

**The National Environmental Policy Act (NEPA) Process  
with  
Military Projects**

By

Charlotte Fay Baldwin  
US Department of the Army  
Fort Hood, Texas  
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### Abstract

The purpose of the National Environmental Policy Act (NEPA) is to include environmental considerations into federal agency planning and action. This is done by providing decision makers and other stakeholders with information they need to understand any potentially significant environmental impacts resulting from an action.

NEPA requires, to the fullest extent possible, that the policies, regulations, and laws of the Federal Government be interpreted and administered in accordance with its environmental protection goals. NEPA also requires Federal agencies to use an interdisciplinary approach in planning and decision making for any action that adversely impacts the environment.

The process used in complying with NEPA is very similar to the decision-making process taught to military leaders for years. The first step in the NEPA process is to receive a mission assignment. If that mission assignment involves the potential for construction, or earth disturbing, or planning on either of those actions, you are now in the NEPA process.

The goal is to review the application and management of the NEPA process as it pertains to military projects, so that the spirit and the letter of the act are fulfilled legally and efficiently by informing military planners and decision makers and help integrate environmental considerations into the decision-making process.

### Understanding the NEPA and CEQ Regulations with Military Projects

To understand the NEPA we must ask; what caused NEPA? Several issues lead to the nation demanding protection of our natural resource and environment and the implementation of NEPA.

In the early 1940's water quality and public health was a concern that lead to the Federal Water Pollution Control Act 1948 was in affect with several amendments henceforth. In the 1950's and 1960's the increased use and production of hazardous chemicals and improper disposal methods became a concern to citizens throughout the 1950s and 1960s.

In 1962 a book titled *Silent Spring* by Rachel Carson, was credited for causing widespread public concerns with pesticides and pollution of the environment. The book documented detrimental effects of pesticides on the environment, particularly on birds. *Silent Spring* was said to have facilitated the ban use of the pesticide known as dichlorodiphenyltrichloroethane (DDT) within the United States.

The Clean Air Act of 1963 was designed to control air pollution on a national level. Later in The Amendment of 1970 the Environmental Protection Agency (EPA) was required to develop and enforce regulations to protect the general public from exposure to airborne contaminants that are known to be hazardous to human health.

The Wilderness Act (1964) created the legal definition of wilderness in the United States, and protected some 9 million acres of federal land. The Wilderness Act was a result of a long effort to protect federal wilderness and to create a formal mechanism for designating wilderness.

However, the date and incident that shook the environmental cage was January 28, 1969. The Santa Barbra Oil Spill that resulted in an estimated 3 million gallons of crude oil released into the Pacific Ocean and onto the beaches of Santa Barbara County located in Southern California. This historical oil spill had a significant impact on marine life killing thousands of sea birds, as well as marine animals such as dolphins, elephant seals, and sea lions. The ecological impact was catastrophic. The public was outraged by the spill and the incident

received prominent media coverage in the United States. Numerous pieces of environmental legislation were generated within the next several years, such as the California Environmental Quality Act.

“It is sad that it was necessary that Santa Barbara should be the example that had to bring it to the attention of the American people. What is involved is the use of our resources of the sea and of the land in a more effective way and with more concern for preserving the beauty and the natural resources that are so important to any kind of society that we want for the future. The Santa Barbara incident has frankly touched the conscience of the American people.” Richard Nixon, President, United States<sup>1</sup>

Some of the long-term outcomes that were the direct result or consequence of the oil spill include the following:

- National Environmental Policy Act of 1969 (NEPA)<sup>2</sup>
- The Council on Environmental Quality (CEQ) 1969<sup>3</sup>
- US Environmental Protection Agency Dec 1970<sup>4</sup>
- Earth Day Spring 1970<sup>5</sup>
- The California Coastal Commission / California Coast Act of 1976<sup>6</sup>
- The Environmental Defense Center founded 1977<sup>7</sup>

The National Environmental Policy Act (NEPA) was enacted by congress in December 1969, and was signed into law by President Nixon on January 1, 1970. NEPA was the first major environmental law in the United States and established this country's national environmental policies. To implement these policies, NEPA requires agencies to undertake an assessment of the environmental effects of their proposed actions prior to making decisions. Two major purposes of the environmental review process are better informed decisions and citizen involvement, both of which should lead to implementation of NEPA's policies.

The White House Council on Environmental Quality (CEQ) was created by NEPA in 1970 and is charged with overseeing NEPA implementation by Federal agencies including the military. In 1978, CEQ issued the CEQ regulations implementing NEPA. CEQ also issues

guidance to clarify the requirements and applicability of various provisions of NEPA and CEQ Regulations and to ensure that those requirements can be met in a timely and effective fashion.

With some limited exceptions, all Federal agencies in the executive branch have to comply with NEPA before they make final decisions about federal actions that could have environmental effects. Thus, NEPA applies to a very wide range of military projects that include, but are not limited to, construction projects, plans to manage and develop federally owned lands, and federal approvals of non-federal activities such as grants, licenses, and permits. The Military takes actions every day that are, in some way, covered by NEPA.

The Department of Defense (DoD) follows the rigorous requirements outlined in NEPA, the National Historic Preservation Act of 1966 (NHPA), and all other statutes that involve protecting the environment and vital land resources under DoD stewardship. The DoD has a long and successful program to comply with NEPA. DoD's policy is in DoD Instruction 4715.9, Environmental Planning and Analysis. Each of the military Departments and Defense Agencies are required to demonstrate how they will comply with NEPA prior to selection of each military construction project using Recovery Act funds. In addition, the Department is tracking compliance with NEPA for every project and reporting its status, as required, to the Council on Environmental Quality. The Department is using the full range of actions available under NEPA.<sup>8</sup>

To adhere and comply with NEPA, the Department of the Army engaged in three major efforts that benefited from the NEPA analysis process: Army Transformation, the Installation Sustainability Program and the Sustainable Range Program. All contributed to the long-term reduction of environmental impacts associated with Army programs and projects.

The Army Transformation process is extensive, including the expansion and upgrading of installation training ranges, or the development of new ranges. As training requirements become more collaborative and sophisticated, training ranges may require different land areas, airspace, and support facilities. As this complex Army Transformation process proceeds, NEPA planning is increasingly integrated into Army policies. The planning process associated with the Army's Installation Sustainability Program to address installation encroachment issues integrates the NEPA analysis process and is similar to CEQ's cumulative effects analysis process. The

installation and community jointly identify affected resources within the region in both processes. Once the resources have been identified and evaluated a collaborative management plan is developed that will provide solutions for all stakeholders. The Army's Sustainable Range Program incorporates the same principles of these processes into its planning procedures. Site selection and range design for training facilities begin with a design "charrette" to insure stakeholder collaboration. This effort ensures a design that will satisfy training requirements and environmental issues.<sup>9</sup>

The Army NEPA implementation regulation provides the following broad policy statements<sup>10</sup>:

"NEPA establishes broad federal policies and goals for the protection of the environment and provides a flexible framework for balancing the need for environmental quality with other essential societal functions, including national defense. The Army is expected to manage those aspects of the environment affected by Army activities; comprehensively integrating environmental policy objectives into planning and decision-making. Meaningful integration of environmental considerations is accomplished by efficiently and effectively informing Army planners and decision makers. The Army will use the flexibility of NEPA to ensure implementation in the most cost-efficient and effective manner. The depth of analyses and length of documents will be proportionate to the nature and scope of the action, the complexity and level of anticipated effects on important environmental resources, and the capacity of Army decisions to influence those effects in a productive, meaningful way from the standpoint of environmental quality.

The Army will actively incorporate environmental considerations into informed decision-making, in a manner consistent with NEPA. Communication, cooperation, and, as appropriate, collaboration between government and extra-government entities is an integral part of the NEPA process. Army proponents, participants, reviewers, and approvers will balance environmental concerns with mission requirements, technical requirements, economic feasibility, and long-term sustainability of Army operations. While carrying out its mission, the Army will also encourage the wise stewardship of natural and cultural resources for future generations. Decision makers will be cognizant of the impacts of their decisions on cultural resources, soils, forests,

rangelands, water and air quality, fish and wildlife, and other natural resources under their stewardship, and, as appropriate, in the context of regional ecosystems.”

### **Selecting the Appropriate Level of Documentation**

NEPA was established to make agencies think about the environmental effects that their proposed actions will have prior to making the decisions. Requirements of NEPA are generally met through the production of an environmental document that analyzes the posed action. Below are the three levels of NEPA analysis and documentation.

#### **Categorical Exclusions (CEs)**

At the first level, an undertaking may be categorically excluded from a detailed environmental analysis if it meets certain criteria that a federal agency has previously determined as having no significant environmental impact. A number of agencies have developed lists of actions that are generally categorically excluded from environmental evaluation under their NEPA regulations. Examples include issuing administrative personnel procedures, making minor facility renovations (such as installing energy efficient lighting), and reconstruction of hiking trails on public lands. Agencies develop a list of CEs specific to their operations when they develop or revise their NEPA implementing procedures in accordance with CEQ’s NEPA regulations.

A CE is based on an agency’s experience with a particular kind of action and its environmental effects. The agency may have studied the action in previous EAs, found no significant impact on the environment based on the analyses, and validated the lack of significant impacts after the implementation. If this is the type of action that will be repeated over time, the agency may decide to amend their implementing regulations to include the action as a CE. In these cases, the draft agency procedures are published in the *Federal Register*, and a public comment period is required.

The use of a CE is intended to reduce paperwork and eliminate delays in the initiation and completion of proposed actions that have no significant impact. Public involvement is not

generally required for CEs, as this is the lowest level of environmental documentation. However, a “categorically excluded” action may still trigger EIS preparation.

A Record of Environmental Consideration (REC) is signed statement submitted with project documentation that briefly documents that an Army action has received environmental review. RECs are prepared for CEs that require them, and for actions covered by existing or previous NEPA documentation. A REC briefly describes the proposed action and timeframe, identifies the proponent and approving official(s), and clearly show how an action qualifies for a CE, or is already covered in an existing EA or EIS. When using to support a CE the REC must address the use of screening criteria to ensure that no extraordinary circumstances or situations exist.<sup>11</sup>

### **Environmental Assessments (EA)**

If the proposed action is neither a CE nor one that normally requires an Environmental Impact Statement (EIS) then an Environmental Assessment (EA) must be prepared. The purpose of an EA is to determine the significance of the environmental effects and to look at alternative means to achieve the agency’s objectives. The EA is intended to be a concise document that briefly provides sufficient evidence and analysis for determining whether to prepare an EIS; aids an agency’s compliance with NEPA when no environmental impact statement is necessary; and facilitates preparation of an Environmental Impact Statement when one is necessary. An EA should include brief discussions of:

- the need for the proposal,
- alternative courses of action for any proposal which involves unresolved conflicts concerning alternative uses of available resources,
- the environmental impacts of the proposed action and alternatives, and
- a listing of agencies and persons consulted.

The EA process concludes with either a Finding of No Significant Impact (FONSI) or a Notice of Intent (NOI) to prepare an EIS. Initiation of an NOI to prepare an EIS should occur at any time in the decision process when it is determined that significant effects may occur as a result of the proposed action. The proponent should notify the decision maker of any such



determination as soon as possible. A FONSI is a document that presents the reasons why the agency has concluded that there are no significant environmental impacts projected to occur upon implementation of the action. The FONSI may address measures that an agency will take to reduce or mitigate potentially significant impacts.

### **Environmental Impact Statements (EIS)**

If the EA determines that the environmental consequences of a proposed federal undertaking may be significant, an EIS is prepared. An EIS is a more detailed evaluation of the proposed action and alternatives. The public, other federal agencies and outside parties may provide input into the preparation of an EIS and then comment on the draft EIS when it is completed.

If a federal agency anticipates that an undertaking may significantly impact the environment, or if a project is environmentally controversial, a federal agency may choose to prepare an EIS without having to first prepare an EA. After a final EIS is prepared and at the time of its decision, a federal agency will prepare a public record of its decision addressing how the findings of the EIS, including consideration of alternatives, were incorporated into the agency's decision-making process.

A Federal agency must prepare an EIS if it is proposing a major federal action significantly affecting the quality of the human environment. The regulatory requirements for an EIS are more detailed than the requirements for an EA or a categorical exclusion.

To achieve the purposes set forth in Sec. 1502.1 agencies shall prepare environmental impact statements in the following manner:

- Environmental impact statements shall be analytic rather than encyclopedic.
- Impacts shall be discussed in proportion to their significance. There shall be only brief discussion of other than significant issues. As in a finding of no significant impact, there should be only enough discussion to show why more study is not warranted.

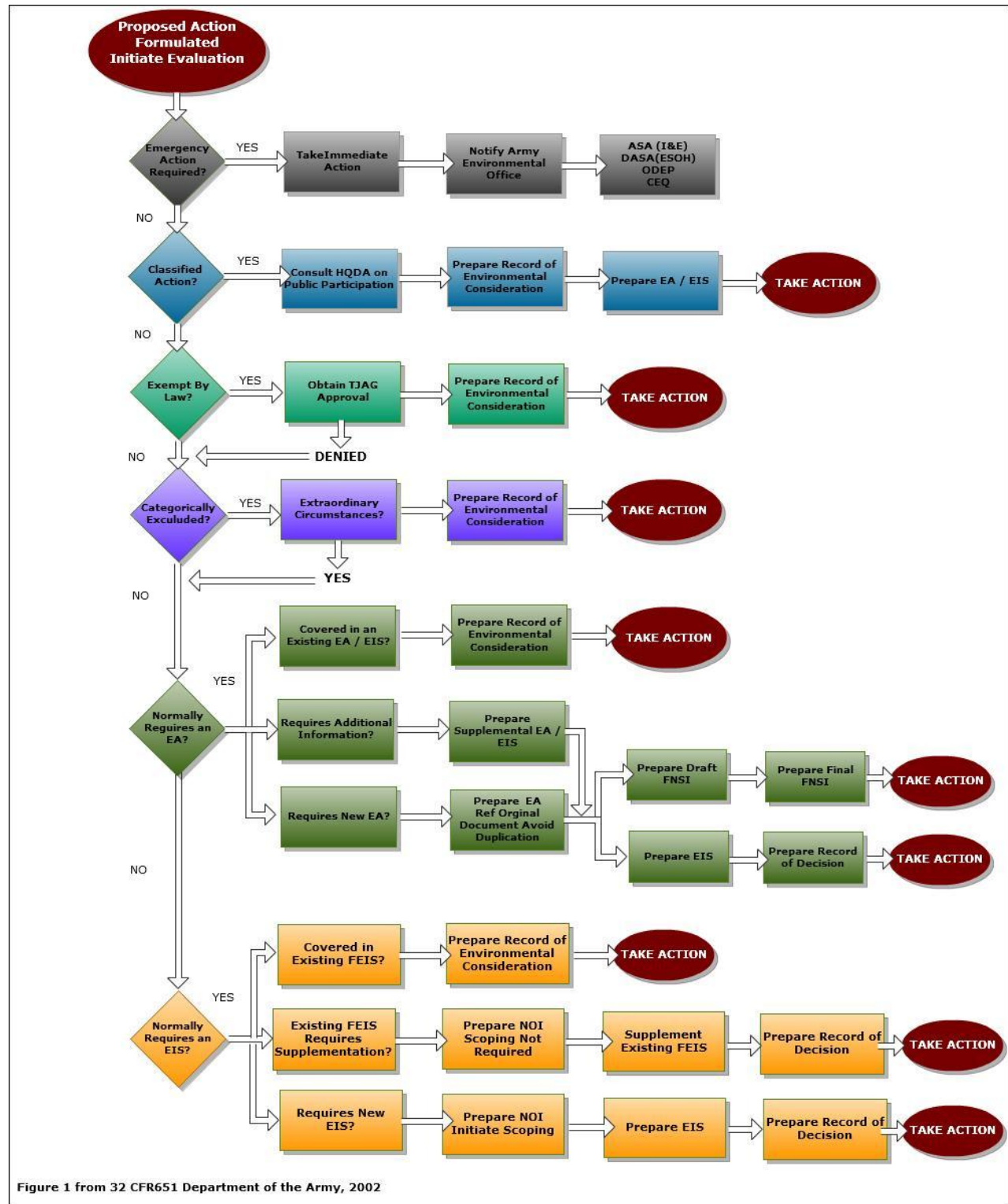
- Environmental impact statements shall be kept concise and shall be no longer than absolutely necessary to comply with NEPA and with these regulations. Length should vary first with potential environmental problems and then with project size.
- Environmental impact statements shall state how alternatives considered in it and decisions based on it will or will not achieve the requirements of sections 101 and 102(1) of the Act and other environmental laws and policies.
- The range of alternatives discussed in environmental impact statements shall encompass those to be considered by the ultimate agency decision-maker.
- Agencies shall not commit resources prejudicing selection of alternatives before making a final decision.
- Environmental impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.

Preparation of an EIS is required for major Federal actions significantly affecting the quality of the human environment". The threshold determination by the relevant federal entity pursuant to this apparently simple phrase has engendered considerable controversy.

Although the phrase contains two criteria -- "major Federal action" and "significantly affecting", the test has been narrowed by CEQ to the single criterion of significance; in essence, an action is major if it is significant and, if it is significant, it requires the preparation of an EIS. The CEQ regulations eliminated previous fine distinctions between "major" and "minor" federal actions, which were primarily predicated upon the extent of federal funding, and instead have focused attention on the degree of environmental impact.

The CEQ regulations set forth the procedure for determining whether a proposed action necessitates preparation of an EIS. Federal agencies were allowed to identify actions which typically require an EIS and also to specify actions which typically do not.

The flow chart shown in Figure 1 summarizes the Army NEPA process for determining documentation requirements, as follows:

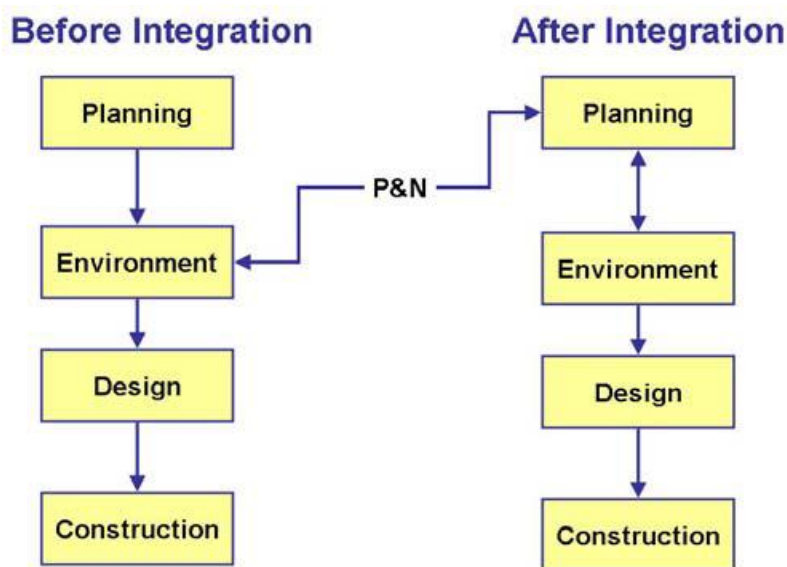


### Determining the Purpose and Need

Every project should describe a Purpose & Need. In military projects, a Purpose can be as simple as housing a brigade or building a complex for a new weapon system. The Need can be justified due to the increase of military personal and the lack of existing housing units or the specialized building requirements needed for a weapon system.

The first step in the NEPA process in military projects is to receive a mission assignment. If that mission assignment involves the potential for construction, or earth disturbing, or planning on either of those actions, you are now in the NEPA process. Within this step is determining the Purpose & Need, which closely resembles the problem statement.

Historically, the Purpose & Need was developed during the Environmental phase (see figure 2). The environmental staff may or may not have information from the Planning phase that is useful in developing the P&N. Ideally, the development of P&N would be during the Planning phase so that when a project progresses to the Environmental phase, the P&N has already been established and simply needs revalidation (a determination that conditions and assumptions have not changed to the point where the original P&N is no longer appropriate) before the project proceeds to the identification of alternatives.



**Figure 2.****Developing Alternatives**

The next process is to compare and evaluate alternatives. This involves collecting data relating to the proposed action and the alternatives, and then evaluating each alternative by predicting the probable outcome based on the data gathered. The final part of this process is to analyze the potential impacts of each alternative course of action.

Developing alternative courses of action is the heart of the NEPA document and should present an assessment of the potential environmental impacts of the proposal and each alternative. The "no action" alternative is included for objective evaluation.

NEPA requires lead agencies to develop and assess reasonable alternatives that meet the purpose and need for agency action. The development of alternatives can be conceptually challenging and laden with value judgment and assumptions, either unspoken or unrecognized. The selection of alternatives drives the remainder of the NEPA process by framing the issues, the possible solutions, and the analysis.

Often it is challenging to reach internal agreements on what the range of reasonable alternatives should be. When the process is expanded to include external parties, the challenge can be even greater. Parties must first come to realize that there may be a number of ways by which their objectives (purpose and need) can be met. Collaboratively developed alternatives are more likely to withstand external challenges because such an approach enables stakeholders to have a meaningful role in choosing among alternatives when developing the Draft EIS. Agencies can use a number of methods and approaches to enhance collaboration when developing viable alternatives, such as working with stakeholders to identify and refine alternatives.

**Identifying Issues and Predicting Environmental Consequences**

The EA or EIS should address the affected environment and provide information on the existing resources and condition of the environment. The affected environment should focus on the important issues in order to provide an understanding of the project area relative to the impacts of the alternatives. The affected environment should discuss, commensurate with the importance of the potential impacts, the existing social, economic, and environmental settings surrounding the project. It should also identify environmentally sensitive features in the project corridor.

Environmental Consequences describe the impacts of project alternatives on the environment and documents the methodologies used in evaluating these impacts. Information is used to compare project alternatives and their impacts are included in the analysis and should describe in detail both the impacts of the proposed action and the potential measures that could be taken to mitigate these impacts. Mitigation must be considered for all impacts, regardless of their significance. Environmental impacts should be discussed in terms of their context and intensity.

### **Review Process**

The environmental review process under NEPA provides an opportunity for the public to be involved in the Federal agency decision-making process. This process helps the average citizen understand what the Federal agency is proposing. It also offers an avenue for the citizen to provide ideas and thoughts on alternative ways for the Federal agency to accomplish what it is proposing. The NEPA process additionally offers the citizen the opportunity to comment on the Federal agency's analysis of the environmental effects of the proposed action and possible mitigation of potential harmful effects of such actions. NEPA requires Federal agencies to consider environmental effects that include, among others, impacts on social, cultural, and economic resources, as well as natural resources. Citizens often have valuable information about places and resources that they value and the potential environmental, social, and economic effects that proposed federal actions may have on those places and resources. NEPA's requirements provide the public means to work with the agencies so they can take the citizen's concerns and information into account.

NEPA Practitioners have found that the "NEPA process" is often triggered too late to be fully effective. At the same time, agency managers who have learned to use NEPA have discovered it helps them do their jobs. NEPA's requirements to consider alternatives and involve the public and other agencies with expertise can make it easier to discourage poor proposals, reduce the amount of documentation down the road, and support innovation. NEPA helps managers make better decisions, produce better results, and build trust in surrounding communities. Fortunately, many agencies are making progress by taking a more comprehensive and strategic approach to decision-making.

Experience with the NEPA process has shown that better decisions — those that meet the needs of the community and minimize adverse impacts on the environment — require the integrated perspective that can only be obtained by incorporating expertise and information from many fields and sources, including state and local agencies. The keys to implementing an interdisciplinary place-based approach, and addressing the full range of cumulative effects, are obtaining adequate environmental data and finding the tools to use it.

The NEPA process is a vital tool for proper planning of military projects. DoD, the Department of the Army and other military branches have provides regulations, guidance and training to assure implementation and compliance to this act. Utilizing the NEPA process in the infancy of a project concept can reduce project delays and expense.

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<sup>1</sup> Richard Nixon, President, United States quote in reference to The Santa Barbara Oil Spill of 1969

<sup>2</sup> <http://es.epa.gov/oeca/ofa/nepa.html>

<sup>3</sup> <http://www.whitehouse.gov/administration/eop/ceq>

<sup>4</sup> <http://www.epa.gov/aboutepa/history/.html>

<sup>5</sup> <http://earthday.envirolink.org/history.html>

<sup>6</sup> <http://www.coastal.ca.gov/whoware.html>

<sup>7</sup> <http://www.edcenet.org>

<sup>8</sup> DoD American Recovery and Reinvestment Act of 2009 - Military Construction Program Plan 2010

<sup>9</sup> NEPA Analysis Guidance Manual May 2007

<sup>10</sup> USA Federal Register, March 29,2002, Part II, Department of Defense, Department of the Army, 32 Code of Federal Regulations Part 651 Environmental Analysis of Army Actions; Final Rule 651.5 (a) and (b)

<sup>11</sup> USA Federal Register, March 29,2002, Part II, Department of Defense, Department of the Army, 32 Code of Federal Regulations Part 651 Environmental Analysis of Army Actions; Final Rule, 651.19