis (*ECM 97-2: Departmental Responsibilities for Indian Trust Resources and Indian Sacred Sites on Federal Lands, Part 1*).

Furthermore, Executive Order 13007 provides that, to the extent practicable, permitted by applicable law, and not clearly inconsistent with essential agency functions, agencies are required to accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and avoid adversely affecting the physical integrity of sites.





# CHAPTER 5: NPS REVIEW OF EXTERNAL ENVIRONMENTAL REVIEW DOCUMENTS

## 5.1 INTRODUCTION

This chapter describes the process by which the NPS participates in environmental reviews of proposals made by non-DOI agencies that affect the interests of the Department. Collectively, these documents are referred to as “external environmental review documents” and may include other agencies’ NEPA documents, proposed rules, applications, plans, reports, Section 4(f) documents, and other environmental documents. DOI considers it a priority to provide comments on EISs and other environmental or project review documents prepared by other Federal agencies for their major actions that significantly affect the quality of the human environment (516 DM 4.2). Although this chapter discusses external environmental review generally, the focus is on review of other agencies’ NEPA documents.

## 5.2 DOI AND NPS EXTERNAL ENVIRONMENTAL REVIEW PROCESSES

The NPS reviews and comments on external environmental review documents in accordance with the policies and procedures established by DOI OEPC. OEPC determines what types of environmental review documents receive department vs. bureau-level responses, which bureau or office is responsible for consolidating DOI comments when applicable, and deadlines for comments (516 DM 4.3B). The NPS is required to comment (to the extent the NPS has comments to submit) in accordance with the process established by OEPC for each particular review. In addition to the functions listed above, OEPC issues Environmental Review Memoranda (ERM) that contain topic-specific guidance related to external environmental reviews. Two examples of guidance that OEPC has issued are *ERM 13-3: Section 4(f) of the Department of Transportation Act* and *ERM 10-5: Procedures for Reviewing Project and Environmental Reports Prepared by or for Non-Federal Agencies*.

Within the NPS, EQD coordinates review of NEPA and other documents prepared by other agencies (DO-12, 5.2). EQD coordinates the external environmental review process by alerting WASO programs and regional offices to the availability of documents for review and comment. EQD also identifies the individual or office responsible for compiling and preparing NPS comments, and establishes NPS deadlines. Parks, regions, and programs implement their own procedures for internally coordinating external environmental review processes and ensuring comments are submitted within established deadlines. You are encouraged to contact your REC or external environmental review contact for more information about coordination and approval processes in your region.

It is essential to comment on external environmental review documents through the coordinated process described above to ensure that NPS comments are substantive, internally consistent, of professional tone, and subject to appropriate management review. If you become aware of an external environmental review document on which you wish to comment but have not received a review notification through the

NPS coordinated external environmental review process, contact your REC or other regional external environmental review contact to determine the appropriate course of action.

### **5.3 COMMENTING ON EXTERNAL ENVIRONMENTAL REVIEW DOCUMENTS**

#### **A. Scope of Comments**

When commenting on external environmental review documents, the NPS should limit its comments to elements of the proposal and analysis over which the NPS has jurisdiction by law or special expertise. “The adequacy of the document in regard to applicable statutes is the responsibility of the agency that prepared the document and any comments on its adequacy shall be limited to the Department's jurisdiction or environmental expertise” (516 DM 4.5).

##### ***Jurisdiction by Law***

Jurisdiction by law means the “authority to approve, veto, or finance all or part of the proposal” (1508.15). For example, if an NPS permit or other authorization is required to implement all or part of a proposal, the NPS has jurisdiction by law.

##### ***Special Expertise***

Special expertise relates to “statutory responsibility, agency mission, or related program experience” (1508.26). For the NPS, this often includes:

- national park system resources and values;
- resources associated with NPS programs, such as National Historic Landmarks and National Natural Landmarks; and
- resources for which the NPS is designated expert by statute; for example, the Federal Power Act requires the Federal Energy Regulatory Commission to consult with the NPS on the potential impacts of hydropower proposals on recreational resources.

#### **B. Substance of Comments**

NPS comments should be supported by factual information and offer practical suggestions for changes to the document or proposal. When comments identify inaccuracies or omissions in a document, they should offer specific suggestions for corrections or additions.

NPS comments on external environmental documents should always be substantive. Substantive comments:

- question, with reasonable basis, the accuracy of the information in the document;
- question, with reasonable basis, the adequacy of the environmental analysis;
- present reasonable alternatives other than those presented in the document; or

- cause changes or revisions in the proposal.

Examples of substantive comments could include:

- identifying a factual error in the document and offering corrected information;
- identifying a relevant environmental issue not considered in the document and explaining why it should be given detailed analysis;
- identifying inaccuracies or omissions in the document's environmental impact analysis and offering technical information that would enable corrections or additions; and
- offering an alternative not considered in the document or suggesting specific modifications to an alternative.

### **C. Commenting on NEPA Documents as a Reviewing Agency**

Through the external environmental review process, NPS provides comments on other agencies' NEPA documents as a reviewing agency. In this role, NPS comments are submitted as part of the public review and comment process associated with a NEPA review (e.g., NOI, DEIS, etc.). As a reviewing agency, the NPS may offer substantive comments on the document to the lead agency, but is generally not involved in the development of the NEPA document. In those instances where the NPS seeks greater involvement in the development of the proposal and analysis than is available to reviewing agencies and has jurisdiction by law or special expertise, the NPS should request to become a cooperating agency. [*See Section 4.13 B: Cooperating Agencies.*] When possible, NPS comments should address ways to avoid or minimize adverse impacts of the proposed action and alternatives on NPS resources and values (516 DM 4.5).

## **5.4 REVIEW OF DRAFT VS. FINAL DOCUMENTS**

### ***Draft Documents***

When reviewing draft external environmental review documents, the NPS should offer substantive comments on elements of the proposal and analysis over which it has jurisdiction by law or special expertise. In instances where the NPS previously submitted comments or information during scoping or another process stage, the NPS should pay particular attention to determine whether the lead agency has correctly incorporated or addressed those submissions.

Key areas of consideration when reviewing a draft document include:

- Does the document identify all potentially affected NPS units or affiliated sites (National Historic Landmarks, National Natural Landmarks, etc.)?
- Do alternatives include measures to mitigate or avoid impacts to NPS resources or values?

- Does the document discuss relevant environmental issues related to NPS jurisdiction or special expertise, either as an issue considered but dismissed or as an issue fully analyzed in impact analysis?
- Does the impact analysis accurately describe and characterize the impacts of the proposal and alternatives on resources related to NPS jurisdiction or special expertise?

### ***Final Documents***

Although there are no public comment periods for final documents, OEPC coordinates departmental review of final documents during their associated waiting period, when applicable. If comments are submitted on final documents, in most cases they should be sent through OEPC. In situations where comments on a final document are sent directly by NPS to an agency, the NPS should coordinate with OEPC prior to sending them and provide OEPC a copy of the NPS comments.

Normally, the NPS does not comment on final documents. However, when the NPS has provided comment on a draft document, it should review the final document, with key areas of consideration including:

- Does the final document incorporate or respond appropriately to NPS comments on the draft?
- Is there new information in the final document that relates to areas of NPS jurisdiction or special expertise and that the NPS was therefore precluded from commenting on during review of the draft document?

If the final document does not respond to key comments on the draft or if there is new information relating to NPS jurisdiction or special expertise, it may be appropriate to submit comments on a final document. In those limited instances where the NPS provides comments on a final document, the comments should explain why the NPS is commenting on the final document and make specific references, when applicable, to NPS comments on the draft document. If you are considering submitting comments on a final document, you are encouraged to consult with your REC or regional external environmental review contact to determine if submission of comments is appropriate.

## **5.5 FORMAT OF COMMENTS FOR EXTERNAL ENVIRONMENTAL REVIEWS**

Depending on the procedures established by OEPC for review of an external environmental document, NPS comments will take one of the following forms:

- a comment letter transmitted directly to the lead agency;
- a comment memorandum submitted to the OEPC-designated lead bureau or office for consolidation into a departmental comment letter; or
- a departmental comment letter prepared by the NPS as the OEPC-designated lead bureau submitted to OEPC for signature and transmission to the lead agency.

OEPC specifies guidelines for departmental comment letter format in 516 DM 4.5(4). The format described below should be used whenever practicable.

### ***Control Number***

The departmental control number (ER number) assigned for the review should appear in the upper left-hand corner of the letter.

### ***Introduction***

The letter should begin by referencing the title and type of document that is the subject of the comments.

### ***General Comments***

This section of the letter should summarize any key concerns with the document and provide comments of a general nature. This section could also include mention of previous comments or technical assistance provided to the lead agency previously in the process.

### ***Detailed Comments***

This section of the letter contains the specific comments on the text of the external environmental review document. The comments should be presented in a manner that follows the organization of the document, referencing the specific sections or page numbers in the document to which the comments pertain.

### ***Summary Comments***

Comments should avoid expressions of support for or objection to the proposed action in most cases. However, in instances where DOI or a DOI bureau has jurisdiction by law over the action, this may be appropriate. In such instances, comments in support or opposition to the action would appear in this section.



## GLOSSARY

Categorical Exclusion – A category of actions that do not individually or cumulatively have a significant effect on the human environment and have been found to have no such effect in procedures adopted by a federal agency pursuant to NEPA (1508.4).

Cooperating Agency – A federal, state, or local agency or tribal government other than the agency preparing the NEPA review (lead agency), that has jurisdiction by law or special expertise with respect to environmental impacts related to a proposal and that has been deemed a cooperating agency by lead agency (1508.5).

Cumulative Impact – The incremental environmental impact of the an action, when added to the impacts of other past, present, and reasonably foreseeable future actions, regardless of what agency (federal or non-federal) or person undertakes such other actions (1508.7).

Effect (synonymous with impact) – A direct result of an action which occurs at the same time and place; or an indirect result of an action which occurs later in time or in a different place and is reasonably foreseeable (1508.8).

Environmental Assessment – A concise public document, prepared in compliance with NEPA that briefly provides sufficient evidence and analysis of impacts to determine whether to prepare an EIS or FONSI (1508.9).

Environmental Impact Statement – A detailed written statement required by section 102(2)(C) of NEPA (1508.11).

Environmentally Preferable Alternative – The alternative required by 40 CFR 1505.2(b) to be identified in ROD, that causes the least damage to the biological and physical environment and best protects, preserves, and enhances historical, cultural, and natural resources (46.30).

Extraordinary Circumstances – Circumstances that, if exist, mean a CE is may not be used and an EA or an EIS must be prepared (46.205).

Finding of No Significant Impact – A decision document prepared in compliance with NEPA, supported by an EA that presents the reasons why an action will not have significant impacts on the human environment (1508.13).

Human Environment – The natural and physical environment and the relationship of people with that environment (1508.14).

Impact Topics– Headings used in a NEPA document that represent specific resources that would be affected by a proposed action or alternatives under consideration.

Issues – Problems, concerns, conflicts, obstacles, or benefits that may occur if the proposed action or alternatives, including the no-action alternative, are implemented.

Jurisdiction by Law – Agency authority to approve, veto, or finance all or part of a proposal (1508.15).

Lead Agency – The agency or agencies responsible for preparing an EIS (1508.16). This term can apply when an EA is prepared as well.

Major Federal Action – Actions with adverse effects that may be significant and which are potentially subject to federal control and responsibility (1508.18).

Memorandum to File – A memorandum to a decision file that documents a determination that an existing NPS NEPA review provides complete and accurate NEPA documentation sufficient to cover a specific proposal.

Mitigated FONSI – A FONSI that relies on mitigation to avoid or lessen potentially significant environmental effects of proposed actions that would otherwise need to be analyzed in an EIS.

Mitigation – Planning actions taken to avoid an impact altogether to minimize the degree or magnitude of the impact, reduce the impact over time, rectify the impact, or compensate for the impact (1508.20).

NEPA Document – Generally refers to an EA or EIS and can also refer to documentation prepared for a CE that requires documentation.

NEPA Pathway – Level of analysis and documentation for a NEPA review. CEs, EAs, and EISs are all specific NEPA pathways.

NEPA Process – All measures necessary to comply with the procedural requirements of NEPA for a specific action (1508.21).

NEPA Review – Applies broadly to all levels of NEPA documentation, whether it is a CE, EA, or EIS.

No-Action Alternative – Has two interpretations:

- (1) “no change” from a current management direction or level of management intensity (e.g., if no ground-disturbance is currently underway, no action means no ground-disturbance); or
- (2) “no project” in cases where a new project is proposed for implementation (46.30).

Notice of Intent – A notice that an EIS will be prepared (1508.22).

Notice of Availability – A notice submitted to the *Federal Register* announcing that a draft EIS, final EIS, and in some cases a ROD, is available to the public.

Preferred Alternative – The alternative identified in draft and final EISs, and most EAs, that the NPS decision maker believes would best accomplish the purpose and need of the proposed action while fulfilling its statutory mission and responsibilities, giving consideration to economic, environmental, technical, and other factors (46.420).

Proposed Action (synonymous with proposal) – The bureau activity under consideration (46.30).



Reasonably Foreseeable Future Action – Federal and non-federal activities not yet undertaken, but sufficiently likely to occur, that a Responsible Official of ordinary prudence would take such activities into account in reaching a decision. Reasonably foreseeable future actions do not include those actions that are highly speculative or indefinite (46.30).

Record of Decision – The document that is prepared to substantiate a decision based on an EIS (1505.2).

Resource – An element of the human environment.

Scope – The range of actions, alternatives, and impacts to be considered in an EIS (1508.25). This term can also apply to EAs.

Scoping – An early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action (1501.7).

Significant – A subjective interpretation of the level of impact that will result to the human environment if an action is implemented, taking into account the context and intensity of an impact (1508.27).

Special Expertise – Statutory responsibility, agency mission, or related program experience.

Tiering – The coverage of general matters in broader EISs (or EAs) with subsequent narrower statements of environmental analysis, incorporating by reference, the general discussions and concentrating on specific issues (1508.28).



# APPENDIX A: ENVIRONMENTAL ASSESSMENT REQUIRED CONTENT AND ADDITIONAL CONSIDERATIONS

## I. REQUIRED CONTENT

At a minimum, an EA must include brief discussions of the following, although you may choose to include additional detail and level of analysis as appropriate (46.310):

- the proposal;
- the need for the proposal;
- the environmental impacts of the proposed action and the alternatives considered, including the following:
  - An EA must discuss the direct, indirect, and cumulative impacts of each alternative and must contain objective analyses that support conclusions concerning environmental impacts.
- a list of agencies and persons consulted;
- either an analysis or specific dismissal of issues related to environmental justice and Indian Trust Resources (ECM 95-3; ECM 97-2).

When the Responsible Official determines that there are no unresolved conflicts about the proposed action with respect to alternative uses of available resources, an EA need only consider the proposed action and does not need to consider additional alternatives, including the no-action alternative.

## II. ADDITIONAL CONSIDERATIONS

- You may format an EA in any way that is useful to facilitate planning, decision-making, and appropriate public involvement (46.315).
- An EA should include a brief description of the existing conditions and expected future conditions of the area impacted by the project.
- Rather than including a stand-alone no-action alternative, you may document consideration of the no-action alternative by contrasting the impacts of the alternatives with the current condition and expected future condition if the proposal was not implemented.
- Conclusions regarding environmental impacts should be clear and concise.
- The description of environmental impacts should provide enough information to support a determination to either prepare an EIS or FONSI.
- While a longer EA may be appropriate when it involves controversial or complex issues, in many cases there is no need for an EA to be longer than 15 to 50 pages.
- You should consult with your REC to determine whether there are any region-specific requirements or standards, with which you must comply.



## **APPENDIX B: ENVIRONMENTAL IMPACT STATEMENT REQUIRED CONTENT AND RECOMMENDED FORMAT**

The following outline includes the required content and recommended format for an EIS. You may use a different format when there is a compelling reason to do so. If you use a different format, you should be sure to address all of the content included in the outline below.

### **A. COVER SHEET**

The cover sheet should not exceed one page and must include (1502.11):

- a list of the responsible agencies including the lead agency and any cooperating agencies;
- the title of the proposed action that is the subject of the statement (and if appropriate the titles of related cooperating agency actions), together with the state and county (or other jurisdiction if applicable) where the action is located;
- the name, address, and telephone number of the person at the agency who can supply further information;
- a designation of the statement as a draft, final, or a draft or final supplemental EIS;
- a one paragraph abstract of the statement; and
- for a draft or draft supplemental EIS, the date by which comments must be received.

### **B. SUMMARY**

The summary section must adequately summarize the contents of the EIS and should not exceed 15 pages (1502.12). This section should:

- identify significant issues (meaning pivotal issues, or issues of critical importance) related to the proposed action and alternatives;
- discuss the alternatives, including any impacts that are potentially significant; and
- state any major conclusions resulting from the analysis in the EIS.

### **C. TABLE OF CONTENTS**

### **D. PURPOSE OF AND NEED FOR ACTION**

This chapter must include a brief statement of the purpose and need for action (1502.13; 46.415). It should also include:

- a background section; and
- a brief discussion of issues both carried forward and dismissed from detailed analysis.

### **E. ALTERNATIVES**

This chapter should (1502.14; 46.415):

- describe the alternatives carried forward for detailed analysis;

- briefly discuss alternatives considered but dismissed from detailed analysis and include reasons for their dismissal;
- identify a preferred alternative;
- identify mitigation measures that could be applied but are not already integrated into the proposed action or alternatives (this could be included in the environmental consequences section instead (1502.16)); and
- when relevant, a draft EIS must include a list of all federal permits, licenses, or approvals that must be obtained to implement a proposal (1502.25(b); 46.430(b)).

## **F. AFFECTED ENVIRONMENT**

This chapter should succinctly describe the current state of the resources that will be affected by the alternatives under consideration (1502.15; 46.415).

## **G. ENVIRONMENTAL CONSEQUENCES**

An EIS must present the impacts of the alternatives in comparative form (1502.14). This comparison can be included in the environmental consequences chapter or the alternatives chapter and can be done by narrative, chart, or other format. An EIS must also identify any methodologies used (1502.24). This can be included in the environmental consequences chapter or in an appendix.

This chapter must discuss the environmental impacts of the alternatives based on a scientific and analytical review (1502.16). The discussion must include an evaluation of direct, indirect, and cumulative impacts and identify any impacts that could be significant.

This chapter must include a discussion of the following (46.415):

- any adverse environmental effects which cannot be avoided should the proposal be implemented;
- the relationship between short-term uses of the human environment and the maintenance and enhancement of long-term productivity; and
- any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented.

Unless inapplicable, this chapter must also include a discussion of:

- possible conflicts between the proposed action and the objectives of federal, regional, state, and local (and in the case of a reservation, tribal) land use plans, policies, and controls for the area concerned. (1506.2(d));
- energy requirements and conservation potential of various alternatives and mitigation measures;
- natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures;

- urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures;

If there is incomplete or unavailable information relevant to evaluating reasonably foreseeable significant adverse effects, an EIS must include (1502.22):

- a statement that such information is incomplete or unavailable
- a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment
- a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment
- an evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community

## **H. CONSULTATION AND COORDINATION**

This chapter must include:

- a list of preparers that includes the names and qualifications of the people who are primarily responsible for preparing the EIS (1502.17)
- the process used to coordinate with other federal agencies, state, tribal and local governments, and persons or organizations who may be interested or affected, and the results thereof (46.415)
- a list of agencies, organizations, and persons to whom copies of the EIS are sent (1502.10)

If the NPS denies a request to become a cooperating agency or determines it is inappropriate to invite an eligible agency to cooperate in preparing an EIS, the EIS must state the reasons for the denial or decision not to extend an invitation in the EIS (46.225(c)).

## **I. INDEX**

## **J. APPENDICES**

Appendices should consist of materials prepared in connection with an EIS and can be made readily available upon request rather than circulated along with an EIS (1502.18).

- Comment responses should be included as an appendix to a final EIS.

## **K. ADDITIONAL REQUIRED INFORMATION**

An EIS must also include a discussion of:

- the impact of the alternatives on minority and low-income populations and communities, as well as the equity of the distribution of the benefits and risk of the decision (EO 12898); if environmental justice issues are not present or are not likely to be significant, a specific dismissal must be included (ECM 95-3); and

- impacts to Indian Trust Resources; if Indian Trust Resources are not present or are not likely to be significantly impacted, a specific dismissal must be included (ECM 97-2).