



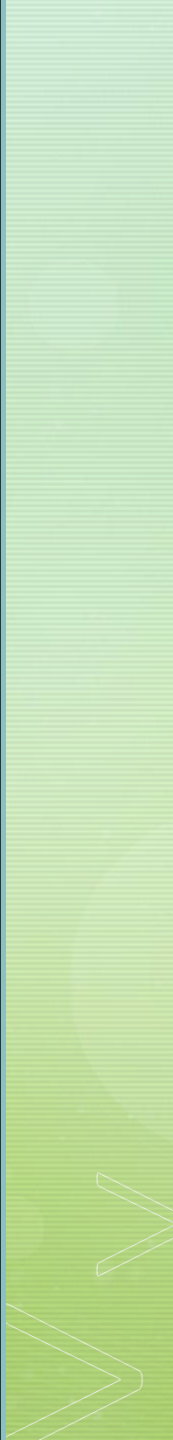
Understanding Federal Requirements &
Tribal Implementation



National Environmental Policy Act (NEPA) for Indian Tribes



What is NEPA?

- Passed in 1970; applies to all Federal Agencies
 - Requires analysis of environmental effects before decisions are made
 - NEPA is procedural, not protective
 - Ensures public involvement and transparency
 - Documents must be defensible in court
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Pillars of NEPA

“The People’s Environmental Law”



Transparency

The government must disclose to the public plans to build or fund certain projects.

Informed Decision Making

The government must conduct an evaluation of the project and relay the results to the public.

Public Input

Before it's started and throughout the project the government must elicit and consider public input.

Accountability

NEPA helps the public utilize the courts to hold the government accountable.

When NEPA Applies to Tribes

- NEPA does not apply to Tribes directly
- Triggered when federal funding or permits are required
- Examples: grants, contracts, loans, or land status change (FEE-to-TRUST)
- Tribes may voluntarily conduct NEPA for best practice

Key NEPA Regulations

- Council on Environmental Quality (CEQ) – 40 CFR Parts 1500–1508
- Clean Water Act (Section 404 – wetlands & waters)
 - *Tribal Environmental Departments may be able to perform this review.*
- Endangered Species Act
 - *Working with local USFWS Biologists to perform this review.*
- National Historic Preservation Act (Section 106)
 - *Tribal Historic Preservation Office may be able to perform this review.*
- Clean Air Act
 - *Tribal Environmental Departments may be able to perform this review.*
- Floodplain and Wetland Protection Orders
- Tribal ordinances and State/local requirements

Activities Tribes may Perform CATEX & EA Reviews Only

- Clean Water Act (Section 404 – wetlands & waters)
 - *Tribal Environmental Office (TEO) may be able to perform review.*
 - *To determine if the project will provide a negative impact on any waterways that are considered waters of the U.S.*
 - *Tribe can work with local US Army Corps of Engineers (USACE) office for support if unsure how to conduct this review.*
- Endangered Species Act
 - *TEO or Natural Resources Office may be able to perform review.*
 - *Working with local USFWS Biologists to perform this review.*
- National Historic Preservation Act (Section 106)
 - *Tribal Historic Preservation Office may be able to perform review.*
 - *Support from State Historic Preservation Office or other Tribal THPO.*

Activities Tribes may Perform CATEX & EA Reviews Only

- Clean Air Act
 - *Tribal Environmental Departments may be able to perform this review.*
 - *Technical Support through: Institute for Tribal Environmental Professionals (ITEP)*
 - *Training opportunities, equipment knowledge and potential rental.*
- Floodplain and Wetland Protection Orders
 - *Executive Order 11988, Floodplain Management, as amended, is “to avoid to the extent possible the long and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative.”*
 - *Executive Order 11990, Protection of Wetlands, is “to avoid to the extent possible the long- and short-term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative.”*
- Tribal ordinances

NEPA Document Types

- Categorical Exclusion (CATEX/CEER) – checklist for minor impacts
- Environmental Assessment (EA) – analysis of alternatives & impacts
- Finding of No Significant Impact (FONSI) – EA outcome with no significant impacts
- Environmental Impact Statement (EIS) – required for significant impacts

NEPA Document Types

LEAST
COMPLEX

LEVEL OF NEPA	ASSOCIATED DECISION DOCUMENT	PURPOSE OF REVIEW
CATEX	Decision Memo (DM) (For some categories)	Determine if an extraordinary circumstance exists.
EA	Decision Notice (DN); Finding of no Significant Impact (FONSI)	Determine if there are significant effects.
EIS	Record of Decision (ROD)	Disclose significant effects and develop/analyze alternatives that can lessen impacts.

MOST
COMPLEX

Categorical Exclusion (CATEX/CEER)

- First step: screen project against CEQ & funding agency criteria
- Checklist covers land, water, air, traffic, wildlife, cultural resources
- If no significant impact → project moves forward
- If potential impact → EA required

*Consider developing a small team to conduct this review in-house
“Environmental, Water Quality, Planning, Cultural, Real-Estate, etc.”*

Categorical Exclusion (CATEX/CEER)

BIA Branch of Environmental and Cultural Resource Management
Version: 2018

CATEGORICAL EXCLUSION EXCEPTION REVIEW (CEER) CHECKLIST

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

Evaluation of Extraordinary Circumstances (43 CFR 46.215):

1. This action would have significant adverse effects on public health or safety.	NO ☐	YES ☐
2. This action would have an adverse effect on unique geographical features such as wetlands, wild & scenic rivers, refuges, floodplains, rivers, placed on nationwide river inventory, or prime or unique farmlands.	NO ☐	YES ☐
3. This action would have highly controversial environmental effects.	NO ☐	YES ☐
4. This action would have highly uncertain environmental effects or involve unique or unknown environmental risk.	NO ☐	YES ☐
5. This action will establish a precedent for future actions.	NO ☐	YES ☐
6. This action is related to other actions with individually insignificant but cumulatively significant environmental effects.	NO ☐	YES ☐
7. This action will adversely affect properties listed or eligible for listing in the National Register of Historic Places.	NO ☐	YES ☐
8. This action will affect a species listed or proposed to be listed as endangered or threatened.	NO ☐	YES ☐
9. This action threatens to violate federal, state, local, or tribal law or requirements imposed for protection of the environment.	NO ☐	YES ☐
10. This action will have a disproportionately high and adverse effect on low income or minority populations.	NO ☐	YES ☐
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.	NO ☐	YES ☐
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.	NO ☐	YES ☐

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

NEPA Action - - - CE ☐ EA ☐

BIA Branch of Environmental and Cultural Resource Management
Version: 2018

Project (con't):

Name and Title of person preparing this checklist

Concur Item 7: _____
Regional Archeologist

Date: _____

Concur: _____
Regional/Agency/OFMC/NEPA Reviewer

Date: _____

Approve: _____
Regional Director/Agency Superintendent/
OFMC Official

Date: _____

NOTES:

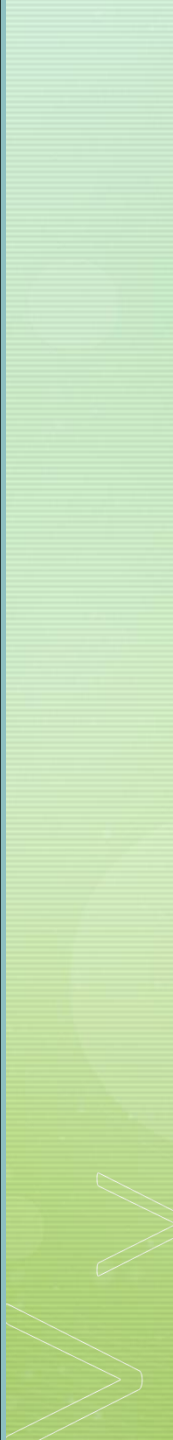
Environmental Assessment (EA)

- Purpose & Need: 'Why here, why now?'
- Analyze project alternatives (minimum of 2)
 - Main project proposal
 - Alternative: Secondary project option
 - Alternative: No impact option
- Assess affected environment
- Consider positive and negative consequences
- Include mitigation measures
- Consultation and public review required
- If significant impacts found → EIS required

*Consider developing a small team to conduct this review in-house
"Environmental, Water Quality, Planning, Cultural, Real-Estate, etc."*



Finding of No Significant Impact (FONSI)

- Result of an Environmental Assessment
 - Explains why impacts are not significant
 - Supported by evidence, data, and analysis
 - Allows project to proceed without EIS
- 

Step-by-Step Tribal NEPA Process

Categorical Exclusion (CATEX)

- Identify project and funding/permit source
- Conduct preliminary screening (CATEX/CEER)
- Review applicable laws (ESA, NHPA, CWA, Etc.)
- If CATEX applies: Document & File
- If not: Develop EA

Environmental Assessment (EA)

- Conduct Impact Analysis (environmental, cultural, social, cumulative)
- Circulate draft for Tribal + Public Comment
- Finalize EA
- If Finding of no significant impacts
 - Issue FONSI
- If significant impacts,
 - Proceed to EIS

Environmental Impact Statement (EIS)

- Conduct Impact Analysis (environmental, cultural, social, cumulative)
- Circulate draft for Tribal + Public Comment
- Agency & Public Review & Comment
- Final EIS
- Record of Decision
- Take Action

Step-by-Step Tribal NEPA Process

Environmental Analysis

CONDUCT ENVIRONMENTAL ANALYSIS

PURPOSE OF ANALYSIS:

- Demonstrate need to modify actions to ensure compliance with applicable laws (preliminary analysis).
- Disclose environmental effects.
- Make findings/conclusions necessary to demonstrate compliance with applicable laws.

Step-by-Step Tribal NEPA Process

Comment Period

CONDUCT COMMENT PERIOD

(IF APPLICABLE)

COMMENT PERIOD:

- Solicit written comments.
- Does not apply to categorical exclusions.
- Timing and process can vary for environmental assessments.
- Required for environmental impact statements.
- Notice provided by legal notice published in the newspaper of record.

Step-by-Step Tribal NEPA Process

Comment Consideration and Response

**CONSIDER
COMMENTS;
RESPOND IF NEEDED
OR REQUIRED**

CONSIDERATION:

- Responsible official will consider all comments and include them in the record.

RESPONSE:

- Response is required for environmental impact statements.
- Responsible official may choose to document response for environmental assessments (and for categorical exclusion scoping comments).

Step-by-Step Tribal NEPA Process Response to Comments



Modifying
alternatives,
including the
proposed
action.



Developing
and
evaluating
alternatives
not previously
given serious
consideration.



Supplementing,
improving, or
modifying
analyses, or
making factual
corrections.



Explaining
why the
comments do
not warrant
further agency
response.

Step-by-Step Tribal NEPA Process

Approve Actions

**APPROVE
ACTIONS**
(MAKE DECISION)

MAKING THE DECISION:

- Responsible official will choose the approved actions.
- Decision can be signed once all required analysis and processes are completed.

Step-by-Step Tribal NEPA Process

Objection and Appeal Processes

OBJECTIONS AND APPEALS

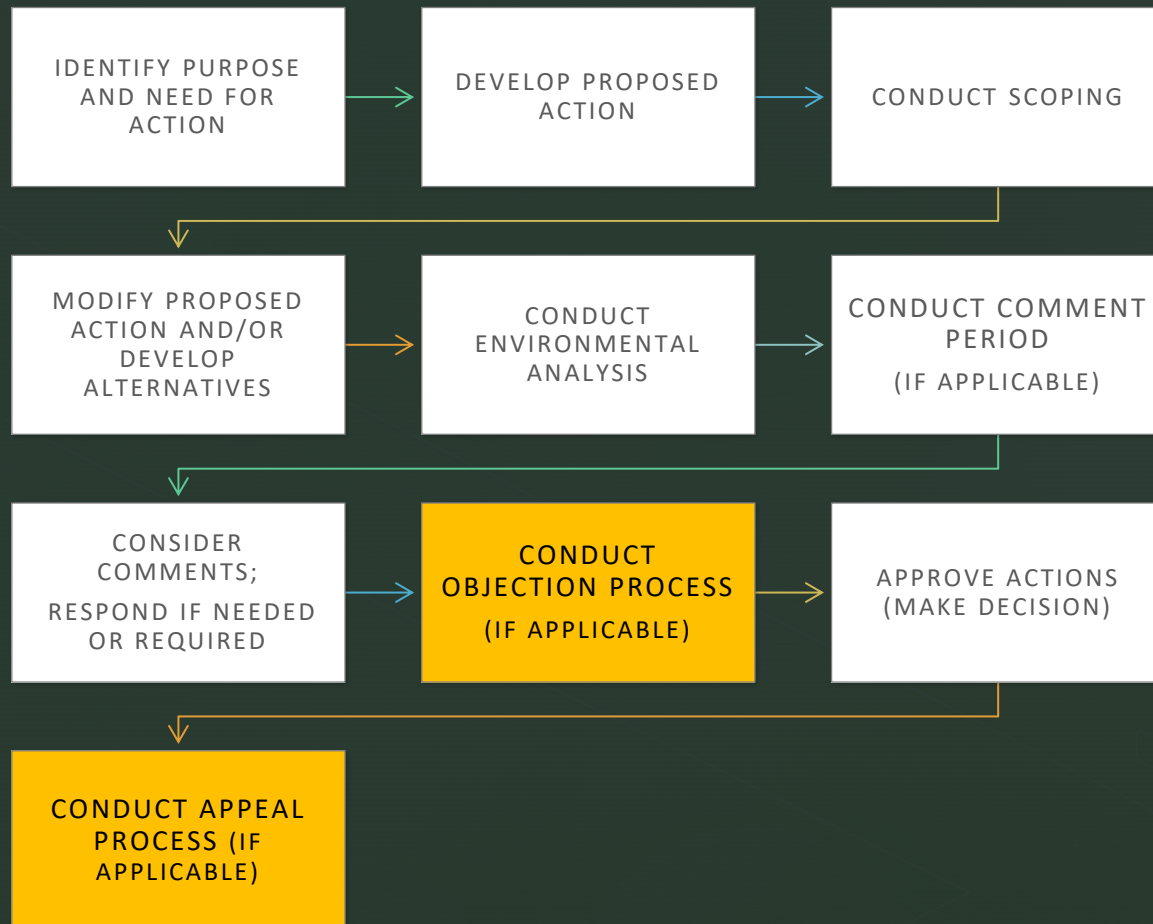
218
OBJECTIONS
PRE-DECISION
(36 CFR 218)

219
OBJECTIONS
PRE-DECISION
(36 CFR 219)

214 APPEALS
POST-DECISION
(36 CFR 214)

Step-by-Step Tribal NEPA Process

When Objection and Appeal Processes Occur



Best Practices for Tribal Programs

- Develop in-house environmental review team
- Train staff in CATEX, EA, FONSI preparation
- Maintain baseline environmental data
- Establish consultation protocols with federal agencies
- Ensure all NEPA documents are legally defensible



NEPA: What Changed in 2025

Executive Order 14154

- On January 20, 2025, President signed Executive Order 14154, which aims to expedite and simplify the permitting process under NEPA.
- This order directs the Council on Environmental Quality (CEQ) to provide guidance for federal agencies to prioritize efficiency and certainty in their NEPA procedures.
- The goal is to ensure that agencies can meet deadlines established in the Fiscal Responsibility Act of 2023 while maintaining compliance with NEPA's requirements.
- In 2025, the CEQ proposed a significant shift in how NEPA is implemented by transferring responsibility from a centralized CEQ approach to individual federal agencies. This means that agencies will no longer follow a standardized set of NEPA regulations from the CEQ but will instead develop and follow their own procedures. This change aims to provide agencies with greater flexibility in how they apply NEPA, although it may lead to varying levels of complexity depending on each agency's existing frameworks.
- Each agency will be required to create their own process to be implemented.

Summary

- NEPA ensures informed decision-making
- Applies when Tribes use federal funds, permits, or approvals
- Tools: CATEX → EA → FONSI → EIS
- Tribes can strengthen sovereignty by managing NEPA in-house
- Goal: Better projects, stronger protections, defensible records

Contact Information

Steven Escobar
Tribal Planner
Chemehuevi Indian Tribe
planner@cit-nsn.gov
(760) 284-3795

