

EXCHANGES
NEPA Analysis and Documentation
Session Summary

- BLM Handbook Land Exchange H-2200-1, Chapter 6;
- BLM Handbook NEPA H-1790 , All Chapters;
- 43 CFR 2201.2(a) 4 and 5; 43 CFR 2200.0-6(h); 40 CFR 1501.3
- FSH 5409.13, 33.4, & 36 CFR 254.

For BLM, most land exchanges are processed with an Environmental Assessment (EA) and that will be the focus of this segment. Some offices will produce an Environmental Impact Statement (EIS) for actions with a significant effect. The Realty Specialist is usually the project leader on the development of the EA. Some offices have an Environmental Coordinator who will serve as the project lead or reviewer of the EA.

For the Forest Service, most land exchanges are also processed with an Environmental Assessment (EA). However, in some of the larger, more complicated and controversial exchanges an Environmental Impact Statement (EIS) are used. In very limited circumstances, such as an administrative site exchange, where the use of the Federal Land being exchanged out of Federal ownership is not expected to change (e.g., it would stay an administrative site), and in Tripartite Land Exchanges, a Categorical Exclusion (CE) is used.

There are definite trade-offs in the decision to complete an EIS versus an EA; some decision-makers view this as a strategic decision based on their level of certainty that impacts could be significant. While completing an EIS does take some of the concern about the significance threshold off the table, it also adds additional time and formal notification steps to the process and creates a precedent that makes it appear that "these types of projects always require an EIS." BLM's approach is generally to complete an EA if the significance of the action is unknown, using the EA process to inform a determination on level of significance.

Remember the primary purpose of a NEPA document: This written document is made to inform the Federal decision maker of the consequences of the action, and to present viable alternatives that the Federal decision maker could select. Therefore, the primary purpose of NEPA documents is to educate the decision maker so that he or she can make an informed decision that protects, restores, and enhances the environment. Think of a NEPA document as a staff report to the decision maker; but, a staff report that is developed with a full understanding of the information needed by the decision-maker, and may be a circular, rather than linear, process. As the decision-maker reviews the information in the EA, he or she may need additional information, or may wish to see additional options analyzed, so an early and open dialogue that helps define the expectations of the decision-maker is important.

An EA should be an interdisciplinary document. There is no prescribed format for an EA. However, the Council on Environmental Quality regulations (40 CFR 1508.9(b)) prescribe four necessary parts of an EA:

- need for the proposal (and proposed action)
- alternatives which should be considered (affected current condition)
- environmental impacts of the proposed action and the alternatives (cumulative)
- a listing of agencies and persons consulted

Common Misconceptions about NEPA and NEPA documents

A. *That NEPA prohibits Federal agencies from doing anything that will damage the environment.* False. NEPA requires Federal decision makers to be aware of the environmental consequences of their decisions but does not prohibit *any* damage or impacts.

B. *That NEPA requires Federal agencies to generate excellent paperwork and long, exhaustive documentation prior to implementing actions.* False. The goal of NEPA is to generate good, informed decisions, not exhaustive doctoral theses to fill case files.

C. *That NEPA documents should be equivalent to scientific papers.* False. NEPA documents should only be long enough to adequately inform the decision maker and should be fully understandable by the decision maker and the public.

D. *That NEPA documents are used primarily as public disclosure documents.* False. Although this can be one of the purposes of a NEPA document, the primary purpose of a NEPA document is to help the decision maker to make an informed decision. There are elements in the NEPA law that address the importance of conducting NEPA concurrently with internal planning processes so that decisions can be improved; thus, NEPA is not simply about disclosing what we've already decided.

E. *That the NEPA document decides the agency's action.* False. An agency's decision is made by its decision maker (usually a line officer or manager) in a decision document.

F. *That the NEPA document itself is protested and/or appealed.* False. It's the decision of the authorized officer that can be protested or appealed, not the NEPA document itself.

Common Questions about NEPA Documents:

Is an EA (or EIS) subject to personal opinions and interpretation?

Some disciplines are inherently subjective such as mineral potential or a Reasonably Foreseeable Development Scenario (RFDs); however, any expressions of professional opinion should include a clear basis for how that conclusion was reached. Professional opinions are usually founded on multiple assumptions and methodologies, and it's critical that the reader be able to understand and follow how the specialist came to their conclusion.

What do you do when staff members disagree on impacts or on public benefits?

Some disciplines have some inherent overlap, for example, the staff range conservationist's analysis may show that exchanging two parcels of Federal land with no public access will simplify the grazing program. However, the staff botanist's analysis may show that the Federal parcel contains the westernmost range extension of a "rare" plant with no Federal or State status (although it may be considered rare by the local Native Plant Society). The EA should explain both staff members' facts, and the decision maker can decide accordingly. There's no need for these two specialists to reach agreement on the "value" of the land; it's may be valued differently for different resources.

The FS provides the EA for public review and comment for 45 days prior to making a decision. The FS decision maker considers the public comments in making the decision. See FS NEPA Handbook.

What do you do if a member of the public disagrees with some part (or all) of the EA?

As described above, your response may vary from correcting factual information to adding a new alternative to simply answering the comment directly as to why a change was not warranted. It is fairly common to receive comments that the EA is inadequate or that the recommendations in the EA are wrong. Examine the comment objectively regardless of how the commenter chooses to phrase it and determine whether there is a factual basis for the comment and whether your ability to respond is well-documented in the information in the EA or EIS. Many comments are based on matters of opinion, and the burden of proof that we have not complied with NEPA is on the complainant, not on BLM. Many IBLA decisions have addressed this topic.