

Guidance to Applicants for Preparing Environmental Assessments

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## 1.0 INTRODUCTION

This exhibit has been prepared to accompany the Agency's Environmental Policies and Procedures, codified at 7 CFR part 1970. The term "Agency" is used as a generic term that includes all of the programs administered by the Rural Business-Cooperative Service, Rural Housing Service, and the Rural Utilities Service.

A major objective of the Agency's environmental policies and procedures is to comply with the requirements of the National Environmental Policy Act (NEPA)(42 U.S.C. §§ 4321 *et seq.*) and regulations promulgated by the Council on Environmental Quality (CEQ) for implementing the procedural provisions of NEPA (40 CFR parts 1500-1508). "NEPA was enacted to 'prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man.' It established concrete objectives for Federal agencies to enforce these principles, while emphasizing public involvement to give all Americans a role in protecting our environment." (*Presidential Proclamation on the 40<sup>th</sup> Anniversary of the National Environmental Policy Act, 2010, December 31, 2009*). NEPA requires that federal decisionmakers consider environmental amenities and values along with other economic and technical factors and "that environmental information is available to public officials and citizens before decisions are made and before actions are taken" (40 CFR § 1500.1).

In addition, 7 CFR 1970 (as described in § 1970.3) incorporates and derives its authority from a number of other Federal statutory, regulatory, and Executive Order requirements that also mandate the evaluation and consideration of federal decisionmaking and actions on specific resources. Two of the more significant statutes that the Agency must consider prior to taking its action (approving financial assistance) are the Endangered Species Act (16 U.S.C. §§ 1531 *et seq.*) and the National Historic Preservation Act (16 U.S.C. §§ 470 *et seq.*). This exhibit will provide comprehensive guidance in complying with all of the relevant statutes, regulations and Executive Orders that the Agency is required to consider prior to taking its actions. In accordance with 7 CFR § 1970.8(b)(1), the Agency action referenced in the previous sentence is the approval of financial assistance.

Applicant requests for financial assistance that do not meet the definition of a categorical exclusion (CE) or that do not require the preparation of an environmental impact statement (EIS) will require the preparation of an environmental assessment (EA). In accordance with CEQ regulations, an agency may permit an applicant to prepare the EA as long as the agency "make[s] its own evaluation of the environmental issues and take[s] responsibility for the scope and content of the environmental assessment"(40 CFR § 1506.5(b)).

In accordance with 7 CFR § 1970.5(b)(3)(iv)(C), applicants are responsible for preparing EAs that meet the requirements of Subpart C. 7 CFR part 1970, Subpart C describes the overall procedures for preparing and processing an EA. This exhibit provides specific guidance to applicants and their consultants in the preparation of EAs. **Because many of the issues related to the evaluation of potential environmental effects of applicant proposals require specific educational and professional knowledge, it is highly recommended (and expected) that applicants hire environmental professionals or consultants to prepare the EA.**

Depending on the nature of the applicant's proposal, "scoping" (an early and open process for determining the scope of issues to be addressed and for identifying the significant environmental issues related to the applicant's proposal) may be prudent. Although a more formal public scoping process is encouraged where an interested or affected public exists (e.g., electric generation or transmission line proposals), in most cases the scoping process for more routine proposals involves gathering information from appropriate federal, state, and local agencies and any affected Indian tribe. For more complex proposals, applicants are encouraged to hold public informational meetings when they believe such meetings would be beneficial to the public's understanding of their proposal. If the Agency decides to conduct formal public scoping, which may require public meetings, it will inform the applicant and request their assistance as necessary.

The EA prepared by the applicant must be sufficient for the Agency to evaluate the environmental effects of their proposal. It will also enable the Agency to fulfill its responsibilities under NEPA and other environmental mandates. **The Agency is solely responsible for determining the adequacy of the EA and the proposal's environmental impacts and accepting it for use as a federal document.**

An acceptable EA must be sufficiently detailed to enable the Agency to:

- Understand the purpose and need for the applicant's proposal;
- Determine if all reasonable alternatives have been considered;
- Evaluate the environmental effects of the proposal and any reasonable alternatives;
- Assess the significance of those effects;
- Specify mitigation measures, if necessary; and
- Conclude that interested agencies, tribes, and the public were given adequate opportunity to participate in, review, and comment on the proposal.

In order to expedite the application process and the Agency's review and approval of the proposal, applicants are strongly encouraged to consult early and frequently with Agency environmental staff. This ensures that pertinent environmental issues are sufficiently identified and described and impacts are appropriately considered and evaluated. The significance of the impacts identified in the EA will determine whether the Agency can make a "Finding of No Significant Impact" (FONSI) or whether the preparation of an EIS will be necessary. Regardless of whether an EIS is ultimately required, the information provided must allow the Agency to determine that its decision, i.e., whether or not to provide financial assistance, will not conflict with other environmental statutes, regulations, Executive Orders, policies, and procedures that may be applicable to the applicant's proposal. It is important to bear in mind these points when preparing the EA:

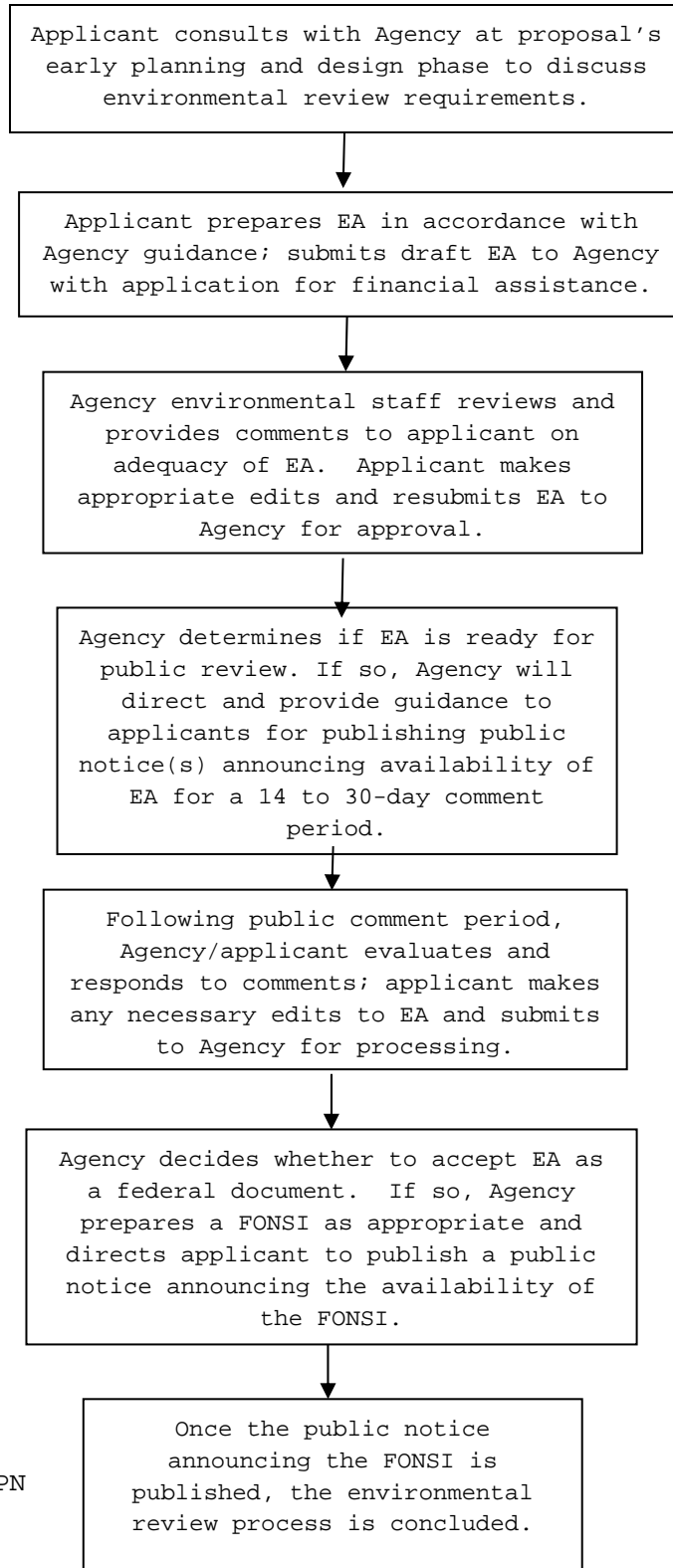
- Descriptions and discussions should be clear and complete so that a person with little previous knowledge of the proposal can understand and easily verify the accuracy of the information and conclusions drawn from such information.
- Maps depicting the location of proposal components and environmental resources can increase understanding and expedite review, but they must be clear, legible, and have meaningful content.
- Sufficient data or evidence and documentation must be presented to substantiate impact analyses and conclusions.
- Concerns raised by federal, state, and local agencies, tribes, or the public must be addressed as completely as possible. **Documentation must be included that demonstrates or provides evidence that consultation with appropriate environmental regulatory or natural resource agencies has occurred.**
- Relevant environmental documents prepared by other federal, state, or local agencies or tribes should be incorporated by reference in the EA if they augment its overall clarity. A document prepared **for or by** another federal agency may serve as the Agency's EA or a part thereof, as long as it contains the required information and is properly formatted to enable review.

This exhibit will discuss the:

- Format for the EA;
- Environmental issues that need to be considered during early project planning and design;
- Types of information that must be provided in the EA;
- Sources for locating necessary information and baseline data; and
- Methods and information regarding agency coordination and required public involvement processes including, as appropriate, the publication of public notices announcing the availability of the EA for public review and comment and, if appropriate, announcing the availability of the Agency's decision.

An illustration of the procedures that are normally followed by an applicant and the Agency for preparing, reviewing, and approving an EA is shown in Figure A below. If questions arise during the EA's preparation and depending on the Agency program, preparers are urged to seek advice and guidance from the Agency's State Environmental Coordinator (SEC) for programs administered by State Offices or National Office Environmental Staff (NES) for programs administered from the Washington, DC office. Unless specified, SECs and NES herein are referred to as Agency environmental staff. Similarly, SECs will consult with the NES when it appears that the proposal may have significant or complex environmental issues or raise public controversy.

Figure A Processing an EA



## 1.1 National Environmental Policy Act

NEPA is a federal statute whose primary goal is to enable and inform public officials and federal decisionmakers to make better decisions based on an understanding of the environmental consequences of their actions, and to take actions that protect, restore, and enhance the environment. To accomplish this, NEPA requires federal agencies to either prepare or have prepared written assessments or statements that describe the:

- Affected environment and environmental consequences of the proposal;
- Reasonable alternatives to the proposal; and
- Mitigation measures that may be necessary to avoid or minimize adverse environmental effects.

The CEQ regulations established three levels of environmental review - CEs, EAs, and EISs - and required each federal agency to classify its actions within these levels of review. The Agency's action with regard to NEPA is providing financial assistance to eligible program recipients. The Agency classification scheme is consistent with CEQ's except for CEs.

## 1.2 Relationship of the EA to the Preliminary Engineering Report for Water and Waste Disposal Program Proposals and Preliminary Architectural Feasibility Reports for other Agency Programs

The Agency requires that its Water and Waste Disposal Program applicants prepare and submit a Preliminary Engineering Report (PER) with the applicant's application for financial assistance. In addition, the Agency requires its Community Facilities and Housing Programs applicants prepare and submit a Preliminary Architectural Feasibility Report (PAR) with the applicant's application for financial assistance. The environmental review process required in 7 CFR part 1970 is designed to be performed concurrent with the applicant's engineering or architectural planning and design activities documented in the PER or PAR.

Engineering planning and design activities for the Water and Waste Disposal Program and the environmental review process are closely linked, thus this exhibit and the guides for preparing the PER in 7 CFR part 1780 (Exhibits 1780-2 through 1780-5) request similar types of information. To minimize duplication of effort, it is sufficient to provide reference to environmental information from the EA in the PER. Conversely and in order to create a stand-alone document, the EA must incorporate detailed, relevant technical and engineering information (purpose and need for the proposal including design parameters) from the PER. This is necessary because the EA will be made available to the public for a review and comment period, and also because it serves as a decision document.



For those programs not specifically requiring submission of a PER/PAR with its application, it is expected that sufficient planning, engineering/architectural and design information will be available in order to meaningfully analyze any potential environmental impacts of the applicant's proposal. Where appropriate, the planning, engineering/architectural and design information will be included to support the EA.

### 1.3 Public Involvement

A key element of the NEPA and other environmental and historic preservation review processes is public involvement. Public involvement should be approached broadly in order to inform and engage the widest group of stakeholders and interested parties to help identify the issues or concerns they may have on the proposal. This involvement and input will inform the Agency's decisionmaking process and should begin at the outset of early project planning and design activities, because if done properly, it will allow key issues to be raised and addressed early in the planning and environmental review process, rather than later. A proactive public involvement process can minimize delays and maximize public acceptance of the proposal. Public notices, while part of this process, are for limited purposes and time frames. Section 5 of this exhibit addresses public notice requirements in greater detail, and includes sample public notices.

### 1.4 Agency Decision

The environmental review process must be completed before the Agency can make a decision on an application for financial assistance. Upon completion of the 14 to 30-day public review and comment period, if appropriate the Agency will prepare a FONSI if it finds, based on the EA and any public comments received, that there will not be a significant impact on the quality of the human environment. In general, the FONSI must provide the following information:

1. Name of the applicant's proposal and description of Agency action;
2. Summary of the facts and impact conclusions that led to and support the FONSI;
3. Statement summarizing any public comments received and any applicable responses;
4. Commitment of any mitigation measures agreed upon as part of the environmental impact analyses;
5. Statement that the proposed action will not have a significant impact on the quality of the human environment and thus an EIS will not be prepared; and
6. Date of issuance and signature of the Agency's approval official.

Exhibit F, Attachment 3 provides a sample FONSI.

### 1.5 Project Changes Subsequent to Approval

In some cases, during the bidding and negotiation of a construction contract or permitting process for approved projects, facility design and proposed construction activities change from the approved planning and environmental review documentation. In these instances, applicants may be required to conduct additional environmental review including supplemental documentation, Agency review and concurrence, and possibly follow-on public notices. In these situations, applicants must contact the Agency's environmental staff as soon as possible to determine whether or what additional requirements are necessary.

### 1.6 Sources of Information

To the extent they are available and accessible, internet-based information resources are provided throughout this exhibit. These websites can provide very useful and current information, such as regulatory requirements, resource specific guidance documents, resource listings, and points-of-contact for information and assistance. Often these websites will provide links to other websites that can also be helpful in gathering pertinent information in preparing an EA. Applicants are encouraged to take advantage of these resources. Documenting and providing website addresses as references in the EA is important to verify the source of information being presented.

## 2.0 FORMAT OF THE ENVIRONMENTAL ASSESSMENT

The EA's objectives are to:

- Provide evidence that the Agency is in compliance with NEPA and all of the applicable environmentally and historic preservation related statutes, regulations, and Executive Orders that apply to the Agency's use and approval of Federal financial assistance;
- Provide a brief discussion of the purpose and need for the proposal and the Agency's action (see Section 2.3.1);
- If appropriate, provide an analysis of alternatives to the proposed action including the "no action" alternative;
- Minimize repetition and the inclusion of extraneous background information; include only information relevant to the assessment of potential environmental impacts and Agency decisionmaking;
- Provide sufficient detail, evidence, and analysis for determining impacts and documentation and evidence of proper consultation with environmental regulatory or natural resource agencies;

- Present information in a clear, concise manner, minimizing the use of long narratives;
- Use summary or comparative tables, maps and diagrams;
- Provide references and include pertinent supporting materials and evidence of consultation in appendices; and
- If appropriate, identify mitigation measures necessary to avoid or minimize adverse environmental impacts.

## 2.1 Level of Detail

The amount of information and depth of analyses provided in the EA must be commensurate with the magnitude and nature of the proposal and its potential level of impacts. According to CEQ Guidance, *The 40 Most Asked Questions Concerning CEQ's NEPA Regulations* (Question 36a) (CEQ, 40 Questions - 46 FR 18026, March 23, 1981), the EA is intended to be a "concise document and should not contain long descriptions or detailed data which the agency may have gathered. Rather it should contain a brief discussion of the need for the proposal, alternatives to the proposal, the environmental impacts of the proposed action, and a list of persons or agencies consulted." Essentially, the EA should briefly provide sufficient data, analysis, and evidence supporting impact conclusions to ultimately determine whether to prepare a FONSI or proceed to an EIS.

## 2.2 Maps, Tables, Illustrations, and Photographs

The use of maps, photographs, and diagrams can improve the EA's clarity and aid the Agency and public review process. Geographic Information Systems (GIS) technology readily allows preparation of maps at a variety of scales and consisting of numerous combinations of data layers. Examples of data/resources that are typically useful include: topography, land use/vegetation cover, soils, floodplains, wetlands, existing infrastructure, and demographics. Aerial photography or other remotely-sensed imagery may be useful, particularly on larger scale maps or maps that show more detail. There is no set format for graphics and visual displays, but it is important that the proposal be clearly delineated and identified, and that project components or data being presented be clearly identified and referenced appropriately in the appropriate section of the EA.

## 2.3 EA Table of Contents

The following sections introduce the recommended sequence for presenting the proposal and the impact analyses for specific environmental resources and historic properties that must be part of and integrated into the EA (while this section contains all the elements of the EA, it contains additional explanatory text and slightly different organization than how the actual EA document is formatted. See Attachment 1 for the actual EA Table of Contents).

### 2.3.1 Purpose and Need for Proposal

The section defining the purpose of and need for the proposal and the Agency's action is a critical section of an EA. The information presented in this section needs to explain the:

1. Underlying purpose of and need for the applicant's proposal and for which Agency financial assistance is being requested; and
2. Agency's authority and program objectives in responding to the proposal under consideration.

In order to be consistent with NEPA, the Agency's program objectives need to be identified along with the applicant's purpose of and need for seeking financial assistance through the Agency's programs. In addition, the purpose and need statement for the proposal establishes a basis for the range of reasonable alternatives that the Agency must consider in determining whether to take its action. See Section 2.3.2. for determining how to develop the alternatives that need to be evaluated in an EA.

In order to meet the second criterion stated above, the following statement describing the Agency's program objectives **must** be included in this section - "USDA, Rural Development is a mission area that includes three federal agencies - Rural Business-Cooperative Service, Rural Housing Service, and Rural Utilities Service. The agencies have in excess of 50 programs that provide financial assistance and a variety of technical and educational assistance to eligible rural and tribal populations, eligible communities, individuals, cooperatives, and other entities with a goal of improving the quality of life, sustainability, infrastructure, economic opportunity, development, and security in rural America. Financial assistance can include direct loans, guaranteed loans, and grants in order to accomplish program objectives." In addition to this broad mission statement, the EA should identify the specific program authority under which the applicant is seeking federal financial assistance (if applicants are unsure of the exact program title and authority, contact the Agency's program officials).

Following the above statement, applicants must prepare and include a complete and detailed project description including the purpose and need for their proposal. The project description needs to clearly answer the questions of who wants to do what, why, where, and how. The "why" they want to do and "why now" is part of the need statement described in this section.

### 2.3.2 Alternatives Including the Proposed Action and No Action

The initial discussion in this section is designed for the more complicated single-site or linear utility line proposals. For proposals that are less complicated single-site actions, see section 2.3.2.2.

#### 2.3.2.1 Introduction

A basic principle of NEPA and other environmental statutes, regulations and Executive Orders is the identification, consideration, and analysis of alternatives that would avoid or minimize adverse effects to the human environment. Stated another way, federal agencies are required to identify and assess reasonable alternatives to proposed actions (applicant proposals) that will avoid or minimize adverse effects of these actions on the quality of the human environment.

In the early planning and design process for the proposal, applicants should logically explore and, as necessary, be able to document in this section of the EA all *reasonable* alternatives that could satisfy and are consistent with the purpose and need of their proposal. Reasonable alternatives are those that could effectively meet the proposal's purpose and need, are technically implementable and economically feasible, and make common sense. Alternatives that are not determined to be reasonable can be documented as considered but eliminated from further review.

Reasonable alternatives that would avoid or minimize adverse environmental effects may include:

- Design alternatives;
- Siting and location alternatives;
- Alternative water sources or locations of point discharges/receiving waters of treated wastewater;
- System capacities, project timing, etc.; or
- Alternative corridors or routes for utility infrastructure proposals, e.g., electric power lines or water lines.

In accordance with 7 CFR §§ 1970.13(a) and 1970.102(a)(3) and as a minimum, applicants are required to evaluate the environmental effects of the "No Action" alternative. The "No Action" alternative "mean[s] the proposed activity would not take place, and the resulting environmental effects from taking no action would be compared with the effects of permitting the proposed activity or an alternative activity to go forward" (CEQ, 40 Questions (Question 3) - 46 FR 18026, March 23, 1981). In addition, the No Action alternative establishes an environmental "baseline", enabling Agency decisionmakers to compare the magnitude of existing impacts which would continue into the future against the proposed impacts of the proposal and what would be the consequences of not implementing the proposal.

In the alternatives section of the EA:

1. Outline the initial alternatives that were evaluated during the early planning and design phase of the proposal. As the planning, design, and environmental review progresses, various alternatives may be considered and ultimately determined to not be reasonable for various reasons.
2. Document the alternatives that were considered but dismissed from detailed review. Clearly describe the rationale for eliminating such alternatives.
3. For those alternatives determined to be reasonable, present the factors considered in judging each alternative's ability to meet the purpose and need established for the proposal. All relevant factors that contribute to the decisionmaking process should be included, e.g., technical and economic feasibility, environmental and social considerations, effectiveness, or implementability.

It may be useful to summarize this information in a comparative table. Numeric, plus/minus, or scalar ranking should be avoided as these are largely subjective. In addition, any impacts or consequences resulting from the No Action alternative, i.e., not taking the action, are important for comparison purposes and should be integrated in the comparative table.

#### 2.3.2.2 Single-Site Actions

For applicant proposals that are less complicated, single-site actions and in accordance with 7 CFR § 1970.13(a), applicants are only required to consider and document the analysis of the "No Action" alternatives in the EA (see discussion in Section 2.3.2.1) as long as there are no potential adverse effects to environmental resources. If during the environmental review process and EA preparation, the proposal or a component thereof is determined to have potential adverse effects to an environmental resource(s), reasonable alternatives must be evaluated to avoid or minimize that effect.

For example, if an applicant proposes to construct a facility, e.g., hospital, multi-family, wastewater treatment facility in a floodplain, the applicant must evaluate other facility locations that would not be located in and affect the floodplain. The only way the Agency would agree with this proposal, is if the applicant's analysis demonstrates that there are no other practicable alternatives to locating the facility in the floodplain (see Section 3.3. Floodplains). If there are practicable alternatives to siting the facility in the floodplain, the facility must be relocated before the Agency will consider providing financial assistance for the proposal.

### 2.3.3 Affected Environment

This section should describe the geographical and environmental setting of the area affected by the proposal and any alternatives, as well as documenting the current condition of the resources being evaluated.

Describing the affected environment involves:

1. Providing brief descriptions of the area(s) affected by the proposal and any alternatives, as appropriate, limiting the description to information directly relating to the scope of the proposal and the assessment of potential impacts.
2. Providing information or data necessary to assess or understand potential impacts to specific resources. The level of detail must be sufficient to support the impact analysis, including cumulative impacts, if necessary, but not excessive; detailed descriptions can be incorporated by reference where appropriate. Although there may be variations on a project-by-project basis and the specific resource in question, generally 3-5 pages maximum per resource will be sufficient.
3. Describing any environmental resource that may be affected by the proposal. Examples would include listed threatened or endangered species, historic properties, archeological resources, sole source aquifers, or specially-designated waters or waters of the United States. If such resources are present, all necessary impact analyses must satisfy the environmental review requirements under applicable laws, regulations, and Executive Orders. If upon analysis, a specific environmental resource is not present in the area affected by the proposal, clearly document that fact in the applicable EA section.
4. Summarizing and documenting communications with appropriate environmental regulatory or natural resource agencies (or websites) consulted for identifying the environmental resources in the affected area(s). Agency contacts or websites where preliminary information can be found are discussed in Section 3 of this exhibit.

5. Providing maps that outline the area affected by the proposal including the location of any proposed construction activities with, as appropriate, the overlay of specific resources being evaluated. This is a perfect use of GIS technology mentioned in Section 2.2. Note that the area(s) of potential impact may be different depending on the resource involved and should be clearly identified. For example, the area of potential impact to threatened and endangered species may be defined differently than the area of potential impact (or effect) to historic properties.

#### 2.3.4 Environmental Consequences

Describing the environmental consequences involves:

1. Documenting the evaluation of and discussing the potential impacts to each affected resource from all alternatives under consideration (see discussion of alternatives in Section 2.3.2).
2. Summarizing the methods used to collect data/information for predicting impacts.
3. Describing the methods used to evaluate and analyze impacts from the proposal including a summary "conclusion" at the end of each resource discussion of all findings, including whether or not an impact would occur and, if so, the significance of such an impact.
4. Providing adequate documentation for any conclusion or finding that no significant impacts are likely to occur if the proposal or any alternative is implemented. Documentation of consultations with environmental regulatory or natural resource agencies that would substantiate any findings or conclusions must be provided.
5. Establishing and discussing any mitigation measure(s) necessary to avoid or minimize any significant adverse impacts to a specific environmental resource.

Analysis of environmental consequences typically involves:

1. Accurately presenting and interpreting data.
2. Defining the context, duration, intensity, and type of impacts both positive and negative (see also 40 CFR §§ 1508.7, 1508.8, and 1508.27):
  - a. Context - considers whether the impact will be site-specific or local or at a larger scale, such as regional or even national or global.
  - b. Duration - considers whether the impact is short- or long-term. Short-term impacts are temporary, transitional, or construction-related. Long-term impacts are those lasting several years or more or are permanent.



c. Intensity - refers to the severity of the impact. Several factors should be considered, including the balance of beneficial and adverse impacts; effects to public health; unique characteristics of the project area or proximity to special resources; degree of controversy; degree of uncertainty or unique/unknown risks; establishment of a precedent for future actions; relation to other actions with cumulatively significant impacts; adverse effects to historic properties or other cultural resources; nature of effects to listed threatened or endangered species; and possible violations of Federal, State or local environmental laws.

3. Discussing direct, indirect, and cumulative impacts. Direct effects are caused by the applicant's proposal, and occur at the same time and place (e.g. construction and operation activities). Indirect effects are those caused by the applicant's proposal and are later in time or further removed in distance, but are still reasonably foreseeable (e.g. impacts caused by growth induced by the proposal). Cumulative effects are addressed in the next section.

4. Discussing any beneficial impacts.

5. Identifying clearly where data is unavailable or insufficient to make an impact determination.

6. Identifying potential mitigation measures that may be necessary to avoid or minimize any adverse impacts. Mitigation measures should be developed jointly with the Agency environmental staff, and the applicable environmental regulatory or natural resource agency. Mitigation must identify the party responsible including any cost implications related to implementing and monitoring the measures.

#### 2.3.5 Cumulative Effects(see also 7 CFR Part 1970, Subpart O, Exhibit O-5)

##### 2.3.5.1 Introduction

The cumulative effects assessment considers the effects of the proposal in light of the effects of past, present, and reasonably foreseeable future actions occurring in the area affected by the proposal. If appropriate, both additive and synergistic effects to particular resources should be considered and analyzed. It is presented in a separate section of the EA, and it addresses all the resources of concern.

Cumulative effects assessment (CEA) is often viewed as complex and difficult, but it need not be. Fundamental to the analysis is assessing if the proposal's potential effects, when combined with other actions (similar actions in the same geographic area or other activities in the area with similar effects), will cause a significant impact to the human environment. The impacts of the proposal by itself may be minor, but collectively, may be major.

A proposal in and of itself does not have cumulative impacts, but it may contribute to cumulative impacts to a given resource. The assessment can typically be qualitative, and need not be lengthy (certainly if quantitative data is readily available, use it - see table 2.3.5-1 for an example).

While similar to the analyses of direct and indirect effects, there are some important differences, or shifts in approach. These shifts are from project to resource, from single resource to ecosystems, and from resource-centered to human-centered. What this means is that the analysis can move from asking "what are the effects of this proposal" to "how do the effects of this proposal interact with similar effects and in a larger context." Part of the scoping process conducted early in the EA preparation process is to set boundaries for the analysis, in space and time, and these are different for each resource. The analysis must consider reasonable spatial and temporal limits, e.g., the county or region level, and as a "rule of thumb", the last 20 years/next 20-25 years. The boundaries and the analysis need to be relevant to both the proposal's scope and setting.

Consider trends in resource quantity/quality, local or regional development, population, or land use. How have things changed, if at all, and how quickly? What does the future look like? Do local or regional units of government have land use or development plans in place, and what do they say? When looking ahead, focus on what is reasonably foreseeable, not what is speculative, hypothetical, remote or unknown.

Illustrate the analysis in a table or matrix (see Tables 2.3.5-2 and 2.3.5-3 for examples). This can be a good way to quickly illustrate the resources considered, and how the past, present, and future conditions interact with each other.

Similar to information gathering for the individual resources previously discussed in this section, utilize a variety of sources. In particular, consult with community leaders, citizen's groups, local or regional planners and planning documents, etc. to learn of their vision of the future for their community, and the nature of any specific plans. This can also reveal the certainty of proposed or planned development actions, as illustrated by permits applied for or granted, land purchased, or funding in place.

#### 2.3.5.2 Analytical Process

While there is not a defined process as such for conducting a CEA, generally accepted principles can be associated with the overall impact assessment, and thus provide a framework for analysis (Table 2.3.5-1). Perhaps the most important phase or step is scoping; this is when the analysis should be bounded, and resources of concern, other relevant actions, and potential cumulative effects issues identified.

CEA is not something tacked on at the end; it is integrated from the start. In terms of specific methodologies, the CEQ guidance devotes an entire appendix to some examples, among them questionnaires, checklists, matrices, modeling, and trends analysis. Again, the level of detail of the analysis should match the scope and complexity of the proposal, as well as the number of and degree to which resources are potentially affected.

Table 2.3.5-1. Steps in cumulative effects analysis (CEA) to be addressed in each component of environmental impact assessment (EIA) (adapted from CEQ 1997)

<b>EIA Components</b>	<b>CEA Steps</b>
Scoping	1. Identify the significant cumulative effects issues associated with the proposal and define the assessment goals. 2. Establish the geographic scope for the analysis. 3. Establish the time frame for the analysis. 4. Identify other 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. 7. Define a baseline condition for the resources, ecosystems, and human communities.
Determining the Environmental Consequences	8. Identify the important cause-and-effect relationships between human activities and 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 practices.

Table 2.3.5-2 Example of quantitative assessment of cumulative effects (NPS, mining effects on riparian habitat; adapted from CEQ 1997).

Habitat (acres)			Long-term Impacts (acres)			Short-Term Impacts (acres)	
Study Area Drainage	Pre-mining	Existing (% of pre-mining)	Past Mining Loss	Alternative A Loss	Cumulative Loss	Alternative A Loss	Cumulative Loss
A	1,227	1,101 (89.7)	126	30	156	26	182
B	2,081	1,376 (66.1)	705	20	725	14	739
C	1,158	1,148 (99.1)	10	20	30	11	41
D	833	777 (93.3)	56	20	76	16	92
TOTAL	5,299	4,422 (83.1)	897	90	987	67	1,054

Table 2.3.5-3 Example of qualitative (narrative) description of cumulative effects (adapted from CEQ 1997).

Resource	Past Actions	Present Actions	Proposed Action	Future Actions	Cumulative Effect
Air Quality	Impacts dissipated	Noticeable deterioration in visibility during summer, but standards met	Visibility affected during operations, but standards met	Increase in auto emissions expected	Standards possibly violated
Fish	Decrease in numbers and species diversity	Occasional documented fish kills	Increase in number of fish kills	Loss of coldwater species due to temperature change	Significant decline in numbers and species diversity
Wetlands	Large reduction in acreage of wetlands	Loss of small amount of wetland annually	Disturbance of a 5-acre wetland	Continued loss of wetlands	Significant cumulative loss of wetlands

2.3.5.3 Key Information for the EA

Identify:

- a. Direct and indirect impacts of the proposal on the environmental resources listed in the sections of this guidance document.
- b. The spatial and temporal boundaries of the impacts.
- c. Prepare a summary table, similar as appropriate, integrating any of the identified direct or indirect effects.

2.3.5.4 Suggested Information Sources

- a. USEPA, "[Consideration of Cumulative Impacts in EPA Review of NEPA Documents](#)," May 1999;
- b. Council on Environmental Quality, "[Considering Cumulative Effects Under the National Environmental Policy Act](#)," January 1997;

- c. Council on Environmental Quality, "[Guidance on the Consideration of Past Actions in Cumulative Effects Analysis](#)," June, 2005; and
- d. American Association of State Highway and Transportation Officials, "[Assessing Indirect Effects and Cumulative Impacts Under NEPA](#)," Practitioner's Handbook #12, AASHTO Center for Environmental Excellence, April 2011.

### 2.3.6 Summary of Mitigation

This section briefly summarizes any proposed mitigation measures necessary to avoid or minimize any adverse effects to any environmental resource. The summary should include the responsible party(ies), implementing criteria, and how each measure will be enforced. A tabular format may be used. A discussion of the concept and application of mitigation follows here.

#### 2.3.6.1 Introduction

In its strictest sense, mitigation consists of five hierarchical components as defined in the CEQ NEPA Implementing Regulations (40 CFR §1508.20): avoid or minimize the impact; rectify the impact by repair, rehabilitation, or restoration; reduce/eliminate the impact over time through preservation or maintenance; or, "mitigate" it, i.e., compensate for the impact by replacement or substitution. Clearly these five components overlap and blend in to each other, but generally this order goes from the easiest to implement and least costly (and thus most desirable, both ecologically and practically) to the more complex and most costly.

The NEPA Task Force, in their September 2003 report to CEQ, [Modernizing NEPA Implementation](#), addressed this topic among several others, and recommended that agencies ensure that they have taken a "hard look", i.e., fully considered and evaluated the possible effects of its proposed actions, clearly document the measures required to avoid significant adverse impacts, and also make stronger efforts to document how the measures will be implemented and enforced. The importance of agencies committing resources to implement and monitor the effectiveness of mitigation was reinforced in the CEQ's guidance entitled [Appropriate Use of Mitigation and Monitoring and the Appropriate Use of Mitigated Findings of No Significant Impact](#), issued in January 2011.

If appropriate, applicants document and implement any necessary mitigation measures in several ways and at various stages in the proposal development/EA preparation and construction phase. During EA preparation, it is not only the applicant's and Agency's responsibility to document coordination and consultation with environmental regulatory and natural resource agencies, but also to clearly explain what measures, if any,

those agencies recommended or required to mitigate potential impacts to resources of concern. These measures are then summarized in the EA, and also must be identified in the Letter of Conditions (LOC), conditional commitment, or similar agreements so applicants are clearly informed of and indicate their agreement to their mitigation responsibilities. Some standard construction practices that are typically required by state and local agencies as part of the construction permits are better characterized as best management practices (BMPs); these are implemented during the construction phase of the proposal. These could include measures such as silt fences to minimize soil runoff, requiring proper vehicle and equipment maintenance and operation to avoid spills or excessive noise, dust suppression measures, diurnal or seasonal work restrictions, maintaining vegetative buffer zones, etc. These types of measures should be included in the construction plans and specifications and/or other construction contract documents as per construction permit requirements. It is recommended that these not be included in the mitigation section of the EA, but rather summarized elsewhere or simply be included in the resource-specific discussion sections.

In evaluating potential mitigation measures, consider the following:

- The adverse effect must have a reasonable chance of occurring in the foreseeable future; mitigation measures are only useful and appropriate when there is a compelling reason to address an identified impact. If an adverse effect has a low expectancy in the foreseeable future, mitigation is not likely necessary.
- Mitigation measures must be reasonable and enforceable. There must be a reasonable expectation that the measure can be implemented and have the desired outcome.
- The Agency often relies on third parties to monitor and enforce implementation; environmental regulatory or natural resource agencies are technically in the best position to accomplish this, but may not be adequately resourced in terms of staffing or funding. As much as possible, the Agency will work with applicants to assure mitigation follow-up. This may require a brief plan or need to be detailed in loan agreements.
- Measures must balance the potential for impact on a resource and the resource's relative environmental value. Potential impacts on unique or scarce resources, for example, may require a strong mitigation measure (e.g. restrictive measure).
- Mitigation measures must be tailored to the specific conditions of the proposal and the applicant's capabilities. There is no "one best solution" for all projects. The applicant and the Agency must evaluate and balance all of these elements.

#### 2.3.6.2 Key Information for the EA

List all of the mitigation measures identified in the various resource sections of the EA. The purpose of this section is to provide a comprehensive list of agreed-to or negotiated mitigation measures.

#### 2.3.6.3 Suggested Information Sources

- a. Council on Environmental Quality. [Appropriate Use of Mitigation and Monitoring and the Appropriate Use of Mitigated Findings of No Significant Impact](#), January 2011.

#### 2.3.7 Coordination, Consultation and Correspondence

Impact evaluation and analysis requires coordination and consultation with Federal or State environmental regulatory or natural resource agencies. All correspondence related to this coordination must be included in this section, along with those persons, organizations, and agencies that were contacted for information and that assisted in identifying important issues, developing alternatives, or analyzing impacts. Any formal agreements or documentation indicating final compliance with applicable laws or regulations must be appended to the EA or be readily available for public inspection. Any scoping or other public involvement efforts should also be described. A list of recipients receiving copies of the EA is recommended.

#### 2.3.8 References

Include any literature cited, and attach as exhibits or appendices any other supporting documents, maps, photographs, etc.

#### 2.3.9 List Of Preparers

A list of persons responsible for preparing the EA should be included, along with their affiliations. Those that had a significant review role can be included.

### 3.0 RESOURCES/ISSUES TO BE ADDRESSED

#### 3.1 Introduction

This section provides further detail on the specific resources issues to be addressed in the EA, including key information that must be provided in the EA, suggested information sources, and pertinent questions to address in the analysis. Where the evaluation of a given resource is required by law or Executive Order (e.g., threatened/endangered species, wetlands, historic properties, important farmland, etc.), the appropriate statute, regulation, or Executive Order should be cited.



A list of applicable statutes, regulations, and Executive Orders is found at 7 CFR § 1970.3, and specific documents can be found via agency websites or through an internet search.

The following objectives are crucial to successfully completing an environmental impact analysis on the resources listed in this section:

1. Initial information on environmental resources in the area affected by the proposal may be gathered directly from the appropriate federal, state, local and/or Tribal agencies, or by using those agency websites, if available, or other sources. It is critical that any documentation indicating communications or coordination with applicable agencies must be included in the EA. Depending on the environmental resource, certain agencies must be consulted to concur with any findings or conclusions drawn on the proposal's possible impacts to that resource, i.e., State Historic Preservation Officers for Section 106 review (see Section 3.8). More detailed information on coordination and consultation is found in Section 4 of this exhibit.
2. Proper coordination and consultation must be completed prior to approval of the EA; ideally such consultation will be completed prior to a draft version of the EA being submitted to the Agency with the application for financial assistance.
3. If avoidance of an adverse impact is not possible, the applicant must demonstrate and justify this conclusion to the Agency's (and regulatory agencies') satisfaction.
4. If necessary, appropriate mitigation measures must be evaluated and integrated in the proposal's design and clearly identified in the EA.

In certain instances, a specific environmental issue or law clearly does not apply due to geographic location (e.g., the Coastal Zone Management Act (CZMA) does not apply in non-coastal or non-Great Lakes states), or not being present (e.g., no Wild and Scenic Rivers). Thus, input from all of the agencies listed under each issue is not always necessary. If in doubt on the need for coordination and consultation, contact the Agency's environmental staff. If a resource issue is not applicable to the proposal, clearly state why this is so in the appropriate resource section.

Each resource will have its own section in the EA, and it is recommended that they be discussed in the order they are presented here; each section must list the affected environment, environmental consequences, and mitigation measures for each resource. For example (and as shown in the EA outline at Attachment 1):

### 3.1 Land Use/Important Farmland/Formally Classified Lands

- 3.1.1 Affected Environment
- 3.1.2 Environmental Consequences
- 3.1.3 Mitigation

### 3.2 Land Use (See also 7 CFR 1970, Subpart L)

Decisions concerning land use arise from various societal or governmental needs or goals, including statutory or regulatory objectives. These may include, among others:

- Pursuit of economic growth and development;
- Accommodating increased population growth;
- Assurance of adequate provision of public utility services - potable water, wastewater treatment, electrical power, and telecommunications;
- Providing or improving community services and facilities;
- Discouraging unplanned, uncontrolled, and costly urban/suburban sprawl;
- Discouraging the conversion of agricultural or forest lands from existing uses;
- Objective to minimize wetland losses or encroachment upon or development in floodplains;
- Assurance of appropriate environmental quality; and
- Providing for proper solid waste disposal in rural areas.

It is USDA Departmental policy (USDA Departmental Regulation 9500-3, [Land Use Policy](#)) to promote land use objectives that respond to current and long-term economic, social, and environmental needs, yet discourage the unwarranted conversion of important land resources to other uses "when practicable alternatives exist to meet developmental needs." In general and in administering its programs, USDA supports and promotes compact community development by discouraging the unwarranted expansion of the peripheral boundaries of existing settlements.

The EA needs to address the compatibility of the proposal with any existing land use or land use plans, as well as possible land use changes that may result if the proposal is implemented. Land use issues are divided into three categories:

1. General land use;
2. Important farmland; and,
3. Formally classified lands.

#### 3.2.1 General Land Use

3.2.1.1 Key Information for the EA

Identify:

- a. Existing zoning ordinances, land use plans, development plans, etc.;
- b. Total land area required and/or proposed for purchase and the area that will be disturbed by construction for and operation of the proposal;
- c. Current land uses in the area affected by the proposal, such as residential, commercial, agricultural, rangeland, forest land, recreational, etc.;
- d. Compatibility of the proposal with existing, if any, local, regional or state land use plans or controls; and
- e. If necessary, any mitigation measures.

3.2.1.2 Suggested Information Sources

- a. Local, regional, and state planning agencies/commissions; and
- b. Federal and state natural resource agencies.

3.2.2 Important Farmland

The objective of the [Farmland Protection Policy Act](#) (FPPA), the regulation implementing the FPPA (7 CFR part 658), and USDA Departmental Regulation 9500-3, *Land Use Policy*, is to minimize the impact federal programs have on the unnecessary and irreversible direct or indirect conversion of farmlands to nonagricultural uses. In addition, one of the goals of the FPPA is to assure Agency programs are administered to be compatible with state or local government laws or policies or any private programs, if any, to protect farmland. As used in this exhibit, the term "important farmland" includes Natural Resources Conservation Service (NRCS) definitions of prime and unique farmland, and farmlands of statewide or local importance.

If an applicant's proposal proposes to construct a facility or take an action that directly or indirectly converts land classified and defined as "farmland" by NRCS to nonagricultural uses, the applicant must consult with a local NRCS office who will use, with Agency assistance, a numeric rating system called a land evaluation and site assessment (LESA) process to rate, rank, and compare the site (and other alternative sites) on the basis of their agricultural value. NRCS has integrated and documents this analysis in NRCS's Form AD-1006, *Farmland Conversion Impact Rating*.

If a particular site scores over 160 in NRCS's LESA process, the Agency and applicant are encouraged to seek and use other sites where the agricultural value is less than a higher ranked site(s).

For utility programs, due in part to applicant eligibility requirements and design policies, it is Agency policy that the requirement to complete the NRCS-CPA-106, *Farmland Conversion Impact Rating for Corridor Type Projects* form does not apply to electric transmission lines or proposals for utility distribution, collection, or telecommunication networks where the objective is to connect existing populations. This policy may not apply to water supply transmission or wastewater collection main lines that traverse significant areas of important farmland where tap-ins for subdivisions or other growth areas in rural areas might be reasonably foreseeable. If the latter is applicable to a specific proposal, then the applicant must use the NRCS-CPA-106 form to evaluate alternate routes. If a specific route for a water supply transmission or wastewater collection main line is necessary for the properly functioning hydraulics of the water or wastewater utility system, then alternative routes may not be feasible. If this is the case, completing the NRCS-CPA-106 is not necessary, however applicants must document and substantiate the reasons for these routes in this section. For site-specific actions however, applicants must consult with NRCS and complete the aforementioned NRCS Form AD-1006, *Farmland Conversion Impact Rating*. (7 CFR § 1780.7(c)(2)). (Eligible projects - Projects must be designed and constructed so that adequate capacity will or can be made available to serve the present populations of the area to the extent feasible and to serve the reasonably foreseeable growth needs of the area to the extent practicable.)

The first step in the process of determining effects to important farmland is to determine whether any soil types in the area affected by the proposal are classified as important farmland under the FPPA. Applicants should consult directly with NRCS on this question. In order to assist NRCS in making this determination, applicants need to identify the areas affected by the proposal on a map. A good source of mapped soil data can be found in the [NRCS Web Soil Survey](#) listed in the section below (Section 3.2.2.1). If there are no soil types classified as important farmland potentially affected by the proposal, the analysis is complete and should be documented in the conclusions section.

If soil types classified as important farmland are present in the area affected by the proposal, the step-by-step process for determining the proposal's potential to convert important farmland to nonagricultural use is listed on the second page of the form AD-1006. Once information has been obtained from NRCS, applicants should work with Agency environmental staff to complete Section V, *Site Assessment Criteria*, and Section VII. If the values from Sections V and VI for specific sites equal or exceed 160 points, applicants and the Agency are expected to consider alternative sites to avoid the conversion of important farmland to nonagriculture uses.

At least one Agency program has established through their program regulations, the requirement to charge higher interest rates on loans that convert important farmland. Check with Agency environmental staff if the proposal will "involve the use of, or construction on, prime or unique [important] farmland..." (7 CFR § 1942.17(f)(5) Prime farmland). For essential community facilities loans, the rate indicated by paragraphs (f)(2), (f)(3) or (f)(4) of this section will be increased by two per centum per annum if the project being financed will involve the use of, or construction on, prime or unique farmland in accordance with RD Instruction 440.1, exhibits B and J (available in any Agency (Rural Development) office).

#### 3.2.2.1 Key Information for the EA

Identify:

- a. Areas of important farmland directly or indirectly affected by the proposal including the amount of area to be disturbed; consider whether alternatives are available that will avoid a conversion of important farmland to nonagricultural uses;
- b. Results of consultation with NRCS and, if appropriate, the results of the land evaluation and site assessment process documented on the NRCS AD-1006 form. If appropriate and in compliance with Agency policy stated in Section 3.2.2, documentation from the NRCS-CPA-106;
- c. The effects (direct, indirect, and cumulative) to important farmland; and
- d. If necessary, any mitigation measures.

#### 3.2.2.2 Suggested Information Sources

- a. NRCS - [Farmland Protection Policy Act](#) website provides copies of all relevant information and forms related to the FPPA and the Farmland Conversion Impact Rating Form. In most cases, NRCS local offices will aid applicants in consulting for FPPA-related impact determinations. In addition, the above website maintains NRCS State Office FPPA points of contacts.
- b. NRCS's [Web Soil Survey](#) - online resource for determining whether the soils in the area affected by the proposal are classified as important farmland soils.
- c. American Farmland Trust, [Farmland Information Center](#).

### 3.2.3 Formally Classified Lands

There are specific land areas that have been accorded special protection through formal legislative designations and are either administered by federal, state, or local agencies, tribes, or private parties. These properties have been termed "formally classified lands". It is important that these areas be identified in early project planning and design so that any special use permits or other access issues can be considered during the preparation of the EA. These areas include, but are not limited to:

- National Parks and Monuments;
- National Forests and Grasslands;
- National Historic Landmarks(NHL)(see also Section 3.8, Historic and Cultural Properties);
- National Battlefield and Military Parks (see also Section 3.8, Historic and Cultural Properties);
- National Historic Sites and Historical Parks (see also Section 3.8, Historic and Cultural Properties);
- National Natural Landmarks (NNL);
- National Wildlife Refuges;
- National seashores, lake shores, and trails;
- Wilderness areas;
- Wild, scenic, and recreational rivers;
- State parks;
- State fish and wildlife management areas
- Bureau of Land Management (BLM) administered lands; and
- Native American owned lands and leases administered by the Bureau of Indian Affairs (BIA).

#### 3.2.3.1 Key Information for the EA

Identify:

- a. The location, type, and amount of such lands and waters that would be affected by the proposal and any alternatives considered; note that linear proposals that may be using a right-of-way (ROW) through classified lands must be coordinated with the appropriate land managing agency(ies) or tribes as early as possible;
- b. Correspondence and any comments received from agencies and/or tribes administering the potentially affected lands; specify if any special use or other permits are required and the process for obtaining them;
- c. Visual impacts from the proposal (see also section 3.9, Aesthetics);
- d. The effects (direct and indirect) to any such resources; and
- e. If necessary, any mitigation measures.

### 3.2.3.1 Suggested Information Sources

- a. Department of Interior, [Surface Management Agency](#);
- b. [U.S. Geological Survey](#) (USGS) and [U.S. Forest Service](#) (USFS) maps;
- c. [U.S. National Park Service](#) (NPS) and USFS (where applicable) - National Historic Landmarks, National Natural Landmarks, national parks, national battlefields and monuments, military parks, national seashores and lake shores, national historic sites or parks, national recreational areas, national trails, wilderness areas; Wild and Scenic (and recreational) Rivers and [Nationwide Rivers Inventory](#); [BLM](#) - administered lands and wilderness areas;
- d. [National Parks Conservation Association](#);
- e. U.S. Fish and Wildlife Service (USFWS) [wildlife refuges](#);
- f. State and local land management and planning agencies, state and local parks, and other state-owned lands; and
- g. [BIA](#) - Tribal lands (contact with individual tribes is also necessary).

### 3.3 Floodplains (see also 7 CFR Part 1970, Subpart F).

#### 3.3.1 Introduction

Continued encroachments on floodplains decrease the natural flood-control capacity of these land areas and creates short or long-term threats to lives and property perpetuating the need for costly structural flood control measures and disaster relief and rehabilitation activities. Compliance with E.O. 11988, *Floodplain Management*, and E.O. 13690, *Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input*, require Federal agencies to avoid actions, to the extent practicable, which will result in the location of facilities in floodplains and/or affect floodplain values. Facilities located in a floodplain may be damaged or destroyed by a flood or may change the flood-handling capability of the natural floodplain or the pattern or magnitude of flood flows. In addition, USDA Departmental Regulation 9500-3, *Land Use Policy*, discourages the unwarranted alteration of floodplains by requiring agencies within the Department to not assist in actions unless:

1. There is a demonstrated, significant need for the proposal; and
2. There are no practicable alternative actions or sites that would avoid the direct or indirect encroachment on floodplains or, if conversion is unavoidable, reduce the number of acres to be converted or encroached upon.

The relevant floodplain area to be evaluated for most proposals is an area that has a 1-percent probability of flood occurrence in a given year. A flood of this recurrence interval is referred to as the "100-year flood" or the "base flood", and the area is also termed the "Special Flood Hazard Area" (SFHA). Floodplain management guidelines further require federal agencies to apply the 0.2 percent probability of flood occurrence in a given year to the location of "critical actions." A flood of this recurrence interval is referred to as the "500-year flood." Critical actions (24 CFR §55.2) are those defined as an activity for which even a slight chance of flooding would be too great a risk because it might result in loss of life, injury, or property damage. Critical actions include activities that create, maintain, or extend the useful life of structures or facilities that:

- Produce, use or store highly volatile, flammable, explosive, toxic or water-reactive materials;
- Provide essential and irreplaceable records, or utility or emergency services that may be lost or become inoperative during flood and storm events (e.g., data storage centers, electric generating plants, principal utility lines, emergency operations centers including fire and police stations, and roadways providing sole egress from flood-prone areas); and
- Are likely to contain occupants who may not be sufficiently mobile to avoid loss of life or injury during flood or storm events, e.g., persons who reside in hospitals, nursing homes, convalescent homes, intermediate care facilities, board and care facilities, and retirement service centers. Housing for independent living for the elderly is not considered a critical action.

In accordance with guidelines prepared by the U.S. Water Resource Council to implement E.O. 11988 and E.O. 13690 and Agency objectives as per USDA DR 9500-3, proposals that propose to locate facilities or structures in the floodplain must evaluate whether there are practicable alternatives to locating the proposal in a floodplain. (Established by the Water Resources Planning Act of 1965. Guidelines for Implementing Executive Order 11988, Floodplain Management, and Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input, October 22, 2015, 80 FR 64008.) The decisionmaking procedures that evaluates this process includes an eight-step decision making process. The steps included are:

- **Step 1** - Determine whether: 1) the proposal is located in 100-year floodplain or 500-year floodplain for critical facilities, and 2) the proposal has the potential to affect or be affected by a floodplain.



- **Step 2** - Notify the public at earliest possible time of the intent to carry out an action in a floodplain, and involve the affected and interested public in the decision-making process (the public notification process will occur when the EA is published for public comment and review after the Agency accepts the EA as a Federal document).
- **Step 3** - Identify and evaluate the practicable alternatives to locating the proposal in a floodplain.
- **Step 4** - Identify the full range of potential direct or indirect impacts associated with the proposal's occupancy or modification of floodplains, and the potential for direct and indirect support of additional floodplain development that could result from implementing the proposal.
- **Step 5** - If there are no practicable alternatives for the proposal to occupy or modify the floodplain, the evaluation must identify measures that will minimize the potential adverse impacts to the floodplain and, where possible, propose actions that will restore natural and beneficial floodplain values.
- **Step 6** - Re-evaluate the proposal to determine: 1) if it is still practicable in light of its exposure to flood hazards; 2) the steps necessary to minimize these impacts; and 3) its potential to take actions that could restore and preserve floodplain values.
- **Step 7** - If after evaluating the applicant's analysis, the Agency agrees with the applicant on its analysis that no practicable alternative exists for the proposal to occupy or modify a floodplain, the applicant will document the analysis and findings in the EA. The Agency and applicant will document the finding and provide an explanation of the relevant factors considered in the decision in the public notice announcing the availability of the EA.
- **Step 8** - After the required public comment period on the EA has expired and after the Agency has considered any public comment(s) on the applicant's proposal to take action to occupy or modify a floodplain, the Agency will document its final decision in the Finding of No Significant Impact (FONSI). The public notice announcing the availability of the FONSI will highlight the decision. The Agency and applicant will ensure that any minimization plans are implemented and that, if appropriate, flood insurance requirements are met.

### 3.3.2 Key Information for the EA

Identify:

- a. If the proposal or any portion thereof will be located in a 100-year floodplain or 500-year floodplain for critical facilities, particularly if it is proposed to be located in the designated floodway (floodways are defined as an area identified on a FIRM or FHBM that represents the portion of the floodplain that carries the majority of the flood flow and often is associated with high velocity flows and debris impact);
- b. The area of floodplain potentially affected; indicate graphically the location of proposal components or facilities and evaluate impacts to the floodplain;
- c. Any local floodplain development requirements and permits;
- d. As applicable and discussed above, the information necessary to meet the requirements of the eight-step process outlined in E.O. 11988;
- e. Practicable alternatives to locating facilities in a floodplain (include alternative sites or routes located outside the floodplain);
- f. If the determination is made that no practicable alternatives exist to locating in the floodplain, a justification and recommended measures to minimize impacts and restore and preserve floodplain values;
- g. As required, a completed FEMA Form 086-0-32; and
- h. If necessary, any mitigation measures.

### 3.3.3 Suggested Information Sources

- a. [FEMA Flood Insurance Rate Maps](#) (FIRMs), or Flood Hazard Boundary Maps (FHBMs). These maps are the primary sources, and under E.O. 11988, must be used if they are available. In addition, map revisions not shown on FIRM maps should be checked, such as letters of amendment, change or revisions, and conditional letters of the same.
- b. [NRCS Soil Survey maps](#). These maps contain soil units that are classified as "alluvial" soils. These soil units are associated with soils that developed in floodplains and represent the best available information if FEMA maps are not available. In addition, soil surveys provide general data indicating the soil unit's frequency for flooding.
- c. [U.S. Army Corps of Engineers](#) (USACE) has the authority to provide floodplain management and technical services (Flood Plain Management Services) to state, regional, local, and tribal governments. The types of services they can provide, upon request, include floodplain delineations, flood hazard evaluations, regulatory floodway analysis, comprehensive floodplain management, storm water management, etc.

As part of providing these services to eligible parties (non-federal public agencies), they may have pertinent floodplain information in the absence of FEMA maps. Contact your local [USACE District Office](#) to determine if any information is available in the area affected by the proposal.

- d. [State water resource agencies](#);
- e. [Association of State Floodplain Managers](#); and
- f. [National Flood Insurance Program](#).

### 3.4 Wetlands (see also 7 CFR Part 1970, Subpart G)

#### 3.4.1 Introduction

Similar to E.O. 11988 as it relates to floodplain management, E.O. 11990, *Protection of Wetlands*, states that it is federal policy to avoid to the extent possible the long and short-term adverse impacts associated with the destruction or modification of wetlands, and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative. In addition, federal agencies were ordered to take actions to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out their responsibilities and programs.

Therefore in accordance with the above E.O., federal agencies were directed to avoid undertaking or providing assistance for new construction located in wetlands unless:

1. There is no practicable alternative to such construction; and
2. The proposal includes all practicable measures to minimize or mitigate wetland impacts that may result from project activities. In making this finding the Agency will consider engineering/architectural design, economic, environmental, and other pertinent factors.

In addition, USDA's Departmental Regulation 9500-3, *Land Use Policy*, also discourages unwarranted wetland alteration and directs USDA agencies to consider alternatives and minimize potential damage whenever wetland impacts cannot be avoided. To be consistent with the E.O. and DR 9500-3, applicants that propose to construct facilities or conduct activities in wetlands must evaluate alternatives and, if it is determined that there are no practicable alternatives to the destruction or modification of a wetland, they must submit adequate documentation and justification demonstrating such a finding to the Agency for approval.

In addition, some Agency programs are specifically prohibited from impacting wetlands per Section 363 of the Consolidated Farm and Rural Development Act (ConAct). This specific section established a prohibition on the Agency's loan-making authority by stating that the Secretary cannot approve any loans under the Act which would result in draining, dredging, filling, leveling, or manipulating a wetland. Section 363 exempts utility line proposals from these restrictions.

Regulatory oversight of wetlands falls under Section 404 of the Clean Water Act and permits are administered by the [U.S. Army Corps of Engineers](#) (USACE) with oversight by the [U.S. Environmental Protection Agency](#) (USEPA). Section 404 established a Federal permitting program that requires anyone who is proposing to place dredged or fill material into "waters of the United States", which includes wetlands, to obtain a permit from the USACE. A link to the definition of a wetland is provided at [http://www.usace.army.mil/Portals/2/docs/civilworks/regulatory/rw\\_bro.pdf](http://www.usace.army.mil/Portals/2/docs/civilworks/regulatory/rw_bro.pdf).

In general, there are two kinds of Section 404 permits - individual and general permits. From the USACE's website - "Individual permits are two types of permits that the Corps can issue under program authorities. Individual permits include Standard Permits, which are generally more complex in nature and involve notification of the public and commenting agencies, and Letters of Permission, a type of permit issued through an abbreviated processing procedure which includes coordination with Federal and State fish and wildlife agencies, as required by the Fish and Wildlife Coordination Act, and a public interest evaluation, but without the publishing of an individual public notice."

**Agency programs included in the ConAct Section 363 prohibition are:**

**Rural Business-Cooperative Service**

- Business and Industry Guaranteed Loan Program
- Rural Transportation (RBEG earmarks and/or set aside)
- Business and Industry Direct Loan Program
- Intermediary Relending Program
- National Sheep Industry Improvement Center
- Northern Great Plains Regional Authority
- Guarantee and Commitment to Guarantee Loans

**Rural Housing Service**

- Community Facilities Guaranteed Loan Program
- Community Facilities Direct Loan Program
- Loan Guarantees for Water, Wastewater and Essential Community Facilities Loans

**Rural Utilities Service**

- Water and Waste Disposal Direct Loans
- Water and Waste Disposal Guaranteed Loans
- Rural Water and Wastewater Circuit Rider Program
- Loan Guarantees for Water, Wastewater and Essential Community Facilities

The second kind of permit are general permits established under Section 404(e) and are issued by USACE on a programmatic, nationwide, regional, or state basis for particular categories of actions. These permits authorize activities that have been determined to have minimal individual and cumulative adverse environmental effects. General permits can be issued for a period of no more than five years. A nationwide permit is a general permit that authorizes activities across the country, unless a USACE District or Division Commander revokes the nationwide permit in a state or other geographic region.

Nationwide permits authorize a wide variety of activities such as residential developments, utility lines, road crossings, mining activities, wetland and stream restoration activities, and commercial shellfish aquaculture activities (<http://water.epa.gov/lawsregs/guidance/wetlands/acenwp.cfm>). Examples of nationwide permits that are applicable to some of the Agency's programs include: NWP 7 - Outfall Structures and Associated Intake Structures; NWP 12 - Utility Line Activities; NWP 14 - Linear Transportation Activities; NWP 29 - Residential Developments; and NWP 43 - Stormwater Management Facilities.

As part of the proposal's planning process and EA preparation, applicants may not be expected to obtain a Section 404 wetland jurisdictional determination unless the proposal or some component thereof involves potentially adversely affecting a wetland and if the action would require a Section 404 individual permit. **As stated above, the Agency has an obligation under E.O. 11990 and USDA DR 9500-3 to evaluate and concur with an applicant's analysis (including an alternatives analysis) and justification that no practicable alternative exists to adversely affecting a wetland prior to the applicant pursuing a USACE regulatory or permit decision.** If the Agency concurs with the applicant's justification that there are no practicable alternatives to potentially affecting a wetland and the action is not subject to ConAct Section 363 prohibitions, the applicant will be required to obtain a jurisdictional determination with USACE as part of the 404 individual permit application process. In most cases, applicants are not expected nor required to secure a Section 404 permit prior to the Agency's decision on whether to provide financial assistance; the permit would be required prior to construction.

If the proposal has the potential to affect a wetland, applicants are responsible for contacting the appropriate USACE district office to determine specific permitting requirements. If appropriate, the applicant can request a pre-application consultation to determine the factors the USACE must consider in its permit decisionmaking process. One of the factors USACE has to consider in its permitting decision is its own NEPA process.

To the extent possible, USACE may be able to use the applicant's/Agency's EA in its permit process so coordination during the proposal planning process and EA preparation phase is encouraged. Agency environmental staff are available to assist with this coordination. The applicant will also assist the Agency in public noticing requirements for wetlands impacts (see also Section 5.0 of this guidance).

If wetlands are present in the area affected by the proposal, the proposal's project components must be clearly shown on a NRCS soil survey map or USGS topographic maps to help determine locations and to quantify the number of acres of potentially affected wetlands.

#### 3.4.2 Key Information for the EA

Identify:

- a. Location of wetlands in relation to the area affected by the proposal, the amount (acres or linear feet) that would be physically affected by proposed construction, and a description of potential impacts (loss/conversion, temporary impact with hydrological or other indirect impacts, restoration efforts, etc.);
- b. **If potential wetlands impacts are likely, applicants must develop and submit the analysis and justification to the Agency for concurrence that no practicable alternative exists for any affects to or conversions of wetlands;**
- c. If appropriate for actions that require individuals permits, function and habitat value of wetlands likely affected by the proposal;
- d. Type of permit necessary and current status of USACE review; and
- e. If necessary, any mitigation measures (special conditions outlined in an USACE permit) to avoid, minimize or compensate for any impacts to wetlands.

#### 3.4.3 Suggested Information Sources

- a. [NRCS Soil Survey Maps](#) (soil survey maps provide delineations of "hydric soils", one of the factors in identifying wetlands);
- b. [National Wetlands Inventory Maps](#) (NWI maps are small scale maps and as such are not detailed enough to show smaller sized wetlands that a larger scale map (like the NRCS soil maps) would be able to show; therefore these maps are less accurate for site specific actions, see the [USFWS's data limitation disclaimer](#));
- c. [U.S. Army Corps of Engineers](#); and
- d. [State Wetland Programs](#).

### 3.5 Water Resources

### 3.5.1 Introduction

This section addresses water quantity and quality issues related to: discharges to or appropriations from surface or ground water; ground water protection programs (e.g., sole source aquifers and recharge areas); and water quality degradation from temporary construction activities. Water quantity and quality changes can impact other (and sometimes quite distant) environmental resources such as: groundwater and drinking water supplies; threatened or endangered species; other fish and wildlife species; and wetlands, among others. Permitting requirements (with mostly state agencies) are the applicant's responsibility and the EA needs to address any permit requirements including the description of any mitigation or other compliance measures that may be necessary as a condition of any permits. Applicants are urged to consult with the Agency's engineers and environmental staff, particularly those at the Agency's State Offices as these individuals have knowledge of water quality issues and permitting considerations in their respective states.

### 3.5.2 Key Information for the EA

Identify:

- a. Location of water bodies that may be receiving waters for wastewater effluent discharges for existing and proposed facilities;
- b. Location of water bodies used as sources of potable or industrial water;
- c. All aquifers utilized for and affected by water supply operations or that may be affected by runoff, infiltration, or any operational activities from wastewater treatment or solid waste facilities;
- d. Any groundwater protection programs for sole source aquifers or recharge areas and the results and status of any coordination with USEPA or state agencies;
- e. Any watershed management plans or other land use plans in the area affected by the proposal, project construction activities, or facility operations;
- f. Possible effects from temporary construction activities and construction best management practices that need to be instituted during construction; and
- g. If necessary, any mitigation measures.

### 3.5.3 Suggested Information Sources

- a. [National Pollutant Discharge Elimination System](#). The NPDES permitting program deals with point source discharges and in most cases is administered by [individual States agencies](#) or USEPA in non-primacy States;
- b. [Non-point source pollution \(stormwater runoff\)](#) and [State agencies](#);
- c. [Ground water protection programs](#) (refer to the "[Citizen's Guide to Groundwater Protection](#)");
- d. [State natural or water resource agencies](#) - Best management practices for erosion and sediment control for construction activities, and permit requirements for construction activities and operations;
- e. [American Waterworks Association](#);
- f. Local watershed associations - [State Soil and Water Conservation Districts](#) and [NRCS](#); and
- g. [USEPA map of sole source aquifer locations](#).

### 3.6 Coastal Resources (See also 7 CFR 1970, Subpart O)

#### 3.6.1 Introduction

Coastal areas and barrier systems provide diverse and unique habitats as well as protect inland areas from hurricanes, other storms, or storm surges. Much of the coastal zone continues to experience heavy pressure for residential, recreational, energy and industrial development, among many others, while simultaneously being prone to storm damage and flooding. To address the competing demands on coastal areas, Congress enacted two major laws for their protection and management.

##### 3.6.1.1 Coastal Zone Management Act

The Coastal Zone Management Act of 1972, as amended (CZMA), applies to all lands on the boundary of any ocean or tributary thereof, and the Great Lakes. Applicants should note that the width of the "coastal zone" might vary among the applicable states. The CZMA establishes a cooperative management framework between the federal government and coastal states, whereby federal financial and technical assistance is available to states that have CZMA-approved management programs (34 of the 35 coastal States have approved programs as of this writing - As of July 1, 2011, Alaska is the one coastal state that does not have a federally-approved coastal management program and federal consistency does not apply to Alaska). The CZMA requires federal actions that are reasonably likely to affect any land or water use or natural resource in a coastal zone be consistent with the enforceable policies of a coastal state's or territory's federally-approved coastal management program ("State CMP", "CMP", or "management program"). Federal actions may be direct (management activities or construction) or indirect (permits, licenses, or financial assistance).



Consistency is also necessary for actions that may be proposed in "described geographic areas" (e.g., coastal floodplains or water bodies (approved management plans should identify such areas)) outside of the coastal zone, but which may affect the coastal zone. State and Agency responsibilities are outlined in 15 CFR Part 930, Subpart F (Consistency for Federal Assistance to State and Local Governments). The RUS Electric and Telecommunications Programs are exempt from the CZMA.

The applicant is responsible for securing state approval (i.e., the state agency makes the consistency determination) under the CZMA. If the state agency objects to an applicant's proposal, it will notify the applicant and the applicable federal agency of its finding; the Agency cannot fund a proposal unless approved by the state agency. As opposed to other federal actions, state CMP review of assistance activities is normally conducted as part of intergovernmental review under E.O. 12372. Applicants and the Agency should also be aware of possible interstate effects (i.e., a proposal in one State with reasonably foreseeable effects in another State); 15 CFR 930, Subpart I discusses interstate effects.

Based on 15 CFR part 930, the following is a list of requirements to help ensure CZMA compliance and, if the proposal may affect a designated coastal zone, that should be addressed in the EA. The step-by-step process requires applicants to:

- Identify and contact the state and/or federal consistency coordinator;
- Submit a copy of the federal agency funding application to the state coordinator;
- Provide the state coordinator with a brief evaluation of the proposal, and its possible effects on the CMP;
- Work with the state agency to seek agreement on conditions that would facilitate state approval; if any such conditions are negotiated, they must also gain federal agency concurrence;
- Notify the state of any changes in the proposal, or significant new circumstances or information, that may affect the consistency determination; and
- During the consistency review, the federal agency must notify the state agency of any decision not to approve the applicant's application for financial assistance.

#### 3.6.1.2 Coastal Barrier Resources Act

The Coastal Barrier Resources Act (CBRA) of 1982 established the John Chafee Coastal Barrier Resources System (CBRS) which consists of undeveloped coastal barrier lands along the Atlantic, Gulf, and Great Lakes coasts. Proposed units have been identified but not designated along the Pacific coast.

The objective of the Act is to prohibit direct or indirect (i.e., funding or permitting) federal activities in CBRS units, including providing flood insurance under the National Flood Insurance Program (NFIP). One exception is for the maintenance, replacement, reconstruction, or repair, but not the expansion of, publicly-owned or publicly-operated roads, structures, or facilities that are essential links in a larger network or system (this does not include financial assistance for the replacement of utility distribution networks). Since the Agency requires flood insurance under the NFIP for all insurable structures, this prohibition further limits possible financial assistance in CBRS units. Prior to approving financial assistance for proposals in CBRS units, applicants and the Agency must consult with and secure the approval of the U.S. Fish and Wildlife Service (USFWS).

### 3.6.2 Key Information for the EA

Applicants for federal assistance (as defined at 15 CFR part 930.92) must identify:

- a. Activities that are proposed to be located in the coastal zone or will otherwise affect those areas;
- b. Coordination conducted with the State coastal management program office concerning the proposal's consistency determination, and documentation of State CMP concurrence (see Section 3.6.1 for the step-by-step consultation/coordination process);
- c. Status of consistency determination with State CMP Office using CZMA worksheet or similar documentation; and
- d. If necessary, mitigation measures required to achieve consistency with the State's coastal management program.

### 3.6.3 Suggested Information Sources

- a. [State coastal management programs](#), including points of contact;
- b. [National Oceanic and Atmospheric Administration \(NOAA\) Coastal Zone Management Act information](#);
- c. NOAA, CZMA [Federal Consistency Overview](#); and
- d. U.S. Fish and Wildlife Service - [Coastal Barrier Resource System](#).

## 3.7 Biological Resources (see also 7 CFR Part 1970, Subpart N)

### 3.7.1 Introduction

The evaluation of effects to biological resources addresses three primary categories:

1. Listed threatened or endangered species;
2. Critical habitat and other vegetation; and
3. Other fish and wildlife species.

Evaluation of these resources often forms a large part of the EA and proper coordination and consultation with the appropriate federal and state agencies is essential. Potential impacts to biological resources can be direct (project-related mortality) or indirect (displacement, degradation or loss of habitat). Vegetation is a key habitat component and acts to stabilize soils and prevent erosion. In addition, information on vegetation can be used in evaluating potential impacts to threatened and endangered species and/or critical habitats.

The primary agencies responsible for conservation and management of biological resources are the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS; also called NOAA Fisheries Service; together, USFWS and NMFS are sometimes termed "the Services"), along with the respective state fish and wildlife agencies or departments of natural resources/conservation. These agencies must be contacted as early as possible in the planning process to gather specific information on species and habitat that might be potentially affected by the proposal. Follow-on coordination/consultation should be completed and documented during initial preparation of the EA. If other federal agency resources/lands are involved or potentially impacted, the appropriate agencies must be contacted immediately with direct consultations during the EA preparation process. It is important to note that federal land managing agencies have NEPA or environmental review responsibilities similar to the Agency so coordination is important to reduce any duplication of effort. In addition, these agencies must approve and provide any required permits prior to the construction of the proposal on these lands. Accordingly, it is important to provide the agencies with accurate descriptions of the proposal and the area to be affected, including maps or other means.

### 3.7.2 Endangered Species Act

The purpose of the Endangered Species Act (ESA) is to protect and recover imperiled species and the ecosystems upon which they depend. Under the ESA, species may be listed as either endangered or threatened. "Endangered" means a species is in danger of extinction throughout all or a significant portion of its range. "Threatened" means a species is likely to become endangered within the foreseeable future.

Under Section 7 of the ESA, federal agencies and applicants to federal programs must identify the presence of threatened, endangered, or candidate species in the areas affected by the proposal. Candidate species are "plants and animals for which the USFWS has sufficient information on their biological status and threats to propose them as endangered or threatened under the ESA."

Both federal and state agencies maintain lists and location data for these species, and they may be accessed from agency websites or otherwise requested from those agencies. In addition under Section 7, federal agencies are required to consult with USFWS or NMFS if listed species could be affected by the proposal. NMFS has jurisdiction for those species that inhabit coastal areas or are anadromous (fish born in fresh water that spend most of their life at sea and return to fresh water to spawn).

ESA consultation under Section 7 includes both "informal" and "formal" processes. The Services work with federal agencies and their applicants to emphasize the identification and informal resolution of potential species conflicts in the early stages of project planning. The purpose of the informal consultation process is to avoid adversely impacting these species and habitats. If the consultation process is not successful in avoiding adverse impacts to these species or habitats, the Agency and its applicant must engage in a "formal" consultation process. The latter process will require a more rigorous analytical and documentation process to determine the effects to species; identify reasonable and prudent alternatives and measures to minimize the impacts; and provide an administrative record of the effects and efforts toward resolution. Therefore, if it appears the proposal could affect (1) a federally-listed threatened or endangered species or its critical habitat or (2) a proposed threatened or endangered species or its proposed critical habitat, the applicant must contact the appropriate Agency environmental staff as soon as possible and the Agency will initiate discussions with the appropriate agencies.

The objective of the consultation process is to ensure that the Agency's approval of financial assistance does not jeopardize the continued existence of any federally-listed threatened or endangered species or result in the destruction or adverse modification of critical habitat. **The Agency is ultimately responsible for providing determinations of effect to the Services and assuring successful conclusion of consultation; applicants or their consultants can assist the Agency through initial or ongoing contact with the Services or state agencies.** In some cases the Services may request a formal designation of a non-federal entity as the Agency's "agent" for consultation; if such a request is made, contact the appropriate Agency environmental staff for assistance.

Specific determinations of effect under the ESA include:

- **No effect** - appropriate conclusion when the Agency determines there are no listed species or critical habitat present in the area affected by the proposal or the proposal will not affect listed species or critical habitat.

- **May affect, not likely to adversely affect** - appropriate conclusion when effects on listed species are expected to be discountable, insignificant, or beneficial.
- **May affect, likely to adversely affect** - appropriate conclusion if any adverse effect to listed species may occur as a direct or indirect result of the proposal or its interrelated or interdependent actions, and the effect is not discountable, insignificant, or beneficial. If a determination is made that the proposal "is likely to adversely affect" the Agency and applicant are required to engage in formal consultation.

Other statutes and Executive Orders pertinent to the evaluation of biological resources include:

### 3.7.3 Migratory Bird Treaty Act

The Migratory Bird Treaty Act (MBTA) implements four separate treaties (or conventions), between the United States and Great Britain (on behalf of Canada - 1916), Mexico (1936) and Japan (1972), and the former Soviet Union (1978). The Act, and the treaties it implements, focused on regulating the "taking" of migratory birds, and introduced the concept of "take" to federal law. Take (defined at 50 CFR 10.12 as "to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt" any of the foregoing) can be intentional or unintentional, and occur through several means.

The MBTA applies to individuals as well as agencies, which has led to several court challenges over private property rights. It is a strict liability law, thus forbidding the taking of even one migratory bird. E.O. 13186, *Responsibilities of Federal Agencies to Protect Migratory Birds* (January 10, 2001), directs executive departments and Federal agencies "to take certain actions to further implement the Act." These actions are fostered through the development of Memoranda of Understanding (MOU) with the USFWS. The MOUs are to include a number of protocols and planning/management actions to pursue the goals of the MBTA. Importantly, however, lending or funding actions (i.e., by federal agencies) are not subject to E.O., but applicant actions remain subject to the Act itself. This means that the environmental review process and EA must reflect actions taken to avoid impacts to migratory birds, particularly proposals that present particular risks, such as wind energy facilities or electric transmission lines.

#### 3.7.4 Bald and Golden Eagle Protection Act

The Bald and Golden Eagle Protection Act of 1940, as amended, prohibits anyone without a permit issued by the USFWS from "taking" bald or golden eagles, including their parts, nests, or eggs. The Act provides criminal penalties for persons who "take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or any manner, any bald eagle ... [or any golden eagle], alive or dead, or any part, nest, or egg thereof." The Act defines 'take' as "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb."

"Disturb" means: "to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, 1) injury to an eagle, 2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or 3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior."  
(<http://www.fws.gov/midwest/MidwestBird/EaglePermits/bagepa.html>)

This Act and its regulations will be critical if the proposal or any associated activity could "disturb," under the above definition, a bald or golden eagle. If during the planning process, it is determined that a bald or golden eagle might be affected by the proposal, the Agency environmental staff must be contacted so the applicant and Agency can consult, as required, with the USFWS.

#### 3.7.5 Invasive Species

E.O. 13112, *Invasive Species* (February 3, 1999), requires federal agencies to prevent the introduction of invasive species, provide for their control, and to minimize the economic, ecological, and human health impacts that invasive species cause. In addition, each Federal agency to the extent practicable and permitted by law are required to identify their actions that may affect the status of invasive species, use relevant programs and authorities subject to the availability of appropriations, and within Administration budgetary limits and with regard to the Agency to:

- Prevent the introduction of invasive species;
- Detect and respond rapidly to and control populations of such species in a cost-effective and environmentally sound manner;
- Monitor invasive species populations accurately and reliably; and
- Provide for restoration of native species and habitat conditions in ecosystems that have been invaded.

In addition, federal agencies were directed to not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species, unless the agency has determined and made public its determination that the benefits of such actions clearly outweigh the potential harm caused by invasive species and that all feasible and prudent measures to minimize the risk of harm will be taken in conjunction with its actions.

Applicant proposals that might affect ecosystems that have been invaded by invasive species or potentially introduce invasive species need to address these issues as part of and during EA preparation.

### 3.7.6 Key Information for the EA

#### 3.7.6.1 General Fish, Wildlife, and Vegetation Issues

Identify:

- a. The vegetative composition and fish and wildlife species that are likely to inhabit the area affected by the proposal; consider the relative amount of each vegetation type, and the extent to which each type of vegetation would be affected;
- b. Potential impacts to fish and wildlife resources. These impacts may result from sedimentation, ground clearing, stream or river flow impedance, forest fragmentation, or increased human activity due to increased access to an area; pay particular attention to the proposal's components or activities that may present a heightened risk to migratory birds;
- c. An estimate of the amount of vegetation clearing required for the proposal and each alternative considered; include a description of vegetation clearing methodology and future maintenance practices;
- d. The short and long-term effects of proposed vegetative clearing, including those related to right-of-way or other maintenance practices;
- e. Any special areas of concern such as riparian zones, wetlands, prairie remnants, or forested tracts (particularly bottomland hardwoods or old growth) that may require more detailed information or that may be afforded special protection;
- f. Potential impacts to bald or golden eagles. These impacts may result from the proximity of proposal activities to these species' nests, thus disturbing or interfering with their normal breeding, feeding, or sheltering habits and causing injury, death, or nest abandonment; and
- g. If necessary, any mitigation measures.

3.7.6.2 ESA Listed Threatened and Endangered Species

Identify:

- a. Federally-listed or proposed threatened or endangered species and a delineation of any critical habitat in the area effected by the proposal;
- b. Potential impacts of the proposal and any alternatives on Federally-listed or proposed threatened or endangered species and proximity to designated critical habitat;
- c. Agency determinations/findings and concurrence correspondence from the USFWS and NMFS concerning whether or not the proposal is likely to affect a listed or proposed species or designated critical habitat;
- d. If the proposal is likely to adversely affect a listed species or designated critical habitat, formal consultation and a Biological Assessment is required;
- e. If formal consultation is required, Agency environmental staff will facilitate the consultation process; and
- f. If necessary, mitigation measures.

3.7.6.3 Migratory Bird Treaty Act

Identify:

- a. Potential direct impacts to birds through collision, and direct or indirect impacts to nests or nesting or migratory habitat;
- b. Potential impacts of the proposal to "important bird areas" as identified by the National Audubon Society;
- c. Potential impacts of the proposal to critical areas for use by shorebirds, as identified in the Western Hemisphere Shorebird Reserve Network;
- d. If the proposal is likely to adversely affect any of the listed species or habitats in the above datasets, consultation with the USFWS will be required to identify project alternatives and avoidance measures; and
- e. If necessary, any mitigation measures.

3.7.6.4 Invasive Species

Identify:

- a. Any existing invasive plant or animal terrestrial or aquatic species that could do harm to native habitats within the area affected by the proposal;
- b. State listings of noxious weeds and other invasive species;



- c. The potential effect of disturbances or likelihood the proposal could introduce, spread, or contribute to the continued existence of noxious weeds or non-native species in the area affected by the proposal; and
- d. As necessary, any mitigation measures such as preventative or eradication measures.

### 3.7.7 Suggested Information Sources

- a. USFWS [Ecological Services Field Offices](#). These offices are the points of contact for ESA Section 7 consultation. A state-by-state directory of offices (look for the "Ecological Services" office nearest you). General information on [Federal endangered species](#). This site also has links for useful tools including a critical habitat mapper, and the Environmental Conservation Online System (ECOS), and Information, Planning and Conservation System (IPaC) tools.
- b. [NOAA/NMFS Fisheries](#) (for marine/anadromous species or coastal proposals);
- c. [State departments of natural resources agencies](#) should be contacted for State-specific endangered species listings and information;
- d. If public lands may be affected, the appropriate [Federal, State, or local government land manager](#);
- e. [Migratory Bird Treaty Act information](#) and [Protected Species Lists](#);
- f. [Western Hemisphere Shorebird Reserve Network](#);
- g. [National Audubon Society's Important Bird Areas](#); and
- h. [National Invasive Species Council](#). Website includes E.O. 13112.

## 3.8 Cultural Resources and Historic Properties (see also 7 CFR Part 1970, Subpart H)

### 3.8.1 Introduction

This section addresses the evaluation and consideration of the proposal's potential effects to cultural resources and historic properties. Effectively and efficiently evaluating the proposal's potential effects to these resources can be very complicated involving numerous Federal and State statutes and regulations and multiple "consulting parties", therefore applicants are strongly encouraged to engage in ongoing communications with Agency environmental and historic preservation staff to avoid delaying their analyses and findings.

The terms "cultural resources" and "historic properties" are being used, respectively, in the context of NEPA and the National Historic Preservation Act of 1966, as amended (54 U.S.C. § 300101 et seq) (NHPA). While there is no legally accepted definition of the term "cultural resources" within the federal government, it is used widely to refer to historic, aesthetic, and cultural aspects of the human environment. Under NEPA, cultural resources are integral to the human environment including the human (social and cultural) and the natural and physical (e.g. the built environment or man-made structures) environment and the relationship of people to that environment.

In addition, NEPA mandates the integration of studies of other related statutes, such as NHPA; NHPA and its implementing regulations (36 CFR Part 800, specifically 36 CFR § 800.8(a)) also encourage federal agencies to coordinate compliance with review processes under NHPA with NEPA. Consequently, the objective of this section is to evaluate and document potential impacts to cultural resources as required under NEPA and to take into account the effects of Agency actions on historic properties under NHPA with other environmental factors.

NHPA defines "historic properties," which are a subset of cultural resources, as any "prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion for listing in the [National Register of Historic Places](#) maintained by the Secretary of Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria."

Section 106 of the NHPA requires federal agencies to take into account the effects of their "undertakings" on historic properties that are within the proposal's "area of potential effect" (APE) and to provide the Advisory Council on Historic Preservation (ACHP) with a reasonable opportunity to comment on such undertakings. The regulations ([36 CFR Part 800, Protection of Historic Properties](#)) implementing Section 106, establish the process through which federal agencies meet this statutory requirement. Notwithstanding the above statement, in most cases Agency actions will not be reviewed by the ACHP but rather by State Historic Preservation Officers (SHPO) and Tribal Historic Preservation Officers (THPOs) on and off tribal land.

Critical definitions from the NHPA, Section 106 implementing regulations include:

**Adverse Effect** - An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify for inclusion in the National Register in a manner that would diminish the property's integrity. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be further removed in distance, or be cumulative (36 CFR § 800.5(a)(1)).

**Area of Potential Effect** - The area of potential effect (APE) is defined as "the geographic area or areas within which an undertaking may directly or indirectly cause alteration in the character or use of historic properties, if such properties exist. The area of potential effect is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking" (36 CFR § 800.8 (d)).

**Consulting Parties** - The following have consultative roles in the Section 106 process: Advisory Council on Historic Preservation (ACHP)(if historic properties may be adversely affected or other circumstances warrant its participation); State Historic Preservation Officer (SHPO); Tribal Historic Preservation Officer (where an Indian tribe has assumed the functions of the SHPO on tribal lands); Indian tribes and Native Hawaiian organizations; representatives of local governments; other interested individuals or organizations; and, the public.

**Consulting** - Consultation means the process of seeking, discussing, and considering the views of other participants, and where feasible, seeking agreement with them regarding matters arising in the Section 106 process.

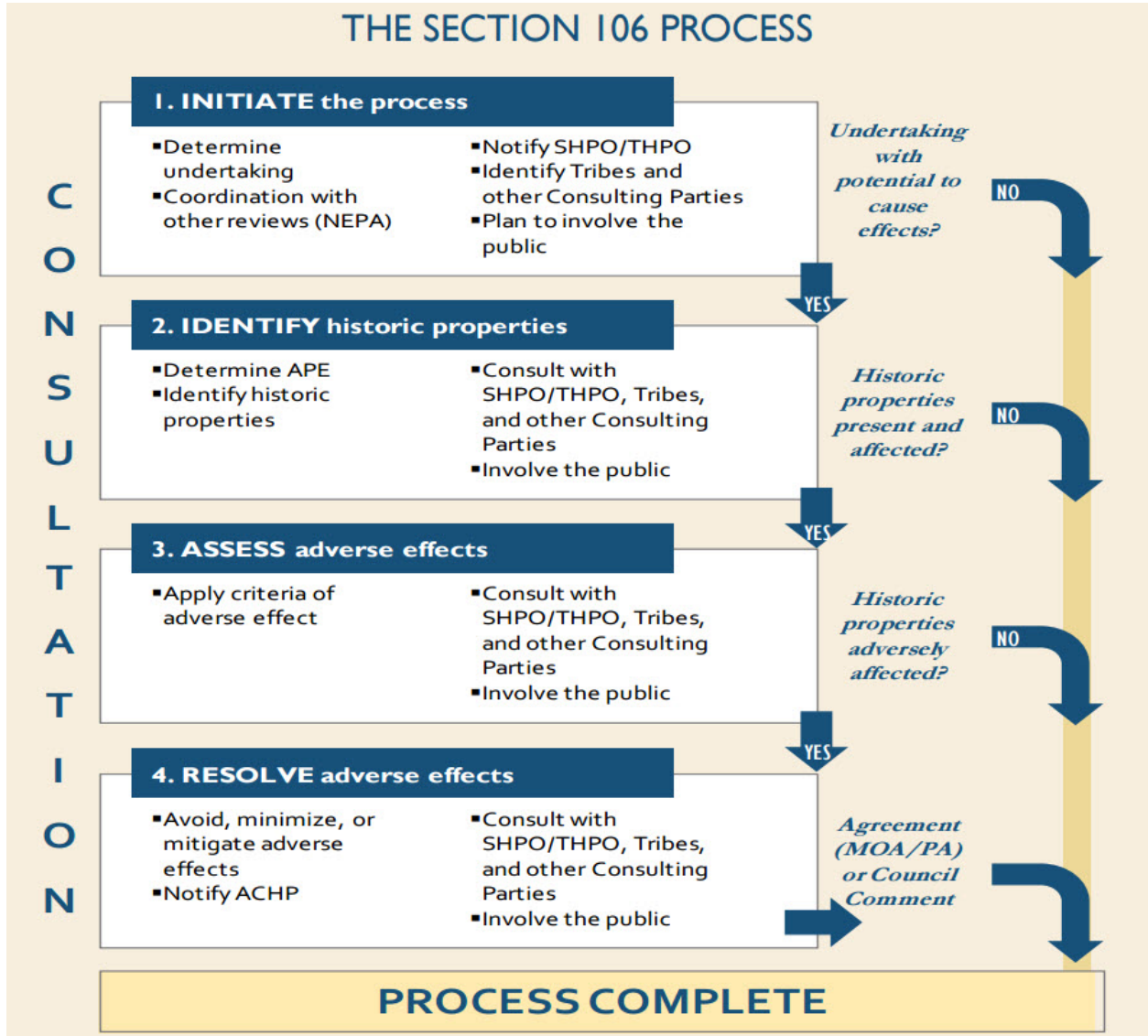
**Indian Tribe** - An Indian tribe "means an Indian tribe, band, nation, or other organized group or community, including a Native village, Regional Corporation or Village Corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602), which is eligible for the special programs and services provided by the United States to Indians because of their status as Indians" (U.S.C. 470w). As of July 2015 there were 567 federally recognized tribes; the listing can be found on <http://www.bia.gov/WhoWeAre/BIA/OIS/TribalGovernmentServices/TribalDirectory/index.htm>.

**State Historic Preservation Officer** - The State Historic Preservation Officer means the official appointed or designated pursuant to section 101(b)(1) of the act [NHPA] to administer the state historic preservation program or a representative designated to act for the State Historic Preservation Officer.

**Tribal Historic Preservation Officer** - The Tribal Historic Preservation Officer (THPO) means the tribal official appointed by the tribe's chief governing authority or designated by a tribal ordinance or preservation program who has assumed the responsibilities of the SHPO for purposes of section 106 compliance on tribal lands in accordance with section 101(d)(2) of the act [NHPA].

**Undertaking** - An undertaking is defined as "a project activity or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval" (36 CFR § 800.16(y)). Accordingly, the Agency determined that providing financial assistance under its multiple programs is an undertaking in accordance with the ACHP's regulations. For clarity and consistency throughout this exhibit undertakings as defined in this section will be referred to as proposals.

The goal of the Section 106 process is to "identify historic properties potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties." The Section 106 review process, as demonstrated in the graphic ("*NEPA and NHPA - A Handbook for Integrating NEPA and Section 106*", Council on Environmental Quality and Advisory Council on Historic Preservation, March 2013, page 8.) below, therefore offers a structured identification and evaluation process that will contribute to identifying and assessing effects not only to historic properties but cultural resources as well.



To fully support the evaluation and documentation of any findings of effect on historic properties, it is necessary to **identify** properties within the APE that are listed in or eligible for listing in the [National Register of Historic Places](#). Applicants should contact the SHPO and/or THPO (and other parties, such as tribes, as appropriate) to seek and review archival information, determine if field investigations and surveys are necessary, and for assistance in identifying issues relating to the proposal's potential effects on historic properties and cultural resources.

Applicants have been delegated the authority to initiate consultation on the Agency's behalf (Subpart 1970-H, Exhibit H-3). Note that specific archival or locational information may have confidentiality concerns, if so the information may not be released to applicants but may be released to the Agency environmental or historic preservation staff. If the SHPO/THPO is unable to assist, it may be necessary for the applicant depending the needs of the proposal to retain an archeological or architectural professional, who meets the Secretary of the Interior's [Professional Qualification Standards](#) to perform the identification efforts.

If a SHPO/THPO recommends that applicants perform an archeological or architectural field survey during the identification process, the basis for such recommendations should be presented in writing. Demonstration that a survey is not necessary falls to the Agency's environmental or historic preservation staff. Typically, the Agency will not require such a survey as a condition for financial assistance or other approvals in the absence of adequate justification or evidence from the SHPO/THPO or other sources. If an archeological field survey is necessary, please note that some states may require an archeological permit to conduct invasive or excavation work on private lands in those states. This is also applicable for archeological field surveys performed on state or federally managed lands.

After the identification process has concluded and if historic properties (or cultural resources as appropriate) have been identified, the next step in the process is to evaluate and determine the effects of the proposal on those properties or resources. The results or findings of effect for the identification and evaluation process include:

- **no historic properties present**, or
- **historic properties are present but the proposal will have no effect upon them**, or
- **historic properties are affected.**

The latter finding or determination will require that the criteria of adverse effects be applied on the identified historic properties (see 36 CFR § 800.5, Assessment of adverse effects). Upon completion of the assessment of adverse effects, the findings may be "**no adverse effect**" or that there is an "**adverse effect.**" If there is an adverse effect, there is a process under the Section 106 regulations for resolving such effects (see 36 CFR § 800.6, Resolution of adverse effects). The Agency will lead this resolution process.

The above paragraphs outline the potential for an extensive level of effort in identifying and evaluating the effects of the proposal's potential to affect historic properties or cultural resources.

As noted previously, Agency environmental or historic preservation staff are available, as needed, to guide and assist applicants in all stages of this process; in fact under the Section 106 regulations the Agency is legally obligated to fulfill the Section 106 requirements and to assert the appropriate findings to the consulting parties so ongoing communication with the Agency is crucial at this stage of the process.

Once the identification process is complete and findings of effects have been determined, according to the Section 106 regulations, the SHPO/THPO, or the ACHP if it has entered the Section 106 process, has 30 days to respond to the Agency's adequately documented finding (see 36 CFR § 800.11, Documentation standards). If the SHPO/THPO, or ACHP, if it has entered the Section 106 process, does not object within 30 days of receipt of the finding, the Agency's responsibilities under Section 106 are fulfilled. If there are objections to the finding, all parties must engage in further consultation until there is a resolution.

Applicants are strongly advised to avoid adverse effects to any historic property prior to the completion of the Section 106 or environmental review process; such actions may result in the rejection of applications requesting financial assistance. When a historic property is destroyed or irreparably harmed with the express purpose of circumventing or preordaining the outcome of a Section 106 review (e.g., demolition or removal of all or part of the property), this is termed "anticipatory demolition"(16 U.S.C. § 470h-2(k) (1994)). The Agency is required to withhold any financial assistance until such time that, in consultation with the ACHP, it is determined and documented that "circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant."

### 3.8.2 Tribal Consultation

The NHPA and Section 106 regulations establish that Indian tribes and Native Hawaiian organizations are one of the parties that have a consultative role in the Section 106 process for all Agency proposals/undertakings (whether on or off tribal lands). The regulations also specifically address the importance of "properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria", and the requirement of federal agencies to consult with tribes when such properties may be affected by the proposal. These provisions are reinforced and complemented by related federal statutes and regulations and Executive Orders (refer to Subpart 1970-H). Fundamental to tribal consultation is the fact that tribes are sovereign Nations and thus consultation is on a government-to-government basis.

Under the Section 106 process, the Agency has a legal obligation to consult directly with tribes on a government-to-government basis; however, in order to facilitate the early involvement of tribes, the Agency may support applicants working directly with Indian tribes, where tribes consent, to initiate the Section 106 process (refer to 1970, Subpart H or contact the Agency's environmental or historic preservation staff for any specific or state implemented protocols).

Another important consideration in tribal consultation is that Agencies (and applicants) make "reasonable and good faith efforts" (see 36 CFR § 800.2(c)(2)(ii)(A)) to identify all tribes that may have an interest in the proposal's APE, even though they may not currently inhabit the area, and may in fact be located quite distant from the area affected by the proposal. Early identification of any and all areas of tribal interest is crucial.

It may be a challenge to determine tribal areas of interest. There are several datasets available to assist in identifying areas of tribal interest; they include the U.S. Department of Housing and Urban Development's [Tribal Directory Assessment Tool](#) (this tool is limited and should not be considered a definitive dataset but is useful in starting the identification process) and for telecommunication tower proposals, the Federal Communication Commission's [Tower Construction Notification System](#). Other datasets may be available from SHPO offices or individual tribal websites. In addition, the Agency maintains Native American Coordinators in every State Office that has a tribe within their jurisdiction; these staff members and Agency environmental or historic preservation staff may be helpful in identifying tribal areas of interest.

### 3.8.3 Key Information for the EA

The EA should include:

- a. A clear description of the applicant's proposal and a delineation of the APE;
- b. A description of the methods used to identify historic properties and cultural resources within the APE; if surveys were conducted, include the appropriate citations and incorporate pertinent information by reference, but consult with Agency environmental or historic preservation staff as to the necessity of including survey reports with the EA;
- c. If there is an adverse effect to a historic property or cultural resource, alternatives that were considered that would avoid, minimize, or mitigate the adverse effect to the historic property or cultural resource;



- d. Documentation of consultation and findings with the SHPO, THPO and other consulting parties; the Agency will, as needed, assist applicants in SHPO and tribal consultation;
- e. The status of any Memoranda of Agreement or Programmatic Agreements (Note: all Memoranda of Agreement and Programmatic Agreements must be reviewed and executed at the National Office level); and
- f. If necessary, any mitigation measures.

#### 3.8.4 Suggested Information Sources

- a. Agency Federal Preservation Officer and preservation staff; Agency environmental staff, and Agency Native American Coordinators;
- b. The National Park Service historic properties [website](#) has several links to pertinent information, including the [National Register of Historic Places](#), [Native American Graves Protection and Repatriation Act](#), and [National Historic Landmarks](#);
- c. The Advisory Council on Historic Preservation (ACHP) [website](#) provides [links](#) to the Section 106 procedures and directories of the SHPO/THPOs, among others;
- d. [State Historic Preservation Office](#) and [Tribal Historic Preservation Office](#) websites;
- e. [State or local historical or archaeological societies](#);
- f. U.S. Department of Housing and Urban Development's [Tribal Directory Assessment Tool](#); and
- g. Federal Communication Commission's [Tower Construction Notification System](#).

### 3.9 Aesthetics

#### 3.9.1 Introduction

As development in rural areas increases in scope and complexity, aesthetic or visual impacts may be a concern for the public. In many instances, landscapes that have remained undisturbed are now being considered for development. Rapid suburban or "ex-urban" residential development also can place homes and properties and proposed utility or community facility projects in close proximity to each other.

Additional consideration should be given to proposals near visually sensitive areas or areas of high scenic value (e.g. designated wilderness areas, parks, recreation areas, historic sites, wild/scenic rivers, etc.; see also Section 3.2.3, Formally Classified Lands). If visual impacts are identified and avoidance of the impacted area is not feasible, efforts should be made to design, construct, and operate the proposal in such a way that aesthetic impacts are minimized.

The visual quality of an area may be affected by the introduction of new buildings or structures, especially those that cause "skylining," i.e., to outline something against the sky, or by an activity that disrupts an otherwise undisturbed viewscape or is juxtaposed on a culturally significant or sacred landscape feature. As with the overall environmental analysis, applicants should tailor the visual assessment to the scope of the proposal; sometimes a simple line-of-sight profile may be sufficient.

### 3.9.2 Key Information for the EA

Identify:

- a. Visually sensitive areas or landscape features that are in the vicinity of the proposal;
- b. Extent to which an area would be visually impacted by the proposal, considering structure heights, viewing angles, and the degree of screening between the project and the sensitive area or feature;
- c. Potential mitigation measures. These could include screening vegetative zones around the proposed facilities, paint colors or other building materials that blend in with the surrounding landscape or other buildings, or re-location/re-orientation to take advantage of natural topography; and
- d. If necessary, any mitigation measures.

### 3.9.3 Suggested Information Sources

- a. [State Historic Preservation Offices/Tribal Historic Preservation Offices](#);
- b. [Federal or State land management agencies](#);
- c. Bureau of Land Management's [Visual Resource Management Program](#);
- d. [State and local park authorities](#); and
- e. Local planning/zoning agencies.

3.10 Air Quality (see also 7 CFR 1970, Subpart O, Exhibit O-3)

#### 3.10.1 Introduction

Potential air quality effects can be short-term (construction-related) or long-term (facility emissions, increased traffic). Under the Clean Air Act, USEPA was required to set National Ambient Air Quality Standards (NAAQS) for "criteria" pollutants (ozone, particulate matter, carbon monoxide, nitrogen oxides, sulfur dioxide, and lead).

In addition, USEPA is responsible for designating areas as meeting (attaining) or not meeting (non-attainment) the NAAQS. States or eligible tribes typically provide the framework for regulating air quality within each state or tribal area and are required to develop plans to maintain and attain the NAAQS. These plans are called State Implementation Plans (SIP); SIPs are submitted to USEPA for approval.

In accordance with the Clean Air Act, Section 176(c)(1), the Agency is responsible for ensuring that their actions conform to applicable implementation plans for achieving and maintaining NAAQS. In order to conform with the applicable implementation plan, the proposal must not contribute to new violations of standards for ambient air quality, increase the frequency or severity of existing violations, or delay timely attainment of standards in the area affected by the proposal.

Applicants are responsible for contacting their respective state air quality agencies to determine whether their proposal will comply with or interfere with attainment or maintenance of the NAAQS and the state's SIP. However, the Agency must make a determination that Agency actions conform to the SIP. Compliance with general conformity determinations is outlined in [40 CFR part 93, Subpart B](#). If the proposal is located in a non-attainment or maintenance area, and emissions of criteria pollutants would exceed *de minimis* levels, applicants must submit an application to the state air quality agency for permits to construct a new facility or to modify an existing facility.

Air quality regulations and determining the proposal's effect on air quality standards is a complex regulatory area; if the proposal requires in-depth analyses contact the Agency's environmental staff for guidance and assistance.

If appropriate and in addition to air emissions, applicants should also consider the offsite migration of odors.

### 3.10.2 Key Information for the EA

Identify:

- a. If the proposal is located in a designated nonattainment or maintenance area, it may require a conformity evaluation in accordance with the applicable implementation plan;

- b. If the above applies, describe the ambient or seasonal meteorological conditions to the extent that they influence dispersal or fate of emissions, and the type and levels of pollutant emissions resulting from construction and operation of the facility; for more complex proposals, air modeling may be required;
- c. Any required permits and the status or result of associated processes, hearings and agency decisions for issuance;
- d. Anticipated effects (including duration) on air quality from construction activities, especially if the appropriate enforcement agency has not provided an exemption or project review;
- e. Any special conditions identified in permits required as mitigation for emissions;
- f. Sources of odors and mitigation measures necessary to minimize off-site migration of odors; and
- g. If necessary, any mitigation measures.

### 3.10.3 Suggested Information Sources

- a. [USEPA's air quality overview](#) and [Plain English Guide to the Clean Air Act](#);
- b. General Conformity Determinations - [40 CFR part 93, Subpart B](#);
- c. [Clean Air Act permitting requirements](#); and
- d. [State and Local Air Pollution Program Administrators](#).
- e. USEPA's [Greenbook for air quality classifications](#).

### 3.11 Socio-Economic Impact Assessment/Environmental Justice (See also 7 CFR 1970, Subpart E)

#### 3.11.1 Introduction

The information for social impact assessment presented in this section may be challenging to evaluate for smaller, less-complex proposals, therefore it is designed and relevant for the more complex and significant proposals considered for financial assistance. The analysis should be kept as simple as is necessary. The succeeding text in this section will describe a fairly detailed process; this can be scaled back to fit the proposal's needs.

The core of the Agency's mission is to support sound development of rural communities and provide economic opportunities for rural residents. This development also has the potential to affect, either positively or negatively, the broader socioeconomic status of the areas being served. Social impact assessment, often lumped under or equated with "socioeconomics," has often focused on population or income changes, or effects to local institutions such as schools, health care, or housing. While these are important and must be considered, other factors also need to be addressed.

Examples include community cohesion or growth, tax revenues and property values, displacement of people or land, transportation patterns, health and public safety, or public services or facilities.

In addition, applicants need to determine if their proposal has or may have disproportionately high and adverse human health or environmental effects on minority and low-income populations. [E.O. 12898](#), *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, and USDA Departmental Regulation [DR 5600-2](#), *Environmental Justice* require the consideration of environmental justice issues during the Agency's environmental review process. In addition, environmental justice is linked with coordination and consultation with Federally- or State-recognized tribes. Tribal consultation requirements and resources are included in section 3.8.2, Tribal Consultation.

### 3.11.2 Key Information for the EA

Identify:

- a. How the proposal would change people's lives beyond the immediate provision of a service (electricity, water, telecommunications, public services, etc.) or facility (housing, community facility, business, etc.);
- b. Describe how the proposal or the area affected by the proposal is situated in proximity to commercial/residential areas, public facilities, or key transportation facilities. How would the proposal change traffic patterns or intensity? Would there be an increased risk for accidents? Would there be more noise or other disruption?
- c. Population numbers and how they are projected to change in magnitude or distribution;
- d. Consider how individual businesses and business districts might be affected in terms of the level of commerce;
- e. The presence and distribution of any minority and low-income populations in the study area (the Agency will complete [RD Form 2006-38](#), but it should be included as an attachment to the EA); if such populations are present, describe their opportunity to participate in the environmental review process, particularly if there is a potential for a disproportionate adverse effect, and any extra outreach measures such as providing public notices in specific locations or in additional languages; and
- f. If necessary, any mitigation measures that would reduce adverse human health or environmental effects to minority and low-income populations.

### 3.11.3 Suggested Information Sources

#### **3.11.3.1 Social Analysis**

- a. [U.S. Department of Commerce, Census Bureau](#);
- b. [State Census Data Centers](#) or social service agencies;
- c. Social Impact Assessment (SIA) Hub  
(<http://www.socialimpactassessment.com/>)
- d. Agency civil rights coordinators.

#### 3.11.3.2 Environmental Justice

- a. [USEPA EJSCREEN: Environmental Justice Screening and Mapping Tool](#);  
and
- b. [USEPA resource directory of EJ tools](#).

### 3.12 Miscellaneous Issues

#### 3.12.1 Noise (See also 7 CFR 1970 Subpart O)

The proximity of the proposal's construction activities and operations to other land uses can produce sounds that could create significant noise impacts for proximal sensitive sound receptors, such as schools, hospitals, or residences, etc. Noise is defined as any loud, discordant or disagreeable sound or sounds. More commonly, in an environmental context, noise is defined simply as unwanted sound. Certain activities inherently produce sound levels or sound characteristics that have the potential to create noise. The sound generated by proposed or existing facilities may become noise due to land use surrounding the facility. When lands adjoining a proposed or existing facility contain residential, commercial, institutional, or recreational uses that are proximal to the facility, noise is likely to be a matter of concern to residents or users of adjacent lands or facilities.

##### 3.12.1.1 Key Information for the EA

Identify:

- a. The ambient noise environment, the distance of the proposal from noise sensitive receptors, proposed hours of operation, and any applicable noise regulations or ordinances that were considered;
- b. Noise sources during construction and operation and the projected levels (intensity, duration, periodization) of noise generated; and
- c. If necessary, mitigation measures to reduce sound levels to noise sensitive receptors.

3.12.1.2 Suggested Information Sources

- a. [USEPA, various resources](#);
- b. [U.S. Department of Housing and Urban Development](#), HUD Noise Guidebook, Office of Community and Development, Washington D.C.; and
- c. [U.S. Federal Aviation Administration, Airport Noise](#).

3.12.2 Transportation (See also 7 CFR 1970 Subpart O)

3.12.2.1 Introduction

Transportation impacts include those from transport to a site, on-site, and from a site, when such activities are reasonably construed as part of the proposal or any alternative. Other impacts to consider are the transportation of materials (hazardous materials) to or from a proposal's site either during construction or operation of a facility. Also evaluate any possible changes in transportation patterns or intensity, and how they may contribute to noise patterns or present new or additional risks of accidents.

3.12.2.2 Key Information for the EA

Identify:

- a. The existing facilities and routes (road, rail, air) that could be affected by the proposal; consider the need for road realignments, signalization, increased delay times, etc., or if the proposal or components need to be re-located to avoid an impact; indicate if any transportation studies were conducted and summarize the results;
- b. Coordination conducted with federal and state transportation agencies, and any permissions/authorizations required/obtained or measures taken to accommodate agency concerns;
- c. Movement of products, raw material or waste in and out of a proposed facility and how such movements may affect congestion, noise, odors, or dust;
- d. Impacts of the proposal related to transportation patterns, circulation, ingress and egress; and
- e. If necessary, any mitigation measures.

### 3.12.2.3 Suggested Information Sources

- a. U. S. Department of Transportation (USDOT), [Federal Highway Administration](#); [information on highway noise barriers](#) and [wildlife](#).
- b. [State transportation agencies](#);
- c. Transportation related State Web Sites of State Partners;
- d. [Federal Aviation Administration](#) (FAA);
- e. For any military facilities, contact the facility's Public Affairs Office; and
- f. State and local planning or environmental agencies;

## 3.13 Human Health and Safety

### 3.13.1 Introduction

It is important to evaluate whether the proposal might result in an adverse effect on public health and safety (this is an indicator of significance per 40 CFR Part 1508.27). This section addresses potential impacts from other media or resources not previously described or disclosed elsewhere in the EA.

### 3.13.2 Electromagnetic Fields and Interference

While electromagnetic fields (EMF) are associated with any electric device, e.g., power lines, electric wiring, electric equipment, or cell and microwave towers, the focus of this section is for power-frequencies EMF, i.e., EMF associated with the generation, transmission, and use of electric power. For proposed overhead high-voltage electric transmission lines, substations, and cellular towers, the EA should address potential effects or interference due to the EMFs created by charged conductors or transmitters in communication systems. These effects may include interference to radio and television reception, as well as direct effects to humans that may be in the immediate vicinity of a power line. Linkages between EMFs and human health are generally considered weak, but the current state of the science on potential effects should be summarized (consult the Agency for assistance) in an effort to acknowledge the issue, and to describe the specific ameliorating factors (e.g., topography, proximity to potential receptors, or design characteristics) associated with a given proposal.



3.13.2.1 Key Information for the EA

Identify:

- a. Any design parameters that would limit and ameliorate receptor exposure to EMFs;
- b. If any state-specific design or siting requirements exist regarding EMF, and, if so, how they are incorporated into project planning;
- c. How EMF considerations were included in the siting process to limit or avoid exposure to humans or sensitive receptors such as schools; and
- d. If necessary, any mitigation measures.

3.13.2.2 Suggested Information Sources

- a. [NIH, National Institute of Environmental Health Sciences](#);
- b. [Electric Power Research Institute](#);
- c. [Centers for Disease Control and Prevention](#); and
- d. [USEPA](#).

3.13.3 Environmental Risk Management (see also 7 CFR 1970 Subpart J)

This section discusses the affect hazardous materials, substances or wastes that may be released at, generated by, or required for the operation of a proposed facility may have in the context of a real estate transaction. In addition, the environmental condition of a property and any proposal's management and operation activities that use or create these materials or wastes need to be evaluated to determine and manage risks to the environment and people. These risks include the presence of lead-based paints, asbestos, or mold.

7 CFR 1970, Subpart J defines an appropriate process for evaluating environmental risk, but the implementation of that process is left to each program to define its desired risk tolerance with regard to funding decisions on specific proposals. Applicants should consult with Agency environmental and program staff for guidance on the particular process or requirements for the applicable program, and how it should be documented in the EA.

In order to determine the environmental condition of a parcel of real estate, the applicant may be responsible for completing the ASTM E1528-14, *Standard Practice for Limited Environmental Due Diligence: Transaction Screen Process*; ASTM E1527-13, *Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process*; or ASTM E2247-08, *Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessments for Forestland or Rural Property*. If the proposal includes an existing facility, the applicant may be responsible for completing the ASTM E2107, *Standard Practice for Environmental Regulatory Compliance Audits*.

The above ASTM standards are designed to determine whether there are any recognized environmental conditions present on property(ies) associated with the proposal. A recognized environmental condition is defined as "the presence or likely presence of any hazardous substances or petroleum products in, on, or at a property: (1) due to release to the environment; (2) under conditions indicative of a release to the environment; or (3) under conditions that pose a material threat of a future release to the environment." This information informs Agency due diligence and decision-making in terms of property or facility acquisition, as well as insuring applicant safety.

#### 3.13.3.1 Key Information for the EA

Identify:

- a. Any recognized environmental conditions identified in the appropriate ASTM standard listed in section 3.13.3;
- b. Presence of lead paint, asbestos or mold;
- c. Use, storage, release and/or disposal of toxic materials;
- d. Any USEPA or state Superfund site or priority clean up site on or near the site of the proposal;
- e. Whether applicant/facility is under any corrective action or regulatory remedial action plan;
- f. Status of any violations and cleanup;
- g. Presence of above-ground or underground storage tanks;
- h. Whether the operation of facility could result in accidental spills of hazardous or toxic substances or result in hazardous air or water emissions; and
- i. If necessary, any mitigation measures.

#### 3.13.3.2 Suggested Information Sources

- a. USEPA's Offices or Programs covering asbestos, lead, mold, wastes, indoor air quality, underground storage tanks, and Superfund (see links on the main USEPA [website](#));
- b. [USEPA Envirofacts Data Warehouse](#); and
- c. [Occupational Safety & Health Administration's Indoor Air Quality](#) information.
- d. ASTM ([www.astm.org](http://www.astm.org)).

3.14 Corridor Analysis (See also Macrocorridor Guidance, 7 CFR 1970 Subpart O)

### 3.14.1 Introduction and Unique Issues

Linear infrastructure such as electric transmission or distribution lines, telecommunication cables, or water or waste water pipelines present unique considerations for impact assessments and thus require more specialized assessment techniques. Issues may arise that are not typically encountered, including:

- The proposal's area of effect can be more extensive;
- For overhead lines, visual impacts could become more important;
- The availability of existing, acceptable utility corridors is decreasing while infrastructure needs are increasing;
- There may be a greater need for land acquisition; and
- The need to include a larger number of stakeholders in the siting and decision-making processes.

### 3.14.2 Key Information for the EA/ Routing Techniques

Fundamentally, routing of linear infrastructure is an optimization process; areas of opportunity (most desirable for routing) and constraint (least desirable) are identified and then typically a computer or GIS-based algorithm finds a route that maximizes the opportunities and minimizes the constraints. Several variables representing important environmental/social, engineering, cost or other criteria are used to define the areas of opportunity and constraint. The degree of complexity for evaluation techniques should correspond to the complexity or controversy of the proposal. A relatively simple proposal may require only a qualitative assessment and "expert judgment", using gross or high-level data particularly if, for example, water or waste water distribution or collection networks are designed to serve existing populations. As the proposal's scope or complexity increases: data needs increase; the evaluation criteria may require weighting and/or ranking to better represent stakeholder views; several increasingly detailed/smaller-scale levels of analysis may be required; and quantitative assessment is used to make the analysis more robust and defensible. The analysis should be kept as simple as is necessary and this will often suffice for EA-level proposals. Note that the succeeding text in this section will describe a fairly detailed process that is particularly appropriate for high-voltage transmission lines; this can be scaled back to fit the proposal's needs.

The preceding is a somewhat oversimplified description of what can be a complex and controversial process. Agency environmental staff are available, as needed, to discuss this process for a particular proposal. Consideration of these questions may assist the process:

- a. What stakeholders should be involved?
- b. Are there state and/or local permitting/routing procedures that must be followed?
- c. Clearly define the endpoints; are they fixed, or can they be varied somewhat?
- d. Where are existing corridors (e.g., utilities, roads) and can they be utilized?
- e. What resources are available to define or describe land use/land cover, ownership, topography, resources of concern, etc.?
- f. Are there standard "off-the-shelf" optimization programs available, or will they need to be developed?
- g. What level of visual impact analysis will be necessary? Are there areas or landscape features of unique scenic/cultural value in the area affected by the proposal, and how would the structures "fit into" the landscape (degree of contrast)?

The following process is suggested to guide your corridor analysis:

1. Map the area; preferably with digital resources. Use all available resources including topographic maps, aerial photography or other imagery, and GIS databases. Identify landowners and include parcel boundaries on the map.
2. Make initial contact with all landowners, possibly via letters that explain the proposal and how it may affect their property.
3. Meet with stakeholders, including landowners or representatives thereof, other agencies, local governments, etc. The initial meeting should present the proposal, explain the process that will be used to reach a route decision, describe the roles of the various interested parties, and establish ground rules and planning objectives as the siting process proceeds.
4. Collectively identify the "obvious" areas of opportunity and constraint (e.g., wildlife refuges, designated historic landmarks or properties, developed areas, airports, undeveloped land, existing corridors, etc.). If it becomes difficult to categorize areas as either/or, a scoring or ranking system may need to be developed.
5. Further refine opportunity and constraint areas, using a finer level of ranking/scoring as necessary.
6. Develop an initial set of potential routes, or macro-corridors.
7. Continue to refine the initial routes, based on additional information, ground truthing, stakeholder input, legal/regulatory considerations, and cost/schedules.
8. Perform detailed evaluation on at least 2 corridors or route alternatives. This level of analysis could produce for planning purposes an actual centerline indicating the (relatively) precise location of the line.

9. Recommend a preferred route.
10. Thoroughly document the process. Clearly describe how data was collected, how selection criteria were identified, the rationale behind any ranking/weighting, and generally how the process narrowed the selection of a preferred route.

### 3.14.3 Suggested Information Sources

- a. Transmission Line Routing Seminar (Manual), Burns & McDonnell, September 1991;
- b. [EPRI-GTC Overhead Electric Transmission Line Siting Methodology](#). Electric Power Research Institute, Palo Alto, CA, and Georgia Transmission Corporation, Tucker, GA: 2006; and
- c. Rural Utilities Service Macrocorridor Guidance (Subpart O)

## 4.0 AGENCY CORRESPONDENCE

### 4.1 Introduction

Coordination and consultation with appropriate environmental regulatory or natural resource agencies (at the federal, state, and local levels) is necessary for information gathering, to support impact assessment conclusions, and in some cases to meet statutory requirements. While web-based resources are important in this regard, project-specific data or regulatory concurrence must be obtained and, in some cases, documented in writing. Agencies are typically given 30 days to respond to a written request for comments, with reasonable time extensions if necessary. If no written response is received within the requested time period, the applicant should re-contact the agency by phone/e-mail regarding its intention to comment. If time is of the essence, it may be prudent to confirm the agency's receipt of the initial request. If necessary, contact Agency environmental staff for assistance.

Relevant agency correspondence must be included in the EA. It is recognized that neither applicants nor the Agency can force an agency to respond and that unreasonable requests for time extensions may unduly delay the proposal. It is not intended that an EA be stymied under such circumstances. When reasonable efforts do not result in an agency response, this should be documented in the EA. Agency environmental staff may be able to assist the applicant in this effort, when necessary.

Tribal consultation must be conducted by the Agency, and while applicants can make initial contact with the USFWS and SHPOs, the Agency must make determinations of effect under ESA Section 7 and findings under NHPA S. 106, respectively. Agency coordination requirements further reinforce the need for applicants and their consultants to maintain close and timely coordination with Agency environmental staff during project planning and EA preparation.

#### 4.2 Addressing Agency Comments

If agencies express concerns about the proposal, recommend further studies, or suggest mitigation measures to offset environmental impacts, the applicant must consult with Agency environmental staff. It is essential that the applicant document in the EA how such comments, recommendations, or suggestions have been resolved.

Agencies from whom comments are solicited and/or whose concurrence is required are included in the resource-specific discussions in Section 3.0.

#### 4.3 Sample Letters

The following are sample letters to federal, state, and local agencies that are typically contacted during the preparation of an EA. Selection should be based on an agency's special environmental expertise or likely interest in or jurisdiction over important resources.

These are intended to be examples only; individual letters should be tailored to the specific proposal and the issues involved. Keep the letter as brief as is necessary and focus on key issues and the information being requested. The amount of proposal-related information that the applicant includes with agency letters may vary somewhat but should at least include a succinct project description and a USGS topographic or other suitable (but clear!) map identifying the proposal's location and features. Agency environmental staff can provide the appropriate agency names and addresses or make them available through the Agency's Environmental Resources Directory. "Form letters" can be used to streamline preparation, but be sure that the salutation, information request, and any other agency-specific information is correct. Letters should always state at the outset that the applicant is requesting financial assistance from the Agency.

4.3(a) Natural Resources Conservation Service (local or field office) Letter Concerning Important Farmland

See section 3.2.2 for the process of submitting NRCS Form AD-1006 with this request; for copies of the form see -

[http://www.nrcs.usda.gov/programs/fppa/pdf\\_files/AD1006.PDF](http://www.nrcs.usda.gov/programs/fppa/pdf_files/AD1006.PDF)

The (*Applicant's name*) is in the process of performing an environmental review pursuant to the National Environmental Policy Act for the USDA, Rural Development in order that it may assess the environmental impacts of (*description of the project*)<sup>1</sup> in (*county*), (*State*).

The project is being proposed to (*give a brief statement supporting project need*). Enclosed is a U.S. Geological Survey map(s) that depicts the proposal's construction activities and a description of the work involved. We are requesting information on the possible effects of the proposal on important farmland and any recommendations you have to minimize or avoid these effects. We also seek your assessment of the compatibility of the proposal with state and local government or any private programs and policies to protect important farmland. We would appreciate a response within 30 days. If you need any further information or wish to discuss our project, please contact (*name*) at (*telephone number*).

<sup>1</sup>Applicants can also attach a complete proposal description to the letter. In order for NRCS to provide appropriate proposal reviews, the proposal descriptions submitted need to be explicit in the types and locations of construction activities that are being proposed.

**4.3(b) Letter to Federal Land Manager (e.g., BLM, Forest Service, National Park Service)**

The (*Applicant's name*) is in the process of performing an environmental review pursuant to the National Environmental Policy Act for the USDA, Rural Development in order that it may assess the environmental impacts of (*description of the project*)<sup>1</sup> in (*county*), (*State*). The project is being proposed to (*give a brief statement supporting project need*). Enclosed is a U.S. Geological Survey map(s) that depicts the proposal's construction activities and a description of the work involved. As is shown on the enclosed map, some of the construction may take place in the (*name of formally classified land unit*). Although the submittal of a special use permit application at this time would be premature, we are seeking information on potential environmental effects from the project as an input to the Rural Development's decision-making process. We request your review of this project for potential impacts to officially designated areas within the (*name of land unit*), and any recommendations you may have to mitigate or avoid these effects.

We would also appreciate receiving any information regarding additional review requirements that your agency may have. We would appreciate a response within 30 days. If you need any further information or wish to discuss the project, please contact (name) at (telephone number). Applicants can also attach a complete proposal description to the letter. In order for the land managing agency to provide appropriate proposal reviews, the proposal descriptions submitted need to be explicit in the types and locations of construction activities that are being proposed.

**4.3(c) Template Letter and Consistency Determination (CD) Outline for Submittal Under CZMA**

[Date]

[Name and address of the State agency responsible for the Coastal Management Program (CMP)]

Attn: [name of State CMP's contact person]

Dear [name of State CMP's contact person]:

This document presents the State of [State's name] with the USDA [Rural Housing Service/Rural Utilities Service, Rural Business and Cooperative Service]'s, hereafter referred to as the Agency, Consistency Determination under Coastal Zone Management Act (CZMA) Section 307 and Title 15 CFR Part 930, Subpart C, for implementation of our applicant's proposal to [provide a brief description of the project] located at [provide the location of the project]. Our applicant, [name of applicant], has requested [direct loan/guaranteed loan/grant] funds for the proposed project and has prepared and provided environmental documentation to allow the Agency to evaluate the potential environmental impacts from the proposed project in accordance with the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S. Code 4321-4347).

Under the proposed action, the applicant would [provide a detailed description of the project, including estimated construction start dates and duration]. [Provide a statement regarding the need/purpose of the project.]

Effects to Resources

The Agency has determined that proposed action would affect the land, water uses, and natural resources of [name of your state] in the following manner:

[Provide summary of effects for all the resources/issues covered in the EA]

Consistency Determination



The [name of your state] Coastal Zone Management Program contains the following applicable enforceable policies:  
[List your state's enforceable policies, as well as who administers them and their purposes. These would most likely be found on your state's CMP website.]

Based upon the following information, data, and analysis, the Agency finds that the proposed project's activities are consistent to the maximum extent practicable with the enforceable policies of the [name of your state]'s Coastal Zone Management Program. The following is a summary of the Agency's analysis supporting this determination:

[Provide a list of the CMP's enforceable policies and the evidence the Agency has supporting the consistency of the project with those individual policies.]

Pursuant to 15 CFR Section 930.41, the [name of your state] Coastal Zone Management Program has 60 days from the receipt of this letter in which to concur with or object to this Consistency Determination, or to request an extension under 15 CFR Section 930.41(b). [Name of your state]'s concurrence will be presumed if its response is not received by the Agency on the 60th day from receipt of this determination. The State's response should be sent to:

[Name, address, and phone number of Agency contact]

If you need additional information, or if you have any questions, please do not hesitate to call me at [your phone number], or email me at [email address]. Thank you very much for your assistance.

Sincerely,

[Name]  
[Title]

Attachments: [list your attachments]

4.3(d) U.S. Fish and Wildlife Service or National Marine Fisheries Service  
Letter Concerning Federally-Listed Species (address to field supervisor of  
FWS Field Office or NMFS Area Office)

The (*Applicant's name*) is in the process of performing an environmental review pursuant to the National Environmental Policy Act for the USDA, Rural Development in order that it may assess the environmental impacts of (*description of the project*)<sup>1</sup> in (*county*), (*State*). The project is being proposed to (*give a brief statement supporting project need*). Enclosed is a U.S. Geological Survey map(s) that depicts the proposal's construction activities and a description of the work involved. To initiate the process, Rural Development has asked us to gather information regarding Federally-listed species, critical habitat, and migratory birds from your office. Rural Development, as the lead Federal agency, is responsible for compliance with Section 7(a)(2) of the Endangered Species Act, and will provide determinations of effect as appropriate during the consultation process. The proposal should not represent a "major construction activity" as defined in 50 CFR 402.02. We request a list of any Federally-listed or proposed threatened or endangered species and designated or proposed critical habitat that may be present in the project area. In addition, please advise us of any present concerns you may have related to possible effects of the project listed above on such species or critical habitat, as well as any other wildlife concerns.

We would appreciate a response within 30 days. If you need any further information or wish to discuss our project, please contact (*name*) at (*telephone number*).

Applicants can also attach a complete proposal description to the letter. In order for the Services to provide appropriate proposal reviews, the proposal descriptions submitted need to be explicit in the types and locations of construction activities that are being proposed.

4.3(e) Letter to State Historic Preservation Office.

The (*applicant's name*) is in the process of performing an environmental review pursuant to the National Environmental Policy Act for the USDA, Rural Development so it may assess the environmental impacts of (*description of the proposal*)<sup>1</sup> in (*county*), (*State*). The project is being proposed to (*give a brief statement supporting project need*). Enclosed is a U.S. Geological Survey map(s) that depicts the proposal's area of potential effect for all construction activities and a description of the work involved<sup>2</sup>.

We are requesting your assistance in identifying historic properties that are listed or eligible for listing on the National Register of Historic Places and that may be affected by the project. Please provide any recommendations you may have to mitigate or avoid these impacts, to properties that may be affected. Rural Development, as the lead Federal agency, is responsible for compliance with Section 106 of the National Historic Preservation Act, and will provide findings of effect as appropriate during the consultation process.

We would appreciate a response within 30 days. If you need any further information or wish to discuss the project, please contact (name) at (telephone number).

\*Applicants can also attach a complete proposal description to the letter. In order for the SHPO to provide appropriate proposal reviews, the proposal descriptions submitted need to be explicit in the types and locations of construction activities that are being proposed.

\* In order to expedite SHPO request for information, applicant should submit maps of an appropriate scale that will show the proposal's area of potential effect. These areas should cover all proposed construction including easements, staging areas, etc... Applicants should consider submitting photographs of any suspected historic properties with letters.

4.3(f) State Natural Resource or Environmental Agency Letter

The (*Applicant's name*) is in the process of performing an environmental review pursuant to the National Environmental Policy Act for the USDA, Rural Development in order that it may access the environmental impacts of (*description of the project*)<sup>1</sup> in (*county*), (*State*). The project is being proposed to (*give a brief statement supporting project need*). Enclosed is a U.S. Geological Survey map(s) that depicts the proposal's construction activities and a description of the work involved.

(*Applicant's name*) requests that your office review the proposal for any State and Federally-listed threatened and endangered species and any other important State natural resources that may occur in the project area. Please provide any recommendations you may have to mitigate or avoid these impacts. We would appreciate a response within 30 days. If you need any further information or wish to discuss the project, please contact (name) at (telephone number).

Applicants can also attach a complete proposal description to the letter. In order for the state agency to provide appropriate proposal reviews, the proposal descriptions submitted need to be explicit in the types and locations of construction activities that are being proposed.

#### 4.3(g) Letters Regarding Floodplains and Wetlands

For floodplains, letters of the same general format as the preceding can be sent to state or local floodplain management agencies/administrators if such agencies/administrators exist. These entities may provide additional guidelines or approval requirements regarding floodplain management or state/local standards. FEMA should be contacted for mapping resources (online), and for letters amending or revising floodplain mapping, but they are not in a position to comment on project-specific or local floodplain impact determinations.

For wetlands, the U.S. Army Corps of Engineers should be contacted for permit-related matters including notification or application for use of permits. The closest District or area office (Regulatory Division) is the appropriate point of contact. State agencies may also have additional permitting requirements.

### 5.0 PUBLIC NOTICES

#### 5.1 Introduction

It is the Agency's responsibility to ensure that all required public notice requirements has been completed prior to making a decision on the approval of each proposal. All notices must be reviewed and approved by the Agency prior to publication. When publishing public notices, the applicant should ensure that the notice has a reasonable likelihood of being seen by potentially-affected or other interested individuals or organizations. Normally, newspaper advertisements (both print and online) are used to notify the public, but other forms of notice may also be prudent depending on the nature of the potential impacts and the intended audience. In addition to newspaper advertisements, the following methods may be appropriate:

- Individual notices mailed to landowners or residents near the proposal area;
- Radio and television announcements;
- Inserts into utility bills;
- Notices posted in areas frequented by the target audience; and
- Announcements at public activities (schools, place of worship, town meeting, etc.).

## 5.2 Procedures for the EA

EAs will require a public notice announcing the availability of the EA for public review and announcing a comment period (template notice at Exhibit F, Attachment 1). Once the EA has been completed and accepted by the Agency as a federal document, the Agency will authorize the applicant to publish a public notice in a newspaper(s) of general circulation in the area where the proposal is located (template letter to applicant at Exhibit F, Attachment 2); any unique public notice requirements will be conveyed to the applicant. The public is to be afforded 14-30 days to submit comments (consult with the Agency environmental staff to determine the appropriate period of time). Notices should direct that comments be provided to the Agency; any comments sent to the applicant should be promptly forwarded to the Agency. The Agency will review and respond to comments received and direct the applicant to make any necessary or appropriate changes to the EA.

A second public notice will be published by the applicant announcing the availability of the Agency's environmental decision (FONSI or preparation of an EIS)(template FONSI at Exhibit F, Attachment 3; template notice at Exhibit F, Attachment 4). Publication authorization and any specific requirements will be provided to the applicant (template letter to applicant at Exhibit F, Attachment 5). There is no public comment period for the FONSI. The notice shall briefly describe the applicant's proposal, reasons why the proposal will not have a significant impact on the human environment, summarize how any outstanding issues or public/agency comments were resolved, including mitigation measures adopted to address any adverse impacts, and include the statement that an EIS will not be prepared. The notice must mention the Agency funding the proposal as well as identify the locations where the public may review the EA and FONSI. Upon request, the Agency or the applicant will make available or provide copies of the EA/FONSI to anyone requesting them in compliance with §1970.14(e). Documents will be provided without charge or at a cost not exceeding reproduction costs.

Newspaper notices should be of reasonable size and prominence and not be placed in the classified section or an obscure portion of the newspaper; it is permissible to place notices in a specific "public notice" section if a newspaper has such a section. If the area has no local newspapers, use those that cover the majority of the service area or the area affected by the proposal. The publication frequency shall be 3 consecutive days for daily newspapers and 2 consecutive weeks in weekly newspapers for the NOA; the FONSI is published only once. Public review and comment dates are computed from the initial publication date of the notice. Proof of publication must be provided to the Agency either as a copy of the advertisement or the publisher's affidavit.

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The EA public notices (NOA and FONSI) should also incorporate as appropriate preliminary and final notice language if there will be impacts to floodplains or wetlands. Language can be obtained from the respective notices attached to Subparts F and G.

**Attachment 1 EA Table of Contents**

- 1.0 Purpose and Need
    - 1.1 Project Description
    - 1.2 Purpose and Need
  
  - 2.0 Alternatives Evaluated Including the Proposed Action
    - 2.1 Proposed Action
    - 2.2 Other Alternatives Evaluated
    - 2.3 No Action Alternative
  
  - 3.0 Affected Environment and Environmental Consequences
    - 3.1 (Resource/Issue being Evaluated)
      - 3.1.1 Affected Environment
      - 3.1.2 Environmental Consequences
      - 3.1.3 Mitigation
    - (Succeeding sections 3.2, 3.3, etc. are then repeated for each resource/issue considered)
  
  - 4.0 Cumulative Effects
  
  - 5.0 Summary of Mitigation
  
  - 6.0 Coordination, Consultation and Correspondence
  
  - 7.0 References
  
  - 8.0 List of Preparers
- Exhibits or Attachments