

## Supporting and Underlying Documents for Final NEPA Pilot Project Reports

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## **PILOT PROJECT I: NEPA Information Technology Tools**

CEQ announced the selection of the [first NEPA Pilot](#) on August 31, 2011, an ongoing initiative using two information technology tools developed by two agencies to improve the efficiency and management of environmental reviews. The National Park Service's [Planning, Environment, and Public Comment System](#) (PEPC) and the Forest Service's eMNEPA were selected for their innovative value to their respective agencies for greatly improving efficiency through reduced costs and time to process reviews. These tools enable online management of the environmental reviews and allow for the submission and processing of public comments on NEPA documents. These IT tools were selected because of their significant potential to reduce costs and save time in the NEPA review and documentation processes for all agencies by allowing agency personnel from different offices to coordinate review timelines, distribute workloads, share documents, and collaborate through an internet-based platform. They also provide opportunities to transform the public review, comment, and participation processes with the goal of being much more robust and interactive.

### ***Accomplishments***

CEQ collaborated with the Office of Management and Budget (OMB) and General Services Administration (GSA) to launch an integration of PEPC with the [Federal Priority Infrastructure Dashboard](#) on November 30, 2011, enabling users to track Federal permitting and environmental review process for expedited infrastructure projects.

Following this trial period, CEQ convened a NEPA Information Technologies Working Group (ITWG) with representatives from over 20 agencies to assess which tools currently used by agencies would yield the most efficiencies, and eventually promote the availability and adoption of these IT tools across Federal agencies to improve the NEPA process. The primary activity was identifying NEPA Metric Recommendations (Appendix A) which captured major milestones for NEPA reviews. These NEPA Metric Recommendations identified uniform process time data points across agencies and are being implementing for major infrastructure projects.

### ***Lessons Learned***

The CEQ-led Information Technology Working Group and other agency working groups provided practical feedback on the potential effectiveness of using these IT tools across Federal agencies. It identified a broad set of benefits to agencies for implementing the NEPA IT tools that would improve the review process, focusing on managing NEPA reviews and public comment.

- The NEPA Tracking System for Managing NEPA reviews:
  - Allows agencies to pull together NEPA documentation information quickly, efficiently and more accurately, where agencies can better assess how and where agencies should devote resources to the NEPA process by identifying and responding proactively to potential delays.

- Provides point of contacts and status of NEPA reviews to agency headquarter offices when inquiries are received, resulting in a quicker response time to interested parties.
- Facilitates mitigation monitoring, ensuring that commitments are honored.
- The Public Comment System:
  - Sorts, tracks, summarizes and analyzes comments submitted online, categorizes received letters, and facilitates comment response editing and approval from multiple reviewers.

These IT tools have the potential to promote faster and more effective Federal decisions to help agencies save time and money through project tracking and reporting, distributing environmental information, and making the public review process more interactive.

The ITWG recognizes that different agencies have different needs and purposes for IT tools, especially in the context of tracking documents and public comments. Applying standard IT tools for all agencies would be burdensome and unnecessary. Additionally, IT tools need to be scalable for their individual uses. The scalability of IT tools is necessary because different types of reviews have different data points to be tracked. Environmental reviews also have varying levels of public interests, requiring IT tools that can accommodate the necessary scope of the review process.

The ITWG has now merged with the IT team at the Interagency Infrastructure Permitting Improvement Team to continue collaborating and learning from efforts to guide agencies and provide access to the suite of available NEPA IT tools that help expedite the process, increase transparency, and engage the public.

***Recommendations:***

1. Agencies should refine and develop their NEPA management and public engagement IT tools by leveraging existing tools and working collaboratively across the Federal Government to ensure compatibility of IT tools.
2. Agencies should have a suite of NEPA IT tools at their disposal and be able to choose which ones they need to meet their needs, depending on the project and step in the review process.

## **PILOT PROJECT II: Best Practice Principles for Environmental Assessments**

On October 19, 2011, the CEQ announced its [second nomination](#), the Pilot Project on Best Practice Principles (BPPs) for Environmental Assessments. This ongoing Pilot was conducted by the National Association of Environmental Professionals (NAEP) to assemble lessons learned and experience-based BPPs used in the preparation of environmental assessments (EAs) by Federal agencies, NEPA practitioners, and consulting firms. NAEP surveyed NEPA practitioners, and analyzed EAs prepared from 1979-2011, as well as projects funded by the American Reinvestment and Recovery Act. The pilot was designed to determine effective practices that are timely, cost-effective, and focus on environmental issues relevant to the decision-making process.

### ***Accomplishments***

NAEP formed a steering committee to develop the project. This committee:

- Designed an online questionnaire distributed to a wide range of environmental professionals and reviewed the responses.
- Reached out to NAEP's professional membership, agency NEPA liaisons and collaborators, and compliance professionals, to obtain their input.
- Established categories of BPPs and drafted a report that it submitted to CEQ in November 2012.
- Finalized the BPPs through a peer-review process based on CEQ review and feedback from the 2013 NAEP Membership Conference to refine and prioritize the BPPs.

On August 14, 2014, NAEP presented the final Guidance on Best Practice Principles for Environmental Assessments (Appendix B) to CEQ. CEQ obtained input from the Federal NEPA Contacts and issued the final report to the Federal agencies in January 2015. The report focuses on the seven BPPs identified as most important in advancing the effective and efficient development of quality EAs. The prioritized BPPs were selected to improve the quality and transparency of agency decision-making by decreasing the length and complexity of EAs, encouraging the use of timelines and page limit ranges, and providing for expedited review, all while promoting public involvement.

### ***Lessons Learned***

The Pilot Project's survey shed light on the experiences of NEPA practitioners, providing the basis for improvement in preparing EAs. The steering committee considered CEQ regulations, applicable case laws, and peer-reviewed literature in reviewing comments received from respondents and reviewers, finding broad commonalities that prioritized seven BPPs:

1. Description of Purpose;
2. Description of Proposed Action and Range of Alternatives;
3. Content;
4. Cumulative Assessment and Management;
5. Regulatory Consultation and Coordination;

6. Determination of Environmental Impact Significance; and
7. Extent of Public Involvement.

These identified principles are meant to support all Federal agencies and consultants in their EA practice, acknowledging the range and complexity of EAs, while focusing on the individual principles designed to improve the quality, usefulness, and timeliness of EAs.

NAEP is posting the report on its website and advancing the BPPs through webinars and presentations. CEQ and the Federal agencies will explore using NAEP's report to develop a workshop for training and education on EA preparation to improve the NEPA process.

***Recommendations:***

1. Agencies should review the Best Practice Principles for developing Environmental Assessments and incorporate them into their NEPA practices.
2. Agencies should provide comments to CEQ on which Best Practice Principles should be incorporated into CEQ guidance.

## **PILOT PROJECT III: EPA's *NEPAssist***

CEQ [announced](#) the third NEPA Pilot program, the Environmental Protection Agency's (EPA) [NEPAssist](#), on October 19, 2011. EPA developed *NEPAssist*, a web-based Geographic Information System (GIS) mapping application, for use by Federal agencies to provide geographically-referenced data to inform environmental reviews and decision-making during all stages of the NEPA process.

The GIS component of *NEPAssist* allows for geospatial data to be viewed on a map and linked to databases containing more detailed information in relation to environmental features of interest. *NEPAssist*'s unique web-based platform design allows for consolidated geospatial data, allowing access to multiple stakeholders throughout the NEPA process. NEPA practitioners benefit from its unique features including:

- Standardized datasets from federal, state, and local agencies;
- Distributed application allowing for access to real-time data and customizable regional reports and analyses; and
- Facilitated communication with diverse and distributed group of agencies by providing access to consistent place based information.

Using *NEPAssist* in a NEPA review provides for a more holistic and contextual perspective of alternative actions and guide better environmental decision-making.

CEQ and EPA selected *NEPAssist* as a pilot to expand its use across Federal agencies to incorporate into the NEPA process and make it publically available through a user-friendly interface.

### ***Accomplishments***

On April 26, 2012, the EPA successfully released *NEPAssist* to the public and received a significant amount of positive feedback and appreciation for its applicability.

CEQ formed an IT Working Group with the EPA and several other agencies to develop the GIS Inventory for Environmental Professionals, which sought out additional GIS datasets to inform the NEPA review process. This Inventory provides a large amount of authenticated GIS datasets with national coverage currently available to the public on Federal databases. The Inventory's consolidated datasets eliminate the need to download, store, maintain, and process the data because those functions are performed by the agency and continuously updated data is provided to the user over the web. Datasets in this inventory include information in a variety of different areas, including ecological, water, and air quality, socio-economics and health, infrastructure, and climate.

The application has been expanded and includes a user-friendly interface that allows interested parties and the public open web-access to its data and reports. EPA is continuing to

improve *NEPAssist* by expanding its coverage to incorporate Federal Agencies' web-based GIS services and increase the availability of data layers that can be publically viewed on maps.

### ***Lessons Learned***

Previous experience using *NEPAssist* has provided benefits to agencies in varying stages of the review process. *NEPAssist* provides a wealth of existing environmental information and analysis that supports compliance with NEPA by providing access and interpretation of geospatial data relevant to environmental decisions. This has:

- Increased use in early stages of project proposals by considering existing conditions and identifying locations of the least environmental sensitivity to guide appropriate locations for projects.
- Enhanced the ability to determine the appropriate type of environmental review and focus its scope, thereby cutting the time to review Federal Agency scoping notices and projects.
- Expanded the availability of information to the public and project proponents to provide a more holistic and contextual perspective of a project, helping broaden the consideration of alternative actions and mitigation strategies.

### ***Recommendations:***

1. Agencies should encourage use of EPA's *NEPAssist* geospatial IT tool by program and project managers as well as NEPA practitioners.
2. Agencies should ensure their IT tools are compatible to ensure ease of use with *NEPAssist*.

## **PROJECT IV: Department of Transportation's Northeast Corridor-Tier 1 Environmental Impact Statement for the Passenger Rail Corridor Investment Plan**

CEQ announced its [fourth NEPA Pilot program](#) on January 13, 2012, for a collaborative effort with the Department of Transportation's (DOT) Federal Railroad Administration (FRA) to begin the process of preparing a Tier 1 Environmental Impact Statement (EIS) for the improvement of intercity passenger rail service in the Northeast Corridor (NEC). The 457-mile NEC is the backbone of the Northeast region's rail transportation system anchored by Boston's South Station in the north, New York's Pennsylvania Station in the center, and Washington, DC's Union Station in the south. The NEC is shared by intercity, commuter and freight operations, carrying around 260 million passengers per year and used by over 250 businesses for shipping goods in one of the United States' most important economic regions.

FRA embarked on a comprehensive planning effort called the [NEC FUTURE](#) to further develop an integrated passenger rail system that defines, evaluates, and prioritizes future investments in the NEC through 2040. Improving rail service in the NEC is an important regional and national priority for infrastructure investment, speeding job creation in the near term while increasing the Nation's competitiveness in the long term. NEC FUTURE involves the preparation of a Passenger Rail Corridor Investment Plan (PRCIP) which includes a Tier 1 EIS. Because of NEC FUTURE's large geographic scope and complexity, the Tier 1 EIS will involve an unusually broad range of stakeholders, requiring an innovative approach to encourage collaboration and engagement.

The goal of this NEPA Pilot project was to establish best practices for large-scale, multi-state, Federal, and tiered decision-making, specifically early engagement and coordination of various stakeholders. This Pilot was designed to help avoid the conflicts and delays often found in complex, multi-state transportation projects by engaging environmental resource and regulatory agencies early in the review process, and to serve as a model for other large-scale infrastructure projects and/or programs.

### ***Accomplishments***

In February 2012, CEQ and FRA established formal points of contact with Federal and state resource agencies and met with their representatives at headquarter and field offices. Because of the geographic extent, three working groups (north, central, and south) were established to facilitate focused interactions on regional issues. FRA provided the field offices with details of the NEC FUTURE planning and environmental review process, including the projected schedule for completion of the NEPA Tier 1 EIS.

In May of 2012, FRA posted and tracked the NEC FUTURE project timelines and progress on the [Federal Infrastructure Projects Dashboard \(Dashboard\)](#). It also launched a project-specific [website creating a portal for sharing Tier 1 EIS materials](#). FRA filed its [Notice](#)

[of Intent](#) under NEPA in June 2012 along with initiating intergovernmental consultation to engage the Native American tribes as part of the early coordination process prior to scoping for the Tier 1 EIS. The result of this early coordination was a well-informed process that included the following:

- Multiple in-person meetings were held that facilitated consensus and trust between FRA and relevant resource and regulatory agencies, each of which was available to attend via webinar.
- Project information, planning and analytical methodologies were shared with resource agencies in advance of FRA decision-making.
- FRA received frequent input on the environmental review process and technical approaches to preparing a Tier 1 EIS at points earlier than in the traditional NEPA agency coordination process.

CEQ worked with FRA and the agencies to develop an alternative approach to the Memorandum of Understanding (MOU) process typically employed under NEPA. CEQ met with the agencies and worked with FRA to reduce the MOU to a concise [Statement of Principles](#) that was posted on the Dashboard and provided a coordination schedule along with the points of contact for the agencies engaged in the effort.

### ***Lessons Learned***

This Pilot proved to be innovative in its approach of reaching out and engaging resource agencies early in a collaborative planning process. All parties involved gave good feedback about the process, especially regarding engagement with them well in advance of the Notice of Intent. The engagement and collaboration proved successful in various stages of the NEPA review process involving the different agencies and stakeholders. By the time FRA was conducting agency scoping meetings in August 2012, the pertinent agencies were already familiar with the project and could give more focused and substantive comments. Furthermore, the agencies had input during the process of developing alternatives by helping the technical team identify and shape reasonable alternatives for the review.

Based on the experience of the Pilot project, [FRA identified and reported on the following best practices](#) for environmental collaboration during a complex, multi-state planning process:

- Reach out to all Federal, regional, and state resource and regulatory agencies, at both headquarters and regional levels, early and regularly throughout the NEPA process;
- Use a [Statement of Principles](#) to guide communication and consultation with environmental resource and regulatory agencies;
- Share resource data and agency input via increased participation of all interested parties using on-line meetings and web-based techniques; and
- Use a collaborative process to develop and enhance inter/intra-agency trust through increased input, coordination, and communication.

These best practices are expected to continue throughout the Tier 1 EIS process, as FRA continues to meet with these agencies on a regular basis. Using these practices, FRA established an effective foundation for ongoing agency coordination that will benefit the ongoing NEC FUTURE program and during subsequent project-level environmental reviews.

***Recommendations:***

1. Agencies should consider developing and using a [Statement of Principles](#) in lieu of the more complex and time-intensive process required to adopt a formal Memorandum of Understanding when developing cooperating or participating agency agreements with other Federal, tribal, state, or local governmental entities.
2. Agencies should review the [final best practices report](#) for the FRA's Northeast Corridor Rail Future project when developing a large-scale (temporal and spatial) NEPA review.

## **PROJECT V: Forest Service’s Four Forest Restoration Initiative and Fivemile-Bell Project**

CEQ and the U.S. Forest Service (USFS) announced the selection of [the fifth and final NEPA Pilot](#) project on February 9, 2012, Approaches to Restoration Management. This pilot involves the [Fivemile-Bell Landscape Management Project](#) (Fivemile-Bell) and the [Four Forest Restoration Initiative](#) (4FRI).

The Fivemile Bell Project is a planned 10-year watershed restoration project of a small section of an Oregon coastal forest altered by past agricultural activities. Under NEPA, Fivemile Bell is using an Environmental Assessment (EA) to cover a project that includes upland treatments, in-stream and channel restoration, and valley bottom management. The 7,000-acre project will address ecosystem diversity and productivity focusing on habitat enhancement for endangered or threatened wildlife and plant species. Project partners collaboratively prepared the EA and will continue their efforts as USFS implements the decision and undertakes restoration work. The extent of this collaborative approach is unprecedented for USFS in that it extends to obtaining local support and hiring local residents to assist in preparing the NEPA review.

The 4FRI is the largest project-level NEPA analysis ever conducted by USFS. It will be developing a more complex Environmental Impact Statement (EIS) covering a large expanse of four contiguous ponderosa pine forests in northern Arizona of around one million acres. The goal of this long-term project is to collectively restore fire-adapted ecosystems in four forests covering 2.4 million acres, addressing the resources management issues of repairing an ecosystem vital for critical wildlife habitats and nearby communities.

Though these projects differ dramatically in scale and scope, they share the common goal of forest restoration and employ innovative approaches to NEPA by fully engaging a suite of different stakeholders in the environmental review process. These projects promote:

- Project planning at different scales;
- Innovative methods of collaboration;
- Integration of adaptive management programs; and
- Use of cutting-edge communication and GIS-based planning tools.

The purpose of this NEPA Pilot is to reaffirm the principle that NEPA is not a process that is meant to generate paperwork, but to encourage a process that promotes excellent action. Ultimately, the Pilot draws on issues and concerns raised during the scoping and public comment periods and close coordination with stakeholders to amplify the challenges, opportunities, and successes for collaborative approaches to land restoration projects that are applicable to other large-scale projects and/or programs.

### ***Accomplishments***

The Pilot provided a testing ground for collaboration and early engagement for both large and small-scale landscapes. Each of the projects demonstrated considerable progress in identifying and working through the environmental review process in each of their contextual scales and engaging the stakeholders in the review and decision-making process.

#### Fivemile-Bell Project

The scoping process began in May 2010, and the [final EA](#) was released in July 2012. During the process, communities and interested parties, including the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians, were consulted about developing alternatives and mitigation and monitoring requirements. A task force of USFS specialists and partners was convened to oversee this process and met regularly. This process influenced the [final decision released](#) on July 2, 2013. Stakeholder communities will continue to be a part of the implementation and monitoring process for the duration of the project. So far:

- USFS partnered with the Siuslaw National Forest, a suite of local stakeholder groups to engage communities, and the local natural resource workforce early on in the process.
- Several non-profit organizations dedicated to improving the community and watershed health of the Oregon Coast and the Siuslaw Soil and Water Conservation District helped with the NEPA process through direct involvement in public outreach with concepts, materials, and meetings.
- Ecotrust, a regional non-profit organization assisted USFS in hiring local citizens and workers to gather and synthesize assessment data for the planning and environmental analysis process, help share the workload, and include the community in the process.

#### 4FRI

4FRI began the scoping process and holding public workshops in January 2011, throughout various locations in the project's geographic range in Arizona, with a final NOI release in August of that year. By March 2012, the Draft EIS (DEIS) was being developed and published in the same month of 2013, to be open for public commentary. The Pilot's [webinars](#) included members of the different stakeholder agencies and academic institution involved.

- The first webinar discussing 4FRI was released July 18, 2012, which featured the main broad aspects of the planning effort and the potential challenges and solutions it would face.
- The second webinar was released on August 21, 2013, and looked at the post-DEIS landscape of planning and implementation for 4FRI. This presentation covered 4FRI collaborative efforts, including how stakeholders engaged in the planning process, and specifically regarding the DEIS, how USFS used eMNEPA tools to improve inefficiencies, and how planning will be operationalized.

On November 21, 2014, USFS released a [Final EIS and a draft Record of Decision](#).

#### *Lessons Learned*

The Forest Service employed some innovative engagement strategies for the NEPA process to help develop adaptive landscape management strategies for these projects. Both Fivemile-Bell and 4FRI encountered different experiences with engagement in the NEPA process, contributing context-specific and general lessons that can inform future landscape-scale environmental review processes.

### Fivemile-Bell

A taskforce of USFS specialists for this effort was necessary as they served in supervisory roles for the local contractor and its workforce (Appendix C). Having local people help develop the NEPA review by carrying out field surveys, data collection and historical research, and preparing specialist reports for the USFS led to a greater level of communication, understanding, and trust between the agency and citizens. This diminished potential controversy over the final NEPA environmental review and subsequent decisions. Fivemile-Bell's inclusionary process encouraged USFS personnel to consider issues they may have never dealt with and to examine new ways of solving problems.

### 4FRI

The scale of 4FRI's environmental review and the NEPA process that was followed set several precedents that can inform large-scale landscape environmental reviews (Appendix D). Firstly, this kind of broad planning can be done in a site-specific form through a tiered process, eliminating redundant NEPA processes and documentation. Landscape-scale planning often improves cumulative effects analysis because the scale of effects are more meaningful, using GIS and databases to track past projects. This Pilot validated the value of tracking forest activities in publically available databases to have an accurate assessment of past activities, allowing for a better analysis of cumulative effects. 4FRI's large-scale planning could not have been done without the use of innovative collaboration tools, such as the web-based eMNEPA, which increased transparency by having most documents available to the public and helped provide for the site-specific analysis. The efficiency of the 4FRI planning team was enhanced through resource and data sharing, increasing the capacity and ownership in the project. An active stakeholder group involved in the process was helpful in providing specific input on site-selection and disclosing more information to the public. This standing group is instrumental in creating a robust monitoring and adaptive management framework.

This Pilot and the inherent scale of the review process was not without its difficulties, however. Tracking changes between the draft and final EIS versions can be difficult, requiring a dedicated planning team for the project. Furthermore, stakeholders may have difficulty in conceptualizing the scale of such a large project, thus limiting their comprehension and involvement in the process. Despite these challenges, this Pilot project proved to establish many lessons that can be applied in future projects of this scale, encouraging a more efficient and robust NEPA process.

### ***Recommendations:***

1. Agencies should review the final reports for the USFS 4FRI and Fivemile-Bell restoration projects (Appendices C and D) and use the best practices when developing a large-scale (temporal and spatial) NEPA review.
2. Agencies should optimize the use of collaborative stakeholder groups for developing and implementing monitoring for the effects of proposed projects and the effectiveness of proposed mitigations.

## NEPA IT Working Group Metric Recommendations

# National Environmental Policy Act

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### *Start and End Time Data Points for the NEPA Process*

CEQ proposes that federal agencies capture similar process time data points that are uniform across Federal agencies.

Consistent, Federal-wide data points will provide greater insight to current agency NEPA practices, inform discussions on ways to improve the NEPA review process, and facilitate the development/use of IT software to capture these data points. Collecting these data points can aid in identifying process trends (for example, agencies can consider overall trends and the value of considering certain sectors, levels of analysis, types of proposals), identify opportunities to combine projects where applicable to encourage efficient analyses, and identify and address common external drivers that influence the NEPA process. These data points will contribute to discussions regarding government-wide initiatives such as the OMB led infrastructure permitting effort; however, these data points are not designed or intended to be used as performance metrics.

CEQ requested NEPA ITWG participating agencies to submit their perspectives on the appropriate time data points and based on that input, among others, developed the following recommendations.

#### **CEQ RECOMMENDATIONS FOR NEPA DATA POINTS**

**Undocumented Categorical Exclusions (CEs):** Data points will not be established.

Agencies were unanimous in their view that agencies should not track undocumented CEs. Agencies expressed the lack of documentation associated with these actions and were concerned that this level of tracking would cause undue burden. A general data call will be considered as we move forward.

#### **Documented CEs:**

- Start data points for NEPA: Agency determination that a CE is appropriate based upon receipt of:
  - Complete application requiring agency action; or
  - Agency generated proposal for action
- End data points for NEPA:
  - When the CE determination is signed (this remains blank when concurrent with issuance)
  - When the CE determination is issued
  - When the CE determination is effective (this remains blank if same as date issued)

- End data point for the decision: When a decision is made (recorded or documented).

Agency responses identified the need for the options for start times based on whether the proposal is applicant or agency driven. The agencies reached consensus on the end point recognizing that use of the “final” modifier for “final CE” accommodates varied approval processes.

**Environmental Assessments (EAs):**

- Start time data points: Agency determination that an EA is appropriate based upon receipt of:
  - Complete application requiring agency action; or
  - Agency proposal for action
- Optional Interim time data points (these should remain unreported when they are not applicable): EA and, or, FONSI released for public review (e.g., draft EA, final EA and draft/proposed FONSI)
- End time data points:
  - When the FONSI is signed (this remains blank when concurrent with issuance)
  - When the FONSI is issued
  - When the FONSI is effective (this remains blank if same as date issued)
- End data point for the decision: When a decision is made (recorded or documented).

Agency responses identified the need for the options for start times based on whether the proposal is applicant or agency driven. Based on agencies consensus, the EA process ends when the FONSI is signed or issued (signing the FONSI may not coincide with issuance of the final FONSI when, for example, there is a review period before the signed FONSI becomes effective). Some agencies provide to the public a draft EA and, or FONSI; consequently, interim data points are appropriate.

**Environmental Impact Statements (EISs):**

- Start time data point: NOI publication
- Interim time data points:
  - DEIS NOA
  - FEIS NOA
  - Supplemental Draft EIS (this should remain blank when not applicable)
  - Supplemental Final EIS (this should remain blank when not applicable)
- End data point for NEPA and for the decision:
  - When the ROD is signed (this remains blank when concurrent with issuance)
  - When the ROD is issued
  - When the ROD is effective (this remains blank if same as date issued)

Agencies agreed that the Federal Register publication of the Notice of Intent (NOI) is a common date which identifies the start of the EIS process; however, not all agencies currently track this date with an IT based tool. The EIS process ends on the date the ROD is signed (unless agency procedures stipulate another date such as the effective date of the ROD which may vary depending upon whether an effective date is specified in a ROD).

The following table summarizes the recommended data points for documented CEs, EAs, and EISs.

**Proposed NEPA Process Start, Intermediate, and End Dates**

Level of NEPA Review	Start Date	Intermediate Dates	NEPA End Date(s):			Date of Decision
			Signed	Issued	Effective	
Documented CE	Agency determination that a CE is appropriate based upon receipt of a: <ul style="list-style-type: none"> <li>○ Completed application; or</li> <li>○ Agency proposal</li> </ul>		CE determination signed	CE determination	CE determination	
EA	Agency determination that an EA is appropriate based upon receipt of a: <ul style="list-style-type: none"> <li>○ Completed application; or</li> <li>○ Agency proposal</li> </ul>	EA	FONSI signed	FONSI issued	FONSI effective	
EIS	NOI	DEIS NOA FEIS NOA	ROD signed	ROD issued	ROD effective	

*Background:*

The Council on Environmental Quality (CEQ) hosted several meetings with the NEPA Information Technology Working Group (ITWG) to focus on identifying and determining common time oriented data points to denote both the beginning and end points in the NEPA process; including other common milestones. In addition, CEQ conducted a survey of existing agencies NEPA IT systems to determine the status of existing data points collected across the government.

CEQ requested NEPA ITWG participating agencies to submit their perspectives on the appropriate time data points and based on that input, among others, developed this proposal.

FINAL DRAFT

BEST PRACTICE PRINCIPLES FOR ENVIRONMENTAL  
ASSESSMENTS

NATIONAL ASSOCIATION OF ENVIRONMENTAL  
PROFESSIONALS

Council on Environmental Quality Pilot Project

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## Acronyms and Abbreviations

BPPs	Best Practice Principles
CEAM	Cumulative Effects Assessment and Management
CEP	Certified Environmental Professional
CEQ	Council on Environmental Quality
C.F.R.	Code of Federal Regulations
DOPAA	Description of Proposed Action and Alternatives
DOT	Department of Transportation
EA	Environmental Assessment
EIS	Environmental Impact Statement
EPA	Environmental Protection Agency
ESA	Endangered Species Act
FAQ	Forty Most Asked Questions
FHWA	Federal Highway Administration
FONSI	Finding of No Significant Impact
NA	Native Alaskans
NAEP	National Association of Environmental Professionals
NEPA	National Environmental Policy Act
NHO	Native Hawaiian organizations
NHPA	Natural Historic Preservation Act

## **INTRODUCTION**

### **BACKGROUND**

The Council on Environmental Quality (CEQ) released a solicitation in March 2011 inviting Federal agencies and environmental professionals to nominate pilot projects as best examples focused on more efficient and effective implementation of the National Environmental Policy Act (NEPA), those that would improve the quality and transparency of agency decision making. The National Association of Environmental Professionals (NAEP) responded to the CEQ solicitation with a proposal to develop experience-based Best Practice Principles (BPPs) for preparing effective EAs. The NAEP proposal was one of five (5) Pilot Projects selected by CEQ, *available at* [http://www.whitehouse.gov/administration/eop/ceq/Press\\_Releases/NEPA/October\\_19\\_2011](http://www.whitehouse.gov/administration/eop/ceq/Press_Releases/NEPA/October_19_2011).

The first stage of the Pilot Project focused on design of the questionnaire that would be distributed to a wide-range of environmental professionals, and the review of the assembled survey responses. These steps culminated in a draft report submitted to the CEQ in November 2012 and a final report in July 2013 (the "final report"). The steering committee reported the results of the Pilot Project and survey to the membership of the NAEP at the 2013 Conference, which focused on the methodology and results of the questionnaire.

In this last phase of the Pilot Project, the NAEP team focused further on the development and peer review of BPP for EAs. This report focuses on the seven (7) BPPs identified as most important in advancing the effective and efficient development of quality EAs. These Priority One BPPs are:

- Description of Purpose and Need
- Description of Proposed Action and Range of Alternatives
- EA Contents
- Cumulative Effects Assessment and Management
- Regulatory Consultation and Coordination
- Determination of Environmental Impact Significance for EAs
- Extent of Public Involvement for EAs

The NAEP presents to the CEQ these BPPs, which could be used as resource materials by various Federal agencies as they prepare EAs. Further, individual agencies could choose to add agency-specific BPPs to the generic list from this project, or develop a completely new list of agency-specific BPPs.

### **PRACTITIONER KNOWLEDGE AND DEVELOPMENT OF BPPS**

The Pilot Project hypothesis stated that the assimilation of practitioner knowledge related to effective BPPs for EAs provided the basis for improvements in preparing EAs. A six-person steering committee,

led by Dr. Larry Canter and David Keys, CEP, completed the first stage of the pilot project by formulating the survey questions, distributing the survey questions, and finally, compiling the survey questions and recommending BPPs.<sup>1</sup>

The steering committee identified two groups of selected recipients of the survey questionnaire. The first group included the professional membership of NAEP; the second group included agency NEPA liaisons and other NEPA collaborators and compliance professionals compiled by CEQ. The NAEP membership included 811 professionals and the CEQ group included 250 professionals. Accordingly, the survey questionnaire was sent to 1061 persons on February 28, 2012, and responses were received over a 22-day period ending on March 21, 2012.

Responding to this survey questionnaire was voluntary for persons in both the NAEP group and CEQ group of participants. Further, both groups had a participation rate of about 30.0% (the NAEP group – 240 of 811, or 29.6%; and the CEQ group – 76 of 250, or 30.4%). The questionnaire design consisted of 23 questions comprised of a variety of styles and requested inputs. More specifically, groups of questions related to respondent experience in NEPA compliance documentation, current inadequacies and adequacies in EAs, selected topical features for inclusion in EAs, and potential implementation of BPPs for EAs. Respondents made 1689 comments in addition to the standard responses to the topical questions.

This analysis of the survey represented approximately 5000 person-years in experience, established by considering the midpoint between the four experience ranges (1.5, 6.5, 15, and 25 years) of the respondents and multiplying them by the response counts. The steering committee members represented, about 150 person-years in NEPA-related experience, aided in the final findings. Biographies representing the experience of the preparers involved in the CEQ Pilot Project BPPs for EAs may be found in Attachment A.

In addition to the questionnaire responses, the steering committee considered law, regulations and case law in the delineation of inadequacies and adequacies in EAs to establish the initial categories of delineated BPPs. The steering committee also reviewed certain federal agency guidance, reported in Exhibit G to the final report, and peer-reviewed literature. The steering committee presented their findings in the final report on July 24, 2013, documenting the design and development process of the questionnaire, the survey results, the methods and criteria used to develop the BPP topics, and 15 initial Priority One BPPs.

After receiving comments from the CEQ, NAEP organized a second seven-person experienced team to address the CEQ comments and prepare the final BPPs, with an emphasis on the peer-review process. This team included:

- Ron Deverman, Associate Vice-President, HNTB Corporation; Past President, NAEP; 30-year NEPA practitioner, Chicago, IL

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<sup>1</sup> Thanks to the significant planning and work completed by Dr. Larry Canter, David Keys, CEP and Paul Looney, CEP.

- P. E. Hudson, Esq., Counsel and Environmental Law and Planning Training Director, Office of General Counsel, Department of the Navy, Ventura, CA.<sup>2</sup>
- Karen Johnson, CEP-Documentation, 27 years experience, Wylie, TX
- Ronald E. Lamb, CEP, Chair-NAEP NEPA Practice, Washington, DC.<sup>3</sup>
- Professor Daniel R. Mandelker, Stamper Professor of Law, Washington University, Saint Louis, MO
- Stephen Pyle, Esq., Project Manager, HDR Environmental, Operations, and Construction, Inc., Spring Branch, TX
- Dr. Robert Senner, Principal, ARCADIS, Anchorage, AK

## **SELECTION CRITERIA FOR BPPs**

As previously noted, the overarching criterion used to identify the seven Priority One BPPs for EAs presented in this report was to base their selection and development on the knowledge and advice of NEPA practitioners, specifically the 318 NEPA professionals who responded to the electronic survey. In addition, the team applied two specific criteria to identify and prioritize potential BPP topics:

- The level of emphasis and concern which the respondents devoted to a topic, and
- The extent to which a potential BPP topic was already addressed by the CEQ NEPA regulations and informed by state-level guidance, case law, academic research, and other sources.

In the first stage of the Pilot Project, the steering committee applied these two criteria quantitatively through a five-step, systematic, tabulated selection process to produce the first 15 Priority One BPP topics. The final report describes this process in detail (pp. 33-43). The key features were:

Step 1: Develop topical categories from the responses to survey Question 7, which asked NEPA practitioners to identify features typically associated with adequate EAs. The respondents identified 535 positive features which the steering committee collated into 23 distinct topical categories.

Step 2: Compare the 23 topical categories with the CEQ NEPA regulations, case law involving or applicable to EAs, relevant peer-reviewed research articles, and other useful information sources to delineate those topics already receiving high levels of emphasis as opposed to other topics in need of increased attention and guidance. This process yielded 18 potential BPP topics representative of those practice areas not adequately covered by regulatory, case law, or other guidance.

Step 3: Incorporate the results from survey Question 6. This question presented a list of nine inadequacies which have historically been identified in litigation and public comments and in criticisms of specific EAs, and asked the respondents to prioritize them. Each of the prioritized EA inadequacies

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<sup>2</sup> Any views expressed are Ms. Hudson's personal views and not necessarily those of the Department of Defense, Navy, or Federal Government.

<sup>3</sup> Any views expressed are Mr. Lamb's personal views and not necessarily those of the Department of Defense, Navy, or Federal Government.

was matched with one or more of the 18 potential BPP topics derived in Step 2. This provided an initial priority order based on rankings provided by the survey respondents.

Step 4: Factor in the results from survey Questions 8 through 21, which yielded many insightful qualitative responses, based on the respondent's own experience, which the steering committee used to provide a supporting basis for prioritizing the BPPs.

Step 5: Identify Priority One and Priority Two BPP topics based on the preceding steps. The process yielded 15 initial Priority One topics and nine Priority Two topics, from which the 15 originally proposed Priority One BPPs were prepared.

In the second stage of the Pilot Project, the NAEP team closely examined the 15 initial Priority One BPP topics from the first stage of the project and considered them more closely from the context of regulatory language, case law precedent, and review and comment by the CEQ. In addition, the team identified common features or redundancies, which served as criteria to broaden or consolidate the original 15 Priority One topics. This second hard look, following the first systematically applied, step-wise procedure, resulted in the 7 Priority One BPPs presented in this report. These Priority One BPPs are:

- Description of Purpose and Need
- Description of Proposed Action and Range of Alternatives
- EA Contents
- Cumulative Effects Assessment and Management
- Regulatory Consultation and Coordination
- Determination of Environmental Impact Significance for EAs
- Extent of Public Involvement for EAs

## **SEVEN PRIORITY ONE PROPOSED BEST PRACTICE PRINCIPLES**

The 7 Priority One BPPs for EAs consist of concisely written, topically focused principles related to how to address necessary topics in NEPA compliant EAs. The BPPs are designed to improve the quality, usefulness, and timeliness of EAs, while reducing the risk of challenge to a focused EA. The proposed BPPs should be applicable across all Federal agencies that prepare EAs.

The BPPs were developed based primarily on the CEQ Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 40 C.F.R. pts. 1500-1508 (2011) [hereinafter CEQ Regulations], *available at* [http://energy.gov/sites/prod/files/NEPA-40CFR1500\\_1508.pdf](http://energy.gov/sites/prod/files/NEPA-40CFR1500_1508.pdf), questionnaire survey responses, a review of case law, peer-reviewed scholarship, comments by the CEQ, and practitioner experience. Each BPP is written in the style and manner that is particular to that underlying subject matter of the BPP; they do not necessarily follow a strictly standard format.

This report recognizes that a range of EAs exist in practice, on a scale of complexity ranging from small scale, referred to in the final report and herein as traditional EAs, to mitigated EAs and mitigated Findings of No Significant Impact (FONSIs), to those EAs that are particularly complex, based on the extent of controversy over the impacts on particular resource or resources including programmatic or consolidated EAs. Each specific BPP acknowledges and addresses this sliding scale of EA complexity, based on relevancy and applicability. As a matter of reference, the citations to the sources cited are in full at the first citation, and in shorthand, thereafter.

## **BPP 1: DESCRIPTION OF PURPOSE AND NEED**

### Background Information

Responses to Question 6 (inadequacies in EAs) indicate a concern that the statements of purpose and need in EAs are inadequate. Four related comments regarding purpose and need in Question 6 noted that inadequacies included:

- Inadequate explanation of need for the action
- Unclear delineation of purpose
- Confusion of the purpose and need with proposed action and
- Reverse engineering the purpose and need to fit the proposed action.

Conversely, the responses to Question 7 (adequacies in EAs) in the Description of Purpose and Need section included 46 comments on good purpose and need statements within EAs. The comments generally focused on the importance of drafting a clear, concise, well-articulated, and well-defined purpose and need statement.

Other portions of Question 7 that included comments regarding purpose and need were four responses to the Description of Proposed Action and Alternatives (DOPAA) section, and four comments to the Application of Principles of Scientific Writing and Communication section. All comments focused on the need for clear and concise purpose and need statements. Four comments were also noted in the section entitled Inadequacies in EAs, which focused on loosely written and poorly defined purpose and need statements.

Responses to Question 7, involving 269 respondents indicated strong support for ensuring clear, concise, well-defined purpose and need statements in all levels of EAs.

### BPPs for Description of Purpose and Need in an EA

#### 1. Regulations and Guidance involving Description of Purpose and Need

For Environmental Impact Statements (EISs), CEQ Regulations require that “[t]he statement shall briefly specify the underlying purpose and need to which the Agency is responding in proposing the alternatives including the proposed action.” 40 C.F.R. §1502.13; *see also* 40 C.F.R. § 1502.1 (expressing a need for good writing in documents, and requiring that “[s]tatements shall be concise, clear, and to the point.”). The regulations also require that an EA contain “brief discussions of the need for the proposal.” 40 C.F.R. § 1508.9 (2)(b).

The CEQ recognizes the potential value of a collaborative approach, when applicable, in defining purpose and need statements. CEQ, “Collaboration in NEPA - A Handbook for NEPA Practitioners” (October 1, 2007) [hereinafter CEQ Collaboration Handbook], *available at* [http://energy.gov/sites/prod/files/CEQ\\_Collaboration\\_in\\_NEPA\\_10-2007.pdf](http://energy.gov/sites/prod/files/CEQ_Collaboration_in_NEPA_10-2007.pdf). The collaborative approach involves the lead agency working directly with parties, such as agencies with regulatory authority, cooperating agencies and private parties, at one or more stages during the NEPA process, seeking their advice and agreement on the purpose and need statement.

#### 2. Case law and other sources involving Descriptions of Purpose and Need

Many courts will look to the project's purpose and need statement to determine whether an agency should have reasonably considered an alternative; the purpose and need statement guides the range and selection of reasonable alternatives. See, e.g., *Mayo Found. v. Surface Transp. Bd.*, 472 F.3d 545, 550 (8th Cir. 2006), *City of Alexandria v. Slater*, 198 F.3d 862, 867-69 (D.C. Cir. 1999); *Carmel-by-the-Sea v. U.S. Dep't of Transp.*, 123 F.3d 1142 (9th Cir. 1997).

Courts defer to agency statements of purpose and need and uphold them when reasonable. See, e.g., *Citizens for Smart Growth v. Secretary of Dept. of Transp.*, 669 F.3d 1203, 1212 (11th Cir. 2012) (citing *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991)) (“[A]gencies must look hard at the factors relevant to the definition of purpose” and “should take into account the needs and goals of the parties . . .”). On the one hand, an agency may not define the purpose of and need for the action in such unreasonably narrow terms that it prevents consideration of any reasonable alternatives to the proposed project. But then again an agency need not craft a statement so broad that it requires consideration of alternatives that are inconsistent with the overarching purpose of the proposal. The courts apply similar legal reasoning to both EAs and EISs.

The courts emphasize the importance of a carefully developed purpose and need section – the needs should be succinctly stated and the purpose (goals or objectives) should be articulated such that measurable (quantitative or qualitative) criteria could be used in the evaluation of reasonable alternatives. Owen L. Schmidt, *The Statement of Underlying Need Determines the Range of Alternatives in an Environmental Document*, in *Environmental Analysis -- The NEPA Experience*, 42-65 (S.G. Hildebrand and J.B. Cannon, eds., 1993); Judith L. Lee, *The Power of Purpose and Need in Quality NEPA Planning: Three Case Studies*, *Federal Facilities Envtl. J.* Autumn 1997, pp. 72-85.

Finally, agencies should look to their own guidance to determine whether it has reasonably defined the purpose and need of an applicant-proposed project.

### 3. Recommendations for Description of Purpose and Need

CEQ Regulations require that an EIS “briefly specify the underlying purpose and need to which the agency is responding . . .” 40 C.F.R. §1502.13. When it comes to an EA, CEQ Regulations state that a brief discussion of the need for the proposal is needed. 40 C.F.R. §1508.9(2)(b). For an EA, the purpose and need may be drafted as a combined statement. In practice, however, it is common to draft the purpose and need as two distinctly separate statements as is normally done for an EIS. In conceptualizing the purpose and need, the need can be thought of as a description of a situation that exists before an agency takes action. The purpose can be thought of as the position an agency would like to be in after taking action. See United States Bureau of Land Management, Planning/NEPA Forum: Purpose and Need, available at [http://www.ntc.blm.gov/krc/uploads/366/Purp\\_Need.html](http://www.ntc.blm.gov/krc/uploads/366/Purp_Need.html) (last visited Feb. 11, 2014).

#### *Purpose*

The purpose is a statement of goals and objectives that an agency intends to fulfill by taking action. It is typically based on a problem to be fixed or solved, or a decision that needs to be made. The purpose statement should not be defined too narrowly so as to define the proposed action (i.e. the proposed solution to the problem). Nor should the purpose statement be so broad that it fails to effectively

support the development of the range of reasonable alternatives to be analyzed. Finally, the purpose of the proposed action is never to “prepare an EA for a proposed action” or “to comply with NEPA.”

### *Need*

The need statement explains why an agency is proposing a particular action at a particular time. The need statement might describe some underlying condition that needs to be corrected, or a requirement that needs to be carried out. A credible, well-substantiated need statement should present evidence of the problem to be addressed. United States Marine Corps, USMC NEPA Manual (September 2011), *available at* [http://www.miramar-ems.marines.mil/Portals/60/Docs/MEMS/NEPA/USMC\\_NEPA\\_Manual.pdf](http://www.miramar-ems.marines.mil/Portals/60/Docs/MEMS/NEPA/USMC_NEPA_Manual.pdf). Such evidence can include background information about the conditions that need to be changed or fixed, agency mission responsibilities or requirements, agency policy or guidance, management objectives, or other specific information documenting why action is being proposed. Often, explaining what the agency’s overall mission is as an introduction or background to the need statement helps provide a strong support and clarification for why there is a particular need. Without documenting the evidence in the need statement, an agency risks an impression that its proposal for action is arbitrary or not well planned out.

The purpose and need statement for the proposed action guides the alternatives screening and development process in determining the range of reasonable alternatives to be analyzed in the EA, as described further in BPP 2 – Description of Proposed Action and Alternatives. Therefore, the purpose and need statement should not be too narrow, nor too broad. If too narrow, then the purpose and need will likely eliminate reasonable alternatives that should be analyzed in the EA. This could lead to challenges of the EA process itself or give the impression that the “decision has already been made.” If too broad, then the purpose and need might not be supportive of constraining the realm of alternatives to those that might reasonably respond to the problem. This could lead to a waste of agency and contractor resources by analyzing alternatives that might not be reasonable, or responsive to addressing the underlying need.

Consider a collaborative approach when working with cooperating agencies, agencies with regulatory authority over some aspect of the Proposed Action, or other parties in drafting of the purpose and need statement.

In the case of an EA prepared in response to a private party’s application to a Federal agency (i.e. right of way to cross public lands), the lead agency has discretion in adapting the applicant's purpose and need to the agency EA. In these cases, the lead agency should give consideration to the underlying purpose and need of the applicant, in addition to the purpose and need from the public interest perspective. Individual agency NEPA procedures should be consulted because individual agency treatment of purpose and need in applicant situations may vary.

#### 4. Purpose and Need Example:

##### *Background*

A remote Federal facility with a 24 hour per day/7 day per week national defense related mission has traditionally received potable water used for drinking, cooking, restrooms, fire suppression, and other uses through a 4-mile long waterline that starts at a well, and terminates at the Federal facility. The waterline was installed over 50 years ago in an underground right of way that includes two miles of

shoulder along paved roadway, and two miles of unpaved dirt access road within a state park. Sections of the waterline within the state park frequently break because the dirt road right of way has experienced severe erosion from off-road vehicle use and natural causes, exposing the waterline in many places. When the waterline breaks, the resulting flooding leads to additional erosion and the Federal facility water supply must be turned off due to loss of pressure and contamination of the water. The facility is located in an arid climate with high fire danger.

*Example of an adequate purpose and need statement*

“The purpose of the Proposed Action is to ensure a reliable and adequate supply of potable water to the remote installation. The Proposed Action is needed because frequent breaks in the installation’s 50-year old water supply line lead to contamination of the potable water supply, in addition to lack of water pressure. Potential water supply contamination threatens the health of installation personnel, who must staff the facility 24 hours per day, 7 days per week according to mission requirements. Lack of water pressure presents a regional fire safety risk since no other water source is currently available to meet fire suppression needs, and the facility has a duty to take action in case of fire emergencies.”

*Example of an overly broad purpose and need statement*

“The purpose of the Proposed Action is to ensure that the installation’s water concerns are addressed. The Proposed Action is needed because the current system is not adequate, which is of concern to the installation commander.”

*Example of an overly narrow purpose and need statement*

“The purpose of the Proposed Action is to replace the existing installation waterline with a new one. The Proposed Action is needed because the current waterline experiences frequent breaks and a new one would prevent this from happening.”

## **BPP 2: DESCRIPTION OF PROPOSED ACTION AND ALTERNATIVES**

### Background Information

Written comments in response to Question 6 (inadequacies in EAs) indicated that inadequacies included poorly-stated description of the proposed project, inadequate screening and consideration of alternatives to reduce impacts, failure to consider obvious alternatives, reverse engineering the Purpose and Need to fit the Proposed Action, and the absence of a hard look regarding specific types of impacts (including cumulative impacts). Responses to Question 7 identified numerous features associated with adequate EAs. Features pertaining to alternatives can be grouped into 1) a well-defined and detailed project description or DOPAA; 2) a clear, definitive alternatives analysis, including the “no-action” alternative; 3) discussion of comparative impacts for each alternative; and 4) logical, rational reasons for why an alternative was chosen or dismissed from consideration.

Responses to Question 9 indicated strong support for addressing alternatives in EAs, 79.5% of 224 respondents supported fewer (2) alternatives for small-scale EAs (i.e., one action alternative and the required comparison to the no-action alternative baseline). Most respondents agreed that larger EAs (reflecting broader needs to be addressed) are more likely to have more than one reasonable action alternative that should be analyzed. The responses are consistent with CEQ guidance on preparing concise, focused and timely EAs. See CEQ, “Emergencies and the National Environmental Policy Act” Attachment 2, (May 12, 2010) (refreshing the previously issued 2005 guidance) [hereinafter 2010 CEQ Focused EA Guidance], *available at* [http://energy.gov/sites/prod/files/nepapub/nepa\\_documents/RedDont/G-CEQ-Emergencies.pdf](http://energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-Emergencies.pdf). See CEQ, “Emergency Actions and NEPA” Attachment 2 (September 8, 2005) [hereinafter the 2005 CEQ Focused EA Guidance], *available at* [http://energy.gov/sites/prod/files/nepapub/nepa\\_documents/RedDont/G-CEQ-EmergencyGuidance.pdf](http://energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-EmergencyGuidance.pdf).

### BPPs for Description of Proposed Action and Alternatives

#### 1. CEQ Regulations and Guidance on Proposed Action and Alternatives

Section 102(2)(E) requires agencies to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” National Environmental Policy Act of 1969, § 102, 42 U.S.C. § 4332 (2012). *Suttenberg* discusses Section 102(2)(E) as a requirement independent of those for EISs listed in Section 102(2)(c)(iii). J. Suttenberg, L. London, and T. Campbell, *Unresolved conflicts: How revisiting NEPA § 102(2)(E) could increase efficiency, simplify government, and save taxpayers money*, 18 N.Y.U. Env'tl. L. J. 156 (2010). However, the cases have not given a consistent interpretation to this section. For a more detailed discussion, see Daniel R. Mandelker et al., *NEPA Law and Litigation* § 9:22.

The CEQ Regulations include the requirements of Section 102(2)(E) at 40 C.F.R. §§ 1501.2(c), 1507.2(d) and 1508.9(b), but do not provide implementing guidance. The CEQ’s 1981 guidance provides the range and application of alternatives in EISs. CEQ, “Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations” (March 16, 1981) (Questions 1 – 7) [hereinafter CEQ FAQs], *available at* <http://energy.gov/nepa/downloads/forty-most-asked-questions-concerning-ceqs-national-environmental-policy-act>.

Finally, the CEQ's Collaboration Handbook discusses the value of a collaborative approach to developing alternatives: "there may be a number of ways by which their objectives (purpose and need) can be met. Collaboratively developed alternatives are more likely to withstand external challenges because such an approach enables stakeholders to have a meaningful role in choosing among alternatives..."

## 2. Case law and other sources involving Proposed Action and Alternatives

Court cases involving EAs state that federal agencies must include all reasonable alternatives setting forth those alternatives that demonstrate a reasoned choice. An agency need not consider an infinite range of alternatives, only reasonable or feasible ones. *See, e.g., Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991). For situations in which a large number of similar alternatives exist, it may be appropriate for an agency to consider a representative range of reasonable alternatives rather than an exhaustive list. For example, if the Proposed Action could involve a range of options between X and Y (where X may represent a high or maximum number of houses in a development, the number of wind turbines installed, or a resource take limit, and Y represents a low or minimum number), an agency may evaluate the bounds of the range (X and Y) and possibly a midpoint ( $1/2 [X+Y]$ ), if appropriate, to represent the minimum, maximum and intermediate bounds of possible impacts.

An agency is not required to consider alternatives that are not significantly different from those considered or that have substantially similar consequences. The courts do not define a "numerical limit" on the number of alternatives that must be considered. What constitutes a reasonable range of alternatives depends on "the nature of the proposal and the facts in each case." Some courts have found the obligation to consider alternatives in an EA to be less than that required for an EIS, and consequently have allowed agencies to study a more limited range of alternatives. *See Mandelker* at § 10:28.

In addition, two peer-reviewed articles support the survey findings and were used to support the need for BPPs on alternatives. *Smith* examined decisions from the federal Courts of Appeals on challenges to alternative analyses contained in federal agency NEPA documents for the ten-year period 1996–2005. Michael Smith, *A Review of Recent NEPA Alternatives Analysis Case Law*, 27 *Envtl. Impact Assess. Rev.* 126 (2007). The most common challenge was that federal agencies had not included a full reasonable range of alternatives, while the second most frequent was that agencies had improperly constructed their Purpose and Need for their projects resulting in an inadequate development of alternatives. The results show, however, that federal agencies were overwhelmingly successful against both challenges -- winning 30 of the 37 cases in that time period. The study's conclusion focuses on practical steps to developing alternatives analyses in a manner that fulfills the requirements of NEPA and CEQ regulations and makes them less vulnerable to an unfavorable court decision if legally challenged.

*Steinemann* investigates problems with the development of alternatives, based on a study of environmental impact analysis (EIA) in the US. Ann Steinemann, *Improving Alternatives for Environmental Impact Statements*, 21 *Envtl. Impact Assess. Rev.* 3 (2001). The article suggests that alternatives often reflect narrow project objectives, agency agendas, and predilection toward a Proposed Action and that impact analysis often occurs too late in agency decision-making to consider a full range of alternatives. The conclusion of the study proposes ways to improve environmental decision-making.

## 3. Recommendations for the Proposed Action and Alternatives in EAs

*The Purpose and Need statement and the description of the Proposed Action should not be “one and the same.”*

In a May 12, 2003 letter to the Department of Transportation (DOT) the CEQ stated “[c]ourts have cautioned agencies not to put forward a purpose and need statement that is so narrow as to define competing ‘reasonable alternatives’ out of consideration (and even out of existence).” Letter from James L. Connaughton, Chairman, CEQ, to Norman Mineta, Secretary, DOT, (May 12, 2003), *available at* <http://www.environment.fhwa.dot.gov/guidebook/Gconnaughton.asp>. It is inappropriate to define the Purpose and Need so narrowly that potential alternatives are not reasonable and the outcome of the analysis becomes a predetermined formality (*see also* BPP #2 on the Purpose and Need).

*The Proposed Action/Project Description should be complete and clearly stated.*

Based on an appropriate Purpose and Need statement, the Proposed Action/project description must be clearly and completely defined. The description of the Proposed Action should answer the questions *who, what, where, when, how, and how many*. The description of the Proposed Action should be straightforward and concise, but sufficiently detailed to form the basis for the EA analysis. It is also important that the description of the Proposed Action include all *connected actions* (if the action is dependent on or part of other actions).

*EAs addressing broad actions or with unresolved conflicts concerning alternative uses of physical, cultural, or natural resources should evaluate a larger range of action alternatives.*

The broader the problem that needs to be solved, the more likely it is that a broad range of alternatives (possibly including alternatives that only partially satisfy the Purpose and Need) may be found to be reasonable and accordingly will need to be analyzed.

The number of alternatives considered in an EA depends on the circumstances. The sliding-scale approach to NEPA analysis should be applied to the development of alternatives. The sliding-scale approach recognizes that Proposed Actions can be characterized as falling somewhere on a continuum with respect to potential environmental impacts. The sliding-scale approach implements CEQ’s instruction to agencies to conduct “concise reviews and documentation that are proportionate to potential impacts and effectively convey the relevant considerations to the public and decision makers . . .” CEQ, “Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act” (March 6, 2012), [hereinafter CEQ Guidance on Efficient and Timely Environmental Reviews], *available at* <http://www.whitehouse.gov/administration/eop/ceq/initiatives/nepa/efficiencies-guidance>. When applying the sliding-scale approach to the identification of alternatives, the preparer should consider the scope and scale of the need to be addressed and potential environmental impacts. In crafting the range of reasonable alternatives, practitioners should strive to include alternatives with substantial distinguishing characteristics, in contrast to alternatives that are very similar.

If there might be opposition to the Proposed Action, consider conducting public scoping and involving the public and stakeholders in the development of alternatives. If a stakeholder or other interested party suggests an alternative, practitioners should evaluate the alternative in detail or provide a well-reasoned explanation for why the alternative is being dismissed.

*Use screening criteria to develop a reasonable range of alternatives.*

Where more than one alternative meets the Purpose and Need, screening criteria may be helpful in developing the range of reasonable alternatives for analysis. Screening criteria are derived from the Purpose and Need and should reflect the minimum threshold requirements to meet the Purpose and Need. For example, screening criteria may include, but are not limited to, operational needs, safety, environmental impact, time constraints, consistency with enforceable plans, logistics, or geographic considerations.

The method for screening alternatives should be transparent to reviewers and decision makers so that reviewers and the decision-maker can understand agency priorities among the alternatives. The failure to consider alternatives that seem reasonable may affect the credibility of the EA and may lead to delays in the process. Alternatives that were identified by the public during scoping should be considered, or provide a well-reasoned explanation for eliminating the alternative.

## **BPP 3: EA CONTENTS**

### Background Information

This BPP is derived from the information from Question 11. Participants were asked if they agreed or disagreed with the premise that different scales of assessments should have different topical outlines: (1) for larger complex EAs, the EIS format in 40 C.F.R. § 1502.10 should be used; (2) for EAs supporting Mitigated FONSI, the EIS format in 40 C.F.R. § 1502.10 should be used; however, the topical coverage could be reduced; and (3) for a focused EA, the topical outline in 40 C.F.R. § 1508.9(b) could be used with slight modification.

A total of 231 respondents provided their reactions to the three premises. There was a general agreement (71.0%) that 40 C.F.R. § 1502.10 could provide an outline for larger complex EAs, along with its intended use as an outline for EISs. For focused EAs, 84.8% of the respondents indicated that the brief outline in 40 C.F.R. § 1508.9(b) could be used and modified (expanded) as needed. For Mitigated FONSI EAs, the responses were closer in magnitude--54.3% agreeing and 45.7% disagreeing.

NEPA requires federal agencies to prepare an EIS prior to taking "major Federal actions significantly affecting the quality of the human environment." Many agency procedures require the preparation of an EIS for certain actions. If the proposed action does not normally require the preparation of an EIS, the agency must prepare an EA to determine whether the action will have a significant effect on the environment. If the conclusion is reached that there would be no significant impact, which is the case in most EAs, then that finding must be clearly supported in the analysis in the EA and the agency may issue a FONSI. If the EA reveals potential significant impacts, or uncertainties about significant impacts, then an EIS is needed.

### BPPs for EA Content

#### 1. CEQ Regulations and Guidance on EA Content

CEQ Regulations discuss format and topics for EISs at 40 C.F.R. § 1502.10, and core elements for EAs at 40 C.F.R. § 1508.9(b).

The recommended format for an EIS in the CEQ regulations at 40 C.F.R. § 1502.10 is:

- (a) Cover sheet.
- (b) Summary.
- (c) Table of contents.
- (d) Purpose of and need for action.
- (e) Alternatives including proposed action (sections 102(2)(C)(iii) and 102(2)(E) of the Act).
- (f) Affected environment.
- (g) Environmental consequences (especially sections 102(2)(C)(i), (ii), (iv), and (v) of the Act).
- (h) List of preparers.
- (i) List of Agencies, Organizations, and persons to whom copies of the statement are sent.
- (j) Index.
- (k) Appendices (if any).

The regulations state that the preceding standard format for EISs should be followed unless the agency determines that there is a compelling reason to do otherwise. If a different format is used, it shall include paragraphs (a), (b), (c), (h), (i), and (j) of this section and shall include the substance of paragraphs (d), (e), (f), (g), and (k) of this section, as further described in Sections 1502.11 through 1502.18, in any appropriate format.

The CEQ FAQs address format issues in a general way at Question 25 and Answer, Appendices; Question 26 and Answer, Index; and Question 27 and Answer, List of Preparers.

The regulations do not have a similar outline for an EA. Instead, the “core elements” for an EA are described in 40 C.F.R. § 1508.9(b):

- The need for the proposal
- Alternatives as required by NEPA Section 102(2)(E)
- The environmental impacts of the proposed action and alternatives
- The agencies and persons consulted

In addition, there are other sources that address EA format or contents. The CEQ FAQs address this matter in Question 36a, by the question “[h]ow long and detailed must an environmental assessment (EA) be?” The CEQ Answer states that EAs are “concise public documents” that “should not contain long descriptions or detailed data which the agency may have gathered” and should be “not more than approximately 10-15 pages.”

Recent CEQ Guidance on Efficient and Timely Environmental Reviews references its previous FAQ answer recommending an EA of 15-20 pages and states:

[t]his guidance must be balanced with the requirement to take a hard look at the impacts of the proposed action. As with EISs, an EA’s length should vary with the scope and scale of potential environmental problems, rather than just with the scope and scale of the proposed action. The EA should be no more elaborate than necessary to fulfill the functions and goals set out in the CEQ Regulations: (1) briefly provide sufficient evidence and analysis for determining whether to prepare an EIS; (2) aid an agency’s compliance with NEPA when no EIS is necessary, i.e., the EA helps to identify and analyze better alternatives and mitigation measures; and (3) facilitate preparation of an EIS when one is necessary.

Another source is a Memorandum from the James L. Connaughton, Chairman, CEQ to the Ann M. Veneman, Secretary of Agriculture and Gale A. Norton, Secretary of the Interior, Guidance for Environmental Assessments for Forest Health Projects (December 9, 2002), *available at* <http://www.fs.fed.us/projects/hfi/2002/dec/guidance-for-environmental-assessments.pdf>, describing core elements of the EA process with the content being similar to the topics provided in at 40 CFR § 1508.9(b).

The CEQ NEPA Task Force Report, *Modernizing NEPA Implementation*, (2003) discussed EAs, including small and large EAs; checklists and forms; and provided recommendations to the CEQ. See CEQ NEPA Task Force Report at 75.

The 2010 CEQ Focused EA Guidance contains guidance during emergencies on preparing focused, concise, and timely EAs and restates the core elements of an EA from 40 C.F.R. § 1508.9(b). Both CEQ guidance documents are tailored to the most recent emergency and do not change the core guidance from 40 C.F.R. § 1508.9(b).

Finally, according to Judge Posner, “an environmental assessment is a rough-cut, low-budget environmental impact statement designed to show whether a full-fledged environmental impact statement -- which is very costly and time-consuming to prepare and has been the kiss of death to many a federal project -- is necessary.” *Cronin v. U.S. Dep’t of Agric.*, 919 F.2d 439, 443 (7th Cir. 1990).

### 3. Recommendations on EA Content

EAs should be clearly written and organized. The CEQ Guidance on Efficient and Timely Environmental Reviews states that clarity and consistency ensure that the substance of the agency’s analysis is understood, avoiding unnecessary confusion or risk of litigation that could result from an ambiguous or opaque analysis. As with EISs, an EA’s length should vary with the scope and scale of potential environmental problems as well as the extent to which the determination of no significant impact relies on mitigation, rather than just with the scope and scale of the proposed action. See CEQ Guidance on Efficient and Timely Environmental Reviews.

Even though the purpose, depth, and breadth of analysis differ among EAs, depending upon the complexities involved, a common format would be useful. As stated above, the core elements of an EA come from 40 C.F.R. § 1508.9(b); however, the regulations do not provide explicit guidance for the organization and format of an EA. This BPP is intended to provide such guidance. The format in **Table 1** should be followed for an EA, unless the agency determines that there is a compelling reason to do otherwise (similar to the caveat in the regulations for the recommended format for an EIS in 40 C.F.R. § 1502.10).

The recommended format for an EIS at 40 C.F.R. § 1502.10 separates the (f) affected environment and (g) environmental consequences into separate sections; however, in focused EAs, combining all aspects of a resource evaluation (e.g., affected environment and direct, indirect and cumulative impact analysis for water resources) could tighten the discussion and avoid the need to restate information from the affected environment in the impact analysis.

**Table 1. Recommended Content for Environmental Assessments**

	<b>Section</b>	<b>Purpose</b>
1	Title Page	Should provide the information needed to prepare a reference citation.
2	Cover Sheet/Abstract	Provides information on the agency preparing the EA and who to contact for additional information. Should be no more than one page.
3	Executive Summary (optional)	Allows an interested party to know what resources were evaluated in detail and any important issues without having to read the entire EA. In smaller, focused EAs, the abstract on the cover sheet could provide an adequate summary.
4	Table of Contents, etc.	Provides a roadmap to the EA.
5	Acronyms and Abbreviations	Supports clarity and usefulness to the public and decision-makers who may not be versed in the agency culture or lingo.

6	Purpose and Need	Shapes the range of alternatives that need to be evaluated in the EA (see BPP 2).
7	Description of the Proposed Action and Alternatives	Both an adequate description of the proposed action and the consideration of reasonable alternatives are important for the adequacy of the impact analyses (see BPP 4).
8	Combined affected environment, environmental consequences, and cumulative effects sections  (Combination optional but recommended to support concise EAs that emphasize analysis of potentially significant issues)	The body of the analysis documenting the “hard look” required under NEPA. The description of the affected environment should briefly describe the affected environment that would change, focusing on resources and issues that have the potential to be significantly impacted by the proposed action. The environmental consequences should provide a thorough description of the analysis done to determine the level of direct, indirect and cumulative impacts. It should use thresholds to show how the impact would be less than significant (see BPP 10). There is no single uniform list of resources, ecosystems, human communities, or issues that should be considered across all proposals or agencies.
9	List of preparers	Identifies who was responsible for preparing the EA and their qualifications.
10	Agencies and persons consulted	Lets decision-makers and the public know who was contacted for information presented in the EA.
11	References	Provides a list of the references cited in the text to help the reader understand the validity of the statements made in the EA.

The CEQ Guidance on Efficient and Timely Environmental Reviews states that environmental analysis should focus on significant issues, discussing insignificant issues only briefly. 40 C.F.R. §§ 1502.2(a); 1502.2(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. 40 C.F.R. § 1502.2(b). CEQ Regulations on EISs, 40 C.F.R. §§ 1500.4(g) (scoping); 1500.4(j) (incorporation by reference); 1500.4k (integration of other environmental analyses), provide additional guidance that may be used to avoid redundant or repetitive discussion of issues. *Compare* 40 C.F.R. § 1502.8 (“EISs should be written in clear language . . . so that decision makers and the public can understand them”).

## **BPP 4: CUMULATIVE EFFECTS ASSESSMENT AND MANAGEMENT (CEAM)**

### Background Information

Responses to Question 6 (Inadequacies in EAs) indicated that the absence of a hard look regarding specific types of impacts, including cumulative impacts, was a highly rated inadequacy. Four comments in response to Question 6 specifically addressed cumulative effects assessment and management (CEAM), noting that EAs sometimes give no attention, or insufficient treatment, to CEAM. On the positive side, Question 7 (Features of Adequate EAs) included 16 comments that identified CEAM strengths within EAs. These focused on the importance of addressing cumulative impacts, documenting the results, and describing the rationale for concluding there would be no significant cumulative impact on a resource.

Responses to Question 19 (CEAM for Three Levels of EAs) showed strong support for addressing cumulative impacts in all EAs, whether at the brief or lengthy end of the spectrum or in between. Specifically, 72.8 percent of 233 respondents supported some consideration and documentation of cumulative impact concerns, if any, for Traditional (small-scale) EAs. Higher percentages of support for more thorough consideration of cumulative impacts were noted for Mitigated FONSI EAs (82.8 percent) and for Enhanced EAs (91.4 percent).

### BPPs for Cumulative Effects Assessment and Management

#### 1. CEQ Regulations and Guidance on CEAM

With respect to CEQ Regulations, cumulative impacts (effects) are defined in 40 C.F.R. § 1508.7 and included as an intensity factor in defining the term *significantly* in Section 1508.27 (b)(7). A finding by an EA of a significant cumulative impact can thus be a trigger for requiring preparation of an EIS.

On January 1, 1997, the CEQ released a handbook titled *Considering Cumulative Effects under the National Environmental Policy Act*, [hereinafter CEQ Cumulative Effects Guidance], which applies to both EAs and EISs, available at [http://energy.gov/sites/prod/files/nepapub/nepa\\_documents/RedDont/G-CEQ-ConsidCumulEffects.pdf](http://energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-ConsidCumulEffects.pdf). It contains an 11-step CEAM process that the handbook relates to three key components of environmental impact assessment as follows:

#### *Scoping*

1. Identify the significant cumulative effects issues associated with the proposed action and define the assessment goals.
2. Establish the geographic scope for the analysis.
3. Establish the time frame for the analysis.
4. Identify other past, present, and reasonably foreseeable future actions affecting the resources, ecosystems, and human communities of concern.

#### *Describing the Affected Environment*

5. Characterize the resources, ecosystems, and human communities identified in scoping in terms of their response to change and capacity to withstand stresses.

6. Characterize the stresses affecting these resources, ecosystems, and human communities and their relation to regulatory thresholds. [Agency management plans and goals apply to many resources not subject to regulatory thresholds and should also be taken into account.]
7. Define a baseline condition for [each of] the resources, ecosystems, and human communities.

#### *Determining the Environmental Consequences*

8. Identify the important cause-and-effect relationships between human activities and [the] resources, ecosystems, and human communities.
9. Determine the magnitude and significance of cumulative effects.
10. Modify or add alternatives to avoid, minimize, or mitigate significant cumulative effects.
11. Monitor the cumulative effects of the selected alternative and adapt management.

Using a subset of the steps and topics within these steps could provide a framework for consideration of CEAM at an EA level, and for determining if significant cumulative impacts are of concern.

#### 2. Other Regulations and Guidance on CEAM

The U.S. Environmental Protection Agency (EPA) in 1999 issued guidance titled *Consideration of Cumulative Impacts in EPA Review of NEPA Documents*, available at <http://www.epa.gov/compliance/resources/policies/nepa/cumulative.pdf>.

The Federal Highway Administration (FHWA) has been a consistent leader in advancing the CEAM state of practice. In 2003, FHWA issued a memorandum with an attachment titled *Questions and Answers Regarding the Consideration of Indirect and Cumulative Impacts in the NEPA Process*. The attachment includes 12 questions and answers, along with extensive lists of CEAM references and training opportunities current to 2003, available at <http://www.environment.fhwa.dot.gov/guidebook/gaimpact.asp>. FHWA also supports an active online NEPA community of practice, *re: NEPA*, with a multitude of CEAM resources, available at <http://nepa.fhwa.dot.gov>.

Finally, there is a growing base of CEAM guidance at the state level. In 2008, for example, the Washington State Department of Transportation, in cooperation with FHWA and EPA Region 10, released *Guidance on Preparing Cumulative Impact Analyses*, available at <http://www.wsdot.wa.gov/nr/rdonlyres/1f0473bd-be38-4ef2-beef-6eb1ab6e53c2/0/cumulativeeffectguidance.pdf>.

#### 4. Case Law on CEAM

Even with this wealth of available guidance, cumulative effects assessment has been the subject of many court cases involving EAs. Whereas most court decisions involving CEAM have approved the cumulative effects analyses contained in NEPA documents, many cases have included plaintiff claims that proponent agencies have inadequately addressed cumulative impacts, not considered such impacts at all, or included unsubstantiated statements regarding findings of no cumulative impacts. See *Mandelker* at 10:42.30. Courts have especially emphasized the importance of discussing cumulative

impacts in environmental assessments. *See, e.g., Kern v. United States BLM*, 284 F.3d 1062 (9th Cir. 2002).

#### 5. Recommended BPPs for CEAM

Every EA should address cumulative effects, because the rationale for their inclusion in EAs and EISs is the same. These impacts affect the resource regardless of the type of document used to describe them. When addressing cumulative effects in an EA, begin by identifying the physical, biological, and social resources (hereafter referred to by the single word resources) that will be affected directly and indirectly by the proposed action and alternatives. An action cannot contribute to a cumulative effect on a resource in the absence of direct or indirect impacts on that resource.

Use the results of the scoping process to identify impact mechanisms and pathways that link the proposed action and alternatives to specific resources of public or agency concern. These are often identified as issues requiring analysis (e.g., construction or operation noise affecting a school or hospital). In addition, note the criterion or threshold established to determine the significance of predicted direct and indirect impacts on each resource, and use that same metric to characterize the expected significance of any cumulative effect anticipated for that same resource.

Designate preliminary spatial and temporal (past to future) boundaries to be considered for the resources to be addressed by the cumulative effects assessments. The geographic scope for CEAM will likely vary from one resource to another. For example, for a development project the geographic scope of the cumulative impact assessment on soils will typically be localized, whereas the geographic scope for air quality may include multiple airsheds. Consider the occurrence and status of past, present, and reasonably foreseeable future actions within the spatial and temporal boundaries which have affected or could contribute to effects on the same resources as the proposed action and alternatives.

The guidance documents identified in the Background section above explain how to establish spatial and temporal boundaries; how to address other past, present, and reasonably foreseeable future actions; and other components of CEAM practice. For past actions, *see* CEQ, “Guidance on the Consideration of Past Actions in Cumulative Effects Analysis” (June 24, 2005), *available at* [http://energy.gov/sites/prod/files/nepapub/nepa\\_documents/RedDont/G-CEQ-PastActsCumulEffects.pdf](http://energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-PastActsCumulEffects.pdf). Pay particular attention to trends in the past status or condition of the resource and how such trends might continue into the future. Note also the degree to which managed resources have met, and are likely to meet in the future, the regulatory standards or management objectives set by agencies with jurisdictional or management responsibility for the resources.

If it is concluded from the scoping process (CEQ steps 1-4) that no other past, present, or reasonably foreseeable future actions are expected to add to or interact with direct or indirect effects of the proposed action or its alternatives on a specific resource, summarize these findings and explain that neither the proposed action nor any alternative will contribute to a cumulative effect on the subject resource.

If other past or present actions are concluded to be of concern, research and describe how the condition, health, or status of the resource has changed over time in response to past actions, and describe any trend that can be discerned, particularly if a past action or actions had impacts that persist into the present. Identify other present actions, and other future actions that are reasonably

foreseeable and not speculative, which presently affect the resource or will likely affect the resource in the future (CEQ steps 5 to 7).

If the condition of the resource is not presently stressed, and if the contributed effects from the proposed action or its alternatives, along with other actions, are expected to be minimal, then document these findings and indicate that no significant cumulative impact on this resource will occur because the previously defined significance threshold will not be reached.

If the assessment concludes that the proposed action or its alternatives would directly or indirectly contribute to a significant cumulative effect on the resource, identify implementable and effective mitigation measures for the direct and indirect effects of the proposed action and alternatives (CEQ steps 8 to 10). If the residual cumulative effect after mitigation is still significant, consider the development of a collaborative program with other federal agencies to encourage adaptive management of impact contributions from other actions (CEQ step 11). If cumulative impact concerns still remain following the assessment of these mitigation and management measures, consider the preparation of an EIS.

In summary, cumulative effects assessments should be guided by the following considerations:

- Every EA should address cumulative effects.
- If no cumulative effect is expected on a specific resource, the EA should state this and provide a supporting rationale.
- The cumulative effects assessment in an EA should be concise and limited to key resources which combine two attributes:
- They would receive direct or indirect impacts from the action (because there is no cumulative effects contribution in the absence of direct or indirect effects); and
- They are the subject of publicly available information, including input from scoping if conducted, documenting concern on the part of stakeholders, agencies, or the public regarding their current or future status.
- The cumulative effects assessment conducted for each EA should follow the recommended approach as described in the CEQ Cumulative Effects Guidance and other relevant Federal and state guidance.
- The potential significance of each identified cumulative effect on a particular resource should be evaluated according to the same significance criterion or threshold applied to direct and indirect effects on that resource.
- If an adverse cumulative effect is predicted to be significant, identify feasible and realistic mitigation measures for the direct and indirect effects of the proposed action and alternatives on the resource.
- If the cumulative effect would still be significant after mitigation of the direct and indirect effects of the proposed action and alternatives on the resource, consider the development of a

collaborative program with other federal agencies to encourage adaptive management of contributions from other actions (CEQ step 11).

If it is likely that an adverse cumulative effect will persist following these mitigation and adaptive management steps, consider the preparation of an EIS.

## **BPP 5: REGULATORY CONSULTATION AND COORDINATION**

### Background Information

With regard to the survey, Question 6 asked participants, based on their general NEPA knowledge and EA experience, to prioritize the relative importance of a list of inadequacies identified in litigation, public comments, and criticisms of specific EAs. Participants used a numbering scale of 1 to 3, with 1 denoting highly important, 2 denoting medium importance, and 3 indicating minor importance. Two inadequacies were identified in Question 6 specifically relating to omission or inadequate agency coordination: one having to do with the Endangered Species Act (ESA) and the other concerning cultural resources laws such as the Natural Historic Preservation Act (NHPA). A total of 279 respondents answered the part of Question 6 related to ESA coordination. The rating average for ESA coordination was 1.86, which means it fell somewhere between highly important and of medium importance -- 102 participants (36.6%) rated this highly important, 114 participants (40.9%) rated it of medium importance, and 63 participants (22.6%) rated it of minor importance.

Question 7 asked respondents to list three features, based on their general NEPA knowledge and EA experience, which are typically associated with adequate EAs. Of the total 269 responses to this question, there were 30 comments specifically directed toward the importance of regulatory integration and/or engaging in coordination with agencies having subject matter expertise for adequate EAs.

### BPPs for Regulatory Consultation and Coordination

#### 1. NEPA, CEQ Regulations and Guidance

NEPA addresses integration in Section 102(2)(A), stating that “all agencies of the Federal Government shall [ ] utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and decision making . . .” NEPA § 102, 42 U.S.C. § 4332. It specifies that “prior to making any detailed statement, the responsible federal official shall consult with and obtain the comments of any federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved.” 42 U.S.C. § 4332. Section 102(2)(G) reinforces the importance of collaboration, that “all agencies of the Federal Government shall -- make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment . . .” 42 U.S.C. § 4332; *see also* NEPA § 104, 42 U.S.C. § 4334 (“Nothing in Section 102 [ ] or 103 [ ] shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.”).

The CEQ Regulations concerning NEPA integration and coordination are referenced in a multitude of regulations. *See* 40 C.F.R §§ 1500.2(c) (“Federal agencies shall to the fullest extent possible . . . integrate the requirements of NEPA . . . so that all such procedures run concurrently . . .”; 1500.5 (requiring agencies reduce delay by integrating the NEPA process, emphasizing interagency cooperation, . . .”); 1501.2 (“Agencies shall integrate the NEPA process with other planning at the earliest possible time . . .”); The regulations directly address cooperating agencies and consultation requirements in 40 C.F.R. §§ 1501.6; 1502.25(a) and (b) (“The purpose of this section is to emphasize agency cooperation early in the

NEPA process”); and 1506.2 (emphasizing the elimination of duplication with state and local procedures). These CEQ regulations all emphasize the importance of early agency coordination and integrating other regulatory and consultation processes with the NEPA process.

The CEQ FAQs address integration and coordination in Question 8 and Answer (Early Application of NEPA), Question 14 and Answer (Rights and Responsibilities of Lead and Cooperating Agencies; Question 22, State and Federal Agencies as Joint Lead Agencies; and Question 23, Conflicts of Federal Proposals with Land Use Plans.

The CEQ has also issued guidance on Cooperating Agencies and Collaboration in NEPA. See CEQ Collaboration Handbook; CEQ “Cooperating Agencies in Implementing the Procedural Requirements of NEPA” (January 30, 2002), *available at* <http://energy.gov/nepa/downloads/cooperating-agencies-implementing-procedural-requirements-national-environmental>; and CEQ “Designation of Non-Federal Agencies to be Cooperating Agencies in Implementing the Procedural Requirements of NEPA” (July 28, 1999), *available at* <http://energy.gov/nepa/downloads/designation-non-federal-agencies-cooperating-agencies>.

In addition, various Executive Orders require integration and coordination, such as Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. This particular Executive Order on Environmental Justice has received presidential attention since 2009. Plan EJ 2014, *available at* <http://www.epa.gov/compliance/ej/plan-ej/>, is a roadmap that assists the EPA in integrating environmental justice into the Agency’s programs, policies, and activities. Plan EJ 2014 identifies Cross-Agency Focus Areas, Tools Development, and Program Initiatives as three essential elements that will advance environmental justice across the EPA and the federal government.

## 2. Specific BPPs for Regulatory Consultation and Coordination

The requirement to integrate NEPA with other laws is based on reducing delay; avoiding duplication; making decisions based on the understanding of environmental consequences; and taking actions that protect, restore, and enhance the environment. Without integration of other legal requirements into the NEPA process, laws would be satisfied sequentially rather than simultaneously and could result in different or conflicting conclusions resulting in unnecessary environmental harm. Consideration of other laws is also necessary to determine the significance of an action and the appropriateness of a FONSI. See 40 C.F.R. § 1508.27(b)(8), (9) and (10)).

What follows is a five-step approach that emphasizes engaging agencies with expertise or jurisdiction – through scoping or some other form of outreach – and working with those agencies to integrate other identified requirements with the NEPA process. The goal is to expedite the analysis and focus it on relevant impacts by using the expertise available across all agencies (Federal and non-Federal) to accomplish NEPA integration, coordination and consultation.

- Make a thorough, clear, concise record of all consultation, coordination and integration efforts.
- Early in the process identify external entities and parties that may need to be consulted based on their expertise, their jurisdiction over a related planning process or permit that should be integrated with the NEPA process, and/or their access to information.

- Consult early with state, local, and federal agencies; tribes and native Alaskan and Hawaiian organizations (tribes/NA/NHO), to determine if they have any jurisdiction, special expertise, and/or to gauge their interest and ability to participate in the process.
- Request the participation of cooperating agencies (40 C.F.R. § 1501.6) at the earliest possible time.
- For those agencies (Federal and non-Federal) that have jurisdiction over the proposal, special expertise in the environmental effects, and/or are a potential stakeholder, develop schedules and milestones that accommodate and align, as best possible, their specific processes and/or major decision points with the NEPA process.

For example, as applicable to the Proposed Action, coordinate with the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service to discuss ESA Section 7 consultations and/or Marine Mammal Protection Act issues to include coordinating schedules and decision-making. Coordinate with applicable State Historic Preservation Offices, tribes/NA/NHOs (and under certain circumstances the Advisory Council on Historic Preservation) to determine special expertise, access to information, consultation requirements, and integrating the NHPA Section 106 consultation and NEPA processes. Coordinate with EPA and/or the U.S. Army Corps of Engineers to determine special expertise, permitting and consultation requirements, and integrating the Clean Air Act, Clean Water Act, and NEPA processes.

## **BPP 6: DETERMINATION OF ENVIRONMENTAL IMPACT SIGNIFICANCE**

### Background Information

Responses to Question 6, which asked respondents to prioritize inadequacies for EAs, identified “No clear delineation of impact significance” as the most important concern. This inadequacy received an average rating of 1.52, which is between first and second on the importance scale, and the highest importance rating among all of the listed inadequacies.

Responses to Question 7, which asked respondents to list three features typically associated with adequate EAs, included 28 comments relevant to the determination of impact significance. These comments also emphasized the need for clarity and a defensible and logical significance determination. Finally, the responses to Question 13 indicated that the significance determination was important for all complexity levels of EAs.

To summarize, results of the 2012 survey identified “No clear delineation of impact significance” as the major inadequacy of EAs. This conclusion underscores the need to address this issue through a BPP that will help agencies develop EAs that are defensible.

### BPPs for Determining Environmental Impact Significance in Environmental Assessments

#### 1. CEQ Regulations for the Determination of Environmental Impact Significance

A CEQ regulation identifies the factors agencies should consider when making the significance determination. See 40 C.F.R. § 1508.27. It provides substantial guidance and states:

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

- (a) Context. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.
- (b) Intensity. This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:
  1. Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial. The degree to which the proposed action affects public health or safety.
  2. 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.
  3. The degree to which the effects on the quality of the human environment are likely to be highly controversial.

4. The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.
5. 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.
6. Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.
7. 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.
8. 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.
9. Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

Section 1508.27 not only informs best practice principles, but also imposes a compliance responsibility on NEPA practitioners. The bottom line from responses to Question 13 was that preparers of EAs should document the use of section 1508.27 to support their significance determinations.

40 C.F.R. § 1508.27 not only informs BPPs, but also imposes a compliance responsibility on NEPA practitioners. The bottom line from responses to Question 13 was that preparers of EAs should document the use of section 1508.27 to support their significance determinations.

## 2. Uncertainty and Incomplete or Unavailable Information

In some cases, the environmental effects considered in an EA will be uncertain. Uncertainty at the EA stage is covered in 40 C.F.R. § 1508.27(b)(5), which states that an EA should cover “[t]he degree to which the possible effects on the human environment are highly uncertain.” The courts have supported this requirement. *See* Suzanne O. Snowden, *Judicial Review and Environmental Analysis Under NEPA: ‘Timing Is Everything,’* 33 *Envtl. L. Rptr.* 10050 (2003).

Uncertainty may be created when necessary information is incomplete or unavailable. A CEQ regulation, 40 C.F.R. § 1502.22, covers what practitioners must do when this problem occurs during the preparation of an EIS. In a comment on this regulation, CEQ made it clear that “Section 1502.22 is part of the set of regulations which govern the EIS process, as opposed to the preparation of an environmental assessment. It is only appropriate to require this level of analysis when an agency is preparing an EIS.”

Though CEQ explained that section 1502.22 does not apply to EAs, the courts are not clear on this question. For example, in *Environmental Prot. Info. Ctr. v. Blackwell*, 389 F. Supp. 2d 1174, 1188 (N.D. Cal. 2004) the court held that “[w]hile this regulation on its face applies to EISs and not EAs, it still provides some guidance to the Court as to whether an agency can be charged with having failed to take

a hard look simply because information is incomplete or unavailable.” In another case, *Shenandoah Ecosystems Def. Group v. United States Forest Serv.*, 144 F. Supp. 2d 542 (W.D. Va. 2001), however, the court held that section 1502.22 does not apply to EAs.

Because CEQ regulations require that the uncertainty of environmental impacts be a consideration in determining significance or non-significance in EAs, practitioners usually do not need a process modeled on section 1502.22. For complex EAs, practitioners may want to use this type of procedure if there are difficult questions of information availability.

### 3. A Methodology for the Determination of Significance

Comments to the questionnaire indicated that clarity and logic are necessary in the process that leads to a significance determination. Clarity and logic are possible only if an agency uses a disciplined procedure, in which the important issues that determine significance are considered. A number of accepted procedures are available for assessing impacts for affected resources or particular projects.

- For a procedure that uses thresholds of significance to determine environmental significance, see California Governor's Office of Planning and Research, *Thresholds of Significance: Criteria for Defining Environmental Significance* (Sept. 1994), available at <http://ceres.ca.gov/ceqa/more/tas/threshld.pdf>. See also New York Dep't of Env'tl. Conservation, *SEQRA Handbook*, Ch. 4B, available at <http://www.dec.ny.gov/permits/47716.html>. These state guidelines can be applied under NEPA. Thresholds established under other environmental laws are not binding under NEPA, however, unless expressly made binding by statute.
- For a discussion of technical, collaborative and reasoned argumentation approaches to the significance determination, see David P. Lawrence, *Impact Significance Determination -- Designing an Approach*, 27 *Env'tl. Impact Assess. Rev.* 730 (2007), available at <http://www.aseanenvironment.info/Abstract/41016131.pdf>. See also David P. Lawrence, *Impact Significance Determination—Back to Basics*, 27 *Env'tl. Impact Assess. Rev.* 755 (2007), available at <http://www.aseanenvironment.info/Abstract/41016132.pdf>.
- For a discussion of thresholds and methodologies for the determination of significance, including different methods for impact assessment for select resources, see Larry Canter, *Environmental Impact Assessment*, pp. 21-25 (2nd ed. 1996), available at <http://www.eiatraining.com/books.html>.

### 4. The Legal Sufficiency of the Significance Determination

A significance determination will receive favorable judicial review only if it is legally sufficient. Courts will approve a significance decision unless it is arbitrary and capricious, but they will also take a "hard look" at what the agency has done. Though there is no clear agreement in the courts on what a hard look means, the District of Columbia Court of Appeals provided a helpful explanation in *Maryland-National Capital Park & Planning Com. v. United States Postal Service*, 487 F.2d 1029, 1040 (D.C. Cir. 1973):

First, did the agency take a 'hard look' at the problem, as opposed to bald conclusions, unaided by preliminary investigation? Second, did the agency

identify the relevant areas of environmental concern? Third, as to problems studied and identified, does the agency make a convincing case that the impact is insignificant?

Practitioners can use these criteria to evaluate the legal sufficiency of their significance decisions. For additional discussion of how the hard look doctrine is applied by the courts, *see* Mandelker at § 3:7.

#### 5. When Mitigation is Appropriate

In January 2011, CEQ provided guidance that specifically addressed the appropriate use of a FONSI or Mitigated FONSI to conclude a NEPA review process relying on an EA. A Mitigated FONSI is appropriate when mitigation is used to avoid or lessen potentially significant environmental effects of proposed actions that would otherwise need to be analyzed in an EIS. For the CEQ guidance, *see* “Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact” (Jan. 14, 2011), *available at* <http://www.whitehouse.gov/administration/eop/ceq/initiatives/nepa/mitigation-and-monitoring-guidance>.

## **BPP 7: EXTENT OF PUBLIC INVOLVEMENT FOR EAs**

### Background Information

This BPP for assessing the appropriate level of public involvement and participation in EAs is based primarily on CEQ regulations implementing NEPA, specifically 40 C.F.R. §§ 1506.6 and 1501.4(b), questionnaire survey responses, a review of case law, comments from the CEQ, and practitioner experience.

The survey respondents indicate the public involvement process is of high value to the adequacy of EAs. The responses indicate that lack of public involvement is strongly correlated with inadequate EAs.

Specifically, Question 6 asked respondents, based on their general NEPA knowledge and EA experience, to prioritize the relative importance of certain inadequacies identified with the absence of public participation for Enhanced EAs. Participants used a numbering scale of 1 to 3, with 1 denoting highly important, 2 denoting medium importance, and 3 indicating minor importance. A total of 279 people answered the part of Question 6 relating to the absence of public participation. The rating average was 1.90, which means it fell somewhere between highly and medium importance -- 95 participants (34.1%) rated this highly important, 117 participants (41.9%) rated it as medium importance, and 67 participants (24.0%) rated it as minor importance. In addition, 34 people out of the 279 responders (12%) made comments, but none of them related to public participation.

Question 7 asked participants to list three features, based on their general NEPA knowledge and EA experience, which are typically associated with adequate EAs. A total of 269 people addressed to Question 7. In addition, there were 39 comments specifically directed toward public participation.

Question 18 asked if EAs of various types and sizes should be circulated for solicitation of public reviews and comments with the final EAs including responses to the received comments. As seen on a sliding scale, enhanced EAs and mitigated EAs were strongly perceived as needing public participation (87.8% and 68.6%, respectively), while traditional EAs with lesser scope were not as likely to need public participation efforts (38.0%).

To summarize, results of the 2012 survey identified the lack of public participation and involvement as a major inadequacy of EAs. This conclusion underscores the need to address this issue through a BPP that will help agencies develop high quality EAs that support informed decision making and are defensible.

### BPPs for Extent of Public Involvement for EAs

#### 1. CEQ Regulations and Guidance on the Extent of Public Involvement

The CEQ established public involvement as a primary purpose of NEPA. 40 C.F.R. § 1500.1(b) ("NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made. . ."). Public scrutiny is essential to the implementation of NEPA and a cornerstone of informed decision making. 40 C.F.R. § 1500.1(b).

CEQ's regulations define EAs as "a concise *public document*" and directs agencies to mandate that agencies "make diligent efforts to involve the public in preparing and implementing their NEPA procedures." 40 C.F.R. § 1506.6(a) (emphasis added). In doing so, agencies may "[p]rovide public notice

of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected." 40 C.F.R. § 1506.6(b).

The CEQ FAQs address public involvement in its Question 38 and Answer, stating that EAs:

*must be available to the public. Section 1506.6 requires agencies to involve the public in implementing their NEPA procedures, and this includes public involvement in the preparation of EAs and FONSI. These are public 'environmental documents' under Section 1506.6(b), and, therefore, agencies must give public notice of their availability.*

The CEQ Regulations at 40 C.F.R. §1506.6 provide agencies with discretion on how to conduct public involvement in EAs. Each EA is different, and different circumstances will dictate different public participation approaches. CEQ Regulations further provide that "[t]he agency shall involve environmental agencies, applicants, and the public, to the extent practicable ..." 40 C.F.R. § 1501.4(b). The CEQ requires that an agency make its FONSI available for public review when the proposed action is closely similar to one that normally requires an EIS or when the nature of the proposed action is one without precedent. See 40 C.F.R. § 1501.4(e)(2).

In determining when a public hearing or meeting is appropriate, the CEQ directs agencies to consider whether substantial environmental controversy exists concerning the proposed action or whether substantial interest exists in holding a hearing. See 40 C.F.R. § 1506.6(c)(1). Although this regulation does not distinguish between EAs and EISs, some courts have inferred that this regulation applies to EAs, when an agency implements its NEPA procedures. See *Theodore Roosevelt Conservation Partnership v. Salazar*, 616 F.3d 497, 519 (D.C. Cir. 2010); *California Trout v. FERC*, 572 F.3d 1003, 1016 (9th Cir. 2009).

The CEQ Task Force on Modernizing NEPA recommended that the CEQ issue guidance clarifying the requirements for public involvement, among other issues, for Mitigated FONSI. NEPA experts and public stakeholders expressed broad support for clarifying the requirements for public involvement, calling for consideration of public involvement in the use of mitigated FONSI, where the FONSI depends on mitigation in an adaptive management approach. The report noted concern for public involvement for those tiered EAs based on larger programmatic documents. The CEQ Mitigation and Monitoring Guidance incorporates and references these findings. These recommendations are consistent with the EA BPP survey results.

The CEQ Regulations explicitly address the role of scoping in preparation of an EIS. See 40 C.F.R. § 1501.7 ("There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process shall be termed scoping."). The CEQ Guidance on Efficient and Timely Environmental Reviews states:

agencies can also choose to take advantage of scoping whenever preparing an EA. Scoping can be particularly useful when an EA deals with uncertainty or controversy regarding potential conflicts over the use of resources or the environmental effects of the proposed action, or where mitigation measures are likely to play a large role in determining whether the impacts will be reduced to a level where a Finding of No Significant Impact can be made. A lead agency preparing an EA may use scoping to identify and eliminate from detailed study

the issues that are not significant or that have been covered by prior environmental review. The scoping process provides a transparent way to identify significant environmental issues and to deemphasize insignificant issues, thereby focusing the analysis on the most pertinent issues and impacts. We recommend that agencies review their NEPA implementing procedures, as well as their NEPA practices, to ensure they have the option of scoping for EAs.

In this same guidance, the CEQ discussed the adoption of other agency NEPA documents by an action proponent. Here, the CEQ restated that the regulations do not do not require agencies to prepare a draft EA and circulate a draft or final EA for public review or comment. This guidance is consistent with the case law, which is further discussed below.

In summary of the regulations and CEQ guidance, federal agencies must engage the public in the EA process; however, the type and form of public involvement is left to the individual agency and on a case-by-case basis. Recent CEQ guidance encourages agencies to use the public scoping process to focus the EA analysis on potentially significant environmental issues.

## 2. Extent of Public Involvement, Case Law

The courts have disagreed on the extent to which and the manner in which agencies must afford meaningful opportunities for public involvement on a decision to prepare an EA instead of an EIS. While some cases don't require public involvement, a few courts have held that public involvement is required, with different formulations of this requirement. For an extensive discussion of the cases that discuss public commenting on EAs, see Daniel R. Mandelker et al., *NEPA Law and Litigation* § 7:14.

The Ninth Circuit, in *Bering Strait Citizens for Responsible Resource Development v. U.S. Army Corps of Engineers*, 524 F.3d 938 (9th Cir. 2008), adopted a moderate position when it stated that the circulation of a draft EA is not required in every case. The court opined that "requiring the circulation of a draft EA in every case could require the reversal of permitting decisions where a draft EA was not circulated even though the permitting agency actively sought and achieved public participation through other means. The regulations do not compel such formality." The court enunciated the following rule: "[a]n agency, when preparing an EA, must provide the public with sufficient environmental information, considered in the totality of circumstances, to permit members of the public to weigh in with their views and thus inform the agency decision making process." The BPP process outlined below is based on the Ninth Circuit's moderate position.

## 3. Process for Consideration of Extent of Public Involvement

Agencies should involve the public in preparation of EAs and FONSI's to permit members of the public to weigh in with their views. In determining the extent and type of public involvement, agencies should use the elements of public involvement on a sliding scale and in consideration of the totality of the circumstances. The public should be given as much environmental information as is practicable, prior to completion of the EA, so that the public has a sufficient basis to address those subject areas that the agency must consider in preparing the EA. Depending on the circumstances, the agency could provide adequate information through public meetings or by a reasonably thorough scoping notice.

Public involvement, and specifically, scoping, can be particularly useful when an EA deals with uncertainty or controversy regarding potential conflicts over the use of resources or the environmental effects of the proposed action or where mitigation measures are likely to play a large role in determining whether the impacts will be reduced to a level where a Finding of No Significant Impact (FONSI) can be made.

At a minimum, the agency must provide the notice of availability to interested or affected parties and public, agencies and applicants. Impacts to certain resources, such as coastal impacts, noise, visual impacts or involving access to public lands, or involving certain agencies, for example, may require additional public outreach or involvement, or possibly, circulation of a draft EA. Involving members of the public to weigh in with their views informs and thus, strengthens the agency decision-making process and analysis.

This sliding-scale approach may include a combination of public involvement methods depending on the particular circumstances, and as practicable, in accordance with 40 C.F.R. §§ 1506.6 and 1501.4(b). These methods include public involvement in the scoping process, public meetings or hearings or other methods of information dissemination, or providing the draft EA for public comment, as practicable.

## ATTACHMENT A

### **BIOGRAPHIES FOR ALL PREPARERS INVOLVED THE CEQ PILOT PROJECT**

**Dr. Larry Canter** is Professor Emeritus from the University of Oklahoma (August, 2000), during the 1990s he was the Sun Company Chair of Ground Water Hydrology, George Lynn Cross Research Professor, and Director, Environmental and Ground Water Institute. He is now engaged in teaching EIA-related short courses and consulting on the preparation and review of impact studies and the development of EIA policies, procedures, methods, and tools. In 2008, he was Co-Chair of the International Association of Impact Assessment's (IAIA's) Special Topic Meeting on Assessing and Managing Cumulative Environmental Effects. In 2009, he received the prestigious Rose-Hulman Award from IAIA. He received his Ph.D. in environmental health engineering from the University of Texas, M.S. in sanitary engineering from the University of Illinois, and B.E. in civil engineering from Vanderbilt University.

**Ron Deverman** is Associate Vice-President for HNTB, a national engineering, architecture and planning firm, managing environmental impact assessment projects for transportation infrastructure improvements such as transit, passenger and freight rail, roadways, and bridges. Ron has 30-years' experience in the National Environmental Policy Act (NEPA) with special expertise in community impact assessment, cumulative effects analysis, and federal environmental regulations, such as the Clean Air Act, Clean Water Act, National Historic Preservation Act, and Endangered Species Act. His education includes a BS in civil/environmental engineering from the University of Illinois in Urbana, an MA in literature and creative writing from the University of Illinois in Springfield, and post-graduate studies in NEPA and related environmental studies. Ron is the Past President of the National Association of Environmental Professionals (NAEP). He has also chaired NAEP's national NEPA Symposium, NEPA Working Group, Transportation Working Group (co-founder), and 27th Annual Conference (Dearborn, Michigan).

**P.E. Hudson, Esq.** is the Counsel, Department of the Navy Office of General Counsel in Ventura County, California, where she serves as the Environmental Law and Planning Training Director. The focus of her practice is environmental law and planning, and specifically NEPA; she also develops and teaches courses involving NEPA, environmental planning and impact analysis, and environmental law, with a special emphasis on coastal and ocean resources, to federal employees. She has served as a litigator at a large firm in private practice, and as a federal clerk. She is a member of the bars of California, Florida and Georgia and the Supreme Court of the United States. Ms. Hudson retired from the Navy as a Commander (Oceanography). Any views expressed are Ms. Hudson's personal views and not necessarily those of the Department of Defense, Navy or Federal Government.

**Karen Johnson, CEP** has been an Environmental Scientist/Specialist for nearly 28 years. She was a Senior Environmental Scientist/NEPA Specialist for Geo-Marine, Inc. (now Versar, Inc.) in Plano, TX, from 2004

to 2013. Her primary responsibilities included managing NEPA documentation projects for numerous Federal agencies under the Departments of Defense, Agriculture, Energy and Transportation at both the individual project and the programmatic level. She also has completed more than 20 Environmental Site Assessments (Phase Is) or Environmental Baseline Surveys for both private and Federal clients. In 2007, she accepted an assignment to spend a year in Guam providing in-house NEPA support for NAVFAC Marianas, which she found both professionally and personally stimulating. Prior to her work with Geo-Marine, Ms. Johnson spent 12 years with Ecology and Environment, Inc. in San Francisco, CA, initially working under contract with the USEPA to do Superfund site assessments, then staffing and managing CEQA and NEPA projects. Her career started by spending five years with the US Geological Survey Water Resources Division in Sacramento, CA.

**David Keys, CEP**, is the NOAA Fisheries Service, Southeast Region, National Environmental Policy Act Coordinator where he is responsible for compliance with the Council on Environmental Quality's regulations throughout the NOAA Fisheries, Southeast Region. He is a Certified Environmental Professional in environmental documentation and earned his Master of Arts degree in environmental studies from the University of Illinois and his Bachelor of Science degree in forest management from Southern Illinois University. He is an adjunct faculty member at the University of South Florida, St. Petersburg Campus, where he teaches NEPA implementation. He earned the NEPA certificate from the Duke Environmental Leadership Program. He is a general member of the National Association of Environmental Professionals where he is the current chair of the Oceans Track and current vice chair of the Peak Oil Committee. He is a professional member of the American Association for the Advancement of Science.

**Ronald E. Lamb, CEP** is an environmental program manager and senior project manager with more than 25 years of experience in NEPA compliance, environmental compliance and policy, public involvement and community relations, waste management and pollution prevention; litigation support; and issue management. He is a NEPA Specialist at Headquarters, U.S. Marine Corps, where he reviews the adequacy of EISs on USMC actions, serves on the Headquarters USMC Environmental Impact Review Board, and represents the USMC to the President's Council on Environmental Quality (CEQ), other Department of Defense services, and other Federal agencies. Ron is co-chair of the NAEP NEPA Practice and served two-consecutive terms on the Board of Directors. Previously, he was a Vice President and NEPA Program Manager for HDR|e2M. Ron has managed the preparation of dozens of EAs and 14 EISs for the Department of Homeland Security (DHS) Coast Guard (USCG) and Customs and Border Protection (CBP), U.S. Air Force, Bureau of Land Management (BLM), General Services Administration, National Park Service, U.S. Army Corps of Engineers (USACE), and NASA. Any views expressed are Mr. Lamb's personal views and not necessarily those of the Department of Defense, Navy, or Federal Government.

**Paul Looney, CEP, CSE, PWS** has worked in the field of ecology for 24 years in different areas of emphasis. His primary area of expertise is coastal plant ecology. He is directly involved in ecological field work as part of his daily professional life through wetland delineations, threatened and endangered species surveys, coastal ecosystem restoration, and NEPA studies. The issue of invasive species has

been of great interest since attending a symposium sponsored by the state of Florida in 1994. Making the connection between listed species and invasive species has been long in developing, but it is of great interest to him to determine what is being done in this field and possibly establish more of a natural resources emphasis into NAEP.

**Professor Daniel R. Mandelker** is the Stamper Professor of Law at Washington University in Saint Louis, where he teaches a seminar in Environmental Land Use Litigation and a course in Land Use Law. He is the author NEPA Law and Litigation, a leading treatise on NEPA case law, and articles on NEPA, including a recent article, Growth-Induced Land Development Caused by Highway and Other Projects as an Indirect Effect Under NEPA, published in the Environmental Law Reporter. He has been a consultant on NEPA litigation and practice, and has presented training programs and lectured on NEPA at national conferences.

**Stephen Pyle, Esq.** is a Senior NEPA Project Manager at HDR Environmental, Operations, and Construction, Inc. Mr. Pyle has 14 years of experience within the environmental field and two years of legal/litigation experience. Mr. Pyle currently manages all aspects of NEPA projects, including EISs and EAs, for various Federal agencies. In addition to completing numerous EAs throughout his career, Mr. Pyle has successfully completed EISs for diverse Federal agencies including U.S. Coast Guard, National Park Service, U.S. Customs and Border Protection, and is currently completing a complicated EIS for the U.S. Air Force in the Mariana Islands region. Mr. Pyle has also conducted and taken part in a wide range of environmental compliance activities for Federal agencies related to hazardous waste management, storm water management, and natural resource management. In addition, he is experienced as a litigation clerk, paralegal, legal researcher and litigation attorney for two law firms. Mr. Pyle's legal experience includes general contract law, construction defects, mechanics lien law, oil and gas law, Federal Mine Safety and Health Administration law, and general litigation. Mr. Pyle has represented clients before Texas County and District Court judges. He is a licensed attorney, admitted to the State Bar of Texas.

**Dr. Robert Senner** is a Principal with ARCADIS, a global engineering and environmental consulting firm, and is based in Anchorage, Alaska and Seattle, Washington. Dr. Senner has successfully managed and completed many environmental impact statements and environmental assessments, including NEPA, Washington State Environmental Policy Act (SEPA), and Environmental, Social, and Health Impact Assessment (ESHIA) programs. His clients and lead agencies have included most Federal agencies involved in energy, resource development, and transportation, corresponding state agencies, and major energy and engineering companies. He received his Ph.D. in Public Policy (Environmental Law and Economics) from The University of Texas at Austin, Lyndon B. Johnson School of Public Affairs. He also completed advanced studies in biology as a Nuffield Scholar at the University St. Andrews, served as a Royal Society Scholar at the Stazione Zoologica in Naples, and was a National Institute of Mental Health postdoctoral fellow at the California Institute of Technology. He received his Bachelor's degree from Yale University, where he was a National Science Foundation Scholar. Dr. Senner was an original member of the team selected by the CEQ to conduct the Pilot Project on Best Practice Principles for NEPA EAs. He

has published a number of peer-reviewed papers on improving NEPA EAs, cumulative effects assessment and management, and sustainability.

### **Personnel assisting with Questionnaire**

- Tim Bower, Managing Director, NAEP
- Theresa Fortner, Senior Environmental Planner, Logan Simpson Design, Inc., Tucson, Arizona.
- Walker Heap, III, Biologist, U.S. Army, Fort Drum, New York.
- Budd Titlow, Wetlands Scientist, Wildlife Biologist, Ecology and Environment, Inc., Tallahassee, Florida.
- Hibba Wahbeh, Biologist, Planning Division, U.S. Army Corps of Engineers, New York District, New York, New York.

## **Fivemile-Bell Landscape Restoration Project**



**NEPA assessment & data collection performed by local workforce  
under the direction of the SIUSLAW INSTITUTE\***

**\*[siwash@pioneer.net](mailto:siwash@pioneer.net) (541) 964-5901**

**Funding provided by a Whole Watershed Restoration Initiative grant  
(USFS, Region 6), administered by ECOTRUST**

**Project located in Takhenitch Lake Basin of Oregon's mid-coast region**

***Selected as one of five National Pilots for NEPA Innovation by CEQ***

# FiveMile-Bell Landscape Restoration Project

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*Note: Throughout this document various spellings of the name of FiveMile Creek are used. This is not a mistake, but is caused by actual historical differences in usage that still exist today: e.g. FiveMile, Five Mile, Fivemile, 5Mile, etc.*

## ***Acknowledgements***

The Siuslaw Institute, and this Project's coordinator, Johnny Sundstrom would like to thank those who supported and participated in this effort.

Maia Enser and Alice Williamson suggested that a nomination of our project and its innovative approach to NEPA work be entered into the CEQ Pilot Project process and assisted in that process.

Ecotrust and Kate Carone obtained funding through USFS Region 6 Whole Watershed Restoration Initiative, and she did a superb job of managing that funding and finding ways to use its authorities in adapting them to this unusual format of activity.

Jerry Ingersoll, Supervisor and Jeff Uebel, Natural Resources Staff Officer for Siuslaw National Forest always cooperated in advancing this project and fully supported its success.

Paul Burns, Fisheries Biologist for the Siuslaw's Central Coast Ranger District is the lead Project Manager for the FiveMile-Bell Project and coordinated the Task Force that worked to develop the Environmental Assessment for it. He was instrumental in convincing the agency that this process was worth trying, and was invaluable in assuring its accomplishments.

Bruce Buckley, Siuslaw Forest Planner, was the principle author of the EA and kept all the parts in order and working together.

*Primary Contractors utilized in the gathering of data, doing research and joining in the design process included:*

Charley Dewberry, Ecologist – NW Science and Photography: Fish Studies, Roads and passage issues, Hydrology, Historical & Photo research, design,

Val Knox, Botanist – Plants and vegetation inventory, tribal liaison & design

Seth Mead, Forestry – Silvicultural analysis, stand exams and inventory

Liz Vollmer-Buhl and staff, Siuslaw Watershed Council coordinator - GIS, design

Rhonda Black, Umpqua Soil & Water Conservation District - vegetation surveys, public meeting arrangements, and design,

We thank all of these and those that worked with and for them for an excellent and highly cooperative endeavor, conscientiously performed with excellent results.

We are also grateful to Jay Jensen and Horst Greczmiel of the Council on Environmental Quality for embarking on this Pilot program, and Jim Smalls of the USFS Washington Office for all his efforts in keeping it moving.

We are hopeful that our collaborative work on this Project is useful to the ongoing national review of NEPA work and procedures. We look forward to more streamlining and ease of use, and to a greater sense of how communities can be involved in these efforts.

*JS*



## **FiveMile-Bell Landscape Restoration Project – a summary**

Diverse partners including the Siuslaw National Forest, the Siuslaw Watershed Council, Ecotrust, the Siuslaw Institute, Umpqua and Siuslaw SWCDs, Siletz Tribes, other tribal representatives, local schools, and others are collaborating in both traditional and innovative methods to restore the Fivemile-Bell sub-watershed from ridge top to creek bottom while creating and maintaining economic opportunities. The project area contains the largest tributaries to Takhenitch Lake, a wild coho stronghold basin. A unique public-private collaboration addressed the NEPA environmental assessment process for the project, utilizing local partners and contractors, hired and coordinated by the Siuslaw Institute, working with federal agency staff.

The upland forests are overstocked and lack diversity. In the valley bottom, the main stream channel had been rerouted and straightened during the previous century, resulting in downcutting and disconnection with the floodplain. In-stream wood was also eliminated, decreasing stream complexity. Historically, native riparian and wetland vegetation was removed, allowing invasives and non-native pasture grasses to establish and then dominate the surroundings. Undersized culverts beneath the county road restrict natural hydrology, aquatic species passage, sediment transport, and frequently led to road closures and maintenance issues which were burdensome to both county staff and neighbors. Logging roads continue to erode and require maintenance and/or de-commissioning

Working to address the myriad of issues, the Siuslaw National Forest and Ecotrust led the initial design process, with the Siuslaw Watershed Council and other partners now leading the restoration implementation. On-the-ground restoration activities include upland stand treatments (thinning and underplanting), historic logging road de-compacting and re-contouring, re-meandering the stream, re-grading the valley bottom to restore floodplain connection, establishment of diverse native upland, riparian, and wetland plant species, replacement of problem culverts with aquatic species-friendly passage structures, monitoring, and more. The entire project is expected to take about 10 years, with sustainable agriculture and educational facilities as possible additional goals for this sub-watershed. During 2012, the Siuslaw Watershed Council, the Siuslaw National Forest, and others implemented the first phase of restoration with Oregon Watershed Enhancement Board funds secured by the Siuslaw Watershed Council, and other state and federal funding. Local heavy equipment operators were hired to fall trees and decompact and recontour the historic logging roads. An area botanist was contracted to develop the vegetation strategy. In October, a heavy lift helicopter moved the felled trees from the uplands into two miles of creek, increasing stream complexity.

This winter (2013), native trees, shrubs, and graminoids are being purchased from local nurseries, and area natural resource education programs are being contracted to grow-out site sourced seed stock. Project partners have secured and are seeking funding for the future phases of the project with federal, state, and private dollars all contributing to the success of the project and creating local jobs and contracts.

*this document prepared*

*by Johnny Sundstrom*

## **NEPA & THE FIVEMILE-BELL LANDSCAPE RESTORATION PROJECT**

### ***ASSESSMENT PROCESS and PUBLIC INVOLVEMENT***

The Council on Environmental Quality (CEQ) announced the National Environmental Policy Act (NEPA) Pilots Project in February, 2012 to increase the quality and efficiency of federal environmental reviews and reduce costs. CEQ selected a US Forest Service proposal to develop NEPA best practices for forest restoration projects using lessons learned from two restoration projects currently being analyzed in Arizona and Oregon. These two projects demonstrate that by involving partners early in the NEPA process we can cut costs, operate more efficiently, and reduce potential for litigation while still maintaining strong environmental safeguards at the ground level.

FiveMile-Bell Landscape Management Project is the latest and one of the largest Siuslaw National Forest projects organized and developed by the Forest and its partners. It is located in the mid-coast region of Oregon and its sub-basins directly feed the Takhenitch Lake system which flows into the nearby Pacific Ocean. In this case, the Forest and the Siuslaw Basin Partnership (Siuslaw Institute, Siuslaw Watershed Council, Siuslaw Soil and Water Conservation District, and Ecotrust) worked together to expand on their traditions of collaboration by engaging communities and the local natural resource workforce in new ways. The Siuslaw Institute was contracted by Ecotrust to directly participate in assisting the Forest Service by hiring local citizen/workers to gather and synthesize the assessment data and information necessary for the project's planning and environmental analysis process. A task force of Forest Service specialists and representatives of the significant partners was convened to oversee the process, and met regularly throughout the analysis and planning phases. As a part of this effort, partners were also directly involved in the NEPA dissemination and outreach to the public with concepts, materials and meetings related to this work and its long-term plan.

FiveMile-Bell is an ecological and habitat restoration project on close to 5,000 acres of National Forest System lands in the FiveMile and Bell Creeks sub-basins on the Oregon Coast. The project includes in-stream restoration, stream channel reconstruction and re-meandering, upland road and stand improvements, and valley bottom native vegetation treatments. The project will address ecosystem diversity and productivity with its primary focus on habitat enhancement for threatened Coho salmon, endangered Northern Spotted Owls and Marbled Murrelets and other associated habitat for plants and animals. Through long-term efforts to maintain a sustainably managed landscape, the project will enhance the economic, timber, education, community and recreational opportunities available to the area. The proposed restoration work is based on adaptive learning from several other successful watershed restoration projects on federally acquired and managed lands in the Siuslaw Basin.

Ecosystem restoration on the Siuslaw National Forest is characterized by consistent, informal collaboration among a wide range of partners on a watershed scale. Fivemile-Bell takes this to a new level by sharing the environmental analysis workload. The Siuslaw Institute and partners have carried out field surveys, data collection and historical research, and prepared specialist reports under contracts and agreements with the Siuslaw National Forest. These partners share strong, broad and diverse connections with the local community and interest groups and these relationships helped in reaching out to the public with information and answers to questions in advance of the normal public comment period. The Forest Service does retain responsibility for the final environmental document, consultation and decisions.

Sharing the workload in this way builds ownership and trust in the project among the interested and affected public, which can minimize and decrease the risk of litigation and appeals. Utilizing and training local workforce participants in this the workload also builds capacity in the community and among non-governmental organizations to participate in and complete environmental analysis and address environmental impacts in the future. Collaborative preparation of environmental analysis goes well beyond traditional scoping, while advancing the national policy of “productive and enjoyable harmony between humans and their environment.”

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### *PROJECT INTENT*

The FiveMile Bell Restoration Project is a planned 10 year restoration project that will phase-in restorative actions to balance fish and wildlife needs, provide for adequate re-vegetation activities and schedule them to reduce the potential for erosion, and, because the scale of this project is so large, the

time allotted will allow for the use and development of native/local seed and plant sources for the re-vegetation. Phase I of this project sets the stage for rehabilitation of the uplands and valley bottom of this large-scale, Focus Watershed in one of the most productive Coho salmon basins in the Northwest. Activities for Phase I will include the repair of drainage features in the main valley roadway to allow equipment access for future restoration actions and support activities awarded through an Oregon Watershed Enhancement Board grant and other funding. In addition, wood placement in certain reaches of the creek will also be carried out utilizing both ground and aerial placement. Riparian area improvements will start with blackberry and other invasive plant removal.

Future restorative actions include the additional placement of large wood, reconstruction of previously altered stream channels, valley re-grading, further re-establishment of native valley bottom vegetation, and the decommissioning of old forest access roads and stream crossings throughout the uplands that are hampering ecological healing. This project is unique in the involvement of local groups and entities for all phases of its development and implementation, helping to create and increase future capacity for these organizations. Monitoring and many study and research opportunities over the ten-year time span of the project will be encouraged and supported. Youth and other community volunteer groups and activities will be involved and utilized during all Phases of the project

### **NEPA Pilot Projects Submission Form to CEQ**

**First Name:** Johnny

**Last Name:** Sundstrom

**Organization:** The Siuslaw Institute, Inc.

**Email:** <siwash@pioneer.net>

**Phone:** (541)964-5901

**Member of Public or Federal Agency?:** Public

**What Federal agency or agencies will be involved in pilot project?** (1500 characters)

## USDA-Forest Service, Siuslaw National Forest

### **What is the Federal action to which this NEPA pilot project applies?** (1500 characters)

It applies to a Federal watershed restoration project on the Siuslaw National Forest, known as the Fivemile-Bell Landscape Management Project. It includes upland treatments, in-stream restoration, stream channel restoration and re-meandering, and valley bottom management. The project will address ecosystem diversity and productivity with its focus on habitat enhancement for endangered or threatened coho salmon, northern spotted owls and marbled murrelets, and for other important wildlife and vegetative species. Additionally, the project will enhance the economic, timber and recreation opportunities offered by a sustainably managed landscape; provide opportunities for small-scale sustainable agricultural use; and provide for the development of watershed education, training and research opportunities.

The targeted area for restoration is formed by Fivemile and Bell Creeks, and lies upstream from Takhenitch Lake on Oregon's mid-coast. The Lake's outlet passes through large dunes to the ocean and is a prime access point for returning salmon. The total project area includes approximately 7,000 acres, of which 5,000 are managed by USFS, 300 by BLM, with the remaining 1700 in private or tribal ownership. The project area consists mostly of low-gradient stream and aquatic habitat, flood plain bottomland, and forested uplands. USFS recently acquired a 640-acre portion of the project area primarily for the restoration of habitat for coho.

### **How will this pilot project reduce the costs and time needed to complete the NEPA process?** (2500 characters)

It achieves these goals by leveraging local, collaborative capacity for on-the-ground data collection and analysis, fundraising and outreach necessary to meet project goals in a timely manner.

USFS currently lacks capacity to carry out this large project on its own. Therefore, it issued an RFP soliciting assistance with long-term management of the restoration project and subsequent developments regarding the newly acquired property and adjacent upland forested area. Ecotrust responded and was accepted as partner in this effort. The Siuslaw Basin Partnership (Siuslaw Watershed Council, Siuslaw Soil & Water Conservation District and the Siuslaw Institute) joined the USFS in this effort early on.

USFS, Ecotrust and the Partnership worked together throughout the scoping and analysis phase of the Project, increasing the efficiency of the NEPA process. They are cooperating in the preparation of its NEPA document in unprecedented ways, as well as developing designs and outreach documents to be used in securing funding and support for this 10-year effort. An interdisciplinary USFS team guided and shared in the work of the partners at the assessment and data collection stages.

The Siuslaw Institute trained and utilized local expertise to gather data, historical references, and on-the-ground surveys required for the project's NEPA and design processes. The purpose is three-fold: to assist the USFS in getting this Project approved and implemented in a timely manner, to create and sustain local workforce capacity able to assist the USFS in similar future efforts and to reduce costs and time needed for this activity. Local contractors provided significant technical assistance, including the performance of stand exams and botanical, aquatic and hydrologic surveys necessary for the overall assessment. Outreach, communications and publication development, as well as the public comment phase of the NEPA, are being managed by the Institute and Ecotrust.

Another innovation of this project is the use of a \$10,000 contribution from the Partnership. This amount is held in a revolving account that allows for prompt payment of all contractors (within one week of submitting invoices). The fund is replenished by re-imbursements to Ecotrust from Whole Watershed Restoration Initiative, a process which can be lengthy as requests are routed through regional and national payment centers. This procedure is beneficial for contractors and the Institute in managing the payments.

**How will this pilot project ensure rigorous environmental protection?** (2500 characters)

This Project ensures rigorous environmental protection at the local, state and federal level by complying with existing regulations and consulting regulators and environmental experts throughout the decision-making, project implementation and monitoring phases of the project. This Project is governed by the regulatory frameworks of the Northwest Forest Plan, the Endangered Species Act, and Oregon State's water resources statutes. Not only does it fall under these frameworks, the work itself is designed to fulfill these mandates. Consultation is also occurring with NOAA Fisheries, Oregon Department of Fish and Wildlife, and the NRCS. All of this guidance has been brought together to determine both the conceptual design of the Project, as well as the technical and technological approaches to its implementation. The experience of the Siuslaw National Forest and its partners is such that for over 12 years there has been no litigation aimed at federal forest practices, restoration activities, or construction work performed on the Forest. Environmental groups, wildlife interests, and industry are all included on advisory panels such as the four Stewardship Contracting Groups on the Forest, the Coast Range Province Advisory Council and numerous stakeholder and interest groups convened by the local resources

management entities, and by the Forest Service itself. The inclusive and open nature of these initiatives assures that communication concerning practices, projects and actions takes place well in advance of the decisions to proceed, as well as ensuring that oversight and input from citizens and their representatives is considered in a timely and ongoing manner. While this endeavor is not subject to usual County and State permitting procedures, due to its occurrence on Federal lands, the participation of those responsible agencies is being sought out and considered along with the public's interests in the design, implementation, and monitoring of the Project.

**How will this pilot project improve the quality and transparency of agency decision-making?** (2500 characters)

The Fivemile-Bell Landscape Management Project improves the quality and transparency of agency decision-making by encouraging and providing opportunities for open communication between the agency, local collaborative groups, and the public. For the past 20+ years, collaboration and cooperation between the agencies and entities involved in the Siuslaw Basin Partnership has been a tradition. In 1989, a Coordinated Resource Management Plan was first developed for one of the sub-basins of the watershed. Federal, State, and local governments, private landowners and industry, and advocacy groups facilitated the process of developing projects and inter-group communication about upcoming needs, plans and funding. Over the years the day-to-day work, especially restoration, of all of these parties has been based on expanded consultation and shared expertise and funding. Currently, a technical team of specialists from multiple natural resources oriented parties and agencies meets monthly to propose, assess, contribute to and approve projects that fit under the Basin's Whole Watershed Restoration strategy. The Fivemile-Bell Landscape Management Project utilizes this standard of operations, and takes it to a higher level with the cooperative development of its NEPA utilizing local organizational and workforce capacity, as well as being able to ensure regular and effective exchanges of information and progress among the parties. This extensive and transparent communication continues to significantly improve the relationships between the parties and the Forest Service, and contributes to a much smoother and more efficient process of implementation, funding and monitoring over the life of these Projects. Public and contractor involvement in developing the work-plans and reporting procedures for the NEPA data collection, assessment and dissemination brings everyone's decision-making out into the open and provides much greater opportunity for mutual consideration and evaluation of concerns and contributions.

**Will this pilot project develop best practices that can be replicated by other agencies or applied to other Federal actions or programs? Please describe.** (2500 characters)

Yes, the FiveMile-Bell Landscape Management Project will result in replicable best practices that can be applied to many Federal actions and programs. This pilot project shows the way forward for Federal agencies in a future characterized by shrinking budgets and workforce, and increasing costs and workloads. Federal overhead budgets are notoriously expensive and we can show how significant reductions in these expenditures have been made using our model. At the same time, local and rural community capacity has been improved for work of this type in the future on both public and private landscapes. The timeframes we have worked within have shown real efficiency in the work done by contractors under agency specialist supervision, and if there have been slow-downs in the process they have been due to factors within the Agency and not on the contractor side. One key element in the slowing of the NEPA process for this Project has been turnover within the agency as Inter-Disciplinary Team members have either retired or been re-assigned. While personnel changes do occur in the private and local government sectors, those vacancies are more likely to be filled quickly and the local entities demonstrate a more resilient and stable character in maintaining their workforce and fulfilling their commitments.

## **CEQ Pilot Action Plan**

### **FiveMile-Bell Landscape Management Project**

**Background:** The FiveMile-Bell Landscape Management Project is an ecological and habitat restoration project involving the US Forest Service ownership lands in the FiveMile and Bell Creeks sub-basins on the Oregon Coast. The Project includes in-stream restoration, stream channel restoration and re-meandering, upland road and stand improvements, and valley bottom native vegetation treatments. The Project will address ecosystem diversity and productivity with its primary focus on habitat enhancement for endangered or threatened coho salmon, northern spotted owls and marbled murrelets, as well as for other important wildlife and vegetative species. In addition, the Project will enhance the economic, timber and recreation opportunities offered by a sustainably managed landscape; provide opportunities for small-scale sustainable agricultural use; and provide for the

development of watershed education, training and research opportunities. The Project's total area includes approximately 7,000 acres, of which 5,000 are managed by USFS, 300 by BLM, with the remaining 1700 are in private or tribal ownership.

The Project's cooperative effort uses an adaptive management strategy utilizing historical and current assessments, the NEPA process and products, and resources-focused implementation and monitoring, all of this in a collaborative exercise seeking to improve NEPA efficiencies and match the NEPA analysis with the landscape scale decisions that need to be made. The CEQ Pilot process can be utilized to evaluate the effectiveness of the FiveMile-Bell Project in meeting these objectives, identifying lessons learned, and determining if additional policy guidance or direction is needed by either CEQ or USDA Forest Service.

**CEQ Pilot Action Plan:** FiveMile-Bell Project involves a very intensive collaboration effort that began with its original conceptualization and has been maintained through all stages, including design, data accumulation and NEPA preparation, and which will continue into and through the implementation and monitoring stages. The NEPA document is currently in its final drafting stages and the collaborative process will also be used in all aspects of the required public comment and involvement. This Pilot Action Plan is designed to draw from those efforts and not duplicate them. CEQ will be the sponsor for events and provide legitimacy and assurances for other Agencies and stakeholder groups that this is an important NEPA efficiencies pilot project. The partnership of the Siuslaw National Forest, Ecotrust, and the Siuslaw Institute, along with other associated entities will provide the speakers, materials, documentation, presentations and supplemental products needed for the Pilot events.

**Four events are anticipated:**

*Introductory Webinar* – Sponsored by CEQ, hosted by Forest Service, to be held in Corvallis, Oregon. Within three months of selection, the Webinar will explain the objectives for the pilot, the adaptive and collaborative management approach of the partners, and include presentations by stakeholders concerning their involvement. The objective is to provide information about the NEPA process and answer questions about its innovations and procedures.

*Post-DEIS Release Webinar* - Sponsored by CEQ, hosted by Forest Service, to be held in Corvallis, Oregon. After release of the FiveMile-Bell DEIS, we will hold a Webinar to discuss the content of the DEIS and how it relates to the objectives of the CEQ pilot, the successes of our public engagement processes, and the lessons learned so far.

*Post-FEIS Release Webinar.* - Sponsored by CEQ, hosted by Forest Service, to be held in Corvallis, Oregon. After release of the FiveMile-Bell FEIS, we will hold a Webinar to discuss the content of the FEIS, including its response to public comments, and how it relates to the purpose of the CEQ pilot process. The objective here is to provide information about the FEIS, answers to questions, and an evaluation of the overall NEPA process as utilized in this Project.

*Shortly-After-Implementation Workshop (late 2012 to early 2013)* - Facilitated by CEQ, hosted by Forest Service, to be held in Corvallis, Oregon. The Partnership will provide CEQ with documentation of this Project's NEPA process and its products, will identify lessons learned from the process, and determine if there is a need for additional CEQ or Forest Service policy direction or guidance to improve performance. The model and this input will then be documented and prepared for CEQ dissemination and other uses.

It is the intention of the partners in this Project to continue to provide CEQ and other interested parties with updates and evaluation of the Project as it is implemented and as it conforms to the NEPA process itself. Monitoring results will be matched to NEPA expectations, and the local and regional community's involvement in this project will be of special interest in the ongoing assessment of the value and validity of the innovations utilized in this endeavor.

*Respectfully submitted by:*

The Siuslaw National Forest, Ecotrust, and the Siuslaw Institute

## Some Participants



A few of the Key Participants in this NEPA process and the Webinars that followed:

***from left:*** Paul Burns, USFS - FiveMile-Bell Project Manager

Kate Carone, Ecotrust – Whole Watershed Restoration Initiative Manager

Johnny Sundstrom, Siuslaw Institute – NEPA project Contrator/Coordinator

Jerry Ingersoll, Siuslaw National Forest Supervisor

Jeff Uebel, Siuslaw National Forest – Natural Resources Staff Officer

## Participant Comments

*KATE CARONE – ECOTRUST (Funding management)*

“Ecotrust was involved in the assessment phase of the Fivemile-Bell project, and has helped secure funding for both the NEPA process and for project implementation. The project’s NEPA Pilot Project recognition by the CEQ demonstrates the distinctiveness of the Siuslaw National Forest’s community-based approach to NEPA compliance. By partnering with local groups and organizations to complete EA documentation, the Forest freed up staff time to build momentum for project implementation, helped increase local capacity to do similar projects, and reduced the potential for litigation through meaningful community engagement.”

*CHARLEY DEWBERRY – ECOLOGIST (Data collection and organization)*

Fivemile-Bell NEPA

“I participated in the following parts:

- 1) Historical reconstruction of the vegetation of the Fivemile basin.
- 2) Collection and analysis of aerial photos
- 3) Snorkel survey of the abundance and distribution of fish in the Fivemile basin.

Comments:

- 1) The historical reconstruction of the vegetation from the cadastral land survey (GLO). This portion of it went very well. Since not every forest has people with experience working with the GLO notes, I believe that it provided an important addition to the project. Contractors with GLO

experience could be utilized to provide this valuable information for a number of federal projects in forests without personnel with experience working with this information.

- 2) As a U of Oregon faculty member I was able to obtain all the aerial photos available for the basin in a quick and most cost effective manner. The map library at the University has a very extensive collection. There are opportunities to partner with faculty members at state universities to gain access to map and aerial photo collections. Such a partnership could be very valuable to the Forest Service, especially with smaller budgets and available personnel. It also could benefit the University by providing \$\$ for them to train students to maintain the collections and also to analyze the photos.
- 3) Evaluating the effects of a project on the stream ecosystem. This is an excellent opportunity for the Forest Service to contract with local individuals to provide this valuable information.”

*LIZ VOLLMER-BUHL – Watershed Council Executive Director (Task Force and GIS contract work)*

“The Siuslaw Watershed Council was able to be involved in the pre-NEPA stage of the 5Mile-Bell Project with the Task Force for planning and design, and continued participating throughout the NEPA data and information collection and development phases. This gave us the opportunity to ask questions, suggest additional considerations, and assist the USFS staff in becoming aware of how actions involved in the Project might be perceived by community members and interests.

As a future participant in the implementation of the Project, this process gave us the opportunity to interface with USFS specialists (silviculture, wildlife, vegetation, etc.) that would not have been so available without this avenue. We were able to communicate with our Board and members throughout for input. As a subcontractor for the GIS work, we gained further insight into the concepts, were able to contribute to the Project’s design, and provide additional compensation/hours to a staff member.”

*JERRY INGERSOLL – Siuslaw National Forest Supervisor*

“This approach greatly expanded the capacity of the ranger district to initiate and complete large-scale project planning, plus yielding several other important benefits :

- More and better data, due to increased canvassing and use of local information and knowledge (especially historical background) from community members;
- More intensive data acquisition by external team-members in the initial planning stages that later contributed to improved project design and implementation;

- Expanded understanding and support for the project in the community, due to increased number of community members intimately engaged and supportive of the decision; and
- Expanded opportunities for local employment.

Challenges included: impacts to continuity of the process due to changes in USFS staff over time; frustration from lack of full understanding of NEPA process and USFS policies and management direction by the external participants; miscommunication and loss of efficiency between external and internal team members due to short history of shared backgrounds and work. We anticipate that the process would run smoother, quicker, and better in our next effort together.

Overall the planning project was a great success, contributing to a well-founded and beneficial landscape-scale restoration project. Community understanding, trust and enthusiasm for this and future work is high. This effort has significantly contributed to our shared vision to build a ‘restoration economy’, and we couldn’t be happier with the outcome.”

## *Excerpts from the Final EA*

### **The Proposed Project**

The Fivemile-Bell Landscape Management Project is a package of associated aquatic and terrestrial restoration actions that would serve to address the problems identified in the Project area. Project design criteria (Appendix A) were developed to ensure that proposed actions benefit natural resources in the long term and minimize adverse effects to these resources in the short term. To address the problems and meet the desired conditions and goals for the Project area, the following actions are proposed:

- Reconstruct and re-grade the stream channels of Fivemile Creek and Bell Creek to recapture natural stream function;
- Add large wood to Fivemile Creek and Bell Creek;
- Reestablish native riparian vegetation in valley bottomland and upland areas;
- Decommission some non-key forest roads;

- Commercially thin, diversify stand species and structure, and create dead wood in young (less than 80 years old) stands;
- Inoculate or top mature trees near young stands;
- Create meadows and gaps in young stands;
- Maintain existing meadows;
- Repair, upgrade, and maintain key and some non-key forest roads;
- Build, then close, temporary roads; re-open, then close, existing temporary roads;
- Store (close) non-key forest roads;
- Treat invasive plants; and
- Treat residual logging slash along key forest roads.

Chapter 2 provides a quantified list of actions proposed (Table 1), and provides information concerning alternative proposals. Appendices B-2, silviculture prescription; B-3, harvest plan; B-4, costs of upland post-harvest treatments; and B-5, cost of valley-bottom actions; and C, proposed road closures and decommissioning also provide quantified information.

The Project would maintain existing road access needed by private landowners and other public agencies.

All actions are connected because they help meet the restoration objectives within the same 5<sup>th</sup> field watershed, or they would be funded by revenue from the sale of timber. For example, upland areas would provide in-stream large wood for Fivemile and Bell Creeks, and repairing and maintaining some key forest roads are connected actions with timber sales because timber purchasers would be required to perform the work as a condition of timber-sale contracts prior to using the roads. Some of these roads extend outside the boundary of the Project area and provide connections to locations, where commercial-thinning products would be transported.

Most activities would be completed within the next 10 years. The stream restoration work, such as channel reconstruction and valley re-grading, would begin as early as the summer or fall of 2012. A commercial timber-sale contract may be awarded as early as the winter of 2012/2013. Other actions, such as creating dead wood and under-planting seedlings, would not begin until after the completion of commercial thinning activities in each unit. Until seedlings become well established, they may need to be protected from competing vegetation and animal damage, requiring treatment 10 or more years after planting.

## **The Problems (Issues) To Be Addressed**

Information from various sources, such as the Plan, landscape-scale assessments, the WA, the Invasive Plants FEIS (USFS 2005a) and Invasive Plants Record of Decision (Invasive Plants ROD; USFS 2005b), best available science, and analysis data collected by the Team were used to identify the problems.

Based on these information sources, the District Ranger identified the following problems and the need to address them:

- The shortage of high quality aquatic habitat in the Oregon Coast Range limits recovery of coho salmon and ability to maintain healthy populations of other aquatic-dependant species, especially other anadromous fish. Thus, there is a need to improve the quality of aquatic habitat.
- The shortage of old-growth forest habitat in the Pacific Northwest limits populations of species associated with old-growth-forest habitat, such as the northern spotted owl and the marbled murrelet. Thus, there is a need to speed the development of old-growth forest habitat in young stands located in late-successional and riparian reserves.
- The shortage of habitat diversity in young stands and the declining amount of early seral habitat (hardwoods, and grasses, forbs, and shrubs) in the Project area limits the ability to support a diversity of plant and animal species. Thus, there is a need to improve habitat diversity in young stands, maintain existing meadows, create transitory early seral habitat in upland areas, and restore native riparian vegetation in valley-bottom areas.
- The shortage of funds to implement actions designed to enhance or restore ecosystem function limits the ability of the Forest to meet all the Project objectives. Selling timber from young stands (less than 80 years of age) proposed for commercial thinning provides revenue to help fund several of these actions. Thus, there is a need to sell timber generated from thinning young stands to help fund actions designed to enhance or restore ecosystem function.
- The shortage of road maintenance funds limits the suitability of key forest roads for commercial and noncommercial use. A stable transportation system provides access for managing the health, diversity, and productivity of the Siuslaw National Forest and for meeting the needs of present and future generations. Thus, there is a need to use revenue

from the sale of timber to maintain or repair key forest roads to standards that allow both uses.

- The continuing spread of invasive plants in the Project area degrade habitats for native species and communities, and have the potential to spread to land under other ownerships (Invasive Plants FEIS; USFS 2005a). Adjacent watersheds outside of the Project area contain invasive plants that can easily spread into the Project area primarily by use of roads and by stream flow. Thus, there is a need to use manual, mechanical and herbicide treatment methods, and to implement an early detection-rapid response strategy for managing these species (Invasive Plants ROD; USFS 2005b).

These actions would also provide economic opportunities for local communities.

### **Evidence Used by the District Ranger in Deciding to Address These Problems**

The record of decision (USDA, USDI 1994b) for the Northwest Forest Plan—based on physical, biological, and societal evidence provided in the Forest Ecosystem Management Assessment Team report (USDA, USDI, et al. 1993) and described in the Plan's environmental impact statement (USDA, USDI 1994a)—is intended to provide for healthy forest ecosystems, including protecting riparian areas and waters; and a suitable supply of timber and other forest products to help maintain local and regional economies predictably over the long term. The following evidence was used by the District Ranger in deciding to address the problems previously identified

#### The need to enhance the health of aquatic ecosystems

The Plan's Aquatic Conservation Strategy recognizes the need to restore and maintain the health of watersheds and the aquatic ecosystems they contain. The Coastal Lakes Watershed Analysis (WA; USFS 1998) and the Siuslaw National Forest Roads Analysis (USFS 2003) identified the need to improve water quality, fish habitat, and the condition of roads. These analyses identified the following adverse conditions in the watershed:

- Anadromous salmonid populations in Oregon coastal streams, including those in the Project area, are substantially reduced from historic abundance (WA, page 42). The lack of native riparian vegetation and diked channels along reaches of Fivemile and Bell Creeks have resulted in downcut, simplified channels that lack habitat complexity and floodplain connectivity. Pools are moderately abundant, but deep pools are uncommon,

and most stream reaches have low amounts of large wood, particularly in areas that have been used for grazing. (WA, pages 42 and 43).

- Bell Creek is listed as water quality limited for temperature because it exceeds the 64-degree temperature standard established by the Oregon Department of Environmental Quality (Oregon DEQ). This list can be found in Oregon DEQ's 2006 biennial Clean Water Act Section 305(b) report to EPA (<http://www.deq.state.or.us/wq/assessment/rpt0406/search.asp>). Actions that could reduce stream temperatures are riparian thinning to increase growth rates, riparian planting to increase numbers of conifers, and placing large wood in streams to increase sediment storage.
- The Assessment Report for Federal Lands in and adjacent to the Oregon Coast Province (USDA, USDI 1995) states that in-stream fish habitat on federal lands throughout the Province is in marginal to poor condition. The report recommends specific actions to improve fish habitat on federal land by stabilizing, decommissioning, or obliterating roads; and restoring long-term habitat by reestablishing natural riparian areas through actions, such as thinning to speed the development of large wood.
- Forest and county roads, especially valley-bottom and mid-slope roads, have degraded aquatic habitat by accelerating delivery of sediments and debris torrents to streams (USFS 1999, page 91). Less than 1 percent (about three miles) of National Forest System roads in the Project area is located on the valley bottom. Valley-bottom roads can inhibit transport of large wood and coarse sediment, disconnect stream channels, restrict natural sinuosity of streams, and act as barriers to aquatic species migration.
- Currently, and over the past several years, funding to maintain forest roads to standard is inadequate. Roads not maintained to standard have a higher potential for degrading aquatic habitat because un-maintained roads deteriorate more rapidly and culverts are more likely to fail (USFS 2003).

## **Who was Consulted about this Project? (*from the EA*)**

### Introduction

As described in chapter 1, comment on the proposed action was solicited through letters, local newspapers, and the Siuslaw National Forest's quarterly "Project Update" publications. The results of specific government and agency consultations are summarized below.

### Local Confederated Tribes

The Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians; the Confederated Tribes of Siletz Indians; and the Confederated Tribes of Grand Ronde Indians were informed of the Project's proposed actions during the initial public-notification process.

If any plants, such as camas, are found in the Project area, the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians have expressed interest in managing these plants for cultural use. No other comments on the Project's proposed actions were received.

The Confederated Tribes of Siletz Indians indicated that they plan to restore about 3,000 feet of historic logging roads directly adjacent to the lower Fivemile valley on land owned by them. These roads cross three tributaries that enter the lower valley from the south (T20S, R11W, sections 8 and 17). Based on a field review by members of the Confederated Tribes and Forest Service personnel, the Tribes plan to concentrate restoration work on the roads, where they cross the valley bottoms of the tributaries and impact aquatic resources. Road crossings would be removed from each of these three tributaries, and the old road beds would be de-compacted. Removal of the roadbeds would allow the tributaries to re-occupy former stream channels that still exist.

### Federal Agencies

#### **National Marine Fisheries Service (NMFS)**

Project actions not associated with commercial thinning, such as adding large wood to streams, riparian planting, road decommissioning, culvert replacement, and non-commercial thinning would be covered under the NMFS programmatic biological opinion for fish habitat restoration activities in Oregon and Washington (USDC 2008).

The District is consulting with NMFS about valley-bottom actions, such as stream-channel construction, valley re-grading, and levee removal. These actions have been analyzed in the Fisheries Biological Assessment (Appendix G).

Project actions associated with commercial thinning, such as road repair and maintenance, tree felling, yarding, and hauling, have been designed to have no effect on Oregon coast coho salmon—a species listed as Threatened under the Endangered Species Act—and its corresponding designated Critical Habitat. Project actions would not adversely affect Essential Fish Habitat for coho and chinook salmon, as designated by the Magnusen-Stevens Fishery Conservation and Management Act (appendices A and H).

### **US Fish and Wildlife Service**

Through consultation with the US Fish and Wildlife Service (FWS), the FWS concluded that the Project would not jeopardize the continued existence of the northern spotted owl or marbled murrelet (Letters of Concurrence: reference #13420-2010-F-0184, habitat modification; and reference #13420-2009-I-0152, disturbance). The terms and conditions associated with the biological opinions are included in Appendix A.

### **Bureau of Land Management**

Land managed by the Bureau of Land Management (BLM) is in the Project area. The BLM currently has no plans for activities in the Project area in the foreseeable future (Dan VanSlyke, BLM District Fish Biologist, Coos Bay District, pers. comm.).

### **Federal Government Representatives**

US senators and congressional representatives were notified about the Project. No comments were received.

### **State of Oregon and Local Governments**

All proposed actions were evaluated under the 2004 programmatic agreement with the State Historic Preservation Office (SHPO; USFS 2005a). A letter of concurrence from the SHPO is pending.

State congressional representatives, and several State agencies, such as the Oregon Coastal Zone Management Program, Oregon Department of Fish and Wildlife, Division of State Lands, Department of Land Conservation and Development, and Oregon Department of Forestry were notified about the Project. Local governments and representatives, such as county

commissioners, city mayors, other local-government representatives, and county planning departments were also notified. No comments were received.

#### Watershed Councils and Stewardship Group

Members of the Siuslaw Watershed Council and Stewardship Group were contacted. Meetings and field trips were held. Project proposals were discussed and recommendations by these groups were considered by the District Ranger. In general, Project support was expressed by these groups, although one person is concerned about the proposed use of the herbicide glyphosate.

### **FiveMile-Bell NEPA Lessons learned**

#### Collaboration between the USFS and its local partners works!

Our local workforce has the people and skills needed by the Forest Service for accomplishing many of its data collection tasks. Some specialized training may be required.

Overhead and management costs for a management contractor can be much less than the agency's costs for the same activities and results.

A Task Force of USFS specialists (i.e. silviculture, vegetation, wildlife, etc.) for this effort was necessary, and internal communication is critical. These specialists can serve in supervisory roles for the local management contractor and its workforce of sub-contractors.

Short-term employment and compensation make important contributions to the local economy.

Contractors and workers benefit from being able to add this experience to their resumes.

Having local people doing this kind of work for the agency leads to a greater level of communication between the agency and citizens, and can head off controversy and litigation over the final NEPA documents.

Turnover within the agency, and the time it takes to fill vacancies is a serious obstacle and often creates delays for the timely and rapid fulfillment of the project.

Funding for this work is not yet built into budgeting processes and requires special exercise of some existing authorities, but it can be done.

This process encourages USFS personnel to consider issues that they may never have dealt with, and gives them experience in examining ways of solving problems that they don't typically take into account.

## **SIUSLAW INSTITUTE: 5M-B NEPA PARTNERSHIP: Tasks and Costs**

**HYDROLOGY DATA GATHERING – 23 days @ \$600/day = \$13,760**

Includes historical research, GLO and aerial historical records, channel and valley floor, and stream crossing analyses

GIS work, Aquatic Restoration Planning, hydrological modeling

Attendance and participation in USFS Task Force meetings and consulting

Providing information for public meetings and outreach

**PLANNING AND MAPPING – 9 days @ \$600/day = \$5,400**

**HISTORICAL MATERIALS COLLECTION – 11.5 days @ \$600/day = \$7,000**

**VEGETATION AND BOTANICAL SURVEYS – 33 days @ \$200/day = \$6,600**

2.5 days @ \$600/day = \$1,500

**Total = \$8,100**

Field surveys of entire planning area and one control sub-basin, including photography and mapping

Reports and recommendations prepared and submitted to FS

Attendance and participation in USFS Task Force meetings and consulting

Providing information for public meetings and outreach

**SILVICUTURAL EXAMS – 17.5 days @ \$400/day = \$7,000**

Stand exams of entire sub-basin (USFS lands) and reports

Attendance and participation in USFS Task Force meetings and consulting

Providing information for public meetings and outreach

**PROJECT MANAGEMENT – 40 days @ \$400/day = \$16,000**

Contracting and supervision of training and all activities & tasks

Communications and planning with USFS 5M-B Project Manager and other agency specialists

Fiscal management, re-imburements & reporting for Ecotrust

Gathering of historical information, documents and interviews

Attendance and participation in USFS Task Force meetings and consulting

Providing information for public meetings and outreach

**TOTAL COSTS FOR THESE COMPONENTS OF THIS PROJECT = \$57,260**

## Fivemile-Bell Project: Engaging Communities in Restoration Planning



### Webinars

The following link should get you to the page with the videos. They'll be on the right side in the hot topics box: CEQ Pilot Webinars. <http://www.fs.fed.us/emc/>

The first of two webinars was shared with the 4FRI project in Northern Arizona and is identified as the "Fifth Pilot project"

The second and final webinar for this project by itself is identified as the "Fivemile-Bell Project"

## **4FRI Restoration Project**

### **1. Overview**

On February 9, 2012, CEQ and the U.S. Forest Service announced the selection of a fifth NEPA Pilot. The final Pilot, “Approaches to Restoration Management,” evaluates and compares the effectiveness of environmental reviews for two forest restoration projects and identifies best practices for future restoration projects. The pilot is intended to demonstrate that early involvement of stakeholders can reduce costs and enhance efficiencies throughout the Federal Government while maintaining strong environmental safeguards at the ground level. The collaborative efforts and best practices related to this pilot was presented in webinars for Federal planners and NEPA practitioners. The Four Forest Restoration Initiative (4FRI) was selected as a pilot project to explore NEPA efficiencies.

As a result of being selected for CEQ pilot, there have been two webinars to discuss 4FRI with NEPA practitioners. The first webinar was conducted on July 18, 2012. The presenters/panel members within the first webinar included Amy Waltz from the Ecological Restoration Institute at Northern Arizona University, Shaula Hedwall from US Fish & Wildlife Service, Steve Rosenstock from Arizona Game & Fish Department, Bob Davis from the US Forest Service, Region 3, Paula Cote from the US Forest Service, 4FRI Team, and Henry Provencio US Forest Service, 4FRI Team. There were 80 participants in the initial webinar, which featured the 4FRI planning effort. The presentation covered the following items for 4FRI: 1) Who We Are, 2) Our Goals, 3) Where Are We, 4) Why So Big – Scale, Why Here Why Now, 5) Challenges, and 6) Potential solutions – past, present and future.

The presentation discussed the following challenges and possible solutions to these challenges (displayed in the table below).

CHALLENGES	POSSIBLE SOLUTIONS
<b>Information management</b>	Use of available tools (USFS tools including GIS, FSVEG, FS Spatial modeling, fire modeling etc), eMNEPA tools, 4FRI website (Forest Service and stakeholder), and using FS databases of record
<b>Site specificity</b>	FS Veg FS Spatial modeling were used to create site specific data for each stand polygon that are in the analysis area
<b>Trust, both internal and external</b>	Collaboratively developed adaptive management and monitoring, use of concepts that are stakeholder developed products in the NEPA analysis, and all documents were shared during working meetings and drafts and final documents are posted on the 4FRI website (including Spatial and tabular data)
<b>Monitoring and Adaptive Management</b>	Collaboratively developed adaptive management and monitoring and commitment to funding through a portion of CFLR funding

The second webinar took place on August 21, 2013 and looked at the post-DEIS landscape of planning and implementation for 4FRI. The presenters/panel members within the first webinar included Henry Provencio US Forest Service, 4FRI Team, Earl Stewart the Forest Supervisor of the Coconino National Forest, Amy Waltz from the Ecological Restoration Institute at Northern Arizona University, Paula Cote from the US Forest Service, Kisatchie NF, and Dick Fleishman from the US Forest Service, 4FRI Team. The presentation again gave an overview of 4FRI, the genesis of 4FRI from a collaborative background, how stakeholders have engaged in the planning process, and specifically with the 4FRI Draft Environmental Impact Statement (DEIS), how the Forest Service used eMNEPA tools to improve efficiencies, and how planning will be operationalized.

**LESSONS LEARNED THROUGH THE FIRST TWO WEBINARS**

Specifically related to planning, the 4FRI NEPA process disclosed the following lessons learned.

- Large-scale landscape planning can be done in a site-specific fashion. GIS tools and existing modeling can create site specific datasets. The large-scale planning does gain efficiencies by eliminating redundant NEPA processes and documentation. This novel, landscape-scale approach to NEPA planning negates the need to conduct the estimated 20 to 50 individual NEPA analyses that the Forest Service would typically complete for such an area, thus saving money and time over traditional planning efforts. Site-specific planning at 4FRI’s scales, however, would not be possible without the efficiencies gained through the use of cutting edge Forest Service and stakeholder technology that provides for site-specific analyses at unprecedented scales.

The Forest Service will use a new remote sensing tool, LiDAR, to inform the next analysis area--- further expanding the cutting edge tools available to complete landscape scale planning.

- Several innovative collaboration tools were utilized by the 4FRI planning team and the stakeholders. For the Forest Service, the use of web-based applications and Forest Service eMNEPA tools (CARA, Mailing List Management, and Project Records Management) allowed for increased transparency by having nearly all planning documents available to the public, including draft and final documents. This, tied with the 4FRI planning team creating office hours when any public could come to the office and ask questions, led to a better understanding of this highly complex process by the public. The posting of the DEIS on the web during the publication timeframe was innovative and effectively increased the review timeframe for the DEIS, improving transparency for the public.

For the stakeholders, utilizing small groups to carry a majority of the work load for the collaborative as a whole was, and continues to be, an efficient means for achieving their work products. Specifically for commenting to the DEIS the stakeholders used the following process:

- A small group divided issues (total of 9), followed by a rigorous process to ensure inclusive work
- Each sub-group encouraged to solicit time with ID team to get clarity or more information – resulted in dissolution of 3 issues – no need for further comment
- Remaining sub-group identified specific problem areas within issues AND constructive suggestions to remove problem
- Where differences in recommendations differed among stakeholders, work was done to achieve consensus; if no consensus was achieved, recommendations were done at a place where there was consensus and reference to individual comments was encouraged to FS
- Draft recommendations available 1 week prior to meeting, then presented at meeting
- Small group process and participants presented to larger stakeholder group – good feedback received on process and inclusive nature
- Designed 2-day meeting: Stakeholder group reviewed issues where 100% consensus existed first
- Stakeholder group reviewed issues with some disparity after above success, able to agree to the “higher level” of recommendation\*
- High tech voting (text to website) allowed for some anonymity
- Resulted in 100% on a highly detailed list of recommendations for comments

- 4FRI has created an implementation checklist and plan to ensure resource protection can be assured. Prior to on-the-ground implementation, 4FRI’s resource specialists will evaluate the actions to be implemented against the project checklist to ensure the actions proposed include decision elements, such as protective design features (forest plan requirements, soil and water best management practices, mitigation, monitoring). This action is designed to provide environmental safeguards on the ground, as well as a trust building tool. However, because the 4FRI planning project has not been completed, this tool has yet to be tested for effectiveness.
- Collaboration with the US Fish and Wildlife Service and the Arizona Game and Fish Department as cooperating agencies improved the efficiency of the 4FRI planning team through the sharing of resources and data, and having the Arizona Game and Fish Department actually write a portion of the wildlife specialists report. In addition, the 4FRI team also worked with EPA at a regional level, Arizona Department of Environmental Quality and Arizona Radiation Regulatory Agency to address smoke related issues that arose through responses to comments. These collaborative ventures increased capacity and increased ownership in the project.

## **LESSONS LEARNED POST WEBINAR**

The following are lessons learned post-webinar related to NEPA and the 4FRI planning effort.

- If timeline “creep” occurs, there is a temptation to fix any data error that exists. At some point, there needs to be a strategy for addressing data errors.
- At the landscape scale, other related NEPA or ESA analyses may become key. For 4FRI, two forest plan revisions were underway and a US FWS Recovery Plan was revised. One revised forest plan was signed prior to the 4FRI decision. Compliance with the forest plans was conducted on both the current and revised plan(s). The 4FRI FEIS/ROD will address consistency with the revised forest plan. The lesson learned is to evaluate (early and often) how changes in management direction is likely to affect the project.
- Landscape scale planning often times improves cumulative effects analysis because the scale of the effects are more meaningful at a landscape scale rather than at a 10,000-20,000 acre analysis. The use of GIS and databases of record to track past projects (primarily the Forest Service FACTS database) makes this possible. To make this feasible, it is imperative that forest activities are tracked in databases of record to be able to have an accurate assessment of past activities. The more robust the reporting of the data, the more meaningful the analysis of

cumulative effects. Updated current condition map efforts of the entire landscape, such as LiDAR, are also recommended to improve cumulative effects analysis.

- The landscape scale does also create some difficulties as well. First, if there are changes between the DEIS and the FEIS, it is such a large project that tracking the changes through all of the related documents associated with the project can be difficult. As the timeline increases, there is likely to be changed conditions including new information, projects and activities to address in cumulative effects. To alleviate this issue, having a dedicated planning team is integral to the project. Even with a dedicated planning team, turnover by team members can also create timing issues and difficulty in the continuity of completing the project. Second, the landscape scale continues to challenge stakeholders who are having a hard time conceptualizing what the disclosed project will look like on-the-ground, even with site specific disclosure of effects and disclosure of effects at different scales within the analysis. This is partly an issue related to the landscape scale of the project, but it is also difficult to conceptualize the multiple metrics used to display the effects.
- Collaboration is not just something that happens during formal comment periods---it's full time. The Forest Service and the stakeholders continue to work together outside of the formal comment period to improve clarity to the analysis. As an example, at the request of the stakeholders, the Forest Service has shared draft response to comments to ensure understanding (did the Forest Service understand the comment) and to improve the clarity of the analysis that will allow for improved ability of the 4FRI stakeholders and all publics to conceptualize what the project will look like post implementation.
- Having an active stakeholder group involved (and using the tools above), improved the process for the Forest Service because they were able to give very specific input that helped to define the disclosure of environmental effects. As an example of this, during the review of DEIS comments, the stakeholders identified that site specificity may be an issue for the large, landscape scale analysis. The stakeholder group identified three randomly selected sites, and asked the Forest Service DEIS team to display site specificity for these sites. It was successful in recognizing that site-specific analyses have been utilized in this document. However, in the process the review team and the USFS team realized that not all that information is currently available to the public and missing from the official project record. Stakeholders recommended that the site specific treatments, and effects analysis information be made much more readily available for use or review by others. Interactive maps could improve how site specific information is displayed to the public. This may in the long run prove to be time and cost effective because the collaborative has improved the disclosure of complex and potentially

controversial topics with the DEIS. With that being said, the collaborative process was successful on coming to consensus on most controversial aspects of the project, but was not able to get to 100% consensus with all of the stakeholders. Therefore, the collaborative process was not able to get to a full level of trust for the 4FRI project.

The active stakeholder group also has been instrumental in creating a very robust monitoring and adaptive management framework for the DEIS (and subsequently the FEIS). To complement this, the 4FRI planning team worked with The Forest Service's Remote Sensing Application Center, stakeholders and Regional Office personnel to develop a Remote Sensing tool that will be utilized to answer spatial distribution questions raised within the 4FRI monitoring plan. This application is available for any project nationwide and uses existing NAIP imagery.

## **LESSONS YET TO BE LEARNED**

The 4FRI process has yet to come to completion. A Draft Environmental Impact Statement has been published, with a draft Record of Decision expected in the summer of 2014, and a Final Environmental Impact Statement and Record of Decision in the fall of 2014. Implementation and monitoring of the 4FRI EIS will follow. The following are lessons that have yet to be learned.

- One of the hopes of collaboration is that it will limit objections and litigation. It is too soon to tell if collaboration will prevent objections or litigation because we are not at that decision point yet. The final point below is related to this question.
- The successful implementation of monitoring of proposed treatments is expected to improve trust and will continue the conversation with members of the collaborative who do not have full consensus on project proposals. It is expected to also improve the understanding of the landscape scale application to the on-the-ground site specific application. Because the EIS has not been implemented, the actual benefit of building trust through monitoring has yet to be realized.
- Finally, even though collaboration has improved the process to date; you cannot force people and/or organizations to collaborate. Commenters who were not in the collaborative process to the DEIS were asked to join the collaborative and work towards a solution to their issues, but there are some commenters who chose not to join the collaborative process. One of the goals of collaboration is to reduce the potential for costly appeals and/or objections, this cannot happen if all participants in the process do not engage or participate. The NEPA process as currently defined is open ended and does not give additional weight to members of a collaborative---all comments are considered equal, standing is based on participation through commenting during the process, not on collaborating during the process.