

If you experience a problem reading a document with assistive technology, please contact: R9WebTeam@epa.gov.

ROLE OF NEPA/ STATE ENVIRONMENTAL REVIEW PROCESS

*CONNELL DUNNING,
US EPA, ENVIRONMENTAL REVIEW SECTION*

EPA's Role in the National Environmental Policy Act & State Environmental Reviews

Connell Dunning– US EPA Region IX

January 27th 2016

Regional Tribal Operations Committee



EPA's Role in NEPA and State Environmental Reviews

- History and Overview of NEPA
- EPA's Role in NEPA
- EPA's Role in State Environmental Documents

National Environmental Policy Act of 1969

“The Congress.....declares that it is the continuing policy of the Federal Government, ... to use all practicable means and measures, including financial and technical assistance, in a manner calculated to:

- foster and promote the general welfare,
- to create and maintain conditions under which man and nature can exist in productive harmony, and
- fulfill the social, economic, and other requirements of present and future generations of Americans.”

What is NEPA... really?



- ❑ NEPA is procedural law
- ❑ Applies only to major Federal actions
- ❑ Created the Council on Environmental Quality (CEQ)
- ❑ Lead Federal Agency
- ❑ Requires public involvement
- ❑ Goal is informed decision-making

Who does NEPA apply to and when is it necessary?

- ❑ Any Federal action (project, program, etc.)
 - Funding, partial funding, or assistance
 - Use of Federal resources
 - Rules, regulations, plans, policies, or procedures
- ❑ Treaties and international agreements
- ❑ Approval, permitting, or assistance for projects

Who provides NEPA oversight?

- ❑ Congress created the Council on Environmental Quality (CEQ) to administer NEPA
 - Prepares annual environmental report
 - Conducts research/develop national policy
 - Reviews federal agency compliance
 - Issue regulations and guidance, training, advice to Federal agencies
 - Resolve lead agency disputes

Who implements NEPA?

- Every federal agency has existing authorities, which NEPA supplements
 - Each federal agency prepares NEPA implementation procedures
 - Council on Environmental Quality identified criteria that must be met by these procedures
 - There is variation between federal agencies

Public Involvement

- ❑ Requires that environmental information be available to public officials and the community before decisions are made and before actions are taken.



- ❑ Requires public officials to make decisions based on understanding of environmental consequences and to make evaluations and decisions that anticipate adverse effects on environmental resources.

Key Issues and Impacts

❑ Hydrology and Water Use

- Waters of the U.S – Section 404 permits
- Ephemeral streams, washes, springs and seeps
- Scarce supply; groundwater depletion

❑ Air Quality

- PM10/PM2.5 emissions during construction

❑ Wildlife and Habitat

- Endangered species, habitat connectivity,
- Invasive species

❑ Cultural and Tribal Resources

- Meaningful Consultations; Sacred Sites

❑ Cumulative Impacts

❑ Traditional Ecological Knowledge



Other Issues and Impacts

- ❑ Noise - Impacts to humans and wildlife
- ❑ Visual- Viewscape, loss of remoteness and wildness
- ❑ Environmental Justice – Underserved communities
- ❑ Public Health
- ❑ Hazardous Materials
- ❑ Recreation
- ❑ Transportation and Traffic
- ❑ Induced Growth





Summary Review of EIS Process

EIS Process Steps

- Notice of Intent
- Scoping
- Draft EIS
- Formal Review and Comment Period
- Final EIS
- ROD and Mitigation Plan

What is EPA's Role?

- ❑ Filing EISs – EPA Headquarters Office
- ❑ Unique reviewing authority
- ❑ Provides guidance for areas of expertise
- ❑ NEPA role if Lead Agency

EPA's Role - Reviewing

- EPA reviews every Environmental Impact Statement prepared by a federal agency and comments in writing on the environmental impacts. (Authority from Section 309 of the Clean Air Act)
- EPA is authorized to refer the matter to CEQ for resolution if it determines that the proposed action is unsatisfactory from the standpoint of public health, welfare, or environmental quality.

EIS Factors Important for EPA' s Review

- ❑ Well-defined purpose and need statement
- ❑ Adequate alternatives analysis
- ❑ Sufficient public involvement and scoping
- ❑ Consultation with Tribes and affected communities
- ❑ Cumulative Impacts (to air, water, human health, habitat and wildlife corridors, environmental justice, soil and geology, plant and animal species, economy, cultural resources)
- ❑ Compliance with associated environmental laws

EPA' s Role - Guidance

- ❑ Provide scoping comments and “early” assistance
- ❑ Provide NEPA assistance through cooperating agency status, other agreements
- ❑ Review some Environmental Assessments
- ❑ Lead Agency when EPA awards a permit, funding, etc.

Tribal concerns

- Inform tribes of federal projects that may impact tribal interests
 - ▣ Focused on emerging sectors (Renewable energy projects in 2011-2012)
 - ▣ Coordinate directly with Tribes on specific issues, as needed.
- Environmental review and early involvement on Tribal projects (BIA NEPA documents)

NEPA – What it isn't....

- ❑ Only the lead agency has the authority to decide whether an action will commence and which alternative to follow
- ❑ Federal officials are not required to adopt the most environmentally preferred alternative; therefore NEPA imposes procedural, not substantive, decision making requirements
- ❑ NEPA has no penalty or enforcement provision

EPA's Role in State Environmental Reviews

- ❑ Other State “NEPAs” and California Environmental Quality Act
- ❑ NEPA Assignment to Caltrans
- ❑ NEPA Reciprocity

Additional Resources

- ❑ CEQ: <http://www.whitehouse.gov/ceq>
- ❑ CEQ's NEPA website: <http://ceq.doe.gov/>
- ❑ EPA's NEPA website: <http://www.epa.gov/nepa>

Thank you!

Dunning.connell@epa.gov

451-947-4161



Thank you!

Dunning.connell@epa.gov

415-947-4161