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MAKING NEPA MORE EFFECTIVE AND ECONOMICAL FOR THE NEW
MILLENNIUM

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ABSTRACT

This paper focuses on a ten-element strategy for "streamlining" the NEPA process in order to achieve the Act's objectives while easing the considerable burden on agencies, the public, and the judicial system. In other words, this paper proposes a strategy for making NEPA work better and cost less. How these ten elements are timed and implemented is critical to any successful streamlining.

The strategy elements discussed in this paper, in no particular order of priority, are as follows: (1) integrate the NEPA process with other environmental compliance and review procedures; (2) accelerate the decision time for determining the appropriate level of NEPA documentation; (3) conduct early and thorough internal EIS (or EA) scoping before public scoping or other public participation begins; (4) organize and implement public scoping processes that are more participatory than confrontational; (5) maintain an up-to-date compendium of environmental "baseline" information; (6) prepare more comprehensive, broad-scope "umbrella" EISs that can be used effectively for tiering; (7) encourage preparation of annotated outlines with detailed guidance that serve as a "road map" for preparation of each EIS or EA; (8) decrease the length and complexity of highly technical portions of NEPA documents; (9) increase and systematize NEPA compliance outreach, training, and organizational support; and (10) work diligently to influence the preparation of better organized, shorter, and more readable NEPA documents

1.0 INTRODUCTION

According to the Council on Environmental Quality (CEQ), which has the primary responsibility for implementing NEPA, an estimated 20,000 environmental impact statements (EISs) have been prepared by Federal agencies since NEPA was signed by President Nixon on New Year's Day, 1970. This means that the average number of EISs filed annually over the 30-year period was 667. Another estimated 50,000 environmental assessments (EAs) were prepared during the same period.

It can be assumed that the costs of NEPA compliance for both the public and private sectors have run into the billions. Finding ways to streamline the NEPA process, while maintaining the Act's goals and

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objectives, can only serve to make federal agency decisions more sensitive to environmental values.

Even after 30 years of experience with implementing the EIS requirements of the Act, most of the same major NEPA compliance problems remain:

- Avoidance of NEPA compliance at all costs, even if it means stopping the project.
- Documentation procrastination that results in setting impossible schedules for EA or EIS preparation.
- Failure to use NEPA to make better decisions.
- "Encyclopedia mania" which results in producing massive multi-volume, often unreadable NEPA documents.
- Inadequate public and agency involvement, causing delay.
- Atrocious writing, editing, and formatting of documents.
- Preparing an EA where an EIS is required and vice versa.

The ten "streamlining" strategy elements described in this paper are based on the authors' nearly 30 years of experience with NEPA compliance and documentation and their own independent research. However, these elements cannot resolve problems that are historically endemic to the NEPA process. For example, they cannot overcome anti-NEPA attitudes long harbored by some agency and private sector project proponents. However, if implemented, they have the potential to make the NEPA compliance task easier and more helpful to decision makers and the public.

2.0 NEPA PROCESS STREAMLINING ELEMENTS

The ten strategy elements addressed in this paper do not comprise an exhaustive list. A number of other strategy elements could easily be added.

None of the NEPA process streamlining strategy elements discussed below is entirely new or untried. After all, they are mostly common sense. For the most part, they are uncomplicated, easy to implement, and apparent to most NEPA professionals. Nevertheless, they are restated and reemphasized because they are often ignored or resisted by both Federal agencies and NEPA practitioners.

2.1 Element 1: Integrate the NEPA Process With Other Environmental Compliance and Review Procedures

The CEQ NEPA implementation regulations require federal agencies to:

Integrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all such procedures run concurrently rather than consecutively.²

The CEQ specifically requires that agencies integrate environmental impact analyses with related "surveys and studies" required by the *Fish*

²40 C.F.R. §1500.2(c).

and Wildlife Coordination Act,³the National Historic Preservation Act (NHPA),⁴and the Endangered Species Act (ESA)⁵. Further, an EIS must list all federal "permits, licenses, and other entitlements" that are needed to implement the proposed action.⁶

EAs and EISs are frequently used as vehicles for archaeological surveys, biological assessments, and other investigations associated with compliance with the ESA for threatened and endangered species and the NHPA for historic and archaeological resources. They are less frequently used to document permits or other compliances required by other environmental laws and regulations.

Consolidating regulatory compliance documentation in a single NEPA document can save time, resources, and paperwork. However, careful scoping is required to avoid preparing a "one-stop shopping" environmental compliance document that is too lengthy and complex for efficient and effective public review. Thus, a proper balance must be maintained between complying with the NEPA process and addressing other environmental review requirements.

2.2 Element 2: Accelerate the Decision Time for Determining the Appropriate Level of NEPA Documentation

Delaying a decision to attain the appropriate level of documentation - EA, EIS, or categorical exclusion (CX) - can prove costly. Government contractors and project managers awaiting agency decisions on whether or how to comply with NEPA for a particular project can consume an extraordinary amount of time and resources. The problem is particularly acute when awaiting a determination on whether to prepare an EA or an EIS. If the decision is wrong (i.e., the agency decides to prepare an EA when an EIS is really required, or vice versa) even more delay and waste of resources results. Any attempt at "streamlining" the process is "dead on arrival."

Generally, there is a critical need to accelerate the CX vs. EA vs. EIS decision making process. The early and comprehensive internal EA or EIS scoping recommended in Section 2.3 below can be used to determine the level of documentation needed. Another way to reach the EA vs. EIS decision is to determine early if an EIS is required (e.g., when there is a major public controversy or it is apparent that there will be major unavoidable impacts). In such cases, time and resources should not be wasted on an EA. Also, a "mitigated" Finding of No Significant Impact (FONSI), often necessary for an EA on a particular project, may not be feasible, realistic, or credible to the public. Obviously, the agency should not wait until ordered by a court to prepare an EIS.

³16 U.S.C. §661 *et seq.*

⁴16 U.S.C. §470 *et seq.*

⁵16 U.S.C. §1531 *et seq.*

⁶40 C.F.R. §1502.25(b)

2.3 Element 3: Conduct Early and Thorough Internal NEPA Document Scoping

Internal scoping of an EA or EIS is vital and should not be confused with public scoping. NEPA documents should be thoroughly scoped internally before the public scoping process begins. Scoping should be completed before document preparation commences. Attempting to conduct internal scoping and public scoping simultaneously is often a recipe for disaster because it is easy for the agency to be "blindsided" by new issues raised by the public. The agency cannot be adequately prepared for a public scoping process when it has not done its own internal homework.

Whenever possible, internal scoping should involve both agency and EA or EIS contractor personnel. Of course, if NEPA document preparation contractors are selected too late in the process, they cannot function as scoping participants. Contractors often lose considerable time at the front end of a project because they have not participated in either the agency's internal scoping or the public scoping process.

2.4 Element 4: Organize and Implement Public Scoping Processes That Are Participatory Rather Than Confrontational

There are many tools and techniques that can be used in public scoping to avoid its becoming an adversarial process. Public involvement specialists use many techniques including public meetings, participatory workshops, citizen advisory committees, public opinion surveys, and combinations of these and other methods to foster a dialogue. Generally, the least desirable public scoping process is the one often used in the past in which public meetings or hearings are adversarial. A more participatory approach, where a project's proponents, stakeholders, and the public form working groups based on the major issues in the NEPA document, should be considered. This approach is receiving wider acceptance today.

Requirements for an "early and open" public scoping process are detailed in the CEQ regulations.⁷ Federal, state, and local agencies, affected Indian tribes, the project proponent, and "other interested persons" must be invited to participate. While public scoping meetings are optional under the CEQ regulations, they are conducted routinely by some agencies (e.g., the U.S. Forest Service). Although public controversy can never be avoided altogether, its effects can be mitigated if the public and other agencies feel they are being given the opportunity to really participate.

2.5 Element 5: Maintain An Up-to-Date Compendium of Environmental "Baseline" Information

This element applies primarily to large federal installations that face frequent NEPA compliance challenges. For sites of this nature,

⁷40 C.F.R. §1501.7

"baseline" environmental information is needed for both day-to-day NEPA compliance and to support the broad-based "umbrella" documents discussed in Section 2.6 below. The existence of up-to-date "environmental baseline reports" significantly decreases the time and cost associated with NEPA document preparation. It is a proven way to avoid "reinventing the wheel" for each "description of the affected environment" section required for all EAs and EISs.

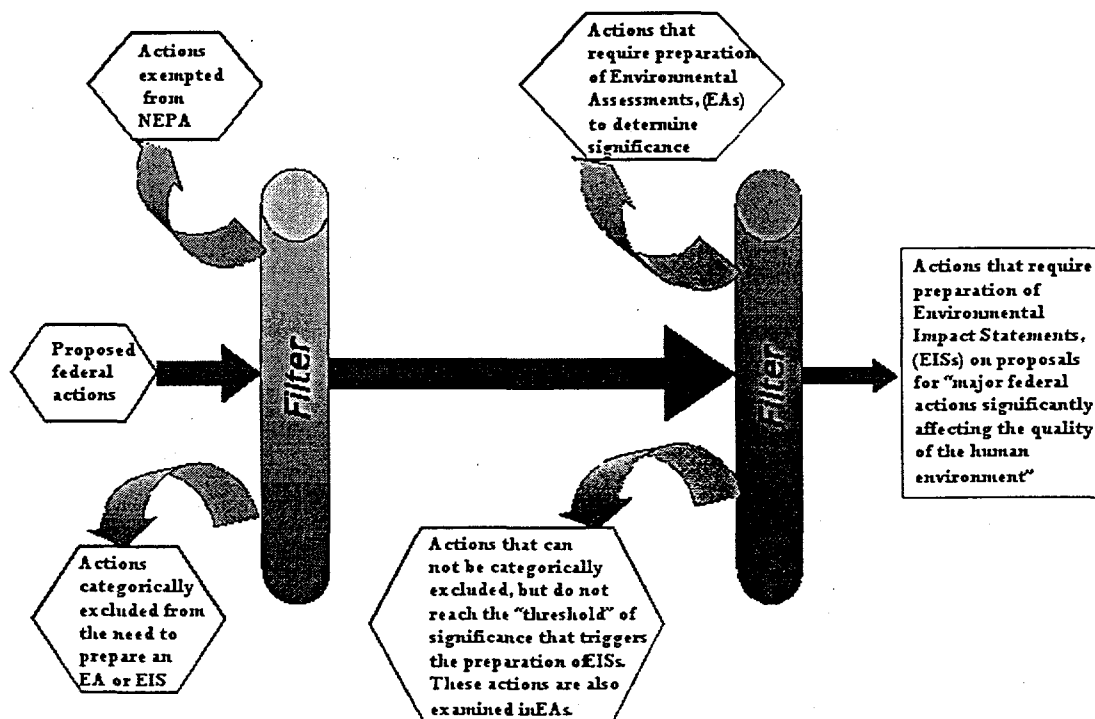
"Environmental baseline" refers to the existing physical, biological, and socioeconomic environment before it is altered by a proposed project. The baseline should consist of data on a wide diversity of environmental parameters (e.g., air and water quality, hydrology, meteorology, cultural resources, sensitive species, and socioeconomics). While all of the baseline information compiled will not be relevant to every proposal, having it readily available will result in greater efficiencies. Standardizing this information and focusing on what is important helps enormously in eliminating encyclopedic discussion and insignificant or unnecessary detail.

Preparing environmental baseline reports can also address esoteric or uncommon topics that may arise in NEPA documents less frequently than others. For example, NEPA documents do not regularly analyze parameters such as noise, vibration, visual resources, or seismic events. Nevertheless, these should be included in a baseline document in case such issues arise in the future.

Good environmental baseline information may allow actions of lower impact significance potential to be "filtered out" and thus allow some EAs or EISs to be prepared at less cost. Figure 1 illustrates how potentially significant Federal actions and their impacts may be filtered so that actions are analyzed in proportion to their significance.⁸

⁸ Some federal actions exempt by statute do have significant impacts.

LOW ← IMPACT SIGNIFICANCE POTENTIAL → HIGH



This figure shows how under the National Environmental Policy Act potentially significant Federal actions and their impacts are filtered so that actions are analyzed "in proportion to their significance," a process referred to as the "sliding scale approach."

Figure 1.

2.6 Element 6: Prepare More Broad-Scope "Umbrella" EAs and EISs That Can be Used for Tiering

New emphasis must be placed on preparing more comprehensive, broad-scope EAs or EISs that can be used for "tiering": using a broad-scope document on an entire program or set of related actions from which to "tier" a document of narrower, more project-specific scope.⁹

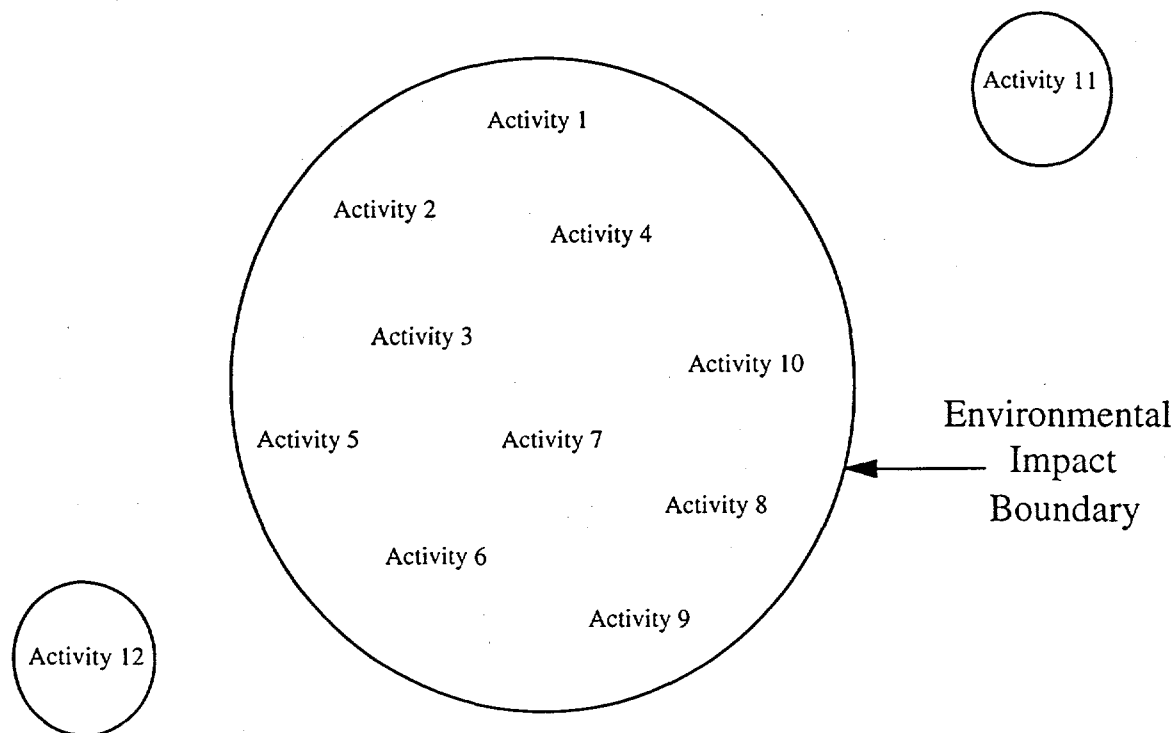
Preparation of more "umbrella" documents will contribute significantly to reducing the overall level-of-effort. Documents of narrower scope can incorporate by reference a considerable amount of material from broad-scope documents and avoid needless preparation of redundant paperwork.

While "tiering" refers to broad-scope or "programmatic" EISs in the CEQ regulations, the concept need not be confined to EISs and subsequent documents. A broad-scope EA can also be used for a tiering document.

Figure 2 illustrates how successful comprehensive NEPA documents may minimize the need to gain approval individually for numerous related actions.

⁹40 C.F.R. §1502.20

"Bounding" Environmental Impacts



Note: Each "Activity" is part of an overall action. Activities 11 and 12 are not bounded by the EA or EIS and require separate NEPA documentation or a Supplemental EIS. See Wolff and Hansen 1994.

Figure 2,

It is incumbent upon every project manager and NEPA practitioner to take advantage of possible tiering opportunities.

2.7 Element 7: Prepare Annotated Outlines That Serve As a "Road Map" for EA or EIS Preparation

Time and resources are wasted needlessly by assigning NEPA document topics or "sections" to selected authors with little, if any, specific guidance regarding content or approach. Authors may spend days or even weeks struggling with an EA or EIS section only to discover that what they have produced is seriously flawed and that another iteration is required. Authors are frequently poorly directed. They often work in a "vacuum" with little understanding of what has to be covered in the entire document.

Although the CEQ regulations recommend a "format" for preparing an EIS,¹⁰ they provide no guidance for preparing a detailed outline of NEPA documents.

¹⁰40 C.F.R. §1502.10

Annotated outlines serve as a "blueprint" or "road map" for the preparation of each EA or EIS. Such an outline is much more than a mere table of contents. Annotated outlines are generally organized in a tabular format consisting of four columns: (1) outline element (table of contents); (2) target number of pages for each element; (3) persons (authors) responsible; and (4) contents and data needs. The latter column is particularly important because it provides specific guidance to the authors on the desired *content* of each section or subsection of the document, the recommended approach to the topic, and what data gaps need to be filled.

2.8 Element 8: Decrease The Length and Complexity of Highly Technical Portions of NEPA Documents

Some parameters addressed in NEPA documents have greater technical complexity than others do. Also, some scientific and technical disciplines are more difficult for the general public to understand. Examples of highly technical topics include, but are not limited to: human health and ecological risk assessment; radioactive waste transportation; electromagnetic radiation; ground water modeling; and noise modeling.

Authors in these highly specialized areas tend to communicate only with their peers. What they write for NEPA documents may not be amenable to the public review and comment required by the NEPA process.

Highly technical data must be presented in a succinct, understandable manner and interpreted for the benefit of both the general public and sophisticated readers. Detailed technical data should be placed in an appendix or provided in a separate document and incorporated by reference.

2.9 Element 9: Increase and Systematize NEPA Compliance Outreach, Training, And Organizational Support

One of the major reasons for decision delays, confusion over "levels" of documentation, writing reiterations, inability to meet schedules, and repeated cost overruns is the lack of NEPA training for project managers, document authors, and others with NEPA compliance responsibilities. Training in the philosophy, purpose, legal requirements, and method of NEPA compliance is imperative for everybody involved in the NEPA process. Unfortunately, such training is often lacking.

Training in the NEPA process and the preparation of NEPA documents may be done by in-house NEPA professionals or by consultants. Getting the most qualified training professionals should be the main consideration.

2.10 Element 10: Work Diligently to Prepare Better Organized, Shorter, and More Readable NEPA Documents

None of the other nine NEPA process streamlining strategy elements discussed above will be effective if EAs and EISs are poorly organized

and written in language that is incomprehensible to public reviewers (see Section 2.8 above). The CEQ regulations require, not merely suggest, that NEPA document authors "reduce excessive paperwork," curtail document length, prepare documents that are "analytic rather than encyclopedic," write in "plain language," and follow a "clear format."¹¹ Paperwork reduction methods identified by the CEQ¹² include: reducing "background" material; narrowing the scope to focus on "significant" issues; incorporating by reference; "tiering" narrow-scope project EISs from broad-scope "program" documents (see Section 2.6); and integrating the NEPA process with other environmental review requirements (see Section 2.1 above).

Most NEPA professionals would agree that NEPA documents are too long, detailed, encyclopedic, and technical to be understood by the public. This is understandable because, for many authors of NEPA documents, it is easier to write a Ph.D. thesis than it is to write two succinct paragraphs. Henry David Thoreau noted in 1857: "Not that the story need be long, but it will take a long while to make it short" (Bartlett, 1980).

NEPA document authors predominantly write for their peers in the same discipline rather than attempting to "insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken."¹³ Project managers and NEPA professionals must learn to focus at least as much attention on the *organization and writing of NEPA documents as on their technical content*.

In his book, *O.J. The Last Word*, famed Wyoming trial attorney Gerry Spence laments the failure of lawyers to communicate effectively with jurors. Although his comments are addressed to the need for lawyers to improve their verbal communications, they apply equally to anyone writing a technical document:

Explaining technical facts requires the ability to speak in clear, understandable language. Lawyers who do not know, and do not want anyone to know that they do not know, use big words. The same goes for the expert witness. Albert Einstein was able to explain the theory of relativity in a simple, straightforward way on a few handwritten sheets of paper that any high school physics teacher could understand . . . The most difficult, the most complicated issue, legal, technical, scientific, or otherwise, can be made understandable by those who understand it themselves and who are able to speak [or write] in plain English. (Spence, 1997)

While not everyone can be a literary giant, the following suggestions for improving the quality of NEPA documents may be helpful:

¹¹40 C.F.R. §1500.4

¹²40 C.F.R. §1500.4

¹³40 C.F.R. §1500.1(b)

- Authors should write for agency and public reviewers who are not experts in a particular discipline.
- Authors should avoid including encyclopedic detail for any topic but, particularly, topics like description of the affected environment and risk assessment.
- Authors should refer regularly to the annotated outline prepared for the EA or EIS (see Section 2.7).
- Document reviewers should refrain from insisting on the inclusion of additional technical detail that only detracts from public understanding.
- Technical editors should check grammar, spelling, syntax, references, typographical errors, formatting, and conduct other strictly editorial tasks. They should not be delegated the function of writing or rewriting the NEPA document.
- Agencies, consulting firms, and other NEPA document preparation contractors should issue awards or other incentives to authors who prepare succinct and understandable documents that meet NEPA objectives while remaining technically and scientifically credible.

CONCLUSION

As stated at the beginning of this paper, none of these "streamlining" elements are new. These and many other strategy elements have been used or attempted over the 30-year history of NEPA. "Lessons learned" can easily become "lessons unlearned" without persistent endeavor and determination. NEPA must be made to work efficiently and effectively if it is to fulfill its promise as a great tool for environmental management

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