



Public Participation
Environmental Impact Assessment (EIA)
in the United States

National Environmental Policy Act (NEPA)
Regulations, Guidelines, Experience

National Environmental Policy Act (NEPA), 1969
Mother of EIA

- ▶ Establishes National Environmental Policy
- ▶ Establishes Administrative Procedures for Federal Agencies to assess/consider impacts
- ▶ Creates Council on Environmental Quality (CEQ)

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Declares National Policy (Title 1, Section 101) to:

NEPA's aspiration:

(1) Use all practicable means and measures for:

- Productive harmony between man and nature
- Requirements of present/future generations
- Widest range of beneficial uses
- Enhance renewable recycle depletable
- Preserve : historic, cultural and natural heritage

(2) Coordinate plans/functions/programs/ resources

(3) Each person should both enjoy and be responsible for preservation and enhancement of the environment

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NEPA's Implementation: Environmental Impact Statements

- ▶ NEPA (Section 102)(2)(c): **Directs federal agencies to prepare **publicly available** "detailed statement" with every proposal for legislation or major Federal action significantly affecting the human environment**

- **Statements must include:**

- Environmental impacts of proposed action
- Unavoidable adverse impacts of proposal
- Alternatives to the proposed action
- Relationship between local short-term uses versus maintenance and enhancements of long-term productivity
- Irreversible/irretrievable commitments of resources

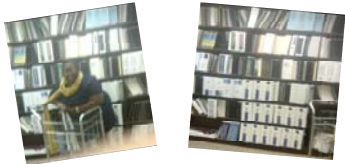
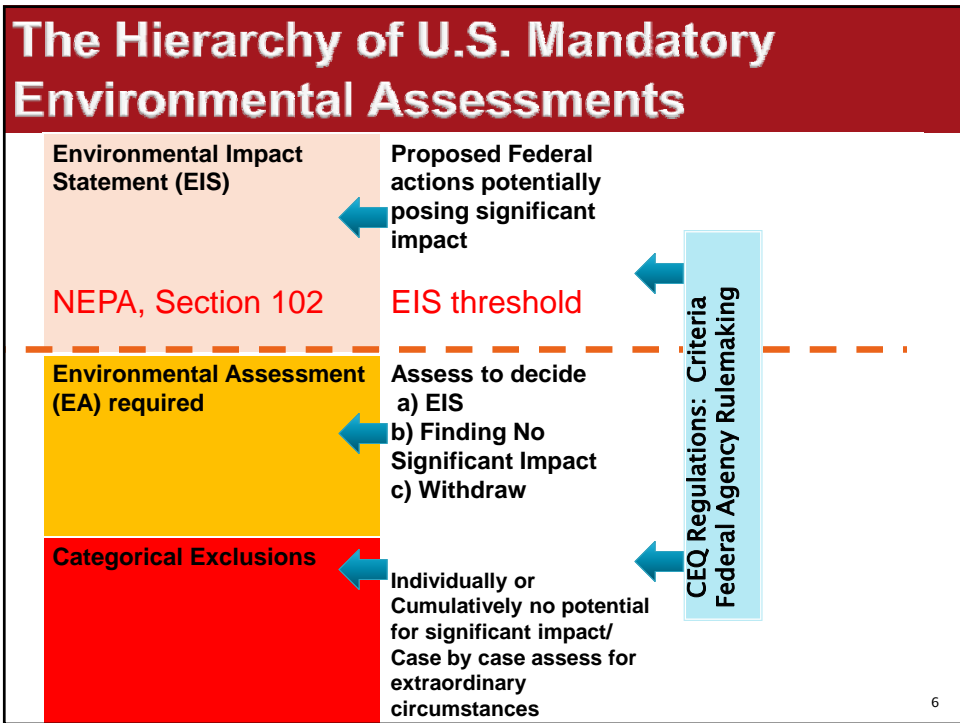
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Other Laws Affecting US EIA

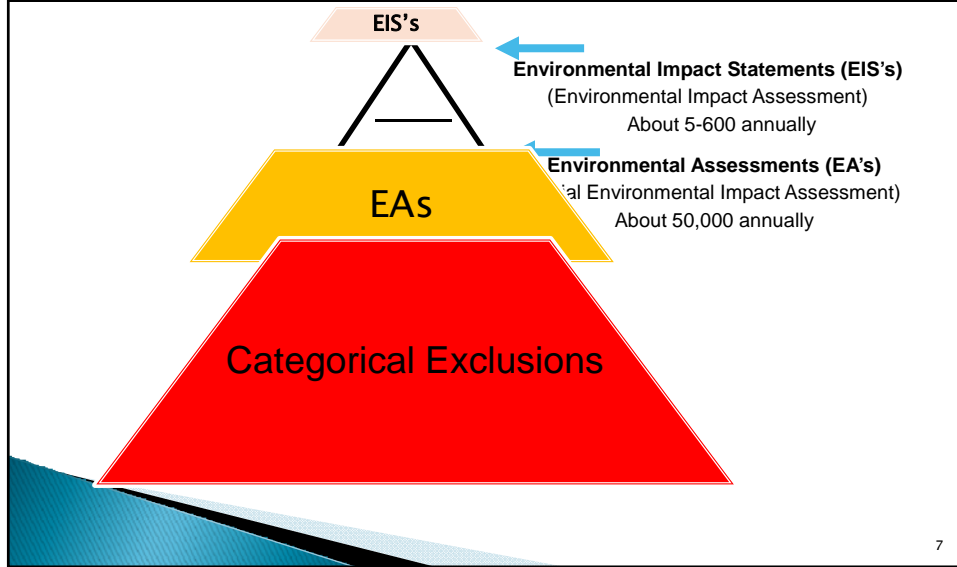
- **Administrative Procedure Act (APA)**
 - Public Notice and Comment
 - Public information requests: 10 days to decide/ 20 days for appeals
 - Judicial Review: for legal wrong/adverse impact of Federal action

- **Section 309 of the Clean Air Act of 1970**
 - EPA independent review and comment: written and public
 - EPA Administrator refers to CEQ any legislation, federal action, or regulation unsatisfactory: public health or environmental quality

- **Memorandum of Agreement between CEQ and EPA**
 - EPA responsible for notice of availability of EIS In *Federal Register*
 - EPA receives, tracks EIS's and manages EIS filing system

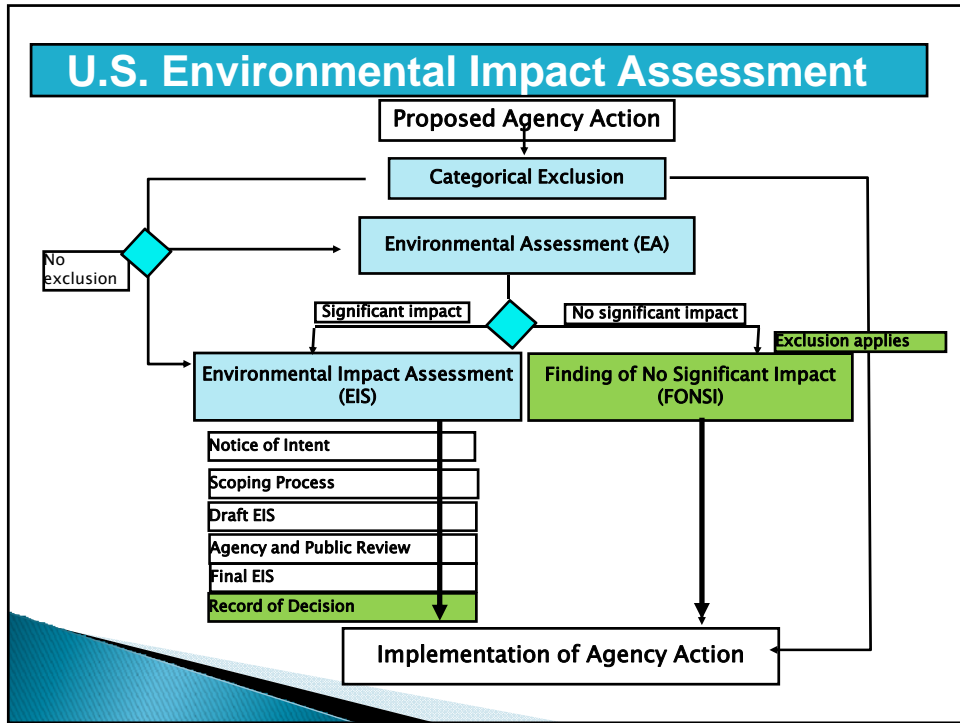



Small proportion of federal actions require an Environmental Impact Statement



Federal Agency and Private Sector Roles and Relationships

- ▶ **NEPA affects private parties only when** there is a Federal "handle" on a proposed private action e.g.
 - Permits, licenses, grants, loans, use of Federal land or resources
- ▶ **Private Sector Proponents:**
 - Submit environmental documentation along with applications
 - May carry out public participation/consultation separate or with Agency
 - May enter into third party agreement with Federal Agency to hire a contractor to prepare an EIS with Federal Agency technical direction
 - Do not prepare decision documents, EIS or write permit/other conditions
- ▶ **Each Federal agency is responsible but:**
 - Involves all agencies across government with jurisdiction and expertise
 - Mandates independent review by U.S. EPA
 - Provides oversight and both formal and informal conflict resolution by the Council on Environmental Quality in Executive Offices of the President



Important Public Participation Opportunities

- ▶ Developing specific legislative authority and regulations
- ▶ Issuance of a finding of no significant impact for an EA

- ▶ Notice of Intent to pursue a proposed action and to develop an EIS
- ▶ Scoping of reasonable alternatives, relevant stakeholders, and issues of concern required for EIS's
- ▶ Review of a draft EIS
- ▶ Wait period – after the final EIS
- ▶ Review of an agency's record of decision
- ▶ Monitoring and evaluation process

CEQ Public Participation requirements for Federal Agency NEPA requires “diligent effort”

- **Make diligent effort to involve the public in preparing/implementing NEPA***
 - Provide public notice to agencies and the public meetings/hearings/availability\documents
 - Hold or sponsor public hearings or meetings if substantial environmental controversy or request
 - Solicit information and comments from the public, especially persons or organizations who might be interested or affected
 - Explain where persons can get information or status reports
 - Have a minimum 45 day comment period on draft EIS's
 - Ensure public availability of public, agencies, EPA comments

* 40 CFR 1506.6

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CEQ Regulations require

- **Public involvement before decisions are made**
Agency cannot issue a decision on a proposed action until
 - 90 days after notice of filing of a Draft EIS
 - 30 days after notice of filing of a Final EIS has elapsed since the publication of EPA's notice of availability in the *Federal Register* of filing an EIS with EPA
- **Accurate scientific analysis, expert agency comments, and public scrutiny**
- **Documents concentrate on truly significant issues** rather than amassing needless detail.

* 40 CFR 1500.1 (b)

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CEQ Public Notice Requirements Encourage Good Practice

Action with National Concern:

- ▶ By mail on request
- ▶ Publication in the Federal Register
- ▶ Notice by mail to national organizations reasonably expected to be interested

Actions with primarily local concerns: Nine suggestions

- Notice to State and area-wide clearinghouses
- Notice to Indian Tribes
- Follow State's public notice procedures for comparable actions
- Publish in local newspapers (general circulation rather than legal papers)
- Notice through local media
- Posting on and off site where action is to be located
- Direct mail to owners and occupants of nearby or affected property
- Publish in newsletters expected to reach potentially interested persons
- Notice to potentially interested community organizations including small business associations

* 40 CFR 1506.6 (b)

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Environmental Assessments: Minimum Public Participation Requirements

- ▶ **Federal agencies shall “involve environmental agencies, applicants and the public to the extent practicable” (1501.4 (b))**
- ▶ **EA process is flexible in format and timing, but must include:**
 - Publicly available document
 - Assessment of Impacts
 - Consideration of Alternatives particularly where there are unresolved conflicts concerning alternative uses of resources
 - List of agencies and persons consulted– but not formal comment or scoping
 - Mitigation if impacts would potentially be significant without mitigation (1508.9)

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Finding of No Significant Impact

- ▶ **Finding of No Significant Impact (FONSI)** is a decision document supporting a determination that an action will not result in significant impacts.
- ▶ **The FONSI must include the EA** or a summary of it, and commit to mitigation measures needed to reduce impacts below significance thresholds. FONSI must be:
 - Circulated to affected public; or
 - Made available for review for 30 days prior to making decision when:
 - Action usually requires an EIS
 - Action is without precedent

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Environmental Impact Statements (EIS) formal requirements/less discretion

The EIS development process must include:

- Notice of intent published in advance of work on an EIS
- Scoping all potentially affected parties*
- Commenting by federal agencies with jurisdiction/expertise
- Draft EIS to public/stakeholders: 45 days for comment
- Final EIS to public/stakeholders: 30 days for comment
- Referral of EIS to CEQ and President for dispute resolution

* Legislative proposals do not require scoping for EIS process

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Record of Decision (ROD)

- ▶ **Lead agency prepares a Record of Decision (ROD)**
 - States decision
 - Identifies alternatives considered, environmentally preferable
 - mitigation measures all practicable were adopted or why not
 - commits to a monitoring and enforcement program

- ▶ **ROD is a public document** (i.e. be available for public review), but it need not be circulated for review.

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Mitigation/Follow up/Monitoring Plan (2)

- ▶ **Lead agencies shall: (1506.3)**
 - Include conditions in grants, permits or other approvals
 - Condition funding of actions on mitigation
 - monitoring requirements under specific Agency laws (such as the National Forest Management Act 36CFR 219)

- Upon request:**
 - Inform cooperating or commenting agencies on progress
 - make available to the public the results of relevant monitoring.

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NEPA and Environmental Justice: Executive Order 12898

Each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low income populations in the United States.

Executive Order 12898,
Federal Actions to Address
Environmental Justice in
Minority Populations and
Low-Income Populations
(1994)

Identifying Factors for Assessing Disproportionate Impacts on Minority and Low-Income Populations



Proximity and Exposure



Cumulative Impacts



Physical Infrastructure



Susceptible Populations



Unique Exposure Pathways



Ability to Participate in Decision-Making (social capital)

*Also, looking into Psycho-Social Stress

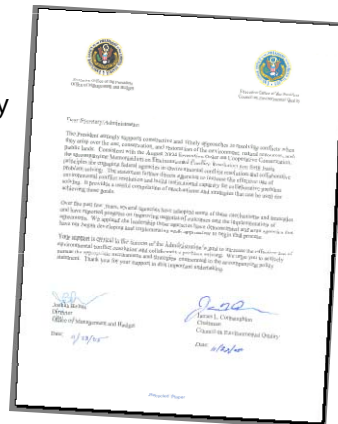
Environmental Conflict Resolution (ECR) Policies and Networks

1998 US Institute for Environmental Conflict Resolution 2005 CEQ/OMB Memorandum

- ▶ Conflict prevention & resolution
- ▶ Use of neutrals
- ▶ Leadership – department and agency policy
- ▶ Incorporation of principles
- ▶ Mechanisms & strategies
- ▶ Accountability – performance evaluation

Other resources

- EPA: CPRC/ Superfund Community Grants
- DOI: CADR
- National Roster and private practitioners
- State dispute resolution programs
- Professional associations (ACR, ABA)
- University-based programs and research



New Tools can help the public identify their interests: NEPAassist: Overview

a digitized polygon	.413 sq/mi
Within 400 meters of an MML wellhead?	Yes
Within 400 meters of an American Heritage River?	No
Within 400 meters of a Wild and Scenic River?	No
Within an Area of Concern (Great Lakes)?	No
Within 400 meters of a Great Lakes shoreline?	No
Within Great Lakes basin?	No
Within 400 meters of an Environmentally Sensitive Shoreline?	No
Within an MML Wellhead?	Yes
Within 400 meters of a Pipeline?	No
Within 400 meters of an Oil Storage Facility?	No
Within 400 meters of a Navigation Lock/Dam?	No
Within 400 meters of a Non-navigational Dam?	No
Within 400 meters of a Marina?	No
Within a Wildlife Refuge?	No

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U.S. Forest Service NEPA website: electronic EIAs, comments, tracking

The Forest Service requires posting all proposed actions using a decision document on a schedule of proposed actions: <http://www.fs.fed.us/cepp/index.php>

US Forest Service Schedule of Proposed Actions can be found on the internet by map location or administrative units.

US Forest Service Schedule of Proposed Actions provides early notice of upcoming projects and includes interest and contact information.

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Wide Range of Projects, Plans, Programs

- New or continuing activities financed, assisted, conducted or approved by federal agencies, for example:
 - Permits, licenses, approvals
 - Grants
 - Loans
- Legislative proposals 1508.18 (a)
- New/ revised rules, regulations, plans, policies or procedures 1508.18 (b)(1)

And whether:

- Connected
- Cumulative
- Similar

What does “diligent effort” look like for Federal Agencies? (1)

- ▶ **Combination of small group meetings, open houses, and facilitated town hall public meetings:**
Nuclear Regulatory Commission reactor license renewal and early site permit program
- ▶ **Procedures for involving the diverse interests that represent the community affected by a proposed project**
Department of Interior, ESM03-7, Procedures for Implementing Consensus-Based Management in Agency Planning and Operations, (July 2, 2003):

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Private Sector Hydropower Projects

Federal Energy Regulatory Commission (FERC) Licensing Regulations

Consult Stakeholders (4.38(b)(3))

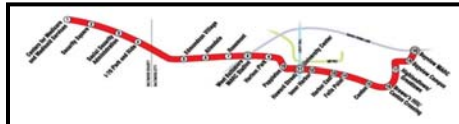
- Consultation process 90 days; proponent/stakeholder agreement can shorten to 30 days via Commission waiver
- Identify all relevant federal and state agencies, tribes, NGOs, and interested parties of proposal
- Document all three stages of the consultation process:
 - At least one joint meeting with stakeholders
 - within 30 to 60 days of requesting a license
 - explain project information, potential environmental effects To find information gaps/study needs.
 - stakeholders/public consulted on schedule/agenda
 - Site visit usual in conjunction with the joint meeting
 - Inform Commission no less than 15 days before
 - Promptly share transcript/audio recording /written notes
 - Comments within 60 days for recommended studies
 - FERC dispute resolution role on information/studies
 - Public comment on the draft application including response to comments and study results



see: Joint Agency Meeting Notice , Joint Meeting Newspaper Notice and Consultation Checklist

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Light Rail project: Baltimore Redline



Community Outreach Strategy

Goal - to establish and maintain two-way, open communication between the study team and community members, including minority and low-income populations.

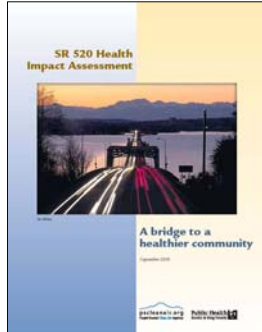
- Actions:
 - 52 Pre-scoping "Listening Tours"
 - Initial scoping meetings/written comment period;
 - Published reports on website
 - Designation of community liaisons
 - Four Public hearings
 - 17 Station Area Advisory Committees (SAAC's)
 - Citizens' Advisory Council
 - Speaker's Bureau Meetings/Neighborhood Events/Community Meetings
 - Open House Public Meetings with notes on website
 - Newsletters in English and non-English versions
 - Study Area Resource Hubs and designated liaisons for specific communities



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Bridge Replacement Health Impact Assessment



Changing definitions of
 ➤ Health
 ➤ Transportation



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Recommendations from Health Impact Assessment

CON- STRUC- TION	<ol style="list-style-type: none"> 1) Reduce construction-related pollution 2) Increase traffic management 3) Provide for construction noise control 	
TRANSIT BICYCLE WALK	<ol style="list-style-type: none"> 1) Increase/improve transit service to meet/attract demand--more riders, and reduce air pollution 2) Connected walking and bicycling facilities throughout 3) Create a common way-finding system 	
LANDSCAPED LIDS AND GREEN SPACES	<ol style="list-style-type: none"> 1) Include six landscaped freeway lids 2) Use landscaping materials throughout the SR 520 corridor, along adjacent trails and roadways and at transit stops 3) Improve and preserve the integrity of the Washington Park Arboretum, and the ability of visitors to enjoy it and other green spaces and natural areas 4) Preserve access to the waterfront for water-related activities 	
DESIGN	<ol style="list-style-type: none"> 1) Reduce noise throughout the corridor 2) Add art/design for adjacent communities' character 3) Utilize innovative storm water management practices 	

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Other approaches

- **Interdisciplinary and Mitigation Development Teams**
Interstate Highway example

- **Community Benefits Agreements, separate but enforceable Los Angeles Airport Example**
 - Coalition for Economic, Environmental and Educational Justice
 - approximately 22 community, educational, religious, environmental, and labor organizations.
 - represents the interests of low-income and minority populations located near Airport.
 - Agreement provides to communities that would be impacted by the implementation of the Los Angeles International Airport (LAX)
 - environmental mitigation programs
 - jobs-related benefits

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Summary

- **The National Environmental Policy Act (NEPA)**
creates a Federal Government responsibility that affects private project proponent actions.
- **Public Participation requirements:**
 - Transparency and public access to information
 - Due diligence in engaging the public/stakeholders
 - All categories of environmental review, all project stages
 - Environmental Justice: attention to vulnerable populations
- **Environmental Conflict Resolution**
- **Best practices evolving, need push, need time**
- **Deadlines/Streamlining forcing greater efficiency**

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Questions?

