

# Compliance: NEPA, NHPA, and ESA



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# What do those acronyms mean?



- **NEPA – National Environmental Policy Act, 1969**
  - Purpose is to ensure that environmental factors are considered in the decision making process for Federal actions.
- **NHPA – National Historic Preservation Act, 1966**
  - Purpose is to ensure that the effects on historic properties and cultural resources are taken into consideration for Federal actions.
  - Major amendments in 1980 and 1992 to clarify or expand the original act.
- **ESA – Endangered Species Act, 1973**
  - Purpose of ESA is to protect and recover imperiled species and the ecosystems upon which they depend.

# What is NEPA



- Short for the NEPA Process – public involvement and decision-making process on federal actions that affect the human environment.
- P.L. 91-190, very brief in content with broad themes, establishes Council on Environmental Quality
- P.L. has been clarified in 40 CFR Parts 1500-1508.

# Why is the NEPA process important?



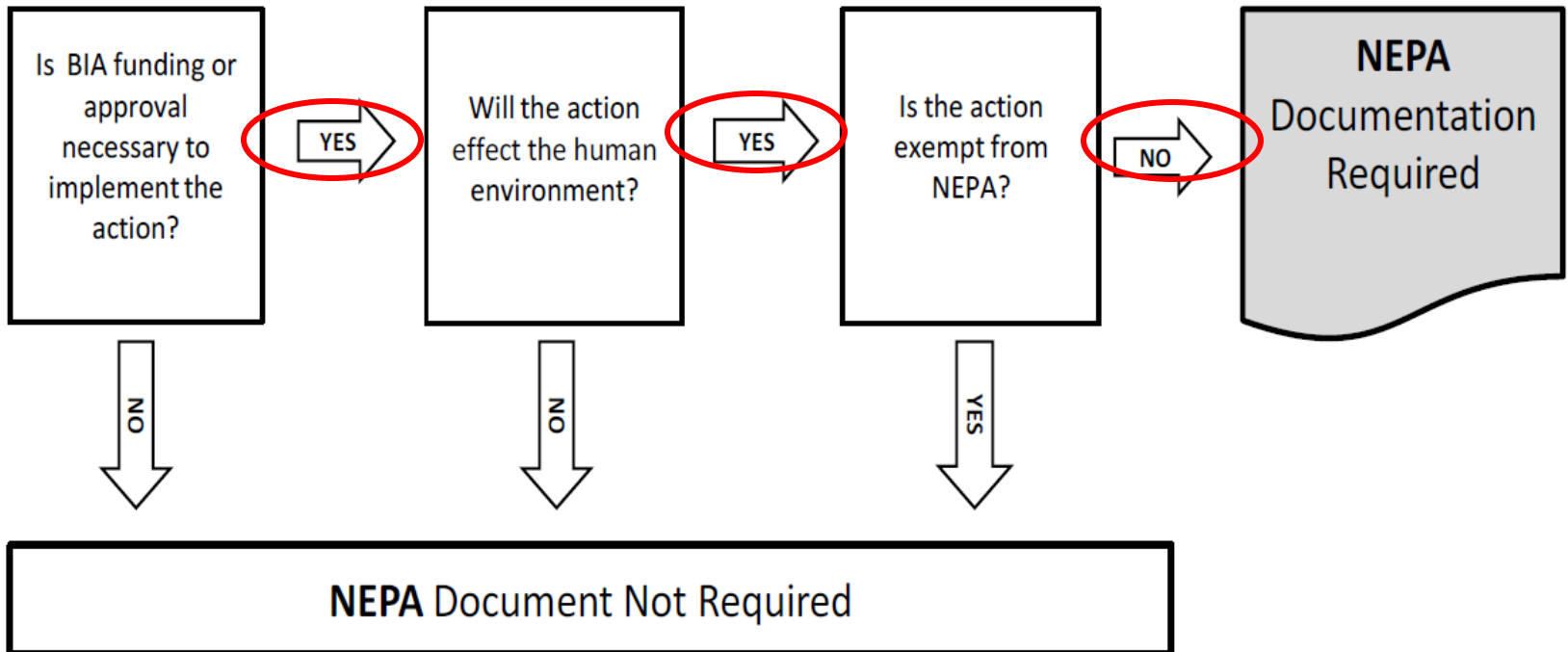
- NEPA was the first major environmental law in the US.
- Established national environmental policies.
- Requires Federal agencies to analyze environmental effects of their proposed actions in order to make informed decisions.
- NEPA process informs decision makers and focuses on appropriate public involvement.

# When does the NEPA process begin

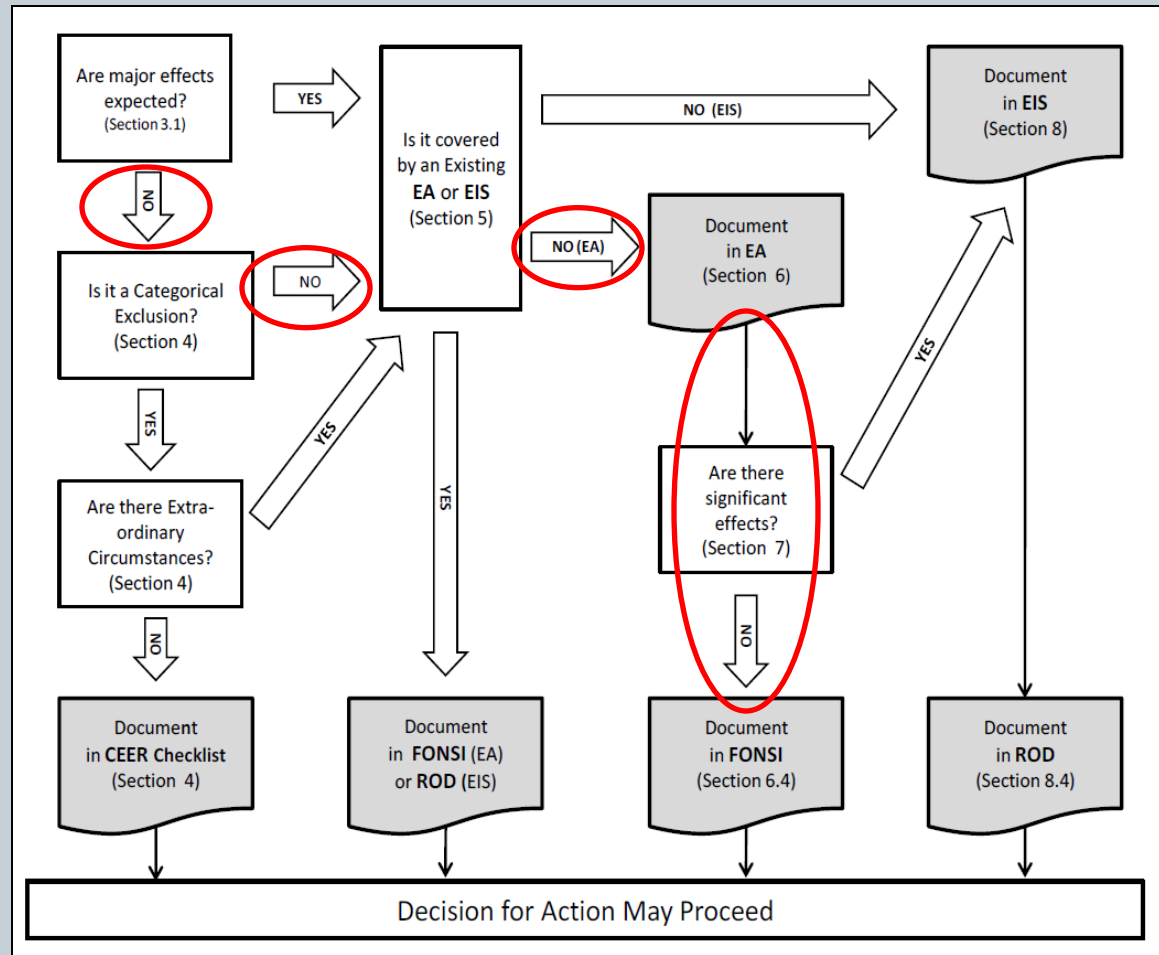


- NEPA is initiated at the project proposal stage.
  - Once someone has an idea and they believe it is feasible
    - ✦ Budget
    - ✦ on-the-ground
    - ✦ Personnel
  
- Example: a 60 acre aspen clearcut, appraised at \$35,000.

# Do I Need NEPA?



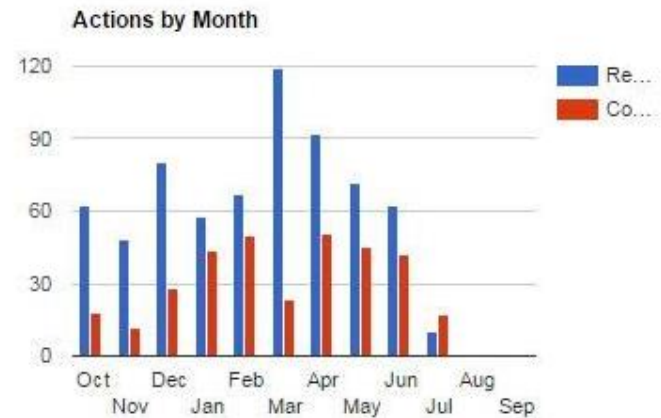
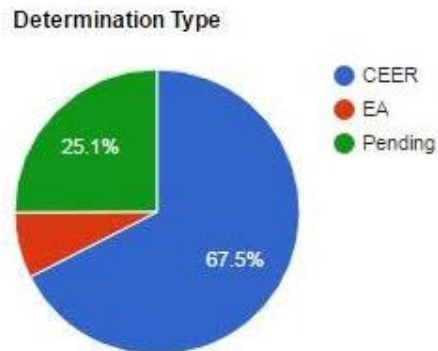
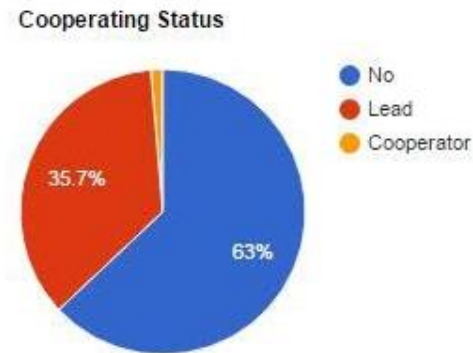
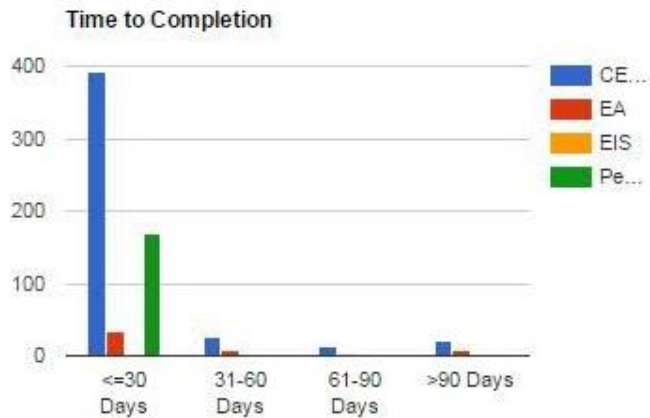
# What type of NEPA Documentation do I need?



\*Sections refer to the Indian Affairs NEPA Guidebook

# NEPA in the Midwest Region

## Midwest Region - FY2016





# Categorical Exclusions – CatExs or CEs



- Categorical Exclusions are actions which do not cumulatively or individually have a significant effect on the human environment.
- They do not have any extraordinary circumstances that apply, which are in the CEER checklist.
- Neither an EA or and EIS is required.
- Limited documentation in the form of a CEER checklist is required, which includes approval by a Superintendent or Regional Director.
- CEER checklist is tied to the definition of *significantly*

# CEER Process

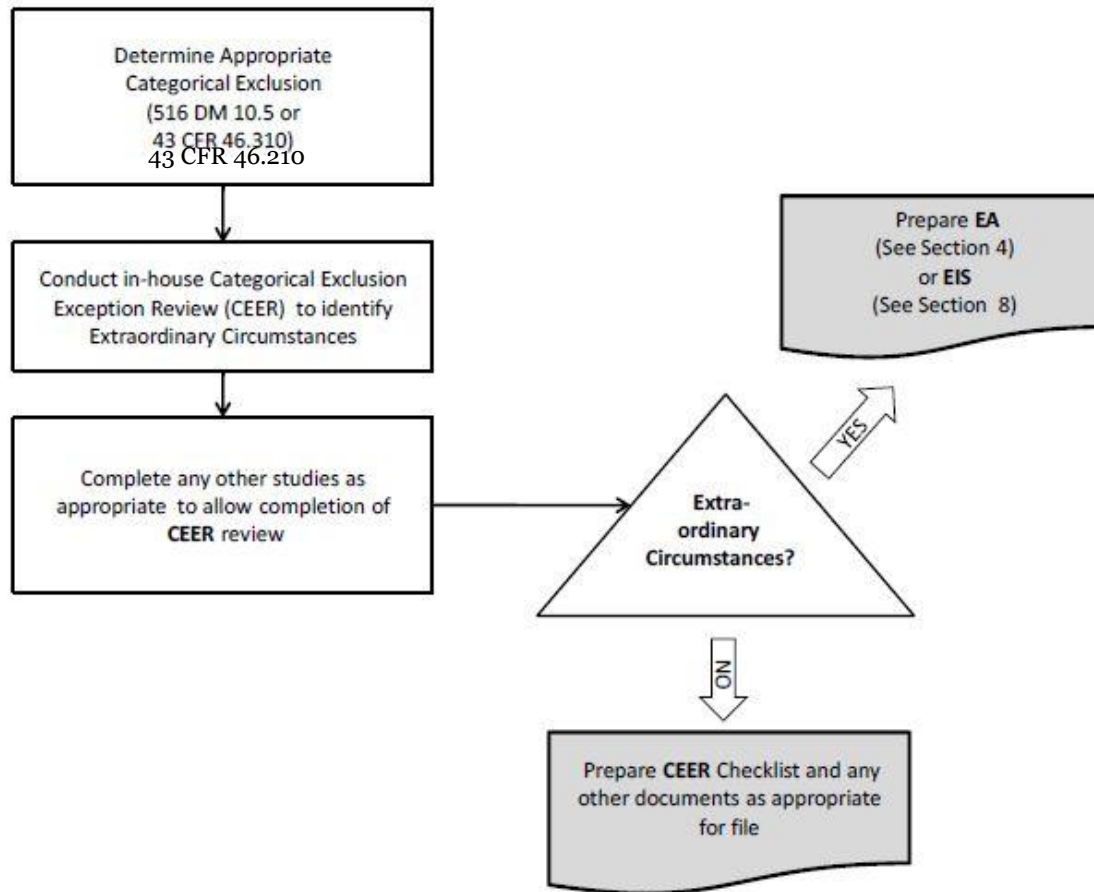


Figure 3 The Steps in Completing a Categorical Exclusion Exception Review

# CEER Checklist



- Public health and safety.
- Impacts to:
  - Natural, geographical, historic or cultural areas
  - Nationally-designated areas
  - Prime drinking water aquifers, prime farmlands, wetlands, floodplains
  - Migratory birds
  - Other ecologically significant areas.
- Highly controversial or unresolvable conflicts concerning alternate uses or available resources.
- Highly uncertain effects or unknown risk.

# CEER Checklist continued



- Establish a precedent
- Related to other actions, which may make a cumulatively significant effect.
- Properties listed or eligible for listing on the National Register of Historic Places. (NHPA, Section 106)
- Species listed or proposed to be listed. (ESA, Section 7)
- Violates federal, state, local or tribal environmental protection laws.

# CEER Checklist continued



- Disproportionate high and adverse effect on low income or minority populations. (Environmental Justice)
- Limit access to, and ceremonial use of, Indian sacred sites on federal lands, by Indian religious practitioners, and /or adversely affect the physical integrity of such sites.
- Contribute to introduction, continued existence, or spread of noxious weeds, or non-native invasive species, or promotion of the introduction, growth or expansion.

# CEER Checklist exhibit

## CATEGORICAL EXCLUSION EXCEPTION REVIEW (CEER) CHECKLIST

Project:	Date:
Letter and Text of category (BIA - 516 DM 10.5 ; DOI - 43 CFR46-210)	

### Evaluation of Extraordinary Circumstances (43 CFR 46.215):

	NO	YES
1. This action would have significant impacts on public health or safety.		
2. This action would have significant impacts on: natural resources & unique geographical features as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild & scenic rivers; national natural landmarks; sole or prime drinking water aquifers; prime farmlands wetlands; floodplains; national monuments; migratory birds; and other ecologically significant areas.		
3. This action would have highly controversial environmental effects or unresolved conflicts concerning alternate uses of available resources.		
4. This action would have highly uncertain environmental effects or involve unique or unknown environmental risk.		
5. This action will establish a precedent for future actions.		
6. This action is related to other actions with individually insignificant but cumulatively significant environmental effects.		
7. This action will have significant impacts on properties listed or eligible for listing in the National Register of Historic Places.		
8. This action will have significant impacts on a species listed or proposed to be listed as endangered or threatened, or Critical Habitat of these.		
9. This action violates federal, state, local, or tribal law or requirements imposed for protection of the environment.		
10. This action will have a disproportionately high and adverse effect on low income or minority populations.		
11. This action will limit access to, and ceremonial use of, Indian sacred sites on federal lands, by Indian religious practitioners, and/or adversely affect the physical integrity of such sites.		
12. This action will contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area, or may promote the introduction, growth, or expansion of the range of such species.		

A "yes" to any of the above exceptions will require that an environmental assessment be prepared.

NEPA Action: CE      EA

### Name and Title of person preparing this checklist

Concur: **Regional Archeologist**      Date:

Concur: **Other Environmental Professional**      Date:

Concur: **Regional/Agency/OFMC NEPA Reviewer**      Date:

Approve: **Regional Director/Agency Superintendent/  
OFMC Official**      Date:

NOTES:

# CEs



- NEPA Guidebook has most CE references and procedures, as well as the CEER checklist.
- 43 CFR 46.210 has DOI CEs are mainly administrative and non-Natural Resources based.
  - Inventory, hazardous fuels reduction, post-fire rehabilitation.
- BIA DM516 10.5 has BIA CEs cover many broad categories including Natural Resources

# Forestry CEs



- BIA DM516 10.5
  - Forestry is in 10.5 H, 3 new categories last year for a total of 13
    - Low value or volume cutting permits or contracts.
    - Environmental stabilization
    - Stand improvement, forestation
    - Prescribed burns
    - Timber harvest of 70 acres or less (not including even-aged regeneration harvest) and up to 0.5 miles of temporary road construction.
    - Salvage harvest of 250 acres or less and up to 0.5 miles of temporary road construction.
    - Sanitation harvest to control insect or disease of 250 acres or less and up to 0.5 miles of temporary road construction.



# Should I do an EA?



- Considerations for moving to an Environmental Assessment:
  - When it doesn't explicitly meet the categories.
    - ✦ and
  - It is believed that the proposed action will not have any **significant** effects.

# Significance



- 40 CFR 1508.27: Significantly
  - *Significantly* as used in NEPA requires considerations of both context and intensity:
    - ✦ (a) *Context*. This means that the significance of **an action must be analyzed in several contexts** such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

# Significance continued



- (b) *Intensity*. This refers to the **severity of impact**. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:
  - (1) Impacts that may **be both beneficial and adverse**. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.
  - (2) The degree to which the proposed action affects **public health or safety**.
  - (3) **Unique characteristics** of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

# Significance continued



- (4) The degree to which the effects on the quality of the human environment are likely to be **highly controversial**.
- (5) The degree to which the possible effects on the human environment are **highly uncertain or involve unique or unknown risks**.
- (6) The degree to which the action may **establish a precedent for future actions with significant effects** or represents a decision in principle about a future consideration.
- (7) Whether the action is related to other actions with individually **insignificant but cumulatively significant impacts**.  
Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

# Significance final



- **(8)** The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the **National Register of Historic Places** or may cause loss or destruction of significant scientific, cultural, or historical resources.
- **(9)** The degree to which the action may adversely affect an **endangered or threatened species or its habitat** that has been determined to be critical under the Endangered Species Act of 1973.
- **(10)** Whether the action threatens a **violation of Federal, State, or local law** or requirements imposed for the protection of the environment.

# When to prepare an EA



- The DOI regulations (43 CFR 46.300(a)) specify that an EA must be prepared for any Federal action except those:
  - Covered by a CE
  - Covered by an earlier environmental document
  - A decision has already been made to prepare an EIS
- What is different than a CE?
  - Scoping is generally not just internal
  - There is some sort of written analysis of the effects
  - There are more documents required – EA, DN, FONSI

# What is required in an EA?



- Need for the proposal
- Alternatives
  - Proposed Action
  - No Action
  - Alternatives to the Proposed Action
- Environmental effects
  - Direct
  - Indirect
  - Cumulative
- Agencies and persons consulted

# EA continued



- **Environmental Effects:**
  - Only what has effects needs to be analyzed.
    - ✦ Timber harvest following riparian BMPS likely would not impact water quality or fisheries, so analysis would not need to be done.
  - Some analysis is required by policy
    - ✦ NHPA
    - ✦ ESA
    - ✦ Environmental Justice
  - Direct, Indirect, and Cumulative Effects



# Direct & Indirect Effects



Direct effects are caused by the action and occur at the same time and place.

Example: Possible trampling of rare plants within the footprint from timber harvest activities



Indirect effects cause by the action and are later in time or farther removed in distance, but are still reasonably foreseeable

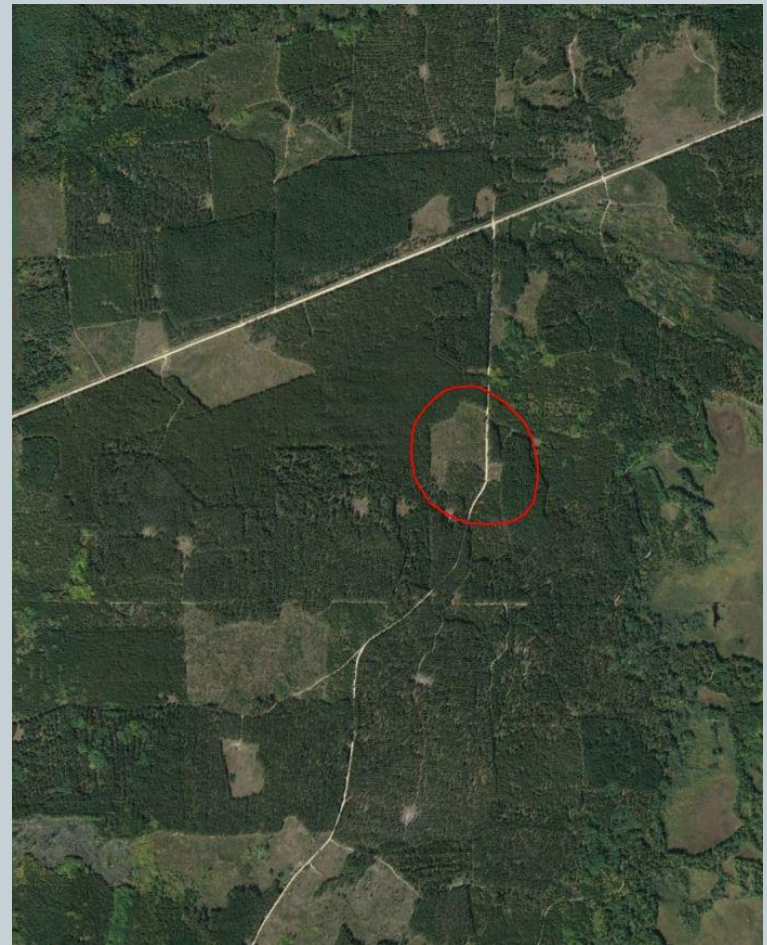
Example: Possible visual quality issues from a recreation site.



# Cumulative Effects



- Past, Present and reasonably foreseeable actions
  - Numerous harvests across the landscape in space and time to provide enough appropriate habitat for an ESA species



# EA Documentation



- **Finding of No Significant Impact**
  - 10 items that are required to be addressed in the FONSI, which are tied to the definition of significantly.
- **Notice of Availability**
  - To inform public that documentation is available
- **Decision Notice / Notice to proceed**
  - Can be issued concurrently with the NOA and FONSI
- **FONSIs can not be appealed – they are findings.**
- **Decision Notice/Decision to Proceed can be appealed – they are decisions.**

# EIS



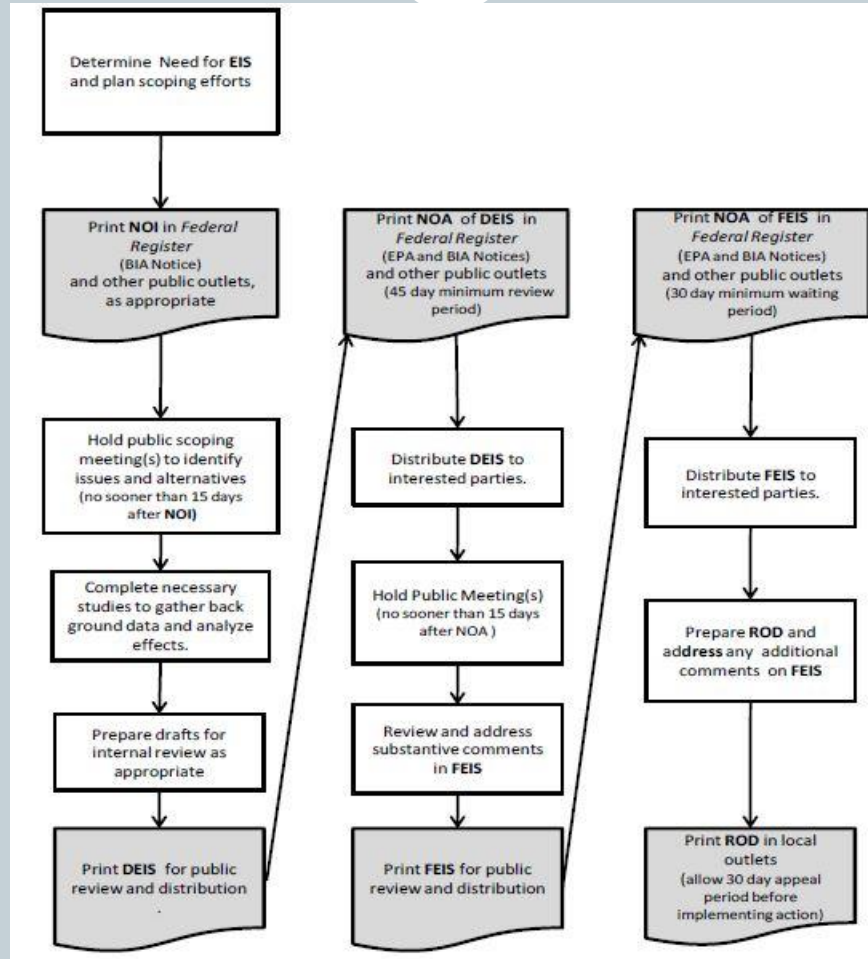
- **When is an Environmental Impact Statement needed?**
  - Does the proposed action have a significant effect on the human environment?
  - Does the proposed action have an unknown effect on the human environment?
  - Do other laws or policies require one?
- **What do I need to do if I think I need an EIS?**
  - Contact specialists
    - ✦ Refine the proposed action to avoid significance – create a Mitigated EA/FONSI.
    - ✦ Write an EIS.

# NEPA Process for an EIS



- There are many steps in the NEPA process to complete an EIS.
  - Public scoping to determine the issues.
  - Notice of Intent to produce an EIS
  - NOA of DEIS and publication of DEIS
  - Public meetings to receive comments
  - NOA of FEIS and publication of FEIS that addresses substantive comments received.
  - ROD and address public comments again
  - 30 days until implementation
- Public involvement along all steps.

# EIS NEPA Process



# Other key items



- Connected actions: actions that are closely related and should be discussed in the same NEPA document. 40 CFR 1508.25 (a)(1).
- If an area has been NEPA cleared for one action, it doesn't mean that it has been cleared for others on the same ground. e.g timber harvest and site preparation for planting.
- Use plain language when writing.
- Writers state the facts of effects and line officers make decisions based on those.



# Reference information

- Agency Staff
- Regional NEPA Coordinators
- BIA NEPA Guidebook
- 40 CFR 1500-1508
- 516 DM 10
- 43 CFR Part 46
- CEQ

**Department of the Interior  
Departmental Manual**

Effective Date: 5/27/04  
Series: Environmental Quality Programs  
Part 516: National Environmental Policy Act of 1969  
Chapter 10: Managing the NEPA Process--Bureau of Indian Affairs

Originating Office: Bureau of Indian Affairs

516 DM 10

Council on Environmental Quality  
Executive Office of the President

**REGULATIONS**  
For Implementing The Procedural Provisions Of The  
**NATIONAL  
ENVIRONMENTAL  
POLICY ACT**



Reprint  
40 CFR Parts 1500-1508

**INDIAN AFFAIRS  
NATIONAL ENVIRONMENTAL POLICY ACT  
(NEPA) GUIDEBOOK**

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**DIVISION OF  
ENVIRONMENTAL AND CULTURAL  
RESOURCES MANAGEMENT**

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