

Nomination Received by Council on Environmental Quality, Executive Office of the President
For the CEQ NEPA Pilot Project Program
<http://www.whitehouse.gov/administration/eop/ceq/initiatives/nepa/nepa-pilot-project-nominations>

PART I. NOMINATOR

First Name:	Owen
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Organization:	Owen L Schmidt LLC
Project Title:	[None submitted]
Submitted by:	Member of the Public
Date Received:	04/03/2011

PART II. SHORT ANSWERS

I. What Federal agency or agencies will be involved in this pilot project?

USDA FOREST SERVICE

II. What is the Federal action to which this NEPA pilot project applies?

LOGJAM TIMBER SALE, TONGASS NATIONAL FOREST

III. How will this pilot project reduce the costs and time needed to complete the NEPA process?

THE "PILOT PROJECT" IS A NEW FORMAT TO THE SUMMARY OF A FINAL EIS. IT IS NOT INTENDED TO DIRECTLY REDUCE COSTS OR TIME, BUT INDIRECTLY THROUGH IMPROVED COMPLIANCE WILL HAVE THOSE EFFECTS.

IV. How will this pilot project ensure rigorous environmental protection?

IT IS NOT INTENDED TO DIRECTLY PROTECT THE ENVIRONMENT, BUT INDIRECTLY THROUGH IMPROVED COMPLIANCE ACCOMPLISH THE GOALS OF NEPA.

V. How will this pilot project improve the quality and transparency of agency decisionmaking?

THIS INNOVATIVE FORMAT IS WRITTEN IN PLAIN LANGUAGE, REPLACES AGENCY JARGON, LEADS THE READER THROUGH THE ARC OF A COMPELLING STORY LINE, AND FORMS A CROSS-CHECK ON THE COMPLETENESS OF AN EIS.

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

ANY AGENCY CAN FOLLOW THE SAME FORMAT FOR THE SUMMARY, NO MATTER THE FORMAT FOR THE EIS. NEPA REGULATIONS AUTHORIZE AGENCIES TO USE EIS FORMATS THAT ARE COMPELLING. THIS INNOVATIVE FORMAT IS COMPELLING FOR REASONS STATED ABOVE, AND IN THE ATTACHMENT.

PART III. PROJECT DESCRIPTION

(See attachment on following page.)

PART III. PROJECT DESCRIPTION

Please submit, via attachment, a 500- to 750-word narrative describing the NEPA pilot program you would like to nominate. The narrative should address the following:

Describe the pilot project. What agency or agencies, geographic area, and natural resource management issues will be involved?

The “pilot project” nominated here is the “Summary” section of the Logjam Timber Sale final EIS – which can be downloaded from this site:

http://data.ecosystem-management.org/nepaweb/nepa_project_exp.php?project=5083

USDA, Forest Service, Tongass National Forest, Logjam Timber Sale. Southeast Alaska, Prince of Wales Island. Issues include timber production, scenic views, subsistence uses, fish, and wildlife.

The Summary is prepared in a question-and-answer format of 8 plain-language questions any reader would want to have readily answered. It is patterned after materials in *NEPA Models and Case Lists, Fourth Edition*, more information here:

<http://web.me.com/olschmidt/NEPA/Index.html>

The 8 plain-language questions are comprehensive yet approachable. This innovative format for the Summary could, in fact, become the format for the EIS itself. 40 CFR §1502.10 (“The following standard format for environmental impact statements should be followed unless the agency determines that there is a compelling reason to do otherwise”).

Compelling reasons for using an 8-question format include these: It is written in plain language. It avoids the jargon of the standard format. It leads the reader through the arc of a storyline from the proposal, the reason for it, alternatives to it, etc., through to mitigation and monitoring. It is, in a sense, a checklist for the contents of an EIS – if 8 plain-language answers to the 8 plain-language questions summarize a coherent story that is told in the EIS it is likely the EIS is complete.

Anecdotal evidence indicates that the Summary for the Logjam final EIS was well regarded by reviewers. It is a fresh approach to formatting the Summary for an EIS that could become the format for the EIS itself.

Relevant pages from the book cited above are attached, below, for easy reference.

How will the pilot project be implemented?

Logjam Timber Sale final EIS has been completed, brought to judicial review, and prevailed. *Tongass Conservation Soc’y, et al. v. U.S. Forest*

Service, et al., D. Alaska, No. 3:10-cv-00006-TMB; U.S. Court of Appeals for the Ninth Circuit, No. 10-35232, June 28, 2010.

Are you nominating a pilot project that has already been implemented, is currently being implemented, or is proposed for implementation?

The final EIS has been completed and the project itself is underway, presumably.

If your pilot project is underway or is proposed for implementation, describe the timeline for implementation: When would the project start? When would it be completed? Describe any major intermediate milestones for implementation.

This data is available from the Tongass National Forest. Contact information at the Web address, above.

Describe the resources that will be needed to implement the pilot project.

N/A. See above. No resources are needed.

Will the pilot project further an Administration priority?

Yes, as cited in CEQ's memorandum of March 17, 2011: "to modernize and reinvigorate Federal agency implementation of NEPA and encourage innovation, public engagement, and transparency." If the 8 plain-language questions are indeed a comprehensive yet reader-friendly summary of the contents of an EIS, then this innovative format modernizes and invigorates. It promotes public engagement and transparency. It would follow that if this format is suitable for the Summary, it would be equally suitable for the EIS itself. It is innovative, not having been done this way in the past. It fosters public engagement and transparency because it uses plain language, covers the necessary points, and forms a cross-check on whether necessary information is indeed present in the EIS.

(For nominations submitted by members of the public) Please describe any consultation you have had with the relevant agency or agencies about this project.

None about the Logjam project itself. There has been communication with Tongass staff about the use of the 8 Q&A approach to formatting the summary of the final EIS.

The narrative can elaborate on, but should not repeat, your responses to the Short Answers (Part II) showing how your project meets selection criteria for the CEQ NEPA Pilots Project.

SUBMITTED BY:

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SOURCE:

<http://www.whitehouse.gov/administration/eop/ceq/initiatives/nepa>

<http://www.whitehouse.gov/webform/submit-nepa-pilot-project-nomination>

8 questions any EA or EIS should readily answer

Ask this question	Looking for	CEQ: 40 CFR	Notes:	Comment:
1. What action is proposed?	Proposal PA	1502.4(a); 1508.23; 1502.14; 1502.5	A “proposal” for action triggers the NEPA process, and the “proposal” is one of the alternative actions normally present in an EA or EIS.	
2. Why?	Underlying need DFC	1502.13; 1508.9(b)	It is the “finding” of the existence of an underlying need that justifies the proposal to take action, authorizes the ultimate agency action, defines the range of alternatives, and forms the basis to create a no-action alternative in true contrast to the action alternatives (including the proposed action alternative).	
3. What other action would meet the same need?	Alternatives AA	1502.14; 1508.25(b)	The “heart” of the NEPA process is the evaluation, comparison, and consideration of alternatives. The statement of underlying need defines the range of alternatives. Agencies are bound by law to consider all reasonable ways to meet the same need that the proposed action is intended to meet, and may by law exclude from serious consideration all alternatives that do not meet the need for action.	
4. What would it mean not to meet the need?	No-action alternative EC	1508.25(b)(1); 1502.14(d)	“No-action” forms the basis for a true comparison between meeting the underlying need and <i>not</i> meeting the underlying need. “No-action” is not simply the absence of the proposed action or other action alternatives, but is a scenario about the future that is alternative to any of the action alternatives.	
5. What are the effects of the proposed action, and alternative actions — in comparative format?	Impacts, “events”	1502.14; 1508.8; 1502.16	An EA or EIS should contain a sufficient discussion of the relevant issues and opposing viewpoints to enable the decisionmaker to take a “hard look” at relevant environmental factors. The agency must articulate a rational connection between the facts and law found and the conclusions made. A court may set aside an agency decision if it is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. §706(2)(A). An agency’s action is arbitrary and capricious if the agency fails to consider an important aspect of a problem, if the agency offers an	

			explanation for the decision that is contrary to the evidence, if the agency's decision is so implausible that it could not be ascribed to a difference in view or be the product of agency expertise, or if the agency's decision is contrary to the governing law.	
6. What factors will be used when making the decision between alternatives?	Purposes	1502.23	"... an environmental impact statement should at least indicate those considerations, including factors not related to environmental quality, which are likely to be relevant and important to a decision." These "decision factors" are relevant to an EIS, and relevant again at the time of decision in the Record of Decision.	
7. Are there any ways to mitigate adverse effects?	Mitigation PA	1508.25(b)(3); 1502.14(f); 1502.16(h); 1508.20; 1500.2(e)	If "mitigation" is part of the proposal, or part of an alternative, it is already accounted for in that proposal or alternative. Only "mitigation" that is <i>optional</i> above and beyond the proposal or alternative is to be considered here. Thus, as CEQ says, "mitigation" is an "alternative" that must be considered apart from the proposal or other alternatives.	
8. What monitoring is necessary that is not included in the proposed action or alternative action?	Monitoring	1505.3; 1505.2(c)	At the time of decision, a monitoring program must be considered for mitigation. Earlier, the EIS is a good place to invite public involvement on potential monitoring. Moreover, monitoring may be incorporated into the proposal, alternatives, or mitigation measures — so their presence in the EIS is required in such a case for purposes of full disclosure.	

Caveats: answers may be present, but not readily apparent; answers may exist in the administrative record but not in the environmental document. If these conditions are present, the ultimate conclusion of the decisionmaker may be supportable, but other problems may be posed. PA = Proposed Action; DFC = Desired Future Condition; EC = Existing Condition.

DFC = PA + EC

DFC = AA + EC

8 questions any EA or EIS should readily answer

Practice Pointers

1. What action is proposed?

Do	Don't
The reader is looking for action that triggers the NEPA process. Without a proposal for action there is no need for a NEPA process. Indeed, the NEPA process is impossible without a clearly defined, well-articulated proposal for action.	The proposal may be so vaguely stated or poorly defined that a reader cannot understand what the agency proposes to do. The proposal may be stated variously or differently in the EA or EIS, again with the effect that the reader cannot understand what the agency proposes to do.

2. Why?

Do	Don't
The reader is looking for a match between the need for action and the proposal for action. The proposal for action should meet the need for action. The need for action should support the proposal for action. And the need for action must be supported by evidence that it is bona fide, that it really exists. See the practice pointers, above, for writing a need statement.	One common way to get this wrong is to write about the need for an EA or EIS. Another is to use a circular logic, or use the same language for both the proposal for action and the need for action, as in "We propose to take action because we need to take action." "We propose to do X because we need to do X."

3. What other action would meet the same need?

Do	Don't
The reader is looking for alternative ways to meet the need. If the proposal would meet the need, what other action would also meet the need? If there is only one way, say so. If there is more than one way, these are alternatives.	Any set of alternatives that loses sight of the need for action would be wrong. One example is to "bracket" the proposed action with alternatives, such as smaller and larger sizes. Thus alternatives are present, but they may make no sense. If there is a need to do one thing, then it may make no sense to look at doing half of it, or double whatever it is. Another example would be to bracket the proposed action with alternatives having different emphasis, such as a "pro-development" alternative and a "pro-conservation" alternative. If either of those would not meet the need for action, they make no sense.

4. What would it mean not to meet the need?

Do	Don't
The reader is looking for the consequences of leaving the need un-met. This is usually the "no action" alternative, though the explanation could be present in the same section the underlying need is described. This information may be the best support there is for why it is important to take action.	The most common mistake is omission. If the "no action" alternative is not analyzed in detail, and if the "underlying need" is not proved, the reader will not grasp the basic comparison between taking action and not taking action, which is meeting the need and not meeting the need.

5. What is the comparison of effects between the proposed action and alternative actions?

Do	Don't
The reader is looking for the “heart” of the EA or EIS, a ready comparison between the “action” alternatives. This is commonly lumped with question 4, above. A comparison table is usually effective.	As for question 4, the most common mistake is omission. Another mistake would be to use different metrics for different alternatives, creating an apples-and-oranges comparison.

6. What factors will be used when making the decision between alternatives?

Do	Don't
Looking ahead to the time of the decision, the reader wants to know what factors will be important to the decisionmaker. For example, if cost is an overriding consideration the reader will want to be satisfied that cost has been adequately analyzed.	The most common mistake is to write a decision that rests on considerations not first presented in the EA or EIS. Thus the task for the EA and EIS is to accurately predict what these factors will be.

7. Are there any ways to mitigate adverse effects?

Do	Don't
The reader is looking at “left over” adverse consequences, those not mitigated at all and those left over even after mitigation. The agency has a duty to investigate the possibility of mitigation, even though it may choose not to mitigate.	Mitigation measures incorporated into the proposed action or alternative actions are just that — part of the proposal or alternatives. Those don't count here. The usual mistake is to disclose an adverse effect and move on, without an analysis of mitigating that effect.

8. What monitoring is necessary that is not included in the proposed action or alternative action?

Do	Don't
The reader is looking for what the agency says about monitoring, whether it is being done already or needs to be added.	The only way to get this wrong is omission. NEPA case law requires monitoring, but does not specify what kind or how to carry it out.

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