

PART 1970 - ENVIRONMENTAL

Subpart D - NEPA Environmental Impact Statements

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PART 1970 - ENVIRONMENTAL

Subpart D - NEPA Environmental Impact Statements

§ 1970.151 General.

(a) The purpose of an EIS is to provide a full and fair discussion of significant environmental impacts and to inform the appropriate Agency decision maker and the public of reasonable alternatives to the applicant's proposal, the Agency's proposed action, and any measures that would avoid or minimize adverse impacts.

(b) Agency actions for which an EIS is required include, but are not limited to:

(1) Proposals for which an EA was initially prepared and that may result in significant impacts that cannot be mitigated;

(2) Siting, construction (or expansion), and decommissioning of major treatment, storage, and disposal facilities for hazardous wastes as designated in 40 CFR part 261;

(3) Proposals that change or convert the land use of an area greater than 640 contiguous acres;

(4) New electric generating facilities, other than gas-fired prime movers (gas-fired turbines and gas engines) or renewable systems (solar, wind, geothermal), with a rating greater than 50 average MW, and all new associated electric transmission facilities;

(5) New mining operations when the applicant has effective control (i.e., applicant's dedicated mine or purchase of a substantial portion of the mining equipment); and

(6) Agency proposals for legislation that may have a significant environmental impact.

(c) Failure to achieve compliance with this part will postpone further consideration of the applicant's proposal until the Agency determines that such compliance has been achieved or the applicant withdraws the application. If compliance is not achieved, the Agency will deny the request for financial assistance.

§ 1970.152 EIS funding and professional services.

(a) Funding for EISs. Unless otherwise approved by the Agency, an applicant must fund an EIS and any supplemental documentation prepared in support of an applicant's proposal.

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Environmental Policies
and Procedures

(b) Acquisition of professional services. Applicants shall solicit and procure professional services in accordance with and through the third-party contractor methods specified in 40 CFR 1506.5(c), and in compliance with applicable state or local laws or regulations. Applicants and their officers, employees, or agents shall not engage in contract awards or contract administration if there is a conflict of interest or receipt of gratuities, favors or any form of monetary value from contractors, subcontractors, potential contractors or subcontractors, or other parties performing or to perform work on an EIS. To avoid any conflicts of interest, the Agency is responsible for selecting the EIS contractor and the applicant must not initiate any procurement of professional services to prepare an EIS without prior written approval from the Agency. The Agency reserves the right to consider alternate procurement methods.

(c) EIS scope and content. The Agency will prepare the scope of work for the preparation of the EIS and will be responsible for the scope, content and development of the EIS prepared by the contractor(s) hired or selected by the Agency.

(d) Agreement Outlining Party Roles and Responsibilities. For each EIS, an agreement will be executed by the Agency, the applicant, and each third-party contractor, which describes each party's roles and responsibilities during the EIS process.

(e) Disclosure statement. The Agency will ensure that a disclosure statement is executed by each EIS contractor. The disclosure statement will specify that the contractor has no financial or other interest in the outcome of the proposal.

§ 1970.153 Notice of Intent and scoping.

(a) Notice of Intent. The Agency will publish a Notice of Intent (NOI) in the Federal Register that an EIS will be prepared and, if public scoping meetings are required, the notice will be published at least 14 days prior to the public scoping meeting(s).

(1) The NOI will include a description of the following: the applicant's proposal and possible alternatives; the Agency's scoping process including plans for possible public scoping meetings with time and locations; background information if available; and contact information for Agency staff who can answer questions regarding the proposal and the EIS.

§ 1970.153(a) (Con.)

(2) The applicant must publish a notice similar to the NOI, as directed and approved by the Agency, in one or more newspapers of local circulation, or provide similar information through other distribution methods as approved by the Agency. If public scoping meetings are required, such notices must be published at least 14 days prior to each public scoping meeting.

(b) Scoping. In addition to the Agency and applicant responsibilities for public involvement identified in § 1970.14 and as part of early planning for the proposal, the Agency and the applicant must invite affected Federal, state, and local agencies and tribes to inform them of the proposal and identify the permits and approvals that must be obtained and the administrative procedures that must be followed.

(c) Significant issues. For each scoping meeting held, the Agency will determine, as soon as practicable after the meeting, the significant issues to be analyzed in depth and identify and eliminate from detailed study the issues that are not significant, have been covered by prior environmental review, or are not determined to be reasonable alternatives.

§ 1970.154 Preparation of the EIS.

(a) The EIS must be prepared in accordance with the format outlined at 40 CFR 1502.10.

(b) The EIS must be prepared using an interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts. The disciplines of the preparers must be appropriate to address the potential environmental impacts associated with the proposal. This can be accomplished both in the information collection stage and the analysis stage by communication and coordination with environmental experts such as those at universities; local, state, and Federal agencies; and Indian tribes.

(c) The Agency will file the draft and final EIS with the U. S. Environmental Protection Agency's (EPA) Office of Federal Activities.

(d) The Agency will publish in the Federal Register a Notice of Availability announcing that either the draft or final EIS is available for review and comment. The applicant must concurrently publish a similar announcement using one or more distribution methods as approved by the Agency in accordance with § 1970.14.

RD Instruction 1970-D
§ 1970.154 (Con.)

(e) Minimum public comment time periods are calculated from the date on which EPA's Notice of Availability is published in the Federal Register. The Agency has the discretion to extend any public review and comment period if warranted. Notification of any extensions will occur through the Federal Register and other media outlets.

(f) When comments are received on a draft EIS, the Agency will assess and consider comments both individually and collectively. With support from the third-party contractor and the applicant, the Agency will develop responses to the comments received. Possible responses to public comments include: modifying the alternatives considered; negotiating with the applicant to modify or mitigate specific project elements of the original proposal; developing and evaluating alternatives not previously given serious consideration; supplementing or modifying the analysis; making factual corrections; or explaining why the comments do not warrant further response.

(g) If the final EIS requires only minor changes from the draft EIS, the Agency may document and incorporate such minor changes through errata sheets, insertion pages, or revised sections to be incorporated into the draft EIS. In such cases, the Agency will circulate such changes together with comments on the draft EIS, responses to comments, and other appropriate information as the final EIS. The Agency will not circulate the draft EIS again; although, if requested, a copy of the draft EIS may be provided in a timely fashion to any interested party.

§ 1970.155 Supplementing EISs.

(a) A supplement to a draft or final EIS will be announced, prepared, and circulated in the same manner (exclusive of meetings held during the scoping process) as a draft and final EIS (see 7 CFR § 1970.154). Supplements to a draft or final EIS will be prepared if:

- (1) There are substantial changes in the proposed action that are relevant to environmental concerns; or
- (2) Significant new circumstances or information pertaining to the proposal arise which are relevant to environmental concerns and the proposal or its impacts.

(b) The Agency will publish an NOI to prepare a supplement to a draft or final EIS.

§ 1970.155 (Con.)

(c) The Agency, at its discretion, may issue an information supplement to a final EIS where the Agency determines that the purposes of NEPA are furthered by doing so even though such supplement is not required by 40 CFR 1502.9(c)(1). The Agency and the applicant must concurrently have separate notices of availability published. The notice requirements must be the same as for a final EIS and the information supplement must be circulated in the same manner as a final EIS. The Agency will take no final action on any proposed modification discussed in the information supplement until 30 days after the Agency's notice of availability or the applicant's notice is published, whichever occurs later.

§ 1970.156 Record of Decision.

(a) The ROD is a concise public record of the Agency's decision. The required information and format of the ROD will be consistent with 40 CFR 1505.2.

(b) Once a ROD has been executed by the Agency, the Agency will issue a Federal Register notice indicating its availability to the public.

(c) The ROD may be signed no sooner than 30 days after the publication of EPA's Notice of Availability of the final EIS in the Federal Register.

§§ 1970.157-197.200 [Reserved]

Exhibits - A, B, C, D, E, F and G

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Work Flow for Preparing Environmental Impact Statements

As noted in 1970, Exhibit F, Guide for Applicants for Use of Third-Party Contracting for the Preparation of Environmental Impact Statements, for actions classified under 7 CFR § 1970.151(b) as requiring the preparation of Environmental Impact Statements (EIS), Agency policy and standard practice is to solicit and procure professional services of qualified contractors for preparing EISs by using a third-party contracting process consistent with 40 CFR §1506.5(c).

While the third-party contracting process is voluntary, utilizing this process will expedite an applicant's project proposal through the required environmental review process and application for financial assistance. The use of a third-party contractor will assist Agency program and environmental staff to evaluate the environmental implications and consequences of an applicant's project proposal. The successful EIS contractor is:

- Selected by and works under the direct supervision and control of Agency environmental staff;
- Responsible for conducting environmental impact analyses and preparing the requisite environmental documentation; and
- Paid by applicants.

This exhibit provides a graphic representation (see Attachment 1) and a step-by-step description of the standard work flow for the EIS process. The information below describes the step-by-step standard process for applicants seeking and obtaining the Agency's approval to initiate the preparation of an EIS, use of the third-party contracting process for soliciting and procuring professional services for preparing EISs including and up to contract award, and the follow-on EIS process which concludes with the execution of a Record of Decision. After contract award, the tasks listed in the Statement of Work and the standard EIS process outlined in the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, (40 CFR part 1500) and Department of Agriculture, Rural Development, Environmental Policies and Procedures (7 CFR part 1970) will guide the follow-on EIS preparation tasks and schedule. The step-by-step work-flow process is as follows:

1. Applicants will consult with Agency program and environmental staff as soon as possible when contemplating actions listed in 7 CFR § 1970.151(b). Individual Agency programs have unique project feasibility and planning requirements; Agency program and/or environmental staff will brief applicants on these requirements.

2. In accordance with program requirements, applicants will prepare and submit applicable feasibility and planning documents to define the purpose and need of the project proposal and other requirements to Agency program and environmental staff.

3. Agency program staff will determine whether the applicant's project proposal meets program planning and eligibility requirements by reviewing the specific feasibility and planning documents. Once Agency program staff concurs that the project and documents meet program requirements, Agency program staff will authorize Agency environmental staff to initiate the third-party contracting process with the applicant.

4. In most cases, Agency environmental staff will, in consultation with the applicant and their technical and environmental consultants, initiate a public scoping process consistent with the specific activities and objectives listed in 40 CFR § 1501.7. This process will require public notices in the Federal Register and local newspapers in the area affected by the project proposal. The public notice will announce the Agency's intent to prepare an EIS and to hold public scoping meeting(s). The scoping process may include an interagency meeting with all federal, state, local, and tribal governments as appropriate and one or more public meetings for interested parties to provide input into the scope and significant issues to be analyzed in the EIS. The results of the scoping process will also assist the Agency and applicant to identify the points-of-contact and consultation protocols for consulting parties and tribes for the Section 106 review. It may also be necessary to have a separate meeting with tribes that have expressed an interest in the project. The information from these meetings will be used to develop a Request for Proposals (RFP) for soliciting the professional services of qualified contractors.. All public notices must be approved by Agency environmental staff prior to publication in local newspapers; Agency environmental staff will be responsible for coordinating the publication of the notice in the Federal Register.

5. Simultaneously with or after the scoping process, Agency environmental staff will brief applicants on the requirements and work flow of the third-party contracting and EIS preparation processes. With assistance from RD environmental staff, the applicant will draft a RFP using project-specific information and documents outlined in 1970, Exhibit D-

6. The following documents are required for the third-party contracting process:

- Third-party agreement;
- Statement of work;
- Cost estimate (this is not included into the RFP but is used for internal comparisons to the cost proposals submitted by interested contractors);
- Technical and cost evaluation factors;
- Administrative record guidance; and
- Contractor conflict of interest or disclosure statements.

7. Agency environmental staff must approve the RFP prior to it being sent by the applicant to prospective contractors. In addition, the applicant must, in consultation with Agency environmental staff, identify three to five contractors who will receive the RFP. Agency environmental staff must approve the list of contractors.

8. All contractors receiving the RFP and who wish to submit technical and cost proposals must complete and execute the contractor conflict of interest or disclosure statement in Exhibit F, Attachment 6 and include such statements with their submittals.

9. Throughout the solicitation process and until the contract is awarded, the applicant is responsible for answering all questions submitted by contractors responding to the RFP.

10. Contractors responding to the RFP must satisfactorily complete all elements in the RFP to be considered as responsive "Offerors."

11. Applicants shall review the Offerors' submittals for completeness and send the responsive technical and cost proposals to Agency environmental staff for review. Agency environmental staff will form a technical review panel to review and evaluate the Offerors' submittals based on the technical and cost evaluation factors in Exhibit F, Attachment 4. Agency environmental staff may use Exhibit A, Attachment 2, Technical Evaluation Panel Score Sheets, to document their evaluations and use for numerically comparing the Offerors' submittals.

12. After completing their review and evaluation, Agency environmental staff will select the third-party contractor and provide the results of their analyses and selection to the applicant.

13. Prior to awarding the contract to the successful third-party contractor, the applicant and Agency environmental staff will complete and execute the Third-Party Agreement in Exhibit F, Attachment 1.

14. Once the Third-Party Agreement is executed, the applicant will award the contract. The applicant will provide Agency environmental staff with the copy of the awarded contract.

15. The applicant is responsible for answering any questions to any Offerors that were not selected.

16. The contract will proceed according to the requirements of the Statement of Work and the awarded contract starting with the contract kick-off meeting.

17. Once the contract is awarded, the third-party contractor will report to and coordinate all contract tasks with the Agency environmental staff listed as the contact person in the Third-Party Agreement.

18. The first major deliverable of the EIS contractor will be a preliminary draft of the Draft EIS. This draft will be reviewed by Agency environmental staff and the applicant. Once Agency environmental staff have reviewed and approved the Draft EIS, it can be published for public review and comment.

19. Prior to publication of the Draft EIS for public review and comment, Agency environmental staff and the EIS contractor will prepare draft public notices announcing the availability of the Draft EIS and, if public meeting(s) are planned to solicit comments on the document, schedules and locations for public meeting(s) for publication in the Federal Register and local newspapers. In addition to the public notices in the Federal Register and local newspapers, the Draft EIS must be filed with the Environmental Protection Agency (EPA)(see www.epa.gov/compliance/nepa/submiteis/index), who will publish its own public notice in the Federal Register acknowledging receipt and availability of the document. Public comment periods are typically 45 days but may be extended if extensions are requested by agencies or interested parties and approved by Agency environmental staff. The start of the comment period starts on the date that EPA publishes its receipt of the Draft EIS in the Federal Register. EPA's notices are published every Friday.

20. If public meeting(s) are planned to solicit comments from interested parties, Agency environmental staff, with assistance from the EIS contractor and applicant, will facilitate and host the meetings at the times and locations announced in the public notices.

21. After the public comment period and public meeting(s) on the Draft EIS have concluded, the EIS contractor will compile all of the comments received and discuss potential responses and changes to the EIS with Agency environmental staff and the applicant.
22. After integrating all appropriate responses and changes to the EIS, the EIS contractor will submit the preliminary draft of the Final EIS to Agency environmental staff and the applicant for review and comment.
23. Once Agency environmental staff have reviewed and approved the Final EIS it can be published for public review and comment.
24. Prior to publication of the Final EIS for public review and comment, Agency environmental staff and the EIS contractor will prepare draft public notices announcing the availability of the Final EIS for publication in the Federal Register and local newspapers. In addition to the public notices in the Federal Register and local newspapers, the Final EIS must be filed with the EPA who will publish its own public notice in the Federal Register acknowledging receipt and availability of the document. Public comment periods are typically 30 days and the start of the comment period starts on the date that the EPA publishes its receipt of the Final EIS in the Federal Register.
25. Once the 30-day public comment period on the Final EIS concludes, the EIS contractor will compile all of the comments received and provide the information to Agency environmental staff and applicant for discussion. The EIS contractor will then draft the Record of Decision (ROD) in accordance with 40 CFR § 1505.2. The ROD will summarize the entire EIS process, identifying all alternatives considered, and state the Agency's decision on the project proposal. The ROD is executed by the appropriate Agency administrator.
26. The public notice announcing the availability of the ROD will be published in the Federal Register and local newspapers. Once the public notice announcing the ROD has been published, the environmental review process is concluded and the Agency program staff can take whatever action is appropriate for the specific project proposal.

Work Flow for Processing Environmental Impact Statements

Environmental Impact State Timeline

	Applicant Actions	Agency Environmental Staff Actions
Proposal Development/Scoping Phase		
	<p>Defines proposal, prepares, and submits to Agency any required planning documents for review and approval. Examples for the electric program include:</p> <ul style="list-style-type: none"> • Alternative Evaluation Analyses • Site Selection Study (Generation) • Macro-Corridor Analysis (Transmission) • Other Planning Documents 	<p>Reviews and approves any required planning documents.</p> <p>Authorizes public scoping meeting(s).</p>
	<p>Based on templates provided, prepares public notice announcing Agency intent to prepare an EIS and hold public scoping meetings. Submits to Agency for review and approval.</p>	<p>Reviews and approves the public notice.</p> <p>Authorizes publication.</p>
	<p>Publishes public notice announcing Agency intent to prepare EIS and hold scoping meeting(s) in local newspapers in area affected by proposal. Notice must be published 14-days prior to public meeting(s).</p>	<p>Publishes public notice announcing Agency intent to prepare EIS and hold scoping meeting(s) in Federal Register.</p>
	<p>Organizes, prepares proposal-related information, and assists the Agency in facilitating public scoping meeting(s).</p>	<p>Participates in and facilitates public scoping meeting.</p>
	<p>Assists Agency and participates in various federal, state, and local interagency and tribal meetings discussing proposal.</p>	<p>Facilitates federal, state, and local interagency and tribal meetings discussing proposal.</p>

Table (Con.)

Proposal Development/Scoping Phase (Con.)		
	Applicant Actions	Agency Environmental Staff Actions
	Summarizes agency, tribal, and public comments from public notices, and public scoping and interagency meeting(s) in Public Scoping Report. Submits to Agency for review and approval.	Reviews and approves Public Scoping Report. Discuss with Applicant the results of comments received during the public scoping process, any specific environmental issues of concern, and consultation protocols for Section 106 review.
Solicitation of Professional Services (2-4 months depending on complexity of procurement action)		
	Based on Public Scoping Report and Agency input and templates, prepares Request for Proposal (RFP) (Statement of Work, Cost Estimate, Evaluation Factors, Conflict of Interest forms, etc.). Selects and recommends list of EIS contractors. Submits to Agency for review and approval.	Reviews and approves RFP and list of contractors. Authorizes Applicant to publish RFP.
	Publishes RFP in accordance with state procurement laws.	
	Reviews technical and cost proposals submitted by contractors in response to RFP. Determines "responsive" contractor submittals and submits to Agency for review and approval.	Creates Technical Evaluation Panel. Reviews and ranks contractor submittals based on RFP evaluation factors. Based on rankings and other appropriate factors selects EIS contractor. Informs Applicant of evaluation process and selected contractor. Authorizes Applicant to award contract to selected contractor.
	Awards contract based on Agency contractor selection.	

Table (Con.)

Solicitation of Professional Services (2-4 months depending on complexity of procurement action) (Con.)		
	Applicant Actions	Agency Environmental Staff Actions
	Organizes and participates in contract kick-off meeting.	Participates in contract kick-off meeting.
EIS Preparation Phase (16-20 months depending on the proposal complexity)		
	Most of the following work will be accomplished by the EIS contractor with applicant assistance.	
	Based on the Statement of Work and Scoping Report, prepares the Preliminary Draft EIS. Submits the Preliminary Draft EIS to the Agency for review and approval.	Reviews the Preliminary Draft EIS. Provides comments and edits to the EIS contractor as appropriate. Once all comments and edits are resolved, approves the Draft EIS for publication.
	Based on templates provided, prepares public notices for announcing the availability of the Draft EIS and to hold public meeting(s) to solicit public comments. Submits to Agency for review and approval.	Reviews and approves public notices. Authorizes publication.
	Publishes public notice announcing the availability of the Draft EIS and intent to hold public meeting(s) to solicit public comments in local newspapers in area affected by proposal if necessary. Notice must be published 14-days prior to public meeting(s).	Publishes public notice announcing the availability of the Draft EIS and intent to hold public meeting(s) to solicit public comments in the Federal Register.

Table (Con.)

EIS Preparation Phase (16-20 months depending on the proposal complexity) (Con.)		
	Applicant Actions	Agency Environmental Staff Actions
	Draft EIS 45-day public comment period (may be more if extensions are requested and approved by the Agency).	
	Organizes, prepares proposal and EIS-related information, and assists the Agency in facilitating public meeting(s).	Participants and facilitates public meeting(s).
	Compiles and summarizes public comments from all sources on the Draft EIS. Submits to Agency for review and discussion.	Reviews summarized public comments received on the Draft EIS and directs EIS contractor on how to respond.
	Based on Agency input, prepares the preliminary Final EIS. Submits the Preliminary Final EIS to the Agency for review and approval. Revises Final EIS per Agency comments and edits.	Reviews the Preliminary Final EIS. Provides comments and edits to the EIS contractor as appropriate. Once all comments and edits are resolved, approves the Final EIS for publication.
	Based on templates provided, prepares public notices for announcing the availability of the Final EIS. Submits to Agency for review and approval.	Reviews and approves public notices. Authorizes publication.
	Publishes public notice announcing the availability of the Final EIS in local newspapers in area affected by proposal.	Publishes public notice announcing the availability of the Final EIS in Federal Register.
	Final EIS 30-day public comment period.	
	Compiles and summarizes public comments from all sources on the Final EIS. Submits to Agency for review and discussion.	Reviews summarized public comments received on the Final EIS and provides input to EIS contractor on drafting the Record of Decision.

Table (Con.)

EIS Preparation Phase (16-20 months depending on the proposal complexity) (Con.)		
	Applicant Actions	Agency Environmental Staff Actions
	Based on templates provided, the contractor prepares draft ROD. Submits to Agency for review.	Completes the ROD. Submits through the Agency program managers for action. Record of Decision executed by Agency administrator.
	Based on templates provided, prepares public notices for announcing the availability of the ROD. Submits to Agency for review and approval.	Reviews and approves the public notice. Authorizes publication.
	Publishes public notice announcing the availability of the ROD in local newspapers in area affected by proposal.	Publishes public notice announcing the availability of the ROD in Federal Register.
		Process complete.

Technical Evaluation Panel Score Sheets

(INSERT APPLICANT NAME)
 (INSERT PROJECT PROPOSAL NAME)
 ENVIRONMENTAL IMPACT STATEMENT SOLICITATION (INSERT CONTRACT NUMBER)

OFFEROR:		Evaluator:			
INDIVIDUAL TECHNICAL EVALUATION WORK/SCORE SHEET					
<i>Relevant Experience</i>	<i>Exceptional (20-16 points)</i>	<i>Acceptable (15-11 Points)</i>	<i>Marginal (10-6 points)</i>	<i>Unacceptable (5-1 points)</i>	<i>Identify and Note Strengths and/or Weaknesses that Affect Rating</i>
(1) Describe your firm's experience in preparing environmental impact analyses and documentation (EISs/EAs and supporting documents) in accordance with NEPA for federal agencies for [insert projects similar to the current project proposal]. Also describe your experience in reviewing or assisting in any state permit applications associated with those projects.					
(2) Describe your firm's experience in preparing environmental impact analyses and documentation (EISs/EAs and supporting documents) for (insert projects similar to the current project proposal) in accordance with the NEPA.					
(3) Describe your firm's experience in preparing EISs/EAs and supporting documents for projects that were similar in scope and potential environmental impacts.					
(4) Describe the analytic processes used to identify all types of effects (direct, indirect, cumulative, etc.) similar to those that could arise from the project proposal. Also describe how this identification process is used to identify relevant data and analytical needs. Describe how your firm evaluates impacts (magnitude, duration, extent, likelihood, etc.) and any qualitative or quantitative methods that have been used.					
(5) Describe your firm's project experience in the (insert general project area of the current project proposal).					
Subtotals:					Total Score:

EIS Outline

EXECUTIVE SUMMARY

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1.2. Purpose and Need for Agency Action

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 - 3.11.6. Public Services
 - 3.11.7. Community Cohesion and Displacement of People
 - 3.11.8. Environmental Justice

4.0. OTHER REQUIRED CONSIDERATIONS

- 4.1. Unavoidable Adverse Impacts
- 4.2. Irreversible and Irretrievable Commitments of Resources
- 4.3. Relationship between Short-Term Use of the Environment and the Maintenance and Enhancement of Long-Term Productivity
- 4.4. Cumulative Effects Analysis

5.0. LIST OF PREPARERS

List the name, qualifications, years of experience, and role of each preparer or contributor in the EIS.

6.0 REFERENCES

INDEX

APPENDICES

Public Comments and Agency Responses

Distribution List for EIS

Reports to Meet Regulatory or Consultation Requirements (e.g., Biological Assessment, Cultural Resource Surveys)

Key Supporting Technical Reports (e.g., soils, air, water, biological inventories)

Relevant Federal and State Permits

Designation of Non-Federal Representative

[Insert Date]

[Insert address of
FWS Ecological Services Field Office
or NMFS Office
for State]

Re: USDA [RHS, RBS, RUS] Improvement Project [insert title of project]:
Designation of Nonfederal Representative

Dear _____,

USDA [insert agency] is in receipt of an application for financial assistance submitted by [name of applicant] for the purpose of [brief description of project], located in [city, county, state]. This project may affect listed or proposed species and/or designated or proposed critical habitat. Species or habitat potentially present in the action area include [insert list of proposed or listed species or proposed or designated critical habitat].

To facilitate Section 7 consultation, we are designating [entity] as our nonfederal representative for the purpose of initiating informal consultation with [FWS or NMFS]. The role of the nonfederal representative includes conducting studies, attending meetings, participating in telephone and email contact, developing draft biological assessments, etc., in support of our eventual Endangered Species Act determination. The authority for making Endangered Species Act determinations remains with USDA-[agency]. The USDA-[agency] contact for this project is [Agency environmental staff]. [Agency environmental staff] can be reached at [insert Environmental staff email and telephone].

Sincerely,

SEC/NES

cc: Applicant (and designated representative if different from applicant,
such as a consultant)
Staff Director

Informal Consultation and Concurrence Request

[Insert Date]

[Insert address of
FWS Ecological Services Field Office or NMFS Office
for State]

Re: USDA [RHS, RBS, RUS] Improvement Project [insert title of project]:
Request for Informal Consultation and Concurrence of Not Likely to Adversely
Affect Finding

Dear _____,

USDA [insert agency] is in receipt of an application for financial assistance submitted by [name of applicant] for the purpose of [brief description of project]. The proposed project is located in [city, county, state] and involves [describe area of impact, adjacent area, ground disturbance, tree removal, impact to streams, wetlands, equipment involved, etc.] Construction of this project is anticipated to start on/around [date] and conclude by [date].

Based on results from FWS's IPaC planning tool (attached) obtained on [insert date of IPaC search], the following species and/or habitat may be present in the action area:
[Modify table as needed; include all T&E species and habitat, including proposed.]

Species	Critical Habitat	Status	Notes	ESA Determination
Species 1	None	Threatened	No suitable habitat present.	No effect
Species 2	None	Endangered	Suitable habitat present. Survey conducted on [date]: negative.	May affect, not likely to adversely affect
Species 3	Proposed	Proposed	Design changes to avoid impact.	No adverse modification

[If required, add a paragraph explaining conclusions reached above, including any project design considerations or mitigation measures. If any surveys, habitat evaluations, etc., were conducted to support the finding, briefly describe and attach.]

Based on the above analysis, we conclude that financial assistance for this project may affect, but is not likely to adversely affect any listed or proposed species or result in the adverse modification of any designated or proposed critical habitat. With this letter, we request your participation in informal consultation per Section 7 of the Endangered Species Act and seek your concurrence with our finding. We respectfully request a response within 30 days.

Sincerely,

Agency environmental staff

Attachments

1. IPaC Species List
2. Project Sketch
3. Any other pertinent information to support our determination (such as presence/absence surveys, literature reviews, etc.)

Formal consultation Request

[Insert Date]

[Insert address of
 FWS Ecological Services Field Office or
 NMFS Office for State]

Re: USDA [RHS, RBS, RUS] Improvement Project [insert title of project]:
 Request for Formal Consultation

Dear _____,

USDA [insert agency] is in receipt of an application for financial assistance submitted by [name of applicant] for the purpose of [brief description of project]. The proposed project is located in [city, county, state] and involves [describe area of impact, adjacent area, ground disturbance, tree removal, impact to streams, wetlands, equipment involved, etc.] Construction of this project is anticipated to start on/around [date] and conclude by [date].

Based on results from FWS's IPaC planning tool (attached) obtained on [insert date of IPaC search] and the attached Biological Assessment, the following species and/or habitat may be present in the action area:
 [Modify table as needed.]

Species	Critical Habitat	Status	Notes	ESA Determination
Species 1	None	Endangered	Suitable habitat present. Survey conducted on [date]: positive.	May affect, likely to adversely affect
Species 2	None	Threatened	No suitable habitat present.	No effect
Species 3	Proposed	Proposed	Design changes to avoid impact.	No adverse modification

RD Instruction 1970-D
Exhibit B
Attachment B-3
Page 2

Based on the above analysis, we conclude that financial assistance for this project is likely to adversely affect the [list species or designated habitat which may be adversely affected]. With this letter, we request your participation in formal consultation per Section 7 of the Endangered Species Act.

We are submitting the attached Biological Assessment in support of this request; please provide a courtesy receipt acknowledging a complete submittal package within 30 days.

Sincerely,

[Staff Director]

Attachments

1. IPaC Species List
2. Biological Assessment

Record of Decision

[Project Name/EIS Title]

[AGENCY]
U.S. Department of Agriculture

[Applicant Name]

Prepared by
[Appropriate Staff
AGENCY]

[Date (Month Year)]

I. SUMMARY OF THE AGENCY'S DECISION.....

II. INTRODUCTION.....
A. PURPOSE AND NEED.....

III. BACKGROUND.....

IV. ALTERNATIVES DEVELOPMENT AND EVALUATION.....
A. Alternatives Dismissed from Detailed Consideration.....
B. Alternatives Evaluated in Detail.....
 1. Technological Alternatives.....
 2. Site Alternatives.....
C. Alternatives Not Selected and [RUS'] Rationale.....
D. [RUS'] Preferred Alternative
D. Environmentally Preferable Alternative.....

V. PUBLIC INVOLVEMENT.....
A. Notice.....
 1. Scoping.....
 2. Draft EIS.....
 3. Final EIS.....
B. Comments Received.....
C. Changes from the Draft EIS to the Final EIS.....
D. Changes from the Final EIS to the ROD.....

VI. SUMMARY OF ENVIRONMENTAL EFFECTS.....

VII. DECISIONS AND RATIONALE FOR DECISIONS.....
A. Decisions.....
B. Rationale and Compliance with Legal and Policy Mandates.....

VIII. [RUS] LOAN REVIEW.....

IX. RIGHT TO ADMINISTRATIVE REVIEW (APPEAL PROCESS).....

X. APPROVAL

CONTACT PERSON AND AVAILABILITY OF FEIS.....

ATTACHMENTS

- [Map of Proposed Alternative]
- [Selected Alternative]
- [Alternatives Evaluated in Detail in the Final EIS]
- [Comments and Response on the Final IES]
- [Final Programmatic Agreement]
- [Summary of Environmental Consequences by Alternative]
- [Mitigation Measures and Other Measures to Reduce Impacts]

Summary of the Agency's Decision

[Who prepared and wrote the document and what it is for.] The Final EIS was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. §§ 4321 et seq.), and in accordance with the Council on Environmental Quality's (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR 1500-1508) and [RUS] regulations (7 CFR § 1970).

[RUS] is the lead federal agency as defined by 40 CFR § 1501.5 [and any cooperating agencies]. [As the lead federal agency, and as part of its broad environmental review process, [RUS] must take into account the effect of the proposal on historic properties in accordance with Section 106 of the National Historic Preservation Act (16 U.S.C. §470f) and its implementing regulation "Protection of Historic Properties" (36 CFR Part 800). Pursuant to 36 CFR § 800.2(d)(3), [RUS] is using its procedures for public involvement under NEPA, in part, to meet its responsibilities to solicit and consider the views of the public during Section 106 review. Accordingly, comments submitted in the EIS process also informed [RUS's] decision making in Section 106 review.]

[Write up covering what the proposed project is. Also include basic information about what prior publications and public meetings occurred. Discuss any other basic information needed in regards to the project. Cover purpose and need briefly here as well.]

Introduction

[General introduction to the program. Can cover what the project is and set the stage for the ROD.]

This document is [RUS'] ROD. The ROD states [RUS'] decision, the rationale for the decision, and summarizes all alternatives considered in reaching the decision.

(a) **Purpose and Need**

[The purpose and need for the project should be included here. This should clearly match what the FEIS says.]

(b) **[Permits Required from Cooperating Agency]**

[Any permits required from cooperating agencies can be included here.]

(c) **[Other Investigations and Analyses to Be Completed Post-ROD]**
[If any other actions are required, they can be included here, such as Section 106 under National Historic Preservation Act, Section 7 of the Endangered Species Act, floodplain analysis, or wetlands analysis.]

Background

[Give the background as to why this project is occurring and why the agency is preparing an EIS. Explain how the agency got to this decision document.]

Alternatives Development and Evaluation

(a) Alternatives Eliminated from Detailed Consideration

In accordance with the Council on Environmental Quality (CEQ) implementing regulations for NEPA (40 CFR §1500-1508), [RUS] evaluated all reasonable alternatives, and for those alternative eliminated from detailed study, discussed the reasons for their having been eliminated (40 CFR §1502.14(a)). [Detail the alternatives that were considered and eliminated from detailed consideration. Explain why they were eliminated. This information is best presented in a table format, but can also be presented in paragraph form if that is deemed easier for the reader to understand.]

(b) Alternatives Evaluated in Detail

[This will generally include the No Action Alternative and whatever alternatives are considered. This can be kept simple if there are only a few alternatives. If there are a number, such as multiple sites and multiple technologies looked at, breaking it up may be useful. Putting these in a table or attachment may also be helpful.]

(1) Technological Alternatives

(2) Site/Build Alternative

(c) Alternatives Not Selected and [RUS'] Rationale

The alternatives considered in detail that were not selected and [RUS'] rationale for elimination:

(1) [List the alternatives and rational.]

(d) **[RUS's] Preferred Alternative**

[Identify the alternative that the agency selected. Include all that is included in the alternative.]

(e) **Environmentally Preferable Alternative**

The identification of an environmentally preferred alternative is required by NEPA [40 CFR § 1505.2(b)]. The environmentally preferred alternative is that "alternative that causes the least damage to the biological and physical environment" and "best protects, preserves, and enhances historic, cultural, and natural resources" (CEQ 40 Questions). Based on these criteria, the no action alternative may be environmentally preferable; however, the no action alternative does not meet the purpose and need. Of the action alternatives that meet the purpose and need, the [xx] alternative, is the environmentally preferred alternative. Explain why the environmentally preferred alternative was not selected if this is the case. [If any mitigation is required for that to be true, indicate that. Give more explanation if necessary for a lay person to understand this section.]

Public Involvement

(a) **Notice**

(1) **Scoping**

[Identify what happened regarding scoping. When was the NOI published? Where was it published? What was included? What occurred at any public meetings that were held? When were those meetings? Etc.]

(2) **Draft EIS**

[Identify when the NOA for the draft EIS was published. Where was it published? What meetings were held? Where? What happened at those meetings? Were floodplains or wetlands also covered in this NOA?]

(3) **Final EIS**

[Identify when the NOA for the final EIS was published and where. When did the comment period end? What comments were received?]

(b) Comments Received

[Identify what comments were received during this project. Summarize them or say where they are summarized. Give rough numbers of how many commenters and comments came in. Where any significant changes made because of the comments? What, if any, changes were caused by comments.]

The discussion below summarizes the responses to issues raised in the Final EIS, grouped by subject area. In a few cases [RUS] made factual corrections; these are included below. No further agency response is needed beyond the responses summarized below and provided in detail in Attachment X, Final EIS Comments and Responses.

(1) [Comment]

Issue: [Summarize the issue]

Response: [Summarize the response or explanation. An example of a response could be: *No further agency response is needed, beyond the explanation provided in Attachment X, Final EIS Comments and Responses. [RUS] considers the rationale presented in the Final EIS for xxx to be sufficient.*]

(2) [Comment]

Issue:

Response: [Sample response: *[RUS's] response in Attachment X, Final EIS Comments and Responses addresses the specific issues raised in the comment. [RUS'] conclusions are unaffected, and no further agency response is needed.*]

(3) [Comment]

Issue:

Response: [Sample response: *The corrected table/section, ... was added to address the comment and is presented below.*]

(c) Changes from the Draft EIS to Final EIS

[Summarize any changes made.]

This section summarizes changes [RUS] made from the Draft to the Final EIS, based on comments received and new information. [RUS] also made minor text edits throughout most chapters, and small map revisions.

(d) Changes from the Final EIS to ROD

[Summarize any changes made.]

Summary of Environmental Effects

Impacts of [RUS'] selected alternative are summarized below. [Table or other format summarizing the impacts of the alternative by resource area.]

RUS Decisions and Rationale for Decisions

[RUS] decisions must comply with all relevant state and federal environmental regulations. The regulations are summarized in [Attachment/Table X, (may be a reference to something in the Final EIS).]

(a) Decisions

This Record of Decision (ROD) documents findings specific to the proposed action. [Describe the proposed action.]

[RUS] has made the following decisions:

- Based on an evaluation of the information and impact analyses presented in the Final Environmental Impact Statement including the evaluation of all alternatives and in consideration of [RUS'] environmental policies and procedures (7 CFR 1970), [RUS] find that the overall impact analysis and evaluation of reasonable alternatives is consistent with NEPA. In the Final EIS, [RUS], in cooperation with [any cooperating agencies], identifies the Proposal as described in the Final EIS with proposed measures to minimize impacts as its preferred alternative. In this ROD, [RUS] identifies the Final EIS preferred alternative as its selected alternative. This ROD concludes the [RUS'] environmental review process in accordance with its Environmental Policies and Procedures.
- A review and analysis of the selected alternative's justification, associated engineering studies, and preliminary financial information has led to [RUS'] concurrence with the selected alternatives' purpose and need.

[RUS] hereby agrees to the above, and should [applicant] apply to [RUS] for financing assistance for the Proposal, the consideration of [applicant's] loan application may proceed. The following conditions apply:

(1) [Applicant] will implement the selected alternative as described in this ROD, with further details as described for the preferred alternative in the Final EIS. This includes, but is not limited to, those actions incorporated into the selected alternative to reduce or eliminate impacts, and any mitigation measures that the Final EIS and this ROD state will be implemented.

(2) [Applicant] will obtain and comply with all applicable local, state and federal permits required for the construction and operation of the selected alternative.

(b) Rationale and Compliance with Legal and Policy Mandates

This section explains how the selected alternative, as defined in the Final EIS and in this ROD, satisfies [RUS'] statutory, regulatory, and policy mandates.

(1) NEPA

In the Final EIS, [RUS] has fully considered all reasonable alternatives to the proposed action, and concluded that the {selected alternative: construction and operation of the [project], best meets the purpose and need of the proposed project. The agency has met the requirements of NEPA and agency policies and procedures for public involvement. This has included responses to requests for information from [appropriate people (concerned individuals, non-governmental organizations, the media, and state and other federal agencies)]. The impacts, actions, and mitigation to reduce them are provided in the Final EIS (and summarized in Attachment X, to this ROD). [Applicant] will be responsible for implementation of these measures with [RUS] (and any cooperating agencies) oversight.

(2) National Historic Preservation Act

Consultation with the Tribal Historic Preservation officers, State Historic Preservation officers, Advisory Council on Historic Preservation, public and consulting parties is documented in Appendix X of the Final EIS and through the fully executed Programmatic Agreement. The Programmatic Agreement sets forth procedures for consultation related to the proposed surveys and for the determination of eligibility, assessment of effects, resolution of adverse effects, and post-review discoveries through the entire area of potential effect as necessary that have not been accomplished to date.

(3) **Endangered Species Act**

[Explain how ESA was dealt with for this project. See below for possible explanations and examples.]

A Biological Assessment (BA) for the proposed project was prepared and submitted to the Fish and Wildlife Service. On [date], the Fish and Wildlife Service concurred with the determination of the BA as detailed in the Final EIS and is currently finalizing an Incidental Take Permit for [x].

Or

As discussed in the Final EIS, [RUS] and the applicants have coordinated with the USFWS and state agencies regarding potential impacts to threatened or endangered species. [Elaborate what was done to avoid any ESA violations.]

(4) **Executive Order 11988, Flood Plain Management**

[Explain impacts to floodplains. See below for an example.]

Impacts to floodplains were avoided to the extent practicable. Implementation of storm water pollution prevention plans and associated best management practices will minimize impacts. Less than one acre of permanent impacts to floodplains is expected.

(5) **Executive Order 11990, Protection of Wetlands**

[Explain impacts to wetlands. See below for example.]

Impacts to wetlands were avoided to the extent practicable. Under the preferred alternative for the proposal, there would be X acres of permanent wetland impact and X acres of temporary impacts. X acres of wetlands would be permanently converted. There is no practicable alternative to work in the wetlands.

[RUS] Loan Review

This ROD is not a decision on [applicant's] loan application and therefore not an approval of the expenditure of federal funds. The ROD concludes the agency's environmental review process in accordance with NEPA and agency policies and procedures (7 CFR 1970). The ultimate decision as to loan approval depends upon the conclusion of the environmental review process as well as financial and engineering analysis. Issuance of the ROD will allow these reviews to proceed, if [applicant] applies to [RUS] for financing assistance.

Right to Administrative Review (Appeal Process)

This ROD concludes the agency's environmental review process pursuant to the National Environmental Policy Act and the agency's environmental policies and procedures (7 CFR 1970). There are no provisions to appeal this decision. Legal challenges to the ROD may be filed in federal district court under the Administrative Procedures Act.

Approval

This ROD is effective on signature.

[Name]
Administrator
[Rural Utilities Service]

Date

Contact Person

For additional information on this ROD or the Final Environmental Impact Statement, please contact [environmental staff person, at USDA/RD, [Rural Utilities Service], 1400 Independence Ave., SW, Mail Stop [1570, Room 2244], Washington, DC 20250-1570; telephone [number]; fax [number]; or email [email]].

Guide for Reviewing Environmental Impact Statements

This exhibit provides an optional review guide for Agency environmental staff to use in reviewing the contents of environmental impact statements (EIS) for actions listed in 7 CFR 1970 Subpart D, NEPA Environmental Impact Statements, specifically § 1970.151(b).

When reviewing EIS documents, Agency environmental staff must focus and determine the completeness and accuracy of data and information presented in the document. In addition, Agency environmental staff must verify the technical, scientific, and legal adequacy and sufficiency of the document prior to the EIS being published for public review and comment. During the public review process for the draft EIS, Environmental Protection Agency (EPA) staff will also be reviewing the EIS and have established criteria for rating the environmental impact of the action and the adequacy of the documentation. The ratings for the environmental impact of the action include: lack of objections; environmental concerns; environmental objections; or environmentally unsatisfactory. The ratings for the adequacy of the draft EIS includes: adequate; insufficient information; or inadequate. See this website for EPA's rating process and scoring protocol - www.epa.gov/compliance/nepa/comments/ratings

Table 1 provides a comparative analysis of the required and recommended format for an EIS that is excerpted from the Council on Environmental Quality's (CEQ), Regulations for Implementing the Procedural Provision of the National Environmental Policy Act (40 CFR Part 1500) with RD's standard format outlined in its Environmental Policies and Procedures (7 CFR Part 1970) (see 1970, Exhibit C).

Table 2 is a template for facilitating a comprehensive review of the elements and contents that must be included in each EIS. Each row in Table 2 itemizes an element of an EIS that is required by CEQ's regulations but is in the format adopted by Rural Development (RD). It can be used to highlight information and analyses that must be in the EIS to make sure it complies with CEQ and Agency procedures.

Because not every item is required for every EIS, insert "not applicable" in column 3 if that item does not apply. If a section is required but is either absent or inadequately presented, provide comment(s) about how it was or wasn't treated in the analysis. It is a good idea to use specific phrases such as "adequate, see pages XX-XX", or "yes, on table XX" to convey whether and where in the EIS those issues or analyses were found.

Suggestions for how to improve the treatment of an issue or where to include a discussion or analysis of an issue that the reviewer cannot find should also be put in the third column. Typographical errors and editorial suggestions may be listed in open format. Please indicate a page number for the typographical errors and editorial suggestions so the preparers can find and fix them.

Table 3 provides an index of terms with the appropriate citations from the CEQ procedures that can be helpful in verifying the correct use of terminology or understanding the context for the use of such terms.

Table 1 - Comparative Analysis of CEQ's Recommended Standard EIS Format and RD Adopted EIS Format

CEQ Regulations	Section	RD Procedures	Corresponding EIS Section
CEQ Recommended EIS Format	§ 1502.10		1970 Exhibit C
Cover Sheet*	§ 1502.11	Cover Sheet	
Summary*	§ 1502.12	Executive Summary	
Table of Contents*	§ 1503.10	Table of Contents	
		Introduction	Section 1.0
Purpose of and need for action	§ 1502.13	Purpose and Need for the Project Proposal	
Alternatives including proposed action	§ 1502.14	Summary of Alternatives	Section 2.0
Affected environment	§ 1502.15	Present Environment and Effects of Alternatives	Section 3.0
Environmental consequences	§ 1502.16		
		Other Required Considerations	Section 4.0
List of preparers*	§ 1502.17	List of Preparers	Section 5.0
		References	Section 6.0
List of Agencies, Organizations, and person to whom copies of the statement are sent*	§ 1502.10		Included in the appendices
Index*	§ 1502.10	Index	Index
Appendices	§ 1502.18	Appendices	
		List of Tables	
		List of Figures	
* - Indicates CEQ Regulatory Requirements			

EIS Review Comments

As stated above, the information provided below includes an optional review guide or template for Agency environmental staff to use in reviewing the contents of EISs prepared by third-party contractors (or even prepared in-house). Agency environmental staff are responsible for determining the completeness and accuracy of data and information presented in the document as well as verifying the technical, scientific, and legal adequacy and sufficiency of the document prior to approving the document for public review and comment. Even though in most cases EISs will be prepared by third-party contractors selected by Agency environmental staff (see 1970, F, Guide to Applicants for Use of Third-Party Contracting for Environmental Impact Statements) and applicants will assist by providing project-level engineering and environmental information prepared by their technical consultants, the agency's has responsibility to "independently evaluate the information submitted and shall be responsible for its accuracy" (40 CFR § 1506.5(a)) and to "participate in the preparation and shall independently evaluate the statement prior to its approval and take responsibility for its scope and contents" (40 CFR § 1506.5(c)). Therefore, the EIS represents official Agency documentation and the agency will be held responsible for its scope and contents by all interested parties, agencies, and the courts, if legal challenges are filed against the agency and the project proposal.

EIS review comments may be compiled and documented by using the review guide and process outlined in Table 2.

Table 2. Review guide prepared from CEQ's Standard EIS Format Using RD's Recommended EIS Format

General Comments: Summarize general comments about the subject EIS. Include comments on what is effective and adequate about the document as well as noting where it is deficient. Indicate whether, in your opinion, the EIS is ready for the next step in the process.

Specific Comments: If comments are so extensive they don't fit in the boxes provided in the Table 2 format, put them in a specific comments section and use a numbering system to tie them to the Comments column in the table below.

Editorial comments: List page number and editorial concerns (misspellings, awkward phrase, wrong place name, incomplete sentences, mistake in sequential labeling, garbled text, redundant section, etc.).

Table 2. Review guide prepared from CEQ's Standard EIS Format Using RD's Recommended EIS Format

Contents	CEQ Regulations	Comments
Cover Sheet (must fit on one page).	§ 1502.11	
Title of project proposal.		
Identification of type of document (draft, final, or supplemental EIS).		
List responsible agencies, including lead agency and any cooperating agencies.		
Name, address, email address, and telephone number of a contact person.		
The date by which comments must be received.		
Executive Summary - includes description of: purpose and need of project proposal; public involvement processes; and tabular presentation of alternatives with potential impacts, consequences, and conclusions on environmental resources.	§ 1502.12	
Table of Contents	§ 1502.10	
Section 1.0 - Introduction		
Introduction.		
Purpose and need of the project proposal.	§ 1502.13	

Table 2 (Con.)

Contents	CEQ Regulations	Comments
Purpose and need for agency action - briefly specify underlying purpose and need to which agency is responding in proposing alternatives including proposed action.		
Authorizing actions - list all federal, state, local and/or tribal permits, licenses, and other requirements which must be obtained prior to implementing the project proposal.		
Public participation - describe the entire public involvement process from interagency, scoping, and public meetings to solicit public comments. Include dates and publications for all public notices.		
Controversial issues associated with project proposal.		
Connected actions.	§ 1508.25 (a)(1)	
Section 2.0 - Summary of Alternatives	§ 1502.14	
Development of alternatives - provide full and fair discussion of significant environmental impacts and shall inform decision-makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment. Highlight and describe the reasons why alternative(s) are determined to be "reasonable" alternatives.		

Table 2 (Con.)

Contents	CEQ Regulations	Comments
<p>Alternatives considered but not studied in detail - for alternatives eliminated from detailed study, briefly discuss reasons they were eliminated.</p>		
<p>Description of alternatives - devote substantial treatment to each alternative considered in detail including proposed action.</p>		
<p>Agency-Preferred Alternative (if applicable).</p>		
<p>Comparison of alternatives.</p>		
<p>Section 3.0 - Present Environment and Effects of Alternatives - section describes the affected environment and the environmental consequences of the project proposal and reasonable alternatives on the human environment. Succinctly describe the environment of the area(s) to be affected by the alternatives under consideration. Descriptions shall be no longer than is necessary to understand the effects of the alternatives. Data and analyses shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced. Avoid useless bulk in statements and concentrate effort and attention on important issues.</p>	<p>§ 1502.15-16</p>	
<p>Specific Resource Areas may differ based on the project proposal.</p>		
<p>Soils and Geology</p>		
<p>Water Resources</p>		
<p>Air Quality</p>		
<p>Acoustic Environment</p>		

Table 2 (Con.)

Contents	CEQ Regulations	Comments
Biological Resources		
Land Resources		
Visual Resources		
Transportation		
Cultural Resources/Historic Properties		
Public Health and Safety		
Socioeconomics and Environmental Justice		
Section 4.0 - Other Requirements		
Unavoidable adverse impacts.	§ 1502.16	
Irreversible and irretrievable commitment of resources.	§ 1502.16	
Relationship between short-term use of the environment and the maintenance and enhancement of long-term productivity.	§ 1502.16	
Cumulative effect analysis.	§ 1508.7	
Section 5.0 - List of Preparers - List names, together with their qualifications (expertise, experience, professional disciplines) of persons primarily responsible for preparing document.	§ 1502.17	
Section 6.0 - References		
Index	§ 1502.10	

Table 2 (Con.)

Contents	CEQ Regulations	Comments
List of acronyms and abbreviations		
Glossary		
Appendices	§ 1502.18	
Responses to public comments		
List of agencies, organizations, and persons to whom copies of the EIS are sent.	§ 1502.10	
List of Tables		
List of Figures		

The two attachments include good general discussions on the titled topics. Rather than provide lists of web links or pertinent articles for specific NEPA topic areas, Agency environmental staff are encouraged to search for topics of interest. A good start is NEPA.gov. For case law reviews, refer to: ceq.doe.gov/legal_corner/case_law_review.

Attachment 1 - Steinhoff, Gordon, "*Alternatives Evaluation under NEPA: What Constitutes a 'Reasonable' Alternative*," International Journal of Applied Philosophy 2004, v. 18, pp. 77-93

Attachment 2 - Thomas E. Shea, "*The Judicial Standard for Review of Environmental Impact Statement Threshold Decisions*," 9 B.C. Environmental Affairs Law Review 63 (1980),
<http://lawdigitalcommons.bc.edu/ealr/vol9/iss1/8>

Table 3. Index to the Council on Environmental Quality's 40 CFR Parts 1500 through 1508

Term	CEQ Citation
Act	1508.2
Action	1508.18, 1508.25
Action-forcing	1500.1, 1502.1
Adoption	1500.4(n), 1500.5(h), 1506.3
Affected Environment	1502.10(f), 1502.15
Affecting	1502.3, 1508.3
Agency Authority	1500.6
Agency Capability	1501.2(a), 1507.2
Agency Compliance	1507.1
Agency Procedures	1505.1, 1507.3
Agency Responsibility	1506.5
Alternatives	1501.2(c), 1502.2, 1502.10(e), 1502.14, 1505.1(e), 1505.2, 1507.2(d), 1508.25(b)
Appendices	1502.10(k), 1502.18, 1502.24
Applicant	1501.2(d)(1), 1501.4(b), 1501.8(a), 1502.19(b), 1503.1(a)(3), 1504.3(e), 1506.1(d), 1506.5(a), 1506.5(b)
Apply NEPA Early in the Process	1501.2
Categorical Exclusion	1500.4(p), 1500.5(k), 1501.4(a), 1507.3(b), 1508.4
Circulating of Environmental Impact Statement	1502.19, 1506.3
Classified Information	1507.3(c)
Clean Air Act	1504.1, 1508.19(a)

Table 3 (Con.)

Term	CEQ Citation
Combining Documents	1500.4(o), 1500.5(i), 1506.4
Commenting	1502.19, 1503.1, 1503.2, 1503.3, 1503.4, 1506.6(f)
Consultation Requirement	1500.4(k), 1500.5(g), 1501.7(a)(6), 1502.25
Context	1508.27(a)
Cooperating Agency	1500.5(b), 1501.1(b), 1501.5(c), 1501.5(f), 1501.6, 1503.1(a)(1), 1503.2, 1503.3, 1506.3(c), 1506.5(a), 1508.5
Cost-Benefit	1502.23
Council on Environmental Quality	1500.3, 1501.5(e), 1501.5(f), 1501.6(c), 1502.9(c)(4), 1504.1, 1504.2, 1504.3, 1506.6(f), 1506.9, 1506.10(e), 1506.11, 1507.3, 1508.6, 1508.24
Cover Sheet	1502.10(a), 1502.11
Cumulative Impact	1508.7, 1508.25(a), 1508.25(c)
Decision-making	1505.1, 1506.1
Decision points	1505.1(b)
Dependent	1508.25(a)
Draft Environmental Impact Statement	1502.9(a)
Early Application of NEPA	1501.2
Economic Effects	1508.8
Effective Date	1506.12
Effects	1502.16, 1508.8
Emergencies	1506.11
Endangered Species Act	1502.25, 1508.27(b)(9)

Table 3 (Con.)

Term	CEQ Citation
Energy	1502.16(e)
Environmental Assessment	1501.3, 1501.4(b), 1501.4(c), 1501.7(b)(3), 1506.2(b)(4), 1506.5(b), 1508.4, 1508.9, 1508.10, 1508.13
Environmental Consequences	1502.10(g), 1502.16
Environmental Consultation Requirements	1500.4(k), 1500.5(g), 1501.7(a)(6), 1502.25, 1503.3(c)
Environmental Documents	1508.10
Environmental Impact Statement	1500.4, 1501.4(c), 1501.7, 1501.3, 1502.1, 1502.2, 1502.3, 1502.4, 1502.5, 1502.6, 1502.7, 1502.8, 1502.9, 1502.10, 1502.11, 1502.12, 1502.13, 1502.14, 1502.15, 1502.16, 1502.17, 1502.18, 1502.19, 1502.20, 1502.21, 1502.22, 1502.23, 1502.24, 1502.25, 1506.2(b)(4), 1506.3, 1506.8, 1508.11
Environmental Protection Agency	1502.11(f), 1504.1, 1504.3, 1506.7(c), 1506.9, 1506.10, 1508.19(a)
Environmental Review Requirements	1500.4(k), 1500.5(g), 1501.7(a)(6), 1502.25, 1503.3(c)
Expediter	1501.8(b)(2)
Federal Agency	1508.12
Filing	1506.9
Final Environmental Impact Statement	1502.9(b), 1503.1, 1503.4(b)
Finding of No Significant Impact	1500.3, 1500.4(q), 1500.5(1), 1501.4(e), 1508.13
Fish and Wildlife Coordination Act	1502.25
Format of the Environmental Impact Statement	1502.10
Freedom of Information Act	1506.6(f)

Table 3 (Con.)

Term	CEQ Citation
Further Guidance	1506.7
Generic	1502.4(c)(2)
General Services Administration	1506.8(b)(5)
Geographic	1502.4(c)(1)
Graphics	1502.8
Handbook	1506.7(a)
Housing and Community Development Act	1506.12, 1508.12
Human Environment	1502.3, 1502.22, 1508.14
Impacts	1508.8, 1508.25(c)
Implementing the Decision	1505.3
Incomplete or Unavailable Information	1502.22
Incorporation by Reference	1500.4(j), 1502.21
Index	1502.10(j)
Indian Tribes	1501.2(d)(2), 1501.7(a)(1), 1502.15(c), 1503.1(a)(2)(ii), 1506.6(b)(3)(ii), 1508.5, 1508.12
Intensity	1508.27(b)
Interdisciplinary Preparation	1502.6, 1502.17
Interim Actions	1506.1
Joint Lead Agency	1501.5(b), 1506.2
Judicial Review	1500.3
Jurisdiction by Law	1508.15

Table 3 (Con.)

Term	CEQ Citation
Lead Agency	1500.5(c), 1501.1(c), 1501.5, 1501.6, 1501.7, 1501.8, 1504.3, 1506.2(b)(4), 1506.8(a), 1506.10(e), 1508.16
Legislation	1500.5(j), 1502.3, 1506.8, 1508.17, 1508.18(a)
Limitation on Action During NEPA Process	1506.1
List of Preparers	1502.10(h), 1502.17
Local or State	1500.4(n), 1500.5(h), 1501.2(d)(2), 1501.5(b), 1501.5(d), 1501.7(a)(1), 1501.8(c), 1502.16(c), 1503.1(a)(2), 1506.2(b), 1506.6(b)(3), 1508.5, 1508.12, 1508.18
Major Federal Action	1502.3, 1508.18
Mandate	1500.3
Matter	1504.1, 1504.2, 1504.3, 1508.19
Methodology	1502.24
Mitigation	1502.14(h), 1502.16(h), 1503.3(d), 1505.2(c), 1505.3, 1508.20
Monitoring	1505.2(c), 1505.
National Historic Preservation Act	1502.25
Natural or Depletable Resource Requirements	1502.16(f)
Need for Action	1502.10(d), 1502.13
NEPA Process	1508.21
Non-Federal Sponsor	1501.2(d)
Notice of Intent	1501.7, 1507.3(e), 1508.22

Table 3 (Con.)

Term	CEQ Citation
OMB Circular A-95	1503.1(a)(2)(iii), 1505.2, 1506.6(b)(3)(i)
102 Monitor	1506.6(b)(2), 1506.7(c)
Ongoing Activities	1506.12
Page Limits	1500.4(a), 1501.7(b), 1502.7
Planning	1500.5(a), 1501.2(b), 1502.4(a), 1508.18
Policy	1500.2, 1502.4(b), 1508.18(a)
Program Environmental Impact Statement	1500.4(i), 1502.4, 1502.20, 1508.18
Programs	1502.4, 1508.18(b)
Projects	1508.18
Proposal	1502.4, 1502.5, 1506.8, 1508.23
Proposed Action	1502.10(e), 1502.14, 1506.2(c)
Public Health and Welfare	1504.1
Public Involvement	1501.4(e), 1503.1(a)(3), 1506.6
Purpose	1500.1, 1501.1, 1502.1, 1504.1
Purpose of Action	1502.10(d), 1502.13
Record of Decision	1505.2, 1506.1
Referrals	1504.1, 1504.2, 1504.3, 1506.3(d)
Referring Agency	1504.1, 1504.2, 1504.3
Response to Comments	1503.4
Rural Electrification Administration	1506.1(d)
Scientific Accuracy	1502.24
Scope	1502.4(a), 1502.9(a), 1508.25
Scoping	1500.4(b), 1501.1(d), 1501.4(d), 1501.7, 1502.9(a), 1506.8(a)
Significantly	1502.3, 1508.27

Table 3 (Con.)

Term	CEQ Citation
Similar	1508.25
Small Business Associations	1506.6(b)(3)(vi)
Social Effects	1508.8
Special Expertise	1508.26
Specificity of Comments	1500.4(1), 1503.3
State and Area-wide Clearinghouses	1501.4(e)(2), 1503.1(a)(2)(iii), 1506.6(b)(3)(i)
State and Local	1500.4(n), 1500.5(h), 1501.2(d)(2), 1501.5(b), 1501.5(d), 1501.7(a)(1), 1501.8(c), 1502.16(c), 1503.1(a)(2), 1506.2(b), 1506.6(b)(3), 1508.5, 1508.12, 1508.18
State and Local Fiscal Assistance Act	1508.18(a)
Summary	1500.4(h), 1502.10(b), 1502.12
Supplements to Environmental Impact Statements	1502.9(c)
Table of Contents	1502.10(c)
Technological Development	1502.4(c)(3)
Terminology	1508.1
Tiering	1500.4(i), 1502.4(d), 1502.20, 1508.28
Time Limits	1500.5(e), 1501.1(e), 1501.7(b)(2), 1501.8
Treaties	1508.17

Table 3 (Con.)

Term	CEQ Citation
When to Prepare an Environmental Impact Statement	1501.3
Wild and Scenic Rivers Act	1506.8(b)(ii)
Wilderness Act	1506.8(b)(ii)
Writing	1502

Guide for Applicants for Use of Third-Party Contracting for the Preparation
of Environmental Impact Statements

Chapter 1 - Introduction and Overview

For actions classified under 7 CFR § 1970.151(b) as requiring the preparation of Environmental Impact Statements (EIS), the Agency's policy and standard practice is to solicit and procure professional services of qualified contractors for preparing EISs by using a third-party contracting process consistent with 40 CFR §1506.5(c). In general under the third-party contracting process, the federal lead agency, project applicant, and environmental consultant enter into a third party agreement to establish an understanding between the Agency and the applicant regarding the respective responsibilities, conditions, and procedures to be followed during the preparation of the EIS. The applicant pays for the consultant's services, but the federal lead agency (the "third party") is responsible for independently reviewing, analyzing and evaluating all information presented in the EIS. Under the Council on Environmental Quality (CEQ) regulations (40 CFR Part 1500), the lead agency is responsible for guiding and participating in EIS preparation, independently evaluating the EIS prior to its approval, and taking responsibility for the EIS scope and contents (40 CFR 1506.4(c)).

The use of a third-party contracting process for EISs was addressed by the CEQ in its publication of a memorandum to agencies titled, "Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations" published in the Federal Register on March 16, 1981 (46 FR 18026). Question number 16, Third Party Contracts, stated:

What is meant by the term "third party contracts" in connection with the preparation of an EIS? See Section 1506.5(c). When can "third party contracts" be used?

A. As used by EPA and other agencies, the term "third party contract" refers to the preparation of EISs by contractors paid by the applicant. In the case of an EIS for a National Pollution Discharge Elimination System (NPDES) permit, the applicant, aware in the early planning stages of the proposed project of the need for an EIS, contracts directly with a consulting firm for its preparation. See 40 C.F.R. 6.604(g). The "third party" is EPA which, under Section 1506.5(c), must select the consulting firm, even though the applicant pays for the cost of preparing the EIS. The consulting firm is responsible to EPA for preparing an EIS that meets the requirements of the NEPA regulations and EPA's NEPA procedures.

It is in the applicant's interest that the EIS comply with the law so that EPA can take prompt action on the NPDES permit application. The "third party contract" method under EPA's NEPA procedures is purely voluntary, though most applicants have found it helpful in expediting compliance with NEPA.

If a federal agency uses "third party contracting," the applicant may undertake the necessary paperwork for the solicitation of a field of candidates under the agency's direction, so long as the agency complies with Section 1506.5(c). Federal procurement requirements do not apply to the agency because it incurs no obligations or costs under the contract, nor does the agency procure anything under the contract.

Question number 17, Disclosure Statement to Avoid Conflict of Interest, also applies to the use of a third-party process. Question 17 states:

17a. Disclosure Statement to Avoid Conflict of Interest. If an EIS is prepared with the assistance of a consulting firm, the firm must execute a disclosure statement. What criteria must the firm follow in determining whether it has any "financial or other interest in the outcome of the project" which would cause a conflict of interest?

A. Section 1506.5(c), which specifies that a consulting firm preparing an EIS must execute a disclosure statement, does not define "financial or other interest in the outcome of the project." The Council interprets this term broadly to cover any known benefits other than general enhancement of professional reputation. This includes any financial benefit such as a promise of future construction or design work on the project, as well as indirect benefits the consultant is aware of (e.g., if the project would aid proposals sponsored by the firm's other clients). For example, completion of a highway project may encourage construction of a shopping center or industrial park from which the consultant stands to benefit. If a consulting firm is aware that it has such an interest in the decision on the proposal, it should be disqualified from preparing the EIS, to preserve the objectivity and integrity of the NEPA process.

When a consulting firm has been involved in developing initial data and plans for the project, but does not have any financial or other interest in the outcome of the decision, it need not be disqualified from preparing the EIS. However, a disclosure statement in the draft EIS should clearly state the scope and extent of the firm's prior involvement to expose any potential conflicts of interest that may exist.

17b. If the firm in fact has no promise of future work or other interest in the outcome of the proposal, may the firm later bid in competition with others for future work on the project if the proposed action is approved?

A. Yes.

While the third-party contracting process is voluntary, utilizing this process will expedite an applicant's project proposal through the required environmental review process and application for financial assistance. The use of a third-party independent contractor will assist Agency program officials and environmental staff to evaluate the environmental implications and consequences of an applicant's project proposal. The EIS contractor is:

- Selected by and works under the direct supervision and control of Agency environmental staff;
- Responsible for conducting environmental impact analyses and preparing the requisite environmental documentation; and
- Paid by applicants.

This guidance document will provide the "necessary paperwork for the solicitation of a field of candidates under the agency's direction" so an applicant can successfully solicit and procure the professional services of a qualified EIS contractor. As noted in Question 16 referenced above, "Federal procurement requirements do not apply to the agency because it incurs no obligations or costs under the contract, nor does the agency procure anything under the contract." However, the procurement process undertaken by applicants must comply with any applicable state procurement laws.

The following documents are provided to aid an applicant's preparation of requests for proposals for soliciting and procuring professional services:

- Third-party agreement;
- Statement of work;
- Spreadsheet example for developing cost estimates;
- Technical and cost selection criteria;
- Administrative record guidance; and
- Contractor conflict of interest or disclosure statement (must be executed by contractors submitting technical and cost proposals in response to a request for proposal (RFP)).

Chapter 2 - Specific Guidelines and Requirements for Developing Requests for Proposals

The following guidance will specifically discuss the items necessary for applicants developing RFPs for soliciting and procuring professional services of an EIS contractor.

As noted above and in accordance with 40 CFR § 1506.5(c) it is the Agency's responsibility to select the EIS contractor. However CEQ in its publication of a 1983 memorandum to agencies titled, "Guidance Regarding NEPA Regulations" published in the Federal Register on July 28, 1983 (48 FR 34263) provided guidance on whether federal agencies can consider contractors suggested by an applicant. It states, "There is no bar against the agency considering candidates suggested by the applicant, although the Federal agency must retain its independence. If the applicant is seen as having a major role in the selection of the contractor, contractors may feel the need to please both the agency and the applicant. An applicant's suggestion, if any, to the agency regarding the choice of contractors should be one of many factors involved in the selection process." The Agency may accept an applicant's recommendation for considering a contractor for preparing an EIS, however they will likely be just one of the many contractors responding to a RFP and the agency will make the selection using the evaluation factors provided below.

Third-Party Agreement

Attachment 1 includes an example of a third-party agreement. This agreement establishes an understanding between Agency environmental staff and the applicant regarding the respective responsibilities, conditions, and procedures to be followed during the preparation of the EIS. Under the agreement, the applicant's primary responsibility is to fund the contractor's services; the contractor's primary responsibility is to assist the Agency in preparing the EIS under the agency's supervision and direction and the Agency's primary responsibility is to supervise and direct the contractor's work. The agreement includes relevant project-specific information and is executed by and after Agency environmental staff have completed the review of the results of the applicant's RFP process and have approved and directed applicants to award the EIS contract to a specific contractor.

Statement of Work

Attachment 2 includes an example of the standard statement of work (SOW) that will be used in the applicant's RFP. The SOW indicates where project-specific information needs to be entered. The SOW also includes a number of attachments that must be prepared. The attachments include a list of applicant-supplied supporting documents (to be filled out by the applicant prior to publishing the RFP), a list of administrative record data fields, and a standard EIS outline.

Cost Estimate Spreadsheet

Attachment 3 includes an example of a spreadsheet that could be used to project and estimate the cost of preparing an EIS based on the tasks outlined in the SOW. The cost estimate is a breakdown in the costs anticipated in the performance of the contract. These costs include direct costs such as labor, products, equipment, and travel; indirect costs such as labor overhead, material overhead, and general and administrative expenses; and profit or fee (amount above costs incurred to remunerate the contractor for the risks involved in undertaking the contract). Applicants should determine the applicable and pertinent labor costs for their area and input those numbers in to the spreadsheet. Cost estimates are used to establish a realistic cost for budgeting purposes and can serve as the baseline for evaluating contractors' cost proposals submitted in response to the RFP.

Evaluation Factors of RFP Responses

Attachment 4 includes recommended factors that will be used to evaluate the technical and cost proposals of contractors that are responding to the RFP. Contractor submitted technical and cost proposals should be evaluated under three equally-weighted factors: past performance, technical capability, and price with the non-price factors combined being of greater importance than price. Award will be made on a "best value" basis.

Administrative Record Guidance

Creating and maintaining a comprehensive file and administrative record (AR) is a critical function of the contractors preparing an EIS. The AR is the paper trail that documents the Agency's decision-making process and the basis for its decision. The AR demonstrates the agency compliance with the relevant statutory, regulatory, and agency requirements and shows that the agency followed a reasoned decision-making process. Attachment 5 includes guidance on preparing the AR and includes the recommended administrative record data fields that comprise an AR.

The AR is comprised of the following:

- Documents and records that were available to the decision-maker at the time the decision was made;
- Documents that do and do not support the final decision but were created or relied upon during the analysis of the decision;

- Privileged and non-privileged documents and records, policy documents, reference books and articles; and
- Documents related to actions taken on the implementation of the decision from the date of the decision to the current date. The AR should also include any Freedom of Information Act requests and responses regarding the Agency's decision.

Disclosure Statement

In accordance with 40 CFR 1506.5(c), if an EIS is prepared with the assistance of a consultant, the consultant must execute a disclosure statement stating they have no "financial or other interest in the outcome of the project." Attachment 6 includes a template document that must be filled out and completed by all contractors responding to a RFP.

Information related to avoiding conflicts of interest are addressed in CEQ's, "Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations" published in the Federal Register on March 16, 1981 (46 FR 18026) (see Chapter 1.0 of this document for an excerpt of this issue).

Chapter 3 - Third-Party Contracting Procedures

The procedures identified below will describe the standard process for utilizing a third-party contract for preparing EISs.

1. The applicant will consult with Agency program officials and environmental staff as soon as possible for actions listed in 7 CFR § 1970.151(b). The Agency staff will evaluate the applicant's proposal and determine if the third-party contracting process is appropriate for the action.
2. Agency program officials will determine whether the applicant's proposal is feasible, eligible for financial assistance, and actionable within budget limits. If the proposal is determined to be feasible, the program officials will authorize the environmental staff to initiate the third-party contracting process with the applicant.
3. Agency environmental staff will work with the applicant to develop and draft the RFP using project specific information and material contained in this guidance document. Agency environmental staff must approve the RFP prior to it being published by applicant.

4. Prior to publishing the RFP, the applicant must identify three to five contractors who will receive the RFP. Agency environmental staff must approve the list of contractors and may make additional recommendations.
5. All contractors receiving the RFP who wish to submit technical and cost proposals must complete and execute the Disclosure Statement included as Exhibit 6 and include it with their submittals. Throughout the solicitation process and until the contract is awarded, the applicant is responsible for answering all questions submitted by contractors responding to the RFP.
6. Contractors responding to the RFP must satisfactorily complete all elements in the RFP to be considered as responsive offerors.
7. Applicants shall review the offerors submittals for completeness and submit those responsive technical and cost proposals to Agency environmental staff for review.
8. Agency environmental staff will review and evaluate the offerors' submittals on the technical and cost selection criteria included in Exhibit 4.
9. Agency environmental staff will make the final selection of the third-party contractor and will notify and provide the results of their analyses to the applicant.
10. Prior to making the award to the successful third-party contractor, the applicant and Agency will complete and execute the Third-Party Agreement included in Exhibit 1.
11. Once the Third-Party Agreement is executed, the applicant will award the contract. The applicant will provide the Agency with a copy of the awarded contract.
12. The applicant is responsible for answering any questions from offerors that were not selected.
13. The contract will proceed according to the steps outlined in the Statement of Work and the awarded contract starting with the contract kick-off meeting.
14. Once the contract is awarded the third-party Contractor will report to and coordinate all contract responsibilities with the appropriate Agency environmental staff.

**THIRD-PARTY AGREEMENT
BETWEEN (INSERT APPLICANT NAME) AND
THE U.S. DEPARTMENT OF AGRICULTURE (INSERT RD AGENCY NAME)
FOR THE PURPOSE OF
PREPARING AN ENVIRONMENTAL IMPACT STATEMENT FOR THE
(INSERT PROJECT PROPOSAL'S NAME)**

I. BACKGROUND AND PURPOSE

The U.S. Department of Agriculture, (**insert RD agency name**), hereinafter referred to as the AGENCY, has determined that an environmental impact statement (EIS) is required for (**insert applicant name's**) proposal, hereinafter referred to as the APPLICANT, to construct the (**insert project title**). The proposed project's potential area of effect encompasses (**insert comprehensive locational information that best suits the project proposal**) Townships _____, Ranges _____, and is located in the _____ County, State. The purpose of this Third-Party Agreement (TPA) is to establish an understanding between the APPLICANT and the AGENCY regarding the respective responsibilities, conditions, and procedures to be followed during the preparation of the EIS.

The AGENCY has approved the (**insert the contractor's name**), hereinafter referred to as the CONTRACTOR, to conduct the environmental review process and to prepare an EIS at the APPLICANT'S expense in accordance with the requirements stated in Section II.

In accordance with 40 CFR 1506.2(a) and (c), to reduce duplication to the fullest extent possible, other federal, state, and local agencies having jurisdiction by law or special expertise will be informed and invited to provide input and cooperate with the parties to this TPA during the preparation of the EIS.

II. NEPA COMPLIANCE

The EIS will be prepared in accordance with the National Environmental Policy Act of 1969, as amended (NEPA; 42 USCA Sec. 4321 to 4370e) and in compliance with all applicable regulations and laws, including the Council on Environmental Quality (CEQ), Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, (40 Code of Federal Regulations (CFR) Part 1500) and USDA, Rural Development, Environmental Policies and Procedures (7 CFR Part 1970).

As the lead agency, the AGENCY is responsible for ensuring that all analyses and documents conform to NEPA, CEQ and other pertinent federal laws and regulations. The APPLICANT and the CONTRACTOR agree to produce an analysis and document that meets the AGENCY standards and legal requirements of applicable laws and regulations.

This EIS will assess the potential environmental impacts of the APPLICANT'S project proposal, the no-action alternative, and a range of reasonable alternatives identified in scoping documents and future analyses, and will serve to inform the AGENCY decision-makers and the public. The project components that must be analyzed in the EIS shall include, but are not limited to, the following:

1. The APPLICANT'S project proposal including the following project components (insert a comprehensive project summary including ALL project components);
2. The purpose and need of the proposal;
3. A description of the no action alternative. The no action alternative is interpreted to mean that "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;"
4. Any reasonable alternatives to the project proposal; and
5. (List any specific issues that are particular to the project proposal, i.e., transportation, air quality, construction activities or issues, etc.)

The AGENCY and the APPLICANT understand and agree that the EIS will analyze the cumulative impacts (see 40 CFR 1508.7) of the project proposal and any other reasonably foreseeable future actions.

III. AUTHORITIES

This TPA is entered into under the following authorities:

- (a) The *National Environmental Policy Act of 1969, as amended* (Public Law [PL] 91-190, 42 USC 4321 et seq.);
- (b) The Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR Part 1500); and
- (c) USDA, Rural Development, Environmental Policies and Procedures (7 CFR Part 1970).

III RESPONSIBILITIES

(a) AGENCY Responsibilities

- (1) *The AGENCY will be the lead federal agency in the preparation of the EIS and will be responsible for compliance with the requirements of NEPA, CEQ regulations, and other pertinent federal and state laws and regulations.*
- (2) *The AGENCY will select and oversee the CONTRACTOR paid for by the APPLICANT, to prepare the EIS in accordance with third-party contracting procedures [40 CFR 1506.5(c) and Question 16 of the CEQ's, Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations]. The AGENCY will designate a sole point-of-contact for all matters related to the preparation of the EIS by the CONTRACTOR.*
- (3) *The AGENCY will consult with and keep the APPLICANT informed on the progress of the EIS, as well as any data needs or changes.*
- (4) *The AGENCY will invite the APPLICANT and the CONTRACTOR to attend meetings with federal, state, and local agencies and other interested groups throughout the EIS/NEPA process.*
- (5) *The AGENCY will provide comprehensive oversight of the EIS preparation process to verify that the CONTRACTOR considers existing data, environmental descriptions, and analysis available from the APPLICANT and other sources, and that the CONTRACTOR does not duplicate work already completed unless the AGENCY determines that the existing work is not adequate for the purposes of the EIS. The AGENCY and the CONTRACTOR will jointly assess whether existing work must be modified or redone. The AGENCY will require the CONTRACTOR to provide adequate copies of all maps, reports, and draft documents to allow for a timely review.*
- (6) *When requested to do so by the APPLICANT, the AGENCY will treat specific data provided by the APPLICANT as confidential and proprietary to the extent permitted by law. This responsibility extends to both internal and CONTRACTOR use of the information. In the event that any confidential or proprietary information is required by law to be released by the AGENCY, the APPLICANT shall be provided written notice of any such proposed release at least thirty (30) days in advance of such release.*

(7) *The AGENCY is responsible for complying with NEPA and its implementing procedures including, but not limited to: scope and content of information in the EIS, administrative records (including documentation of the rationale for the project proposal's purpose and need and other applicable supporting information), public involvement during the EIS process, and preparing with assistance from the CONTRACTOR appropriate decision documentation. The AGENCY shall ensure that the EIS presents a range of reasonable alternatives and includes relevant environmental/social/economic issues and impacts, including cumulative impacts.*

(8) *The AGENCY will consult with the APPLICANT on the project proposal's components and descriptions as needed, particularly during impact analysis, to assist in avoiding, mitigating, or otherwise addressing any adverse impacts. In consultation with the CONTRACTOR, the AGENCY will determine the appropriate method of how the CONTRACTOR will consider existing data, environmental descriptions, and analyses available from all sources including the AGENCY.*

(b) APPLICANT'S Responsibilities

(1) *The APPLICANT will designate a single point-of-contact for the AGENCY on all matters relating to the preparation of the EIS.*

(2) *In consultation with the Agency, the APPLICANT will be responsible for providing administrative and technical support in soliciting and executing a contract with the CONTRACTOR. The APPLICANT will be responsible for all costs and any continuing costs incurred by that CONTRACTOR until terminated by the APPLICANT.*

(3) *Prior to awarding the contract the APPLICANT will ensure that the CONTRACTOR signs a "Disclosure Statement" prepared and provided by the AGENCY stating that the CONTRACTOR does not have any interest, financial or otherwise, in the outcome of the project. A copy of the signed statement shall be provided to the AGENCY prior to the award of the contract to the CONTRACTOR.*

(4) *The APPLICANT AND CONTRACTOR will assist the AGENCY in fulfilling its responsibilities with the requirements of NEPA, CEQ regulations, and other pertinent state and federal laws and regulations.*

(5) The APPLICANT shall provide to the AGENCY a written and full description of the project proposal to facilitate preparation of the project description in the EIS. The APPLICANT shall provide the CONTRACTOR with any agreements executed with any source that are pertinent to the preparation of the EIS.

(6) The APPLICANT will provide the AGENCY with any necessary or relevant technical and environmental information it may have which is needed, at the AGENCY'S discretion, to support the environmental analysis and documentation for the EIS. The APPLICANT will ensure that the CONTRACTOR provides the AGENCY with all documentation, including, but not limited to CONTRACTOR'S EIS team meeting notes, e-mail messages, analysis protocols and methodologies and data, rationale, maps, GIS data and its Federal Geographic Data Committee-compliant metadata, and any other supporting information used in the preparation of the EIS. Such information is part of the administrative record for this project and EIS. The Administrative record for the EIS will be maintained by the CONTRACTOR. The APPLICANT and the CONTRACTOR share responsibility with the AGENCY for ensuring that the administrative record is complete and accurate.

(7) The APPLICANT will review the technical, environmental, and socio-economic information in its possession, and to the extent that such information is not restricted by confidentiality agreements, the APPLICANT will provide the AGENCY and CONTRACTOR with such information that they believe is necessary for review or input into the analysis or other parts of the EIS.

(8) The APPLICANT will immediately provide to the AGENCY and CONTRACTOR any independently received data requests or EIS review comments received during the preparation and public comment period of the EIS.

(9) As requested by the AGENCY, the APPLICANT will attend meetings and participate in the preparation of appropriate mitigation measures to resolve or lessen adverse impacts.

(10) Except for preparation of the Record of Decision as described herein, the APPLICANT and their CONTRACTOR will be responsible for all clerical, graphics, layout, and printing services and all costs associated related to preparing and distributing internal review drafts and final copies of the Draft and Final EIS documents prepared by the CONTRACTOR. Foldout sheets and large maps shall be provided where possible.

(c) **JOINT Responsibilities**

(1) *The AGENCY, in cooperation with the APPLICANT and the CONTRACTOR, will develop an EIS Preparation Schedule that projects key dates. The tentative schedule, current as of the signing of this TPA, is attached as Exhibit 1-1. Changes to the schedule will require advance approval by the AGENCY. Should a party not be able to meet a key date requirement, advance notification shall be given to the other parties. The notification shall include a projected date the requirement will be met. All parties will use best efforts to adhere to, and assist each other in adhering to, the EIS Preparation Schedule.*

IV. ADMINISTRATIVE AND LEGAL PROVISIONS

(a) **Applicable Law.**

The parties agree to comply with all applicable laws governing activities under this TPA.

(b) **Term of TPA**

This TPA will commence upon the date last signed and executed by the duly authorized representatives in accordance with provisions listed below in V, part D (Termination) or until a Record of Decision on the APPLICANT's project proposal is issued by the AGENCY, whichever occurs first.

(c) **Amendments**

Either party may request changes in this TPA. Any changes, modifications, revisions, or amendments to this TPA, will be incorporated by written instrument, executed and signed by all parties to this TPA, and will be effective in accordance with the terms of paragraph A. above.

(d) **Termination**

(1) *Either party may terminate this TPA after thirty (30) days written notice to the other party of their intention to do so. During this period, the parties will enter negotiations to resolve the disagreement(s).*

If the disagreement(s) have not been resolved by the end of the thirty-day period, the TPA will terminate. In the event negotiations are progressing, but are not concluded by the end of the thirty-day period, the party initiating the request to terminate may request termination be postponed for an additional thirty-day period.

(2) In the event of termination of the TPA, and at the request of the AGENCY, the APPLICANT will be required to submit to the AGENCY all information and records held by the APPLICANT and the CONTRACTOR that were used for EIS preparation up to the point of TPA termination, as well as all information and records held by the APPLICANT and the CONTRACTOR needed to, if appropriate, support continued preparation of the EIS.

(e) Limitations

In executing this TPA and taking any other actions contemplated hereby, the APPLICANT reserves the right to contest, in any administrative or judicial proceedings, any and all decisions concerning issues in the EIS or any other federal requirements related to the project proposal. The APPLICANT recognizes that nothing in this TPA commits the AGENCY to fund the project proposal or otherwise take an action that is favorable to the APPLICANT upon all or any part of the project proposal.

(f) Severability

Should any portion of this TPA be determined to be illegal or unenforceable, the remainder of the TPA will continue in full force and effect, and either party may renegotiate the terms affected by the severance.

(g) Exchange of Information

Data provided pursuant to this agreement may contain proprietary or pre-decisional AGENCY or APPLICANT information. All records or information requested of either party by the other will be reviewed by the releasing party prior to release. To the extent permissible under law, any recipient of proprietary or pre-decisional information agrees not to disclose this information to the public or other parties. To the extent permissible by law, any recipient of this information agrees not to transmit or otherwise divulge this information without approval from the AGENCY or APPLICANT or both.

Any breach of this provision may result in termination of this TPA. Requests for information will be made through the points of contact identified in VI. CONTACTS, below.

(h) **Third-Party Beneficiary Rights**

The parties do not intend to create in any other individual or entity the status of third-party beneficiary, and this TPA must not be construed so as to create such status. The rights, duties, and obligations contained in this TPA operate only between the parties to this TPA, and inure solely to the benefit of the parties of this TPA. The provisions of this TPA are intended only to assist the parties in determining and performing their obligations under this TPA. The parties to this TPA intend and expressly agree that only parties signatory to this TPA will have any legal or equitable right to seek to enforce this TPA, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this TPA, or to bring an action for the breach of this TPA.

VI. **CONTACTS:** The primary points of contact for carrying out the provisions of this TPA are:

APPLICANT:
Insert Name and Address here:

AGENCY:
Insert Name and Address here:

V. **SIGNATURES**

For (Insert APPLICANT Name):

By: _____
Signature

_____ Date

Title

Insert APPLICANT Name and Address here:

Name: _____
Address: _____
State: _____

For (Insert Agency Name):

{**Note:** This agreement is executed by the Director of the appropriate Rural Development agency's National Office Environmental Staff.}

By: _____
Signature **Date**

Title

Insert APPLICANT Name and Address here:

Name: _____
Address: _____
State: _____

**EXHIBIT 1-1 EIS
 PREPARATON SCHEDULE**

The AGENCY may or may not have completed the EIS scoping process before the award of the EIS contract. The schedule below assumes that the scoping process has been completed. If the scoping process has not been completed prior to the award of the contract to prepare an EIS, then the scoping process task must be integrated in to the contract and schedule.

Tasks		Target Dates
AGENCY Kick-off Meeting - Establish AGENCY Interdisciplinary Team. Review and approve the APPLICANT's project proposal and solicitation package for the EIS contract.		
APPLICANT completes the solicitation process for the EIS contract and provides documentation to the AGENCY for action.		
AGENCY reviews contractor submittals. AGENCY selects and approves EIS contractor.		
APPLICANT secures from prospective EIS contractor a non-disclosure statement and provides to the AGENCY.		
APPLICANT awards EIS contract to contractor selected by the AGENCY.		
AGENCY and APPLICANT review, finalize, and execute the third-party agreement.		
Notice of intent to Prepare an EIS prepared and submitted to the <i>Federal Register</i> .		
CONTRACTOR prepares and submits preliminary Draft EIS to AGENCY and APPLICANT for review and approval.		
CONTRACTOR responds to all internal comments from AGENCY and APPLICANT and prepares Draft EIS for publication.		

(Con.)

Tasks		Target Dates
Notice of Availability of Draft EIS and to hold a public comment meeting(s) is prepared and submitted to <i>Federal Register</i> and the U.S. Environmental Protection Agency (EPA) (60-day public comment period starts when the EPA publishes the receipt of the Draft EIS in the <i>Federal Register</i>). Draft EIS is published and distributed to all agencies, public repositories, and interested parties.		
Public comment period for the Draft EIS starts.		
AGENCY, APPLICANT, and CONTRACTOR hold a public meeting(s) to solicit public comments on the Draft EIS		
Public comment period on the Draft EIS concludes. All public comments submitted to CONTRACTOR.		
CONTRACTOR prepares responses to all public comments and in consultation with the AGENCY and APPLICANT makes all appropriate changes to EIS. CONTRACTOR prepares and submits preliminary Final EIS to AGENCY and APPLICANT for review and approval.		
CONTRACTOR responds to all comments from AGENCY and APPLICANT and prepares Final EIS for publication.		
Notice of Availability of Final EIS is prepared and submitted to <i>Federal Register</i> and the EPA (45-day public comment period starts when the EPA publishes the receipt of the Final EIS in the <i>Federal Register</i>). Final EIS is published and distributed to all agencies, public repositories, and interested parties.		
Public comment period in Final EIS starts.		
Public comment period on the Final EIS concludes. All public comments submitted to CONTRACTOR.		
CONTRACTOR prepares responses to all public comments and prepares a draft Record of Decision. Submits to AGENCY for review.		

(Con.)

Tasks		Target Dates
AGENCY's decision-maker executes the Record of Decision.		
AGENCY publishes Notice of Availability of the Record of Decision in the Federal Register.		

STATEMENT OF WORK
(Insert Applicant Name)
Environmental Impact Statement
(Insert Project Proposal's Title)

1. INTRODUCTION

1.1. Background

By statutory authority the Department of Agriculture, Rural Development, [*insert agency name*], (hereafter referred to as the "Agency"), is the leading federal advocate for rural America, administering a multitude of programs, ranging from housing and community facilities to infrastructure and business development. Its mission is to increase economic opportunity and improve the quality of life in rural communities by providing the leadership, infrastructure, venture capital, and technical support that enables rural communities to prosper. The Agency supports these communities in a dynamic global environment defined by the Internet revolution, and the rise of new technologies, products, and new markets.

To achieve its mission, the Agency provides financial support (including direct loans, grants, and loan guarantees) and technical assistance to help enhance the quality of life and provide the foundation for economic development in rural areas. [*insert as appropriate the specific agency's mission*]

Providing financial assistance by the Agency would be considered a "Federal action" under the regulations of the National Environmental Policy Act (NEPA), thus the Agency is required to prepare a specific level of the environmental review to assess potential impacts of proposed actions on the human environment. In accordance with the Agency's Policies and Procedures (7 CFR part 1970), compliance responsibilities also include related federal statutes such as the National Historic Preservation Act, Endangered Species Act, Clean Air Act, Clean Water Act, and Farmland Protection Policy Act, among others, as well as applicable Executive Orders.

1.2. Description of Proposal

(*Insert applicant's name*), hereinafter referred to as the applicant, proposes to construct (*insert a detailed project description including all project components*). The project proposal is located in the following locations (*insert a complete description of the project area, at a minimum, city/county/state*).

The applicant has submitted or is planning on submitting an application to the Agency for funding for the project proposal. The application process includes a submittal of planning documents (*if applicable, insert the names of documents*) that consists of (*insert documents*) (*document references*). The applicant, through their consultant, also conducted field studies and compiled baseline environmental data for the project area (*document reference*).

[*Provide list and brief summary of studies and results*]

1.3. Other Regulatory Requirements

The applicant is responsible for all permit applications and any associated studies, and will provide to the contractor information on the status and disposition of such permits for inclusion in the Environmental Impact Statement (EIS).

2. OBJECTIVE

The objective of this solicitation is to procure professional services of an experienced contractor that will, based on existing data and analyses, conduct environmental and social impact assessment, cumulative effects assessment, public involvement, and interagency coordination, and compile the results of these efforts in an EIS. The EIS shall meet the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended (42 USC 4321, et seq.); CEQ Regulations (40 CFR Parts 1500-1508); and Agency's Environmental Policies and Procedures (7 CFR Part 1970). The analysis and conclusions in the EIS shall be of sufficient clarity and detail such that stakeholders are provided sufficient evidence in support of the Agency's decision.

3. GENERAL REQUIREMENTS

3.1. The contractor shall provide all necessary labor, materials, equipment, supplies and transportation to successfully complete the EIS for the project proposal. Specific requirements for the contractor (unless a different responsible party is otherwise stated) are described in following sections of this statement of work (SOW).

3.2. The EIS will be based on data and information provided by the Agency and applicant. Due to the complexity and potential controversy of the project proposal and alternatives considered, specific requirements may change due to Agency consideration, public comment, or other external factors.

The contractor is expected to work closely with the applicant to obtain the information necessary to answer impact questions identified during the scoping or newly-identified issues during the environmental review process, making maximum use of pre-existing documentation. Any disagreements or conflicts should be brought promptly to the Agency for resolution.

3.3. All hardcopy and electronic materials (data, analyses, correspondence, reports, etc.) should be in Arial font, 12-point size, and prepared with the latest version of Microsoft Word. Hardcopy documents shall be printed double-sided except to accommodate graphics, tables or other large-format display material. Margins shall be at least 1.00 inches, but may vary to accommodate different presentation formats. The document should employ ample white space to aid readability and reduce visual clutter.

3.4. Draft documents shall include line numbers to facilitate review and commenting. To the extent practicable, documents submitted for review to the Agency shall be transmitted electronically or on electronic media.

3.5. Documentation to be posted on the Agency's and applicant's website shall be converted to portable document formats (pdf) using the latest version of Adobe® Acrobat®. Text and graphics shall be presented as readable, properly indexed, and bookmarked documents. The documentation shall be prepared accordingly to be reasonably accessible over slower-speed internet connections and as an entire document accessible for high-speed internet connections.

3.6. All geographic information system (GIS) related graphics shall be prepared and submitted in appropriate Environmental Systems Research Institute, Inc. (ESRI™) file formats including completed metadata. Maps provided in the Draft and Final EIS project files shall be submitted in a *.mxd format. All data layers (coverages, shapefiles, or personal geodatabases) shall be submitted in one folder including a portable document format (.pdf) version of each map's final layout. If large maps are required they shall be constructed using the current version of ESRI ArcGIS ArcMap® for Desktop.

3.7. The contractor shall not release to the public or other parties external to the applicant's proposal or preparation of this EIS any data, reports, graphics, conversation records, meeting notes, or related materials produced or used during the completion of the EIS, without written permission from the Agency.

3.8. Literature citations and literature cited sections shall follow the Journal of Wildlife Management guidelines (see Appendix B at joomla.wildlife.org/documents/Manuscript_Guidelines_2008).

3.9. To the extent practicable, all documentation shall comply with Section 508 of the Rehabilitation Act, (29 U.S.C. 794d).

3.10. The Agency may reject any submittal if it deems the submittal deficient. Upon rejection of a submittal, the contractor shall re-submit the submittal, adhering to Agency comments, within 14 business days of being notified of the rejection. Correction of deficient submittals following rejection shall be at no additional expense to the Government.

4. APPLICABLE DOCUMENTS

The contractor shall comply with or reference, as appropriate, the following statutes, guidelines, and publications listed below. The list is not comprehensive, and the Agency may provide additional documents during the course of the contract.

4.1. Statutes

- 4.1.1. National Environmental Policy Act of 1969
- 4.1.2. National Historic Preservation Act of 1966
- 4.1.3. Endangered Species Act of 1973
- 4.1.4. Clean Air Act and amendments,
- 4.1.5. Clean Water Act and amendments
- 4.1.6. Farmland Protection Policy Act
- 4.1.7. Migratory Bird Treaty Act
- 4.1.8. Bald and Golden Eagle Protection Act
- 4.1.9. Wild and Scenic Rivers Act

4.2. Regulations

- 4.2.1. Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR Parts 1500-1508)
- 4.2.2. Protection of Historic Properties (36 CFR Part 800)
- 4.2.3. Interagency Cooperation, Endangered Species Act (50 CFR Part 402)
- 4.2.4. Rural Development Environmental Policies and Procedures (7 CFR Part 1970)

4.3. Executive Orders

- 4.3.1. Executive Order 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- 4.3.2. Executive Order 13186 Responsibilities of Federal Agencies to Protect Migratory Birds
- 4.3.3. Executive Order 11988 Floodplain Management
- 4.3.4. Executive Order 11990 Protection of Wetlands

4.4. Guidance - *add any pertinent state level guidance*

4.5. Publications

- 4.5.1. Council of Science Editors style manual (www.councilscienceeditors.org/publications/style)
- 4.5.2. Federal Plain Language Guidelines (www.plainlanguage.gov/howto/guidelines/bigdoc/fullbigdoc)
- 4.5.3. The Environmental Style: Writing Environmental Assessments and Impact Statements (pp. 5-11) gc.energy.gov/NEPA/nepa_documents/TOOLS/GUIDANCE/Volume2/2-12-the_environmental_style

4.6. The following are included as attachments:

- 4.6.1. Table of Applicant-supplied Supporting Documents (Attachment I)
- 4.6.2. Guidance on Preparation of the Administrative Record (Attachment II)
- 4.6.3. Agency EIS Outline (Attachment III)

5. DETAILED REQUIREMENTS/SPECIFICATIONS.

5.1. Kick-off Meeting. Within 10 business days (*all of the following time frames are only offered as examples. Specific time frames can be modified for different project proposals and contracts*) after contract award, the contractor shall organize and schedule a one- or two-day kick-off meeting near the site of the project proposal in (*town/county*). Meeting participants shall include the Agency, applicant staff and consultants, and staff from (*cooperating agencies, if any*). The purpose of the meeting is to discuss or conduct:

- 5.1.1. Contractual obligations, procedural issues, clarification of roles and responsibilities, and schedule;

5.1.2. Relevant studies, data, or other information considered useful in preparation of the EIS; currently identified alternatives, and potential additional alternatives;

5.1.3. Data needs, areas of controversy, permitting or regulatory issues, or interagency concerns that may influence or help direct preparation of the EIS;

5.1.5. As feasible given logistics, weather, and accessibility, site visits to the project proposal's location(s) and that of any associated project components. The applicant and their contractor(s) will be responsible for planning the site visits.

5.2. Pre-EIS Reports Review.

5.2.1. The contractor shall evaluate relevant data collection, technical studies, and scoping documents prepared by the applicant and its contractors to ensure adequacy for inclusion in the EIS. All documentation will be provided to the contractor prior to and/or at the kick-off meeting. Previously prepared documentation is referenced in Section 6, Applicant/Agency Furnished Items, and listed in Attachment I.

5.2.2. The evaluation shall examine comprehensiveness, scientific validity, and the suitability of the information to provide a basis for the contractor to draw verifiable impact assessment conclusions and recommendations. The contractor shall identify any gaps or shortcomings in the information and, if necessary, suggest additional studies or data collection to address them.

5.2.3. The review shall also evaluate proposed alternatives and recommend additional alternatives as necessary to strengthen the analysis.

5.2.4. The contractor shall submit findings and recommendations in a report to the Agency for review, comment, and concurrence within 20 business days after contract award. The Agency will provide review comments to the contractor within five business days. The contractor, within five business days after comments are received and resolved, shall revise the evaluation report and submit an electronic version of the final report to the Agency.

5.3. Administrative Record and Plan.

5.3.1. The contractor shall develop a Microsoft Access database that tracks and compiles all analyses, reports, correspondence, and any other information related to the development of the EIS. The database shall conform to the Agency's data and formatting requirements (Attachment II), and be structured to enable the contractor and Agency to efficiently locate and reference all EIS-related information. The administrative record will include only those documents provided to, used, generated, or compiled by the contractor.

5.3.2. The contractor, within 15 business days after contract award, shall prepare and submit a plan that describes the database design to the Agency for review. The Agency will provide review comments to the contractor within five business days. The contractor, within five business days after comments are received and resolved, shall revise the database design plan and submit an electronic version of the final design to the Agency.

5.3.3. Compilation of the administrative record by the contractor shall begin immediately upon contract award. Upon completion of the contract, the contractor shall provide the completed electronic database file and all original project files (hardcopy and electronic) to the Agency. If at any time the Agency requests the contractor to provide the administrative record, the contractor shall do so within five business days.

5.4. Project Management Plan.

5.4.1. The contractor shall develop a project management plan (PMP) that includes the following:

- Schedule of specific milestones;
- A critical path flow chart that clearly shows the start and end date of all activities;
- A narrative description of major tasks required by the SOW;
- Additional studies and/or data that the proposal development and pre-EIS reports review may have determined to be necessary;
- Individual steps required for completion of each task.

5.4.2. The contractor shall submit the initial PMP to the Agency for review within 15 business days after contract award. The Agency will provide review comments to the contractor within five business days. The contractor, within five business days after final comments are received and discussed, shall revise the plan and submit an electronic version of the plan to the Agency. Any proposed modifications to the PMP shall be discussed with the Agency, and if agreed to, the contractor should revise plan components as necessary and submit to the Agency for concurrence.

5.4.3. Submit a quarterly status report to the Agency on the first business day of January, April, July, and October for the duration of this contract. The status report shall track information included in the PMP such as: listing of tasks begun and percent completion of each; problems encountered or anticipated that may delay successful completion of tasks, deliverables and/or the entire project, and estimated schedule impacts; corrective actions taken with regard to the identified problem(s); planned activities for the succeeding quarter; expenditures by task; and, an updated schedule. The Agency may request additional status reports.

5.5. Impact Identification and Mitigation.

The contractor shall perform necessary analyses to identify possible effects from the project proposal and any reasonable alternatives being considered, to include direct, indirect, and cumulative effects. These predictions should be based on calculations, extrapolations, models, precedent, logical inference, professional judgment, and other reasonable, accepted, and systematic methodologies as may be appropriate. To the extent that adverse effects are predicted, the contractor will confer with the Agency to identify feasible alternative actions or mitigation measures that would lessen impacts. The potential effects of the mitigation measures themselves will also be analyzed. At the end of the analysis and, if appropriate, the contractor shall prepare a mitigation plan that will be integrated into the Record of Decision (ROD).

5.6. Public Involvement Plan and Associated Activities.

5.6.1. The contractor shall develop, maintain and revise a Public Involvement Plan on an on-going basis during the EIS process. The Public Involvement Plan shall provide a list of interested individuals, agencies, repositories, and organizations that need to be consulted and involved in any and all public involvement activities related to this contract, including distribution of deliverables.

The list shall include point-of-contact information for all appropriate and relevant federal and state agencies, tribes, newspapers, and repositories for the EIS documents and associated studies and documentation. The contractor shall prepare and submit the initial Public Involvement Plan for review to the Agency within 40 business days after contract award. The Agency will provide review comments to the contractor within 10 business days. Within five business days after final comments are received and discussed, the contractor shall revise the plan and submit an electronic version of the plan to the Agency.

5.6.2. The contractor shall provide support to the Agency in executing its public involvement responsibilities. This support will include: maintenance of the Public Involvement Plan; design and preparation of display materials; mailings; and organizing, facilitating, attending, and making presentations at any public, interagency, or tribal meetings.

5.7. EIS Format and Requirements

5.7.1. CEQ's Regulations at 40 CFR § 1502.10 provides a standard EIS outline, with §§ 1502.11 through 1502.18 detailing the contents of individual components. Using the cited CEQ sections as general guidance, the contractor shall follow the Agency-recommended outline at Attachment III in formatting the EIS. In the event of conflicts or doubt, the Agency outline takes precedence. Language shall be concise, grammatically correct, and contain only the information and data necessary to support impact conclusions.

5.7.2. Impact determinations shall include a traceable, defensible rationale for each conclusion. The document shall be written in plain English and be organized and presented in a reader-friendly format that will facilitate understanding by an interested, but not necessarily environmentally expert audience. The document shall emphasize brevity, the use of questions and answers in headings or section introductions, and liberal use of visual displays such as sidebars and exhibits. The EIS should aim to engage the reader by "telling a story," and in so doing help them understand the issues and why those issues matter to them. Refer to www.wsdot.wa.gov/Environment/ReaderFriendly for guidance and resources on preparing "reader-friendly" environmental documents.

5.8. EIS Submittals and Review Process

5.8.1. Preliminary Draft EIS (PDEIS). The contractor shall prepare and submit the PDEIS to the Agency for review within 70 business days after contract award. This document shall include appropriate color maps, information from or reference to relevant reports and studies, and a comparative presentation of potential impacts. The PDEIS shall present information on existing conditions sufficient to provide the context for understanding potential impacts and their importance, i.e., include only information that is relevant. The PDEIS shall emphasize discussion of those resources or issues where effects are considered significant, and de-emphasize those that are not. As appropriate, the document will also recommend possible mitigation measures.

5.8.1.1. The Agency and applicant will provide review comments to the contractor within 10 business days of receipt of the PDEIS. Within 10 business days of receipt of Agency and applicant comments, the contractor shall revise the PDEIS, and transmit proposed text revisions to the Agency for approval prior to finalizing the Draft EIS (DEIS). Upon Agency approval of all revisions, the contractor shall prepare the document as the DEIS.

5.8.2. Draft DEIS Public Notices. Concurrent with the submittal of the PDEIS, the contractor shall prepare and submit to the Agency for review a draft public notice for publication in the *Federal Register* and local newspapers. The Agency will provide review comments to the contractor at the same time that review comments on the PDEIS are provided to the contractor. The contractor shall submit the approved public notice for publication to local newspapers when directed to by the Agency.

5.8.2.1. Within 10 business days after Agency approval of the DEIS, the contractor shall convert the DEIS (including attachments and graphics) into an Adobe® Acrobat® portable document format (.pdf) for posting on the Agency's and, if appropriate, the applicant's websites. The document shall also be compressed (zipped) to minimize file size and provided to the Agency so as to coincide with the publication and distribution of the DEIS.

5.8.2.2. Within 10 business days after Agency approval of the DEIS, the contractor shall prepare and submit to the Agency hard copies and or compact disks, as requested, and electronic files of the complete DEIS including all graphics, maps, and appendices or attachments.

5.8.2.3 Simultaneously with Section 5.8.2.2, the contractor shall distribute the appropriate number of electronic copies of the complete DEIS to government agencies, non-governmental organizations, interested parties, and public repositories as specified by the Agency. The contractor shall produce a minimum of 10 additional hardcopies of the DEIS for distribution upon public request.

5.9. Public Meeting Support/Materials

5.9.1. Within 10 business days after Agency approval of the DEIS in Section 5.8.1.1., the contractor shall submit draft public meeting materials (displays, handouts, etc.) and a description of intended staffing to the Agency for review. The Agency will provide review comments to the contractor within five business days. Within five business days after final comments are received and discussed, the contractor shall revise the materials and submit final copies to the Agency. The Agency will instruct the contractor on the appropriate number of copies for the public meeting.

5.9.2 The contractor shall organize and otherwise support the Agency in its conduct of one DEIS public meeting if necessary. The public meeting will occur approximately five weeks after receipt of the DEIS is published in the Federal Register, but at least one week before the end of the public review period. The Agency, working with the applicant, will designate the meeting location, and the contractor shall identify and reserve a facility and provide all required equipment, assist in setup and takedown, secure a court reporter, set up and conduct registration, facilitate receipt of public comments, and perform other duties as necessary to assure efficient and orderly execution of the meeting.

5.9.3 As necessary, the contractor shall assist and participate with the Agency in providing technical briefings to the public and any agency on all appropriate analyses performed for and any conclusions drawn in the DEIS.

5.10. Response to Public Comments

5.10.1 The Agency and applicant will provide all public comments to the contractor. Within 10 business days after the completion of the DEIS public review period, the contractor shall compile and categorize (by major topic area) the comments, recommended responses, determine and recommend whether it is necessary to re-evaluate previous or perform additional analyses and/or data gathering, and provide to the Agency.

5.10.2 Upon agreement by the contractor and the Agency on response assignments, the parties shall complete their respective responses within 10 business days, and the contractor shall submit their responses to the Agency.

5.10.3 The Agency will provide review comments to the contractor within five business days of receipt of their draft responses.

5.11. Preliminary Final EIS

5.11.1. Within 10 business days of Agency approval of the final comment responses, the contractor shall prepare the Preliminary Final EIS (PFEIS), incorporating any changes based on the comment responses. Revisions shall be identified by bold or italicized text.

5.11.2. The Agency and applicant will provide review comments on the PFEIS to the contractor within 10 business days. The contractor shall discuss and resolve comments on the PFEIS with the Agency and applicant in a teleconference. The contractor shall make final revisions to the PFEIS within five business days, and e-mail the document to the Agency for approval.

5.12. Final EIS

5.12.1. Within five business days after Agency approval of the PFEIS as the Final EIS (FEIS), the contractor shall prepare and submit to the Agency for review a draft public notice for publication in the *Federal Register* and local newspapers. The Agency will provide review comments to the contractor within five business days. The contractor shall finalize the public notice and submit to the Agency for approval. Upon Agency approval of the public notice, the contractor shall provide it to local newspapers for publication.

5.12.2. Within 10 business days after Agency approval of the FEIS, the contractor shall convert the FEIS and all attachments and graphics into a pdf format for posting on the Agency's and, if appropriate, the applicant's websites. In addition, the document shall be compressed (zipped) by the contractor to minimize file size and provided to the Agency so as to coincide with the publication and distribution of the FEIS.

5.12.3. Within 10 business days after Agency approval of the FEIS, the contractor shall prepare and submit to the Agency five hard copies and the electronic files of the complete document including all graphics, maps, and appendices or attachments.

5.12.4. Simultaneous with Section 5.12.3 and as requested by the Agency, distribute the appropriate number of electronic copies of the complete FEIS to governmental agencies, non-governmental organizations, interested parties, and public repositories as specified by the Agency. The contractor shall produce a minimum of 10 additional hardcopies of the DEIS for distribution upon public request.

5.13. Public Comment Summary and Record of Decision

Within 15 business days of the completion of the FEIS public review period, the contractor shall compile and categorize all public comments, prepare a draft ROD, and submit it to the Agency. The Agency will provide review comments on the draft ROD to the contractor within five business days. The contractor shall make final revisions to the ROD within five business days, and email the document to the Agency for approval.

6. AGENCY FURNISHED ITEMS

All supporting technical information and data developed by the applicant and their contractors shall be provided to the contractor for inclusion in and support to this requirement. Completed reports and studies can be downloaded by following these instructions:

(Provide instructions for access to electronic documents, websites, ftp sites, etc.)

A complete list of supporting documents is provided in Attachment I (any reports or documents marked "to be prepared" shall be provided by the applicant and/or their contractors. The documents listed at Attachment I, or a portion thereof, may also be provided to the contractor at the kick-off meeting.

7. MEETINGS

The contractor may be requested by the Agency to attend project-related meetings in addition to the kick-off meeting. At the Agency's discretion and whenever feasible, meetings will be held by teleconference or other similar methods. If additional face-to-face meetings are deemed necessary, they will be conducted in a place and time that best accommodates all parties, to the extent possible.

The scope and nature of contractor participation will be agreed upon by the Agency and the contractor, depending on the specific meeting objective(s). If required, the contract will be modified to cover unscheduled contractor travel costs.

8. PERIOD OF PERFORMANCE

The period of performance for this order is no more than (*insert the appropriate number of*) months after contract award.

ATTACHMENT I

Table of Applicant-supplied supporting documents

(Insert all relevant project-related documentation)

ATTACHMENT II

Administrative Record Data Fields

Document ID Number - This is an internal sequencing system used by Access to maintain database integrity.

Document Date - This field contains the date of the document.

Document Type - This field allows for categorization of the documents (i.e., meeting minutes, e-mail, etc.). A pop-up menu allows the user a limited choice of document types.

Originator or Author's Name - This field contains the name of the author of the document or communication.

Originator or Author's Organization or Agency - This field contains the name of the organization that the author of the document or communication represents.

Recipient Name - This field contains the name of the recipient of the document or communication. It is left blank if the document type is a report, manual, or other type of document which is not directed at an individual or group.

Recipient Organization or Agency - This field contains the name of the organization that the recipient of the document or communication represents.

Document Title (if any)

Document Subject - This field contains descriptive wording about the contents of the document. It can then be searched.

Document Privileged - This field is for documenting whether you believe or know the document is privileged in any way and why you believe it is privileged.

Physical Storage Location - This field contains a code for the location of the document in the hard-copy storage system.

ATTACHMENT III
Example of Cost Estimate

Exhibit E, Attachment E-3, page 2 in PDF format only.

Technical and Cost Evaluation Factors

**Evaluation/Selection Factors used to Review Contractor
Responses to a Request for Proposal for
Preparing Environmental Impact Statements**

Include these evaluation and selections factors in the Request for Proposals used for soliciting professional services for preparing an environmental impact statement.

Evaluation Factors: Technical, price and past performance factors are equal. Technical and past performance combined is more important than price. Award will be based on the best value to the owner. Award may be made without discussions.

Factor 1 - Technical

(a) **Relevant Experience.** The technical proposal shall clearly identify the offeror's wishes to be considered for this requirement and provide evidence of experience in providing this service. Relevant experience includes work completed **within the past ten (10) years**. Describe and list whether any of the environmental documents you have prepared were litigated and, if so, what was the outcome of the litigation. Provide status information (i.e., FEIS, ROD, constructed, etc.) for relevant experience. Relevant experience required:

(1) Describe your firm's experience in preparing environmental impact analyses and documentation (EISs/EAs and supporting documents) in accordance with NEPA for federal agencies for (*insert projects similar to the current project proposal*). Also describe your experience in reviewing or assisting in any state permit applications associated with those projects;

(2) Describe your firm's experience in preparing environmental impact analyses and documentation (EISs/EAs and supporting documents) for (*insert projects similar to the current project proposal*) in accordance with the NEPA;

(3) Describe your firm's experience in preparing EISs/EAs and supporting documents for projects that were similar in scope and potential environmental impacts;

(4) Describe the analytic processes used to identify all types of effects (direct, indirect, cumulative, etc.) similar to those that could arise from the project proposal. Also describe how this identification process is used to identify relevant data and analytical needs. Describe how your firm evaluates impacts (magnitude, duration, extent, likelihood, etc.) and any qualitative or quantitative methods that have been used; and

(5) Describe your firm's project experience in the (*insert general project area of the current project proposal*).

(b) **Staffing.** The offeror should describe current staff available along with planned staffing levels to meet the task technical requirements and schedule. Include the following:

- Current and anticipated future workloads, demonstrating availability of identified staff to ensure timely completion of the EIS;
- In tabular format, a staffing plan that lists proposed staff, percentage of time each will spend on the project, and a summary of their education and relevant technical qualifications;
- The staffing plan should also include proposed subcontractors, their qualifications, and the subtask to which they will be assigned;
- Resumes (max. two pages) that illustrate experience in similar projects for the Project Manager and key personnel;
- An organizational chart.

(1) Proposed staff should have extensive expertise and knowledge in: the policies, principles, and practices of environmental impact assessments; requirements of NEPA and similar state 'NEPAs'; large industrial facility construction practices; federal and state of [*insert relevant state(s)*] environmental statutory, regulatory and permitting requirements; and, social impact assessment and public involvement techniques.

(2) The project manager (PM) will serve as the contractor's direct liaison with the owner. The PM must have demonstrable, relevant skills and experience in project management. Certification as a Project Management Professional (PMP®) is desirable.

(3) Staffing levels or key personnel will not change during the course of the contract unless approved in writing by the owner. Notification to the owner of proposed changes will include a justification for the substitution and an evaluation of its impact on the performance of the contract.

Qualifications of substitute personnel shall be equal to, or greater than, the qualifications of the personnel being substituted.

(4) Upon recommendation of Agency environmental staff, the owner may direct the contractor to remove or replace any personnel.

Factor 2 - Price

The owner will evaluate price based on competitive pricing among the responsible offerors.

Completion of Pricing Schedule:

- (a) Complete the unit price for each contract line item number (CLIN).
- (b) Submit a detailed breakdown of costs to support the price amount proposed. Data should include: labor category, unburdened labor rate, number of hours, material cost, general and administrative expenses, profit, travel, and any other related expense [*Owners could provide a blank copy of the cost estimate example provided in this guidance document for offerors to input their cost data*].

Factor 3 - Past Performance

(a) The offeror shall provide a minimum of three (3) references that are using or have used the offeror's services, of the type proposed in this SOW. The references shall include the customer's name, the location where the services were provided, contact person(s), customer's telephone number, a complete description of the service type, the name of the offeror's Project Manager, and dates the services were provided. Emphasize customers where the offeror has successfully completed EISs/EAs/Permitting for (*insert projects similar to the current project proposal*), within the last 10 years. References will be contacted to verify the offeror's performance. The evaluation may consider information from any source(s) deemed necessary by the owner. The evaluation of past performance is a subjective assessment based on a consideration of all relevant facts and circumstances. Incorrect or outdated references may be grounds for negative rating. Negative references may be grounds for disqualification.

(b) The Agency/Owner will evaluate the quality of the offeror's past performance using the following criteria:

- (1) Firm's (as well as proposed PM and key personnel) past performance record within the past ten (10) years in the timely delivery of specific Draft or Final EISs and supporting documents.
 - (2) The offeror's record of conforming to specifications and standards of workmanship, and adherence to schedules.
 - (3) Effective administration and management, cost control, and handling of change orders or contract modifications.
 - (4) Customer service and overall concern for the client.
 - (5) Performance of any predecessor or related companies, if applicable.
- (c) Offerors with no relevant performance history or for whom information on past performance is not available will be evaluated neither favorably nor unfavorably on past performance.
- (d) Offerors will be given an opportunity to address unfavorable past performance information if the information is the determining factor preventing it from being placed within the competitive range. The offeror's response or lack thereof will be taken into consideration.

Administrative Records Guidance

The Administrative Record (AR) is the paper trail that documents the Agency's decision-making process and the basis for its decision. The AR demonstrates the agency complied with the relevant statutory, regulatory, and agency requirements and shows that the agency followed a reasoned decision-making process. Typically, an AR is developed using a database application.

The AR is comprised of:

- *Documents and records that were available to the decision-maker at the time the decision was made;*
- *Documents that do and do not support the final decision but were created or relied upon during the analysis of the decision;*
- *Privileged and non-privileged documents and records, policy documents, reference books and articles; and*
- *Documents related to actions taken on the implementation of the decision from the date of the decision to the current date. The AR should also include any Freedom of Information Act requests and responses regarding the Agency's decision.*

*Emails are treated like any other documents that contain relevant factual information, a substantive analysis, or that documents the agency decision-making process. Emails that are to or from the agency decision-maker, other agencies, stakeholders, interested parties or representatives from advocacy groups discussing the decision should also be included. Emails that contain both relevant and non-relevant information **must** be included in the AR. For example, emails that contain relevant information to the decision-making process and personal comments about the author's weekend **must** be included, unless otherwise protected or privileged.*

When compiling the AR try to ensure that the context of information contained in emails is as clear as possible. The context of relevant information included in emails can be lost or misinterpreted, especially in emails with attachments or email "chains" (trailing emails) with multiple parties and topics. It may be difficult for a court reviewing email without an attachment or a "chain" email to determine what topic or portion of the message a comment is responding to. Typically, multiple copies of emails should not be included in the AR, however, where multiple copies help to explain the context of a relevant email they should be included.

The AR should be compiled and indexed as the documents are created during the decision-making/analysis process.

What Documents Go into the Administrative Record?

Since the AR is the paper trail that documents the Agency's decision-making process and the basis for the decision, any document that contributes to the analysis and decisions being made that were directly or indirectly considered by the decision-maker should be included in the AR.

Every Document should include:

- The date.
- Title (if applicable).
- Author's name and Agency (if applicable) or organization.
- Recipient's name and Agency (if applicable) or organization.
- Page numbers.
- Identify any enclosures (Describe what is being enclosed in case the transmittal document is separated from the enclosures).

Draft Documents:

- Include any documents circulated to the public for comments.
- DO NOT include multiple copies of draft documents showing "cosmetic" type changes (punctuation, layout, rewording).
- If something is considered but not used, it must be part of the record, including draft GIS coverage and metadata that was released to the public.
- Reviewer's or specialist's comments that change the "content" or show a change in direction of the analysis.

The Administrative Record should also include:

Correspondence:

- Anything on letterhead is considered correspondence.
- Hard copy with an actual signature and dated on the date it was signed (do not date correspondence until it is signed).
- All enclosures and attachments.
- Internal memos and emails.

Meeting Notes:

- Date of meeting.
- List of attendees.
- Name of note taker.
- Concerns, solutions, or follow-up.
- Decisions made or actions items.

Computer-based Decision Support Documents:

- Computer model runs.
- Copy of or summary report of any computer models used for analysis.
- Meta data for GIS analysis.

Specialist Reports:

- Bibliography of all literature cited (and know where an available copy is located in case a full copy is needed).
- Step-by-step documentation of analyses.
- All worksheets, field notes, field data, studies, reports, model runs and background information, etc.
- All relevant monitoring questions and protocols.
- Summary of effects determination and the analyses used to support them.
- All documents incorporated by reference or "tiered" to.
- May include project implementation documents if litigation is brought after project implementation.

Reference Materials:

- Statutes, laws, and regulations citations.
- Bibliography of Literature cited.
- Related NEPA Documents.
- Maps.
- Photos.

Public Involvement:

- Telephone Call Records.
- Presentations to groups (printed or electronic PowerPoints including any video presentations).
- Meeting Notes.
- Lists of attendees.
- Mailing lists and related information.
- Public notices.

Environmental Compliance Documents:

- Scoping documents.
- Federal Register notices.
- Lists of individuals attending public or interagency meetings.
- Agreements with other cooperating agencies.

Endangered Species Act and National Historic Preservation Act Consultation Records:

- Meeting notes.
- Telephone records.
- Biological Assessments.
- Biological Opinions.
- Monitoring reports.
- Technical literature.
- Historic building surveys and reports.
- Archeological surveys and reports.
- If adverse effects to historic properties are present include effect determinations.

This list is not-inclusive; it is provided to help you think about all the documents that were used or created regarding the analysis and implementation of the project/decision.

How to Index the AR

The index of the documents helps to tell the story of what has been done to analyze and implement the project/decision. The documents should be indexed in chronological order starting with the oldest document first. The only exception is for very large EISSs. Those projects can be organized by subject matter and chronological within each subject.

At a minimum, the AR should include these data fields:

1. **Document ID Number** - A document ID number assigned to the documents by the person indexing them. The Document ID number is written on the upper right-hand corner of the front page of the document or affixed digitally on documents received electronically (such as including in the filename of the electronic copy of the document). The Document ID number does not have to be in consecutive order in the index. It is a control number that indicates the document has been indexed. If the document has attachments, only the main (or first) document is given a Document ID number. In other words, each entry on the index has one Document ID number whether it is one document or a document with attachments;
2. **Document Date** - This field contains the date of the document. Include the date of the document, not the faxed, postmarked or received date. If the faxed, postmarked or received date is the **only** date on the document then use it. If there is no date you can either estimate the month and year, use undated or leave it blank;

3. **Document Type** - This field allows for categorization of the documents (i.e., meeting minutes, letter, e-mail, etc.);
4. **Originator or Author's Name** - This field contains the name of the author of the document or communication.
5. **Originator's or Author's Organization or Agency (or Unknown)** - This field contains the name of the organization that the author of the document or communication represents;
6. **Recipient's Name (or Unknown)** - This field contains the name of the recipient of the document or communication. It is left blank if the document type is a report, manual, or other type of document which is not directed at an individual or group;
7. **Recipient's Organization or Agency** - This field contains the name of the organization that the recipient of the document or communication represents.
8. **Document Title** (if any);
9. **Document Subject** - This field contains descriptive wording about the contents of the document. It can then be searched. One to two sentences specifically describing the significance of the document (don't just say regarding the project - regarding what about the project?); and
10. **Document Privileged** - This field is for documenting whether you believe or know the document is privileged in any way and why you believe it is privileged.
11. **Physical Storage Location** - This field contains a code for the location of the document in the hard-copy storage system.

Be consistent when using abbreviations and acronyms and use them sparingly. You should provide a one page list that explains the abbreviations and acronyms used. Also, be consistent in how a person's name and title are used; is it Bill Doe, William Doe or William C Doe. Pick one and use only one. The same goes for a title or company/agency name. Different documents may refer to them differently, but the index should be consistent in how it refers to them and their title. As the documents are being indexed, mark those you think may contain protected information.

Privileged Documents or Materials:

It is important to screen the AR to determine whether the agency believes the documents or materials contain protected information such as attorney-client, attorney work product, Privacy Act (5 U.S.C. 552(a)), pre-decisional, deliberative or mental process (makes recommendations or expresses opinions on legal or policy matters), executive process, confidential business information, documents or information protected by other statutes (e.g. Native American artifacts), and documents protected by court order.

The Agency's attorney(s) will help with the final determination of privileged documents or materials. If documents or materials are determined to be privileged or protected, they need to be redacted or withheld. If redacting the documents or materials, you must black out the protected information so it cannot be read. If the document or material is withheld, it would continue to be identified as part of the AR but it would not physically appear in the AR. The index of the record must identify the documents or materials, reflect that they are being redacted or withheld, and state on what basis they are being redacted or withheld. A page should be inserted in the place of the withheld document or material and should identify the document or material and state the reason it is being withheld.

**Contractor Conflict of Interest or Disclosure Statement
For the Preparation of the Environmental Impact Statement
For the [Insert Project Proposal's Name]**

Complete either the conflict of interest representation statement or the disclosure statement but not both.

Conflict of Interest Representation Statement

I [*insert name of contractor principle*] have made inquiry and to the best of my knowledge and belief declare that executing the contracted work of preparing the Environmental Impact Statement for the [*insert project proposal name*] does not represent an actual or potential conflict of interest and [*insert contractor name*] does not have any financial or other special interest in the outcome of the project.

I understand the term "conflict of interest" to mean that because of other activities or relationships with other persons, the contractor is unable or potentially unable to render impartial assistance or advice to the Federal Government, or the contractor's objectivity in performing the contract work is or might be otherwise impaired, or the contractor may have an unfair competitive advantage. I understand the phrase "no financial or other special interest in the outcome of the project" to include any financial benefits such as a promise of future construction or design work on the project, as well as indirect benefits the consultant is aware of other than the enhancement of the contractor's professional reputation.

Signature: _____ **Date:** _____

Name: _____ **Title**
:

Organization: _____

OR

Conflict of Interest Disclosure Statement

I hereby certify (or as a representative of my organization, I hereby certify) that, to the best of my knowledge and belief, all relevant facts concerning past, present or currently planned interests or activities (financial, contractual, organizational or otherwise) that relate to the proposed work and bear on whether I have (or the organization has) a possible conflict of interest with respect to (1) being able to render impartial, technically sound, and objective assistance or advice, or (2) being given an unfair competitive advantage are fully disclosed as follows:

For ease of presentation divide the following data into four parts:
organizational, contractual, financial, and other;

- The company, agency, organization in which you have a past, present, or currently planned interest or activity (financial, contractual, organizational, or otherwise);
- Brief description of relationship;
- Period of relationship;
- Extent of relationship (such as value of financial interest of work; percent of total holdings, total work, etc.); and,
- Mitigation plan, as necessary.

Signature: _____ **Date:** _____

Name: _____ **Title**
:

Organization: _____

**Template Federal Register Notice of Intent to Prepare an Environmental
Impact Statement and Hold Public Scoping Meetings**

U.S. DEPARTMENT OF AGRICULTURE

[Rural Development Agency Name]

**[Applicant Legal Name], Notice of Intent to Prepare an Environmental Impact
Statement and Hold Public Scoping Meeting[s]**

AGENCY: [Rural Development Agency Name (must use Agency name not Rural
Development for legal reasons)], USDA

ACTION: Notice of intent to prepare an Environmental Impact Statement and
hold Public Scoping Meetings.

SUMMARY: The [Rural Development Agency Name] announces its intent to prepare
an Environmental Impact Statement (EIS) to meet its responsibilities under
the National Environmental Policy Act of 1969 (NEPA) (U.S.C. 4231 et seq.),
the Council on Environmental Quality (CEQ) regulations for implementing the
procedural provisions of NEPA (40 CFR part 1500), and Agency regulations (7
CFR part 1970, Environmental Policies and Procedures). In addition, [Rural
Development Agency Name] intends to hold public scoping meetings in
connection with possible impacts related to a project proposed by [Applicant
Legal Name (Acronym)]. The primary scope of the EIS is to evaluate the
environmental impacts of and alternatives to the [Applicant Name]'s
application for financial assistance to [insert a brief description of the
purpose and need of the proposal]. The proposed project, known as [insert
project name (Project)] proposes to construct a [add a succinct but complete
project description] in [insert locational information, i.e., town,
county(s), and State(s) to describe the area potentially affected by the
proposed Project].

[Rural Development Agency Name] is the lead federal agency, as defined at 40
CFR § 1501.5, for preparation of the EIS. With this notice, federal and
state agencies and federally-recognized Tribes with jurisdiction or special
expertise are invited to be cooperating agencies. Such agencies or tribes
may make a request to [Rural Development Agency Name] to be a cooperating
agency by contacting the [Rural Development Agency Name] contact provided in
this notice. Designated cooperating agencies have certain responsibilities
to support the NEPA and scoping process, as specified at 40 CFR § 1501.6(b).

In addition with this notice, [Rural Development Agency Name] invites any affected federal, state, and local agencies, Tribes, and other interested persons to comment on the scope, alternatives, and significant issues to be analyzed in depth in the EIS. [Insert information on public scoping meetings, i.e., dates, times, and locations].

Public participation is an integral component of the environmental review process for federal actions. Public participation will be especially important during the scoping phase of the proposed Project. [Rural Development Agency Name] will be seeking information, comments, and assistance from federal, State, and local agencies, Tribes, and other individuals who may be interested in or affected by the proposed Project. This input will be used in preparing the Draft EIS. Comments submitted during the scoping process should be in writing. The comments should describe as clearly and completely as possible any issues, concerns, or input commenters may have so that they can be addressed appropriately in the EIS.

[Rural Development Agency Name] is considering funding this application, thereby making the proposed Project an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. 470(f), and its implementing regulation, "Protection of Historic Properties" (36 CFR Part 800). Any party wishing to participate directly with [Rural Development Agency Name] as a "consulting party" in Section 106 review may submit a written request to the [Rural Development Agency Name] contact provided below. Pursuant to 36 CFR 800.3(f)(3), [Rural Development Agency Name] will consider, and provide a timely response to, any and all requests for consulting party status.

DATES: Written requests to participate as a "consulting party" or to provide comments for consideration during the scoping process for the proposed Project must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

Public scoping meetings will be held on [insert dates] from [insert times] at [insert locations including the name and address of the facility(s) hosting the events]. The public scoping meetings will be conducted in an open house format with information poster stations staff by [Rural Development Agency Name] and [Applicant Acronym] representatives. Attendees will be able to submit oral and written comments during the public meeting. Oral comments from the public will be recorded by a certified court reporter. Equal weight will be given to oral and written statements. Written comments may also be submitted to: [Insert Rural Development Agency Name's Contact Information: Name; Title; Agency Name; Address; Telephone; and email address].

ADDRESSES: Project-related information will be available at [Rural Development Agency Name]'s and [Applicant Name]'s websites located at: [insert websites' URL] and at the [insert local addresses where documents will be available to the public, e.g., Applicant's offices, local library, or other locations].

To request "consulting party" status, submit comments, or for further information, please contact: [insert Rural Development Agency, environmental staff contact information including name, address, telephone number, and email address. May include Applicant's contact information if any documents are available at their offices.].

SUPPLEMENTARY INFORMATION: [this section should include a detailed description of the project proposal's construction activities highlighting the purpose and need of the proposal including any documentation that was prepared and may be available to the public prior to the public scoping meetings. List any public involvement activities that were conducted prior to this notice, e.g., public or agency meetings. There is no standard format for supplemental information, it is project specific and should be detailed enough to ensure and help the public understand the purpose and need and specific construction activities of the project proposal.

Among the alternatives that [Rural Development Agency Name] will address in the EIS is the No Action alternative, under which the proposal would not be undertaken or if [Rural Development Agency Name] did not fund the proposed Project, and any reasonable alternatives defined as a result of the scoping process. In the EIS, the effects of the proposal will be compared to the existing conditions in the affected area of the proposal. Public health and safety, environmental impacts, socio-economic, and engineering aspects of the proposal will also be considered in the EIS.

As part of its broad environmental review process, [Rural Development Agency Name] must take into account the effect of the proposal on historic properties in accordance with Section 106 of the National Historic Preservation Act (Section 106) and its implementing regulation, "Protection of Historic Properties" (36 CFR part 800). Pursuant to 36 CFR 800.2(d)(3), [Rural Development Agency Name] is using its procedures for public involvement under NEPA to meet its responsibilities to solicit and consider the views of the public during Section 106 review. Accordingly, comments submitted in response to this Notice will inform [Rural Development Agency Name] decision-making during Section 106 review.

From information provided in the studies mentioned above, and using input provided by government agencies, tribes, and the public, [Rural Development Agency Name] and [cooperating agencies if there are any] will prepare a Draft EIS. The Draft EIS will be filed with the U. S. Environmental Protection Agency (USEPA) and will be available for public comment by the [insert approximate time frame]. At that time, the [Rural Development Agency Name] and USEPA will publish a notice of the availability of the Draft EIS and notice of receipt, respectively, in the Federal Register. In addition, the [Applicant Name] will publish notices in local newspapers and any online local news sources.

The comment period will be 45 days from the date the EPA publishes its Federal Register notice announcing receipt of the Draft EIS.

[Rural Development Agency Name] and the [cooperating agencies if there are any], believe it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the Draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agencies to the reviewer's position and contentions, Vermont Yankee Nuclear Power Corp. v. NRDC. 435 U.S. 519. 553(1978). Also environmental objections that could be raised at the Draft EIS stage but that are not raised until after the completion of the Final EIS may be waived or dismissed by the courts, City of Angoon v. Hodel, 803 F. 2d 1016 1022 (9th Circuit, 1986) and Wisconsin Heritage, Inc. v. Harris, 490 F. Supp. 1334, 1338 (E.D.Wis. 1980). Because of these court rulings, it is very important that those interested in this proposal participate at each opportunity for public involvement so that substantive comments and objectives are made available to the federal agencies involved at a time when they can meaningfully consider them and respond to them accordingly.

To assist the involved federal agencies in identifying and considering issues and concerns on the proposal, comments on the Draft EIS should be as specific as possible. It is also helpful if the comments refer to the specific pages or chapters of the Draft EIS. Comments may also address the adequacy of the Draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the CEQ's regulations at 40 CFR § 1503.3 in addressing these points. After the comment period ends on the Draft EIS, the comments will be analyzed, considered, and responded to by the agencies involved in preparing the Final EIS. The Final EIS is scheduled to be completed approximately [insert number of] days after the end of the comment period on the Draft EIS.

The public will again have the opportunity to review and comment on the Final EIS. Upon completion of a 30-day public comment period, the [Rural Development Agency Name] will document its decision regarding the proposed Project and reasons for the decision in a Record of Decision. A public notice announcing the availability of the Record of Decision will be published in the Federal Register and local newspapers.

Any final action by [Rural Development Agency Name] related to the proposal will be subject to, and contingent upon, compliance with all relevant executive orders and federal, state, and local environmental laws and regulations in addition to the completion of the environmental review requirements as prescribed in [Rural Development Agency Name] Environmental Policies and Procedures, 7 CFR part 1970.

Dated:

[Director's Name]

Director, Engineering and Environmental Staff
USDA, Rural Utilities Service.

Or

Director, Program Support Staff
USDA, Rural Housing Service

Template Federal Register Notice of Availability of a Draft Environmental
Impact Statement and Notice of Public Meeting

U.S. DEPARTMENT OF AGRICULTURE

[Rural Development Agency Name]

[Applicant Legal Name], Notice of Availability of a Draft Environmental
Impact Statement and Notice of Public Meeting

AGENCY: [Rural Development Agency Name (must use Agency name not Rural
Development for legal reasons)], USDA

ACTION: Notice of Availability of a Draft Environmental Impact Statement and
Notice of Public Meeting

SUMMARY: Notice is hereby given that the [Rural Development Agency Name], an
agency within the Department of Agriculture, has prepared and is announcing
that a Draft Environmental Impact Statement (EIS) for a project proposed by
[Applicant Name (Acronym)], is available for public review and comment.
[Rural Development Agency Name] is publishing the Draft EIS to inform
interested parties and the general public about the project proposal and to
invite the public to comment on the scope, proposed action, and other issues
addressed in the Draft EIS. The Draft EIS was prepared in accordance with
the National Environmental Policy Act of 1969 (NEPA), as amended (U.S.C. 4231
et seq.), Council on Environmental Quality (CEQ) regulations for implementing
the procedural provisions of NEPA (40 CFR part 1500), and [Rural Development
Agency Name], Environmental Policies and Procedures (7 CFR part 1970) and
evaluates the potential direct, indirect, and cumulative environmental
effects related to providing financial assistance for the [Applicant
Acronym], [Project Name]. The [Project Name (Project)] is located in [add
general location information for the area affected by the project proposal].
[Applicant Acronym] has requested financial assistance from [Rural
Development Agency Name] for the proposed Project and information contained
in the EIS will serve as a basis for the decision regarding whether to
provide the requested financial assistance.

[Applicant Name] proposes to construct a [insert a brief summary of the proposed project - this information can be excerpted and edited, if necessary, from the Executive Summary in the Draft EIS. A more detailed project description will be provided in the Supplementary Information section therefore this description should be brief]. The purpose and need of the proposed Project is to: [Insert a brief description of the purpose and need of the project proposal - this information can be excerpted and edited, if necessary, from the Executive Summary or the appropriate section in the Draft EIS].

[Rural Development Agency Name] has determined that its action regarding the proposed Project is an undertaking subject to review under Section 106 of the National Historic Preservation Act and its implementing regulation, "Protection of Historic Properties" (36 CFR Part 800) and as part of its broad environmental review process, [Rural Development Agency Name] must take into account the effect of the proposed project on historic properties. Pursuant to 36 CFR § 800.2(d)(3), [Rural Development Agency Name] is using its procedures for public involvement under NEPA to meet its responsibilities to solicit and consider the views of the public during Section 106 review. Accordingly, comments submitted in response to this Notice will inform [Rural Development Agency Name] decision-making during Section 106 review. As noted in the *Federal Register* notice announcing the intent to prepare an EIS [insert date of *Federal Register* notice], the [Rural Development Agency Name] invited any interested party wishing to participate directly with the agency as a "consulting party" in Section 106 review may submit a written request to the [Rural Development Agency Name] contact provided below. Pursuant to 36 CFR 800.3(f)(3), [Rural Development Agency Name] will consider, and provide a timely response to, any and all requests for consulting party status.

DATES: Written comments on this Draft EIS must be received on or before [INSERT DATE 45 DAYS (45 days is the minimum amount of time for a Draft EIS comment period; the agency may elect to have a longer review time, if so, insert the number of days here. In addition, note that the public comment period officially starts from the date of USEPA's publication of the receipt of the EIS in the Federal Register) AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

A public meeting(s) to solicit comments on the Draft EIS will (may) be held on [Insert Date] from [Insert Time] at the [Location Name and Address]. The public meeting will be conducted in a [provide format of meeting e.g, open house with informational poster stations staffed by [Rural Development Agency Name] and [Applicant Acronym] representatives; hearing; or with a court reporter available for transcription of verbal comments].

Attendees will be able to submit oral and written comments during the public meeting. Oral comments from the public will be recorded by a certified court reporter. Written comments may also be submitted to: [Insert Rural Development Agency Name's Contact Information: Name; Title; Agency Name; Address; Telephone; and email address].

All comments submitted during the public review period, oral or written, will become part of the public record. Before including your address, telephone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. All comments will be reviewed and responded to in the Final EIS. For consideration in the Final EIS, comments must be postmarked or received online by [insert date].

ADDRESSES: The Draft EIS and other Project-related information is available at [Rural Development Agency Name] website located at [insert agency's website address. If appropriate and available, the applicant may have a website devoted to their project proposal too. If so, include that information here too]. In addition, hardcopies of the documents are available at the [location information where hard copies of the document will be made available, e.g., public library, applicant's office, or RD local or state office]. Parties wishing to be placed on the mailing list for future information or to receive hard or electronic copies of the EIS should also contact the person contact below.

FOR FURTHER INFORMATION CONTACT:

To request "consulting party" status, submit comments, or for further information, please contact: [Insert Rural Development Agency Name's Contact Information: Name; Title; Agency Name; Address; Telephone; and email address].

SUPPLEMENTARY INFORMATION:

Information provided in this section is a more detailed project description than that provided in the summary section above. In all cases, it is project specific and can largely be excerpted and edited, as appropriate, from the Executive Summary of the Draft EIS. The following items should be addressed in this Section and are listed in a logical sequence, however depending on the specific project, RD environmental staff may wish to present the information in a different sequence.

1. Agencies Involved and Status
2. Project Description and Location
3. Purpose and Need for the Action
4. Issues of Concern
5. Alternatives Considered
6. Overview of Scoping Process
7. Decision Process - see below:

The Draft EIS will be available for review and comment for 45 days. Following the 45-day review period, [Rural Development Agency Name] will prepare a Final EIS. All comments received on the DEIS will be duly considered in preparing the Final EIS, which is expected to be available in [insert date]. The availability of the Final EIS will be announced for public review and comment in the Federal Register and the local newspapers used in previous public notices. After a 30-day public comment period, [Rural Development Agency Name] will consider all public comments and prepare responses and a Record of Decision (ROD) documenting the Agency's decision regarding [Applicant's Acronym] request for financial assistance. Notices announcing the availability of the ROD will be published in the Federal Register and in local newspapers.

Any final action by [Rural Development Agency Name] related to the proposal will be subject to, and contingent upon, compliance with all relevant executive orders and federal, state, and local environmental laws and regulations in addition to the completion of the environmental review requirements as prescribed in [Rural Development Agency Name] Environmental Policies and Procedures, 7 CFR part 1970.

Dated:

[Assistant or Deputy Administrator of Relevant Agency Program]
[Title, Insert RD Program]
USDA, [Rural Development Agency Name].

DEPARTMENT OF AGRICULTURE

Rural Development

[Applicant Name]: Notice of Availability of a Final Environmental Impact Statement

AGENCY: [Agency Name], USDA.

ACTION: Notice of Availability of a Final Environmental Impact Statement.

SUMMARY: The [Agency name] (Agency acronym), an agency within the Department of Agriculture (USDA), has prepared a Final Environmental Impact Statement (FEIS) to meet its responsibilities under the National Environmental Policy Act (NEPA), RUS's implementing regulations, 7 CFR Part 1970, and other applicable environmental requirements related to providing financial assistance for [Applicant's] proposed [Project name] (Project) in [State]. [Agency acronym] will also use the FEIS to meet its responsibilities under Section 106 of the National Historic Preservation Act, 16 U.S.C. 470, and its implementing regulations, "Protection of Historic Properties" (36 CFR part 800).

The FEIS addresses the construction, operation, and maintenance of [Succinct project description] described previously in the Draft Environmental Impact Statement (DEIS) and [if applicable] Supplemental Draft Environmental Impact Statement (SDEIS). It also addresses comments received during the comment periods for the DEIS and the SDEIS [if applicable]. The overall project area encompasses parts of [County(ies)] in [geographic area of State].

DATES: Written comments on the FEIS will be accepted 30 days following the publication of the Environmental Protection Agency's environmental impact statement receipt notice in the Federal Register. Notices of Availability of the FEIS will be published in the local newspapers. After a 30-day public review period on the FEIS, [Agency acronym] will prepare a Record of Decision for its respective action. The environmental review process is expected to conclude in the [season] of [year].

FOR FURTHER INFORMATION CONTACT: To receive copies of the FEIS or request information on the proposed Project, the FEIS process, and [Agency acronym] financing, contact [Name and contact information for RD point of contact]. Copies of the FEIS will be available for review in local libraries in the project area. Library locations will be published in the local papers.

SUPPLEMENTARY INFORMATION: *[Paragraph that further describes the applicant (e.g., type of organization, area and number of members served, etc. Also briefly describe need for the proposal identified by the applicant.)]*

[One-two paragraphs that further describe the proposal. This should include the project components, size, lengths, routes, connecting points, voltage or generating capacity, any temporary features to be constructed, etc. Also describe how the proposal would complement or connect to existing generation or transmission/distribution systems.]

[Number] alternatives and the No Action alternative were evaluated. *[Briefly describe alternatives]*. *[Agency acronym]* has identified Alternative *[number, letter or other designation]* as its preferred alternative because it best meets the purpose and need and minimizes or mitigates potential impacts.

[Agency acronym] is authorized to make loans and loan guarantees that finance the construction of *[types of actions that include the proposal, and applicable programs]*. *[Agency acronym]* is responsible for completing the environmental review process in processing *[applicant's]* application. *[Agency acronym]* is serving as the lead Federal agency, as defined at 40 CFR 1501.5, for preparation of the FEIS. *[List any cooperating agencies, their respective actions, and applicable authorities under which they are involved in the proposal, and any regulatory or statutory authority for which they may be the lead]*. Separate Records of Decision (RODs) will be issued by *[cooperating agency(ies)]* for their respective actions. It is anticipated that the RODs will be issued in *[month, year]*.

The proposed Project is subject to the jurisdiction of *[list any state agencies that have permitting, licensing, or regulatory authority over the proposal. Describe how the applicant will meet the requirements of these agencies.]*

[Agency acronym] has prepared the FEIS to analyze the impacts of its respective Federal actions and the proposed Project in accordance with NEPA, as amended, the Council in Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508), *[Other agency NEPA implementing procedures, and citation, as appropriate]*, and RD's Environmental Policies and Procedures (7 CFR Part 1970). *[Agency acronym]* has already prepared and published a DEIS *[and a SDEIS - as appropriate]* which can be found on the Agency website at *[Agency web address]*.

[If Section 106 review is to be phased, briefly describe the rationale, how the process will be conducted, and which agency will be the lead].

This Notice of Availability also serves as a notice of proposed floodplain or wetland action. It is anticipated that there will be no effect on floodplains and wetlands by the proposed Project. *[Briefly describe how floodplain and wetland impacts will be avoided].*

Dated:

[APPROVING OFFICIAL]

[Title]

USDA, [Agency]

Template Federal Register Notice of Availability of a Record of Decision

DEPARTMENT OF AGRICULTURE

Rural Development

[*Applicant Name*]: **Notice of Availability of a Record of Decision**

AGENCY: [*Agency Name*], USDA.

ACTION: Notice of Availability of a Record of Decision.

SUMMARY: Notice is hereby given that the [*Agency Name*] (*Agency acronym*), an agency within the Department of Agriculture (USDA), has issued a Record of Decision (ROD) to meet its responsibilities in accordance with the National Environmental Policy Act of 1969 (NEPA) (U.S.C. 4231 et seq.), Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR part 1500), [*Agency acronym*] Environmental Policies and Procedure (7 CFR part 1970), and other applicable environmental requirements related to providing financial assistance for [*Applicant's*] proposed [*Project name*] (Project) in [*State*]. The Administrator of [*Agency acronym*] has signed the ROD, which was effective upon signing. This ROD concludes [*Agency acronym*] environmental review process in accordance with NEPA and [*Agency acronym*], Environmental Policies and Procedures (7 CFR part 1970). The ultimate decision as to loan approval depends on the conclusion of the environmental review process plus financial and engineering analyses. Issuance of the ROD will allow these reviews to proceed. The ROD is not a decision on the [*Applicant's*] loan application and is not an approval of the expenditure of federal funds.

FOR FURTHER INFORMATION CONTACT: For further information, or to request copies of the ROD, contact [*Name and contact information for Agency point-of-contact*]. The ROD is also available at [*Agency acronym*] website at [*insert agency web address*].

SUPPLEMENTARY INFORMATION: [*Add specific information that describes the applicant (e.g., type of organization, area and number of members served, etc. Briefly describe the purpose and need for the project proposal. Add a detailed project description. In all cases it is project specific and can largely be excerpted and edited, as appropriate, from the Executive Summary of the EIS.)*]

The proposed Project is subject to the jurisdiction of [*list any State agencies that have permitting, licensing, or regulatory authority over the project proposal and include any specific permitting requirements*]. [*If applicable add - [Applicant] has submitted applications to the [State agency name(s)] for [types of permits]*]. The [*State agency name(s)*] permits would authorize [*Applicant*] to construct the proposed project under [*State*] rules and regulations.

[*Agency acronym*] is authorized under the [*citation of authorizing legislation*] to make loans and loan guarantees [*revise as appropriate*] that finance the construction of [*types of actions that include the proposal, and applicable programs*]. [*Applicant*] intends to request financial assistance from [*Agency acronym*] for the proposed Project. Along with other technical and financial considerations, completing the environmental review process is one of [*Agency acronym's*] requirements in processing [*Applicant's*] application. [*Agency acronym*] is the lead Federal agency for environmental review of the proposed project. [*List any cooperating agencies, their respective actions, and applicable authorities under which they are involved in the proposal, and any regulatory or statutory authority for which they may have led*]. Separate RODs will be issued by [*cooperating agency(ies)*] for their respective actions.

[*Agency acronym*] prepared a Final Environmental Impact Statement (Final EIS) and published a notice of availability in the **Federal Register** on [*date, FR citation*], to analyze the impacts of its respective Federal actions and the proposed Project in accordance with NEPA, the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508), and [*Agency acronym*] Environmental Policies and Procedures (7 CFR part 1970).

[*Agency acronym*] determined that its action regarding the proposed Project is an undertaking subject to review under Section 106 of the National Historic Preservation Act and its implementing regulation, "Protection of Historic Properties" (36 CFR part 800) and as part of its broad environmental review process, [*Agency acronym*] must take into account the effect of the proposed project on historic properties. [*insert a summary of the Section 106 findings including the consultation process and parties*].

Based on consideration of the environmental impacts of the proposed Project and comments received throughout the agency and public review process, [*Agency acronym*] has determined that alternative [*letter, number or other designation*] as described above best meets the purpose and need for the proposed Project. [*Agency acronym*] finds that the evaluation of reasonable alternatives is consistent with NEPA and [*Agency acronym*] Environmental Policies and Procedures. Details regarding [*Agency acronym*] regulatory decision and compliance with applicable regulations are included in the ROD.

Dated:

[Administrator of Relevant Rural Development Agency/Approving Official]

[Administrator/Title]

USDA, [Agency].

PUBLIC MEETING GUIDANCE

Public participation requirements are found throughout CEQ's regulations for implementing NEPA (40 CFR Parts 1500-1508) and RD's NEPA Implementing Procedures (Part 1970). Both sets of regulations describe specific requirements for preparing EAs and EISs and state broad goals for public participation in the NEPA process. Public involvement is also a critical aspect of the National Historic Preservation Act (NHPA) Section 106 process, its implementing regulations at 36 CFR Part 800), and RD's NHPA implementing regulations (7 CFR Part 1901), which require consultation with appropriate State Historic Preservation Officers (SHPOs) and Tribal Historic Preservation Officers (THPOs), development of a plan to involve the public in assessing the effects of its undertakings on historic and cultural properties, and resolution of any adverse effects on such properties (e.g., avoidance and mitigation). The type of public involvement will depend upon various factors including, but not limited to, the nature and complexity of the undertaking, the potential impact, the historic property, and the likely interest of the public in historic preservation issues.

Consultation with agencies in accordance with NEPA and the NHPA Section 106 requirements, in addition to public interaction beginning early in the process, provides the opportunity to balance the interests of agencies, affected landowners, and other stakeholders, minimize potential impacts, and meet project objectives.

Public involvement is an important element in the alternative selection process, and obtaining public input early in this process provides an effective means of sharing important information, minimizing impacts to landowners and land use, and obtaining necessary project approvals. Such input should be sought from a range of stakeholders including federal, state, local agencies, tribes, landowners, etc., as well as any cooperating agencies that have been invited to participate. Various public participation tools and techniques are available to provide pertinent information to the relevant stakeholders and receive input at each step in the process. These tools include, but are not limited to: websites (project description, stakeholder notification, news releases), voluntary public meetings and project workshops or open houses, and required public meetings/hearings. It is important that all federal, state, and local agency interaction/correspondence and public meetings be documented.

The purpose of this Exhibit is to provide Agency staff, applicants, consultants, and cooperating agencies with a consistent approach when preparing for and carrying out the scoping process for Agency-financed projects that require preparation of an environmental impact statement (EIS).

The CEQ NEPA implementing regulations define scoping as a formal, early, and open process, involving all project stakeholders, that identifies key issues on which the analysis should focus (see 40 CFR 1501.7). Two important elements of the process are the identification of "other environmental review and consultation requirements" (40 CFR 1501.7(a)(6)) and the conduct of scoping meetings where information is provided and input sought as to the appropriate scope of the analysis (40 CFR 1501.7(b)(4)). Though the CEQ regulations describe the essentials of scoping, the process may also be viewed more expansively, thus encompassing a variety of activities including routine agency coordination, early information gathering, and documentation of correspondence. These activities can be critical inputs to the environmental document, providing the basis for drawing conclusions as to potential project effects.

Specific CEQ guidance on scoping is somewhat dated (1981; see <http://ceq.eh.doe.gov/nepa/regs/scope/scoping.htm>), but nonetheless contains useful information on the purpose and practice of scoping. Some key points from the guidance include:

- Scoping does not create problems that did not already exist. It ensures that problems that would have been raised anyway are identified early in the process. Scoping can help avoid delays by minimizing the need to re-write or supplement an EIS to address new comments or issues raised later in the process.
- Scoping is often the first contact between a proponent of a proposal and the public.
- Scoping is a process to initiate preparation of an EIS. A fruitful scoping process leads to an adequate environmental analysis considering all reasonable alternatives and including mitigation measures.
- While not the principal goal of scoping, conflict resolution is part of a larger context, and scoping should be considered as a first step in environmental problem-solving.

CEQ chose to leave specific approaches and techniques up to the individual Federal agencies. The ultimate goal is to assure that, to the extent possible, all relevant issues surrounding an applicant's proposal have been addressed, and all reasonable alternatives to that proposal have been considered. Scoping activities should aim to involve the public and agencies as early as possible to enable identification and resolution of issues of concern sooner versus later. In the broadest sense, scoping can be considered as one element of public involvement, whereby information is provided to and input sought from all stakeholders, focusing the assessment on key issues of concern.

1. PRELIMINARY CONSIDERATIONS AND ACTIONS

The process described in this document pre-supposes that an applicant's proposal has been reviewed and given initial approval for RD financing (i.e., purpose and need have been accepted, technical aspects are sound, and the proposal has been properly classified as requiring an EA or EIS). This process typically involves the appropriate environmental, engineering, and loan processing staff, as well as the applicant. The prospective applicant will also have been briefed on available funds and the loan application process.

Additional meetings may be held between the Agency and the applicant to discuss and finalize details of the planning activities and documents needed to initiate and complete the scoping process and the overall environmental review requirements. A conceptual schedule will be developed for the completion of the environmental review. This will include preparation of proposal development documents for program proposals [for example an electric program project would include site-selection study (generation), macro-corridor study (transmission), and an alternatives evaluation (both)], timing and format of scoping meeting(s), publication of a notice of intent in the *Federal Register*, and public notices and advertisements in local newspapers. The use of consultants by the applicant will also be discussed.

2. SPECIFIC PROPOSAL DOCUMENT REQUIREMENTS FOR ELECTRIC PROGRAM PROJECTS

RD generally requires applicants to submit special preliminary studies when applying for financial assistance in the electric program, for classes of electric generation or transmission projects. These preliminary studies for electric projects are the Alternative Evaluation Study (See Subpart O-10 for more details), the Site Selection Study (See Subpart O-10 for more details), and the Macro-Corridor Study (See Subpart O-10 for more details).

The objective of the three preliminary studies is to identify the purpose and need for the action and identify which alternatives to meeting the purpose and need have been examined by the applicant prior to the Agency's initiation of the NEPA process. The studies provide information to the public and other federal, state, and local government agencies to elicit informed comments during the scoping process. The reports should be succinct, but include sufficient detail for the Agency, other agencies, and the public to independently evaluate the alternatives under consideration in relation to the applicant's stated purpose and need.

The proposal documents are the earliest environmental documents submitted to the Agency and serve as the foundation upon which the Agency will conduct its NEPA analysis. The information contained in these preliminary studies will be used throughout the environmental review process for the project. Ideally, the Alternative Evaluation Study should be completed first and provided to the Agency for analysis of the purpose and need for the action and whether the range of technological alternatives is appropriate. The preliminary documents must be reviewed and accepted by the Agency prior to the commencement of scoping and are made available to affected federal, state, and local agencies and the interested public during scoping.

3. SCOPING MEETINGS

While meetings are one element of the scoping process (the NEPA implementing regulations do not require meetings), if an EIS is being prepared or the proposal is particularly controversial, holding such meetings is strongly advised. If conducted properly and at the right time, they provide an opportunity for stakeholders/interested parties to directly engage project proponents and agency staff and can provide valuable information for establishing the direction of the environmental analyses.

These meetings should:

- reinforce the primary purpose of scoping (i.e., to identify issues of importance to be addressed in the environmental review, as well as those of lesser concern that will be analyzed in lesser detail or not at all);
- introduce and explain the roles of the Agency, any cooperating agencies, the applicant, and consultant staff;

- provide the public with information regarding the applicant's proposed project, answer questions, and identify concerns regarding the potential environmental impacts that may result from construction and operation of the proposed project; and
- gather information to determine the scope of issues to be addressed, and reasonable alternatives to be considered, in RD's environmental review and documentation of the proposed project.

In planning and conducting scoping meetings, there are several important and somewhat interrelated considerations, among them being: Is the meeting even necessary? Is the timing appropriate? Have the public or agencies expressed interest or concern about the proposal? Is there sufficient information about the proposal and related issues to properly conduct a meeting? These questions must be addressed to avoid unnecessary or premature meetings, especially in light of increasingly limited financial and staff resources.

Even for meetings that are formally noticed, the public and agencies need to know the purpose of the meetings and why they are being asked to participate. Information packets and proposal documents should be made available beforehand (consider providing instructions in the Notice of Intent as to how they can be obtained), and, in some cases, provided to individual landowners nearest to the proposed project. Timing is important; sufficient detail on the proposal must be presented to get meaningful feedback, so conducting a meeting too soon in the process may not be productive.

3.1 Agency Meeting(s)

An agency-only meeting is recommended for EIS projects. The goal of this meeting is to provide Federal and state agencies and local government officials an opportunity to have more detailed and focused discussions on potential resources of concern, discuss compliance and permitting requirements, and assure that the appropriate range of issues is addressed in the environmental review. The meeting should be held during the day to enable participation during work hours. A trip to the proposed site(s) (possibly including right-of-way corridor(s)) may be scheduled as part of the agency meeting. In some cases, a separate agency meeting may not be necessary and agencies would be invited to attend the public meetings.

The Agency and the applicant will invite the appropriate agency or government officials based on the nature and location of the proposed project; it is better to be inclusive rather than exclusive. Consider the cover types, ownership, and management of lands and waters that may be affected, and the potentially affected resources (fish and wildlife, air quality, socioeconomic, built environment, etc.). Agency meeting invitations should identify relevant documents (e.g., proposal documents, resource or technical studies) that are available and where they can be accessed. These documents should also be available on the website prior to the meeting, at the meeting, and sent to individual agencies and government entities upon request regardless of their intention to participate in the agency meeting.

3.2 Public Meeting(s)

Public scoping meetings should be scheduled on a weeknight after normal business hours. Late afternoon sessions can be added if necessary (e.g., when a proposal is particularly controversial or large crowds are anticipated). Meeting dates should avoid any federal, state, or local holidays or celebrations and not conflict with other civic or religious functions. Meeting locations should be a reasonable distance for all people in the project area to attend. It is suggested that a 25-mile driving distance (maximum) to a meeting site is a reasonable distance to expect an interested party to travel. For linear projects or where alternative sites are widely dispersed, several meeting sites and dates may be necessary (depending on factors that could include the corridor length or number/location of sites). For example, for a 100-mile corridor, 2 meetings may be appropriate if meeting sites could be arranged at the 25-mile and 75-mile points. Where alternative sites are being considered for final selection, it would be preferable to hold the meeting(s) within a 25-mile radius of each site. One meeting location may be appropriate for a number of alternative sites if the sites are close enough together.

3.2.1 Proposal Development Documents

Proposal development documents should be available for public review by the time the *Federal Register* or newspaper notice, whichever comes first, is published. Copies will be available for review at USDA-RD national office in Washington, DC, the headquarters of the applicant(s), applicant's offices in the project area (if applicable), local libraries in the project area, and other locations as deemed appropriate.

3.2.2 Meeting Arrangement and Roles

Scoping meetings are not intended to be public hearings, but rather a forum for information exchange and receipt of public input. Oral public statements are not taken, but it may be prudent to have public address equipment available in the event that a large number of attendees desire a question/answer session or other interchange. These meetings are typically done in an open-house format, with displays and information set up on the perimeter of the room, and each display staffed by applicant or consultant staff. There should be a maximum of two staff members per display and they must be sufficiently familiar with the proposal to answer public queries. RD (and any cooperating agency(ies)) representative(s) and the applicant's environmental or general manager should greet attendees as they arrive, ask them to sign in, and otherwise circulate throughout the room. Handouts or fact sheets about the Agency and the proposal should be made immediately available (contact the National Office for Agency fact sheets). Sign-in sheets will become part of the official record and be included in the Scoping Report. Meetings should be held in buildings that meet the accessibility standards of the Americans with Disabilities Act (PL 101-336; 42 USC 12101).

The displays or stations will provide information on the following topics:

- project description, purpose, and need;
- maps showing the location of alternative sites and corridors, and as necessary, their relationship to land ownership;
- the scope and range of environmental issues to be evaluated;
- photos, models, or conceptual drawings/simulations of the proposed facility(ies), and associated engineering or design information, and
- the environmental review process and schedule.

There may also be other stations to address concerns such as land acquisition or health and safety. There should be copies of the proposal development documents available for review, marked "For Display Purposes Only". Additional copies may be available to hand out if the Agency(ies) and applicant feel there is justification for doing so.

3.2.3 Public Comment

A means must be provided for the public to provide written comments. They should be advised that their comment sheets may be photocopied and inserted into the Scoping Report (which is publically available and supports the NEPA document) and that personal information such as addresses and phone numbers are not required, but, if provided, are subject to public disclosure. Typically, a separate station is provided that has pre-printed comment forms, pencils, and clear instructions as to where to leave comments at the meeting or how and where to submit them after the meeting. Required time frames for comment submittal (typically 30 calendar days after the formal/noticed scoping meetings) should be emphasized.

3.2.4 Meeting Debriefing

As soon as possible after the meeting has concluded, the Agency will conduct a debriefing with all participants to discuss comments, questions, and concerns raised by the public. The meeting should also discuss what went well and what didn't and if there are any aspects that should have been done differently. A summary of the discussion should be recorded highlighting the most common themes or issues. This summary may be included in the Scoping Report, discussed below.

4. NOTIFICATION

4.1 Federal Register Notice

The Agency will publish a Notice of Intent (NOI) to prepare an EIS and hold public scoping meetings in the *Federal Register*. The notice would also announce the role of any cooperating agency(ies). The NOI will identify and briefly describe the applicant's proposal, specify the meeting dates, times, and locations, and provide information on where the scoping documents can be accessed or reviewed. This notice also provides contact information for the designated Agency, applicant, and any cooperating agency(ies) staff persons.

4.2 Applicant Public Notice

The applicant will select a newspaper(s) with general circulation in the proposed project area and publish a similar notice in the legal section. The Agency will provide the applicant with a copy of its *Federal Register* notice to use as the basis for these notices.

The applicant will also have an advertisement published in the local news section of the same edition of the newspaper(s), briefly describing the Agency's intent and referring the reader to the legal notice for more information. These notices should run for three consecutive days in newspapers with daily circulation and two consecutive weeks for those with weekly circulation.

4.3 General Public Notification

Other forms of public notification may be necessary due to cooperating agency requirements or to ensure the public is aware of the notice of intent and public meeting information. Such notification may be through direct mailings, billboard notices in libraries, public buildings, and post offices, and radio or television announcements. In correspondence inviting local agencies to the agency and public meetings, the public officials should be encouraged to notify potentially interested parties through whatever medium they prefer.

Correspondence to local officials of the notice of intent and inviting them to the agency and public meeting should specifically ask if the project might result in disproportionately high or adverse environmental or human health effects on identifiable low-income or minority populations. Officials should be requested to provide suggested contact points so the Agency can make arrangements to contact those populations directly. Demographic data from the Census Bureau may also be used to identify low-income and minority populations. As appropriate, it may be necessary to publish bilingual notices and have an interpreter at the meeting.

5. SCOPING REPORT

5.1 Description and Format

The Agency, any cooperating agency(ies), and the applicant will prepare a report that summarizes the scoping activities conducted and their outcomes. This report should describe the actions undertaken to inform and engage the public, document their input, and capture the key issues to be carried forward for analysis in the EIS. It should also briefly explain the NEPA process and the role of scoping in that process and provide a succinct description of the proposed project and its purpose and need. Though it is usually appended to the EIS, the scoping report should be able to stand alone. The report need not be formal or lengthy, but should clearly document:

- informal or formal meetings held, their dates, locations, and number of attendees;
- copies of all displays, handouts, or other informational material provided to the public (this material should be photo-reduced and included in appendices);
- copies of all comment sheets received (again, photo-reduced and included in an appendix);
- major issue categories and frequency of comments in each;
- classification of comments or issue categories as to their disposition, i.e., issues to be analyzed in detail, issues to be discussed, and issues that will not be further analyzed (e.g., already addressed in prior environmental reviews, outside the scope of the proposal, or not significant); the report is not intended to provide specific responses to comments;
- resolution strategies of key issues.

5.2 Timing and Availability

The applicant typically prepares the report after it is satisfied that it has adequate information to do so, but as soon as possible after the public comment period has ended.

The Agency is ultimately responsible for the content and accuracy of the report. The goal should be to complete the report within two months following the scoping meeting(s). During the comment period, the Agency will forward copies of all comments received to the applicant and cooperating agencies and maintain the originals for the administrative record. The applicant should ensure the Agency receives the originals of any comments received by the applicant. The scoping report is provided to those agencies, tribes, and organizations that are involved in the scoping process. It is typically not distributed to the public, but is publically available (on the Agency website) and can be provided upon request.