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**A STUDY OF
THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969**

**A PLAN B PAPER SUBMITTED TO
DR. JUNE MANNING-THOMAS**

**DEPARTMENT OF URBAN AND REGIONAL PLANNING
&
THE URBAN AFFAIRS PROGRAM**

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EAST LANSING, MI

JANUARY 1999

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"The Lord God took man and put him in the Garden of Eden to work it and take care of it"(Genesis 1:15). The earth, our garden, needs special care.

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ABBREVIATIONS

ACHP-	Advisory Council on Historic Preservation
CBA -	Cost-benefit Analysis
CDBG-	Community Development Block Grant Program
CEQ -	Council on Environmental Quality
CFR-	Code of Federal Regulations
E.O.-	Executive Order
EA -	Environmental Assessment
EC -	European Commission
ECE -	Economic Commission for Europe
EHIA -	Environmental Health Impact Assessment
EIA -	Environmental Impact Assessment
EIS -	Environmental Impact Statement
EPA -	Environmental Protection Agency
ERR -	Environmental Review Report
HUD-	U.S. Department of Housing and Urban Development
NEPA -	National Environmental Policy Act
NOI/RROF-	Notice of Intent to Request Release of Funds
NOI/EIS-	Notice of Intent to Prepare an EIS
PPA -	Post-project Analysis
ROF-	Release of Funds
UN -	United Nations
UNECE -	United Nations Economic Commission for Europe
UNEP -	United Nations Environment Program
US -	United States
USA -	United States of America
USC-	United States Code
WHO -	World Health Organization

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GLOSSARY

Alternatives. An examination of secondary locations, methods, and techniques for a particular project, including the alternative of not proceeding. It may be demonstrated that a project is not actually needed if demanding management approaches are adopted or strengthened. At regional and national levels, a choice of policies, plans, and programs, may be presented, with a range of environmental impacts and mitigation measures (HUD, 1985).

Anthropocentric. When the concern for the national environment is ultimately based on the welfare of people (Fanning, 1975).

Applicant. The proponent or developer seeking approval or consent for a proposed project, or seeking the issue of a permit or license.

Categorical Exclusion. An activity which does not individually or cumulatively have a significant effect on the human environment and which has not been found to have no such effect in regulations adopted by HUD. In such cases, neither an environmental assessment nor an EIS is required. However, categorically excluded projects must comply with non-NEPA requirements. Additional environmental requirements are identified and include, but are not limited to, analysis of historic properties, floodplain management, and wetland protection (HUD, 1985).

Competent Authority. The government authority deciding on the proposed project and is responsible for a correct EA procedure. In case of multiple decisions, there can be multiple competent authorities, one of which may be appointed as coordinating the procedures. The competent authority draws up the guidelines, with the information the EIS should contain, and reviews the finished statement on the basis of the legal requirement and the guidelines (Hammer, 1976).

Conservation. The management of human use of the bio-sphere so that it may yield the greatest sustainable benefit to present generations while maintaining its potential to meet the needs and aspirations of future generations (Canter, 1997).

Cost-benefit-analysis (CBA). The identification and evaluation of all costs and all benefits attributable to a policy, plan, program, or project, over time being reduced by discounting to a present worth. Generally, the greater the benefit/cost ratio, the more attractive the proposal. This principle has been gradually extended to proposals in which there are significant intangibles not readily measured in monetary terms (Sadar, 1994).

Decision-maker. The body or person responsible for deciding whether a project shall proceed or not, or proceed subject to conditions and constraints. The decision-maker is usually an elected body or responsible agency, the decision-maker being essentially a function of government (Sadar, 1994).

Developer. The initiator of a project; also called the proponent, or applicant, for development consent (Sadar, 1994).

Development. The application of human, financial, and physical resources to satisfy human needs. Inevitable development involves modification of the biosphere and some aspects of development detract from the quality of life locally, regionally, nationally, or globally. The

breadth of development is not always appreciated as the word applies not only to the growth of industry, commerce and infrastructure, but to sanitation, education, medicine, health, housing, national parks, tourist, and recreational facilities (Canter, 1997).

Environment. A concept which includes all aspects of human surroundings, affecting individuals and social groupings. The EC has defined the environment as "the combination of elements whose complex interrelationships make up settings, the surrounding, and the conditions of life of the individual and of society, as they are or as they are felt" (Hammer, 1976).

Environmental Assessment. Also referred to as an environmental impact assessment or EIA. This is a concise public document which provides sufficient evidence and analysis for determining whether to prepare an EIS or a finding of no significant impact. An EA must include brief discussions of the need for the proposal, of alternatives (where required under NEPA), and of the environmental impacts of the proposed action and alternatives, as well as a listing of agencies and persons consulted (HUD, 1985).

Environmental Impact Statement. A detailed written statement required by NEPA, which describes, analyze, and assess any alteration of environmental conditions or creation of a new set of environmental conditions, adverse or beneficial, caused or induced by the proposed action and alternatives to the proposed action (HUD, 1985).

Environmental Review Record. A written record of the environmental review process which is available for public review (HUD, 1985).

Exempt activities. An activity which is exempt from environmental review requirements of Part 58 including the NEPA-related laws listed at 24 CFR 58.5. Exempt activities are listed at 24 CFR 58.34. Such activities may still be subject to compliance with authorities listed in 24 CFR 58.6.

Proponent. Is either a public or private entity, who intends to undertake a project which is subject to an EIA. It is the responsibility of the proponent to supply an EIS. The proponent can be the same as the competent authority deciding on the project. For instance, the Minister of Transport, Public Works and Water Management initiates the construction of a new road, but is also the competent authority deciding on such projects (Hammer, 1976).

Scoping. An early and open processing for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed project. A scoping process is initiated after the decision to prepare and EIS is final (HUD, 1985).

Sustainable Development. The idea that society can meet social, environmental, and economic needs without trading off one at great expense to the other, now and into the future (Canter, 1997).

CHAPTER ONE: INTRODUCTION

The environment: Why is it important?; Why do we as humans exert energy trying to improve it? Our views of the water we drink, the air we breathe, and the noise we hear have changed over the years. Oh yes, we've found that the environment, whether built or not, is important to our survival. It determines our quality of life for present and future generations. The way we lived yesterday has affected the way we live today, the way we plan today will affect how we live tomorrow.

Looking historically at how the environment was studied, we find that the impact of people on the natural environment has been observed for centuries. Early observations of the environment were not conducted or used in a systematic manner, nor did they help to minimize unintended environmental disruptions caused by the public or private sectors. During the 1960s public concern over environmental degradation increased, and systematic planning to maintain environmental quality intensified (Canter & Clark, 1997). Efforts to control the water, air, waste, and noise were greatly increased. New laws, and administrative regulations were established, requiring government agencies to account for the environmental impacts of their decisions.

The increased attention to the environment led to the field of environmental planning. People working in the environmental field are most likely referred to as environmental planners, environmental engineers, civil engineers, environmental specialist, or environmental consultants. People who view themselves as environmental planners generally have a specialty in a single discipline that is related or closely related to the environment. The environmental movement also sparked the development of several environmental journals and professional organizations.

For years those studying the environment were mainly interested in how the environment influenced people rather than how people influenced the environment. An environmentalist was viewed as someone who was concerned with how the physical environment influenced the way societies functioned and developed. This view has since changed, now the study of how human actions effect the natural environment is a major focus.

There are several bases for concerns about person-environment relationships. One concern deals with nature's resources being viewed as something to be used efficiently with the absence of waste. Another bases for concern surrounds the absence of caution in human undertaking leading to irreversible and disastrous impacts on the environment. Some views are driven by aesthetic, religious, and ethical concerns which call for the restraint of human actions on the environment (Canter & Clark, 1997).

There is no single approach used by those who consider themselves to be environmentalists or planners. Those who choose to work in the field of environmental planning, will more than likely, work in the areas of pollution control, land use planning, or environmental impact assessment. In the area of pollution control, measures are implemented to improve environmental quality. Land use planning predicts how the air, land, and water will change in response to land use changes. It's also concerned with the design and implementation strategies use to manage the way land is developed. Impact assessments aid environmental professionals in forecasting future consequences of proposed actions. They also help in the design and implementation of programs requiring polluters to reduce waste discharges. An example of projects having negative impacts would involve developments of airports, dams, and highways.

The aim of this paper is to examine the United States National Environmental Policy Act of 1970 (NEPA). This act is a major tool used by the U.S. to help deal with the issues of pollution, impacts, and land use in relation to the built and unbuilt environment. It will further look at how the U.S. environmental policy efforts have influenced other communities, in particular the European Community (EC), and how effective implementation practices have been in preserving the environment. Looking at environmental practices on the local and global level is a necessity for the survival of the human race.

Global contamination is a problem that has existed for years and is still a threat today. As mentioned early on, human influence on the environment was not a major concern in previous decades. Issues surrounding the issue of "liveable environment" have since changed the world's view of how we

treat our environment and the sustainability thereof.

The creation of NEPA has helped to address many environmental quality issues. Since its enactment other countries and communities have adopted its processes to address the issue of contamination within their countries. As in the U.S., these countries have found that environmental policy plays a very important role in the planning process. It helps to lessen or prevent contamination locally and on the global level.

Chapter two will give a historical look at how NEPA began, and review the key components of the Act. I would like to note here, that all federal agencies are required to adhere to the provisions of NEPA. Any agency using federal funds to develop land is required to follow NEPA regulations. This chapter will also introduce the environmental assessment process, a major component of NEPA. The environmental assessment component is bounded by: NEPA; the Council on Environmental Quality (CEQ); and individual agency regulations. The CEQ and the Environmental Protection Agency (EPA) are the two principal agencies involved in implementing NEPA.

The NEPA process does not dictate that an agency choose the most environmentally friendly alternative, nor does it dictate the least expensive. Although this is the case, if a project or action will have an adverse impact on the environment, it could be prohibited depending on the severity of the impact. The major purpose of the NEPA process is to ensure that necessary studies are completed accurately, with public involvement. The Act promotes public awareness at the earliest planning stages, and provides for public input in a dialogue fashion (i.e. in the form of a public hearing). By following or adhering to these steps, public officials gain the necessary information they need to make informed and realistic decisions.

After reviewing the historical setting of NEPA, chapter three will deal with specific environmental policy enforcement mechanisms used in the United States. It will look at the various levels of government at which impact statements are required: federal, state, and local. Environmental actions come in all shapes and sizes. Environmental concerns could surround issues of rerouted roads or highways, building of a new dam, and expansion of an industrial plant, or building of a new

industrial park on federally owned land. Every project reviewed by the National Environmental Protection Agency, is posed with the question of whether the proposed action merits a "categorical exclusion". If an action was studied in the past, and a significant impact was not determined by law, no further action is needed. The agency can then implement its proposed action. If the proposed action is not excluded from further study, the process continues. The next question asked is whether an action will have significant impact on the environment (Gilpin, 1995). If yes, NEPA outlines a detailed process for an environmental impact statement (EIS), which is discussed in detail in chapter five.

The effects of the National Environmental Policy Act prompted several surrounding countries to adopt components of the Act. Chapter four will examine why the European Community (EC) adopted the environmental assessment component of NEPA and incorporated it into their planning process. The Council of Ministers in the EC authorized their Commission of Communities to study how impact assessment procedures might be applied in the communities and member states. As in the U.S. environmental impact statements are used as a practical decision-making tool. In the EC initial simplified impact assessments include: project descriptions, assessment of potential negative impacts, development of a checklist, consideration of alternatives, and balancing of goals. Examining the adoption of the U.S. NEPA by other countries is one way of gaining insight and understanding of the Act's global effect. If the basic concept of NEPA can be duplicated effectively and efficiently in other countries, how can it be improved upon to benefit the world community. What one does in the east will ultimately effect those to the north, south, and west.

In chapter five, we will turn our attention exclusively to NEPA's environmental assessment process. An environmental assessment is an overview of potential impacts on the environment. If enough analysis is done an agency can determine whether or not an impact statement is needed, or that there's a Finding of No Significant Impact (FONSI). If a FONSI is discovered, an EIS must be prepared. This chapter will give the framework for analyzing problems of air quality, water quality, noise, and other aspects of the environment. We will look at the EIS counterparts in other countries, and how these countries require their agencies to give considerations to the impacts of proposed

projects on the environment.

The EIS is a tool based on the premise that environmental quality is not likely to improve significantly, unless more attention is given to the unintended side effects of land use decisions. This is one technique used to forecast specific environmental impacts and considers how biological systems and resources are effected. The EIS must look at all interrelated elements of the environment: the natural component (air, water, waste); and the human components (jobs, housing, schools, health and safety, aesthetics, transportation, etc.). It must identify opportunities for reducing or eliminating significant adverse impacts, as well as, offer alternative courses of action for a proposed project.

Although NEPA has made great strides toward improving the natural and physical impacts on the environment, and has shown good results, there are still areas of the law that need to be improved upon. Every policy has its strengths and weaknesses. Chapter six will look at the strong points of NEPA and areas in which the process can be improved upon. One major area of improvement that will be dealt with surrounds the issue of public participation. Concerns raised during public scoping help shape the issues of an EIS. Comments received by the public become a part of the final document, and public input is one tool to help identify the social impacts of a proposed project. Examples of social impacts include disruption of a neighborhood caused by a new highway and job opportunities created by construction of a petroleum refinery.

After carefully reviewing and comparing the National Environmental Policy Act, the final chapter will summarize the overall effect of NEPA. It will also look at how select trends have evolved from the National Environmental Policy Act.

CHAPTER TWO: THE NATIONAL ENVIRONMENTAL POLICY ACT

The "federal environmental decade" was initiated symbolically by the first Earth Day, April 15, 1969, and by the signing of the National Environmental Policy Act (NEPA) on January 1, 1970. Also in 1970, the creation of the U.S. Environmental Protection Agency (EPA) consolidated several existing federal environmental programs and provided an administrative umbrella for many new initiatives legislated by Congress (McEvoy, 1977).

The new environmental laws of the 1970s refined the conservation measures of the 1960s, and enlarged the range of problems addressed through federal programs. These new laws also expanded, the spectrum of means by which such problems were to be attacked. In air and water pollution, the federal role shifted from a timid reliance on state programs to direct setting and enforcement of national standards. Other new federal laws addressed such problems as noise, pesticides, solid and hazardous waste, flood plain management, wetlands, mining reclamation, drinking water, occupational safety, ocean dumping, oil spills, and coastal management (see Table #1).

These new programs relied on a broader interpretation of federal powers, in particular the commerce clause, which grants Congress the power to "regulate commerce ... among the several states" (U.S. Constitution, Art. 1, Sec. 8). The emission of pollution by vehicles or in economic production of goods for sale in interstate commerce has been held in many court decisions to justify federal pollution regulations. Also, the movement of air and water across state lines itself gives rise to a federal interest in controlling the pollution that they convey. There was a shift from "urban sprawl" in the 1960s to "environmental deterioration" in the 1970s signifying a subtle change in political and geographical emphasis. While cities had occupied central stage in the earlier wave of new federal programs, the environmental movement expanded the area of concern to the entire nation with a consequent downgrading of strictly urban concerns such as housing and transportation. This geographical enlargement turned into a worldwide effort in the 1980s, with reference to global warming, stratospheric ozone depletion, acid rain, and tropical deforestation. With the inauguration

of the Republican presidency of Richard Nixon in January, 1969, the urban and community development agenda of the Democrats under Presidents Kennedy and Johnson was substantially dismantled. In the process, political clout shifted from just urban planners in the 1960s to ecologists, chemists, and climatologists over next decades. In cooperation with Congress, the Nixon Administration presided over adoption of the National Environmental Policy Act, the far-reaching amendments to the federal air and water quality acts, and the creation of the Environmental Protection Agency (Dolgin and Guilbert, 1974).

<u>U.S. ENVIRONMENTAL LAWS 1970 – 1986</u>		
1970	---	National Environmental Policy Act (PL 91-190) Environmental Quality Improvement Act (PL 91-224) Clean Air Amendments (PL 91-604) Resources Recovery Act (PL 91-512) Occupational Health and Safety Act (PL 91-596)
1972	---	Federal Water Pollution Control Act Amendments (PL 92-500) Noise Control Act (PL 92-574) Coastal Zone Management Act (PL 92-583) Federal Environmental Pesticide Control Act (PL 92-516) Marine Protection, Research, and Sanctuaries Act (PL 92-532)
1973	---	Flood Disaster Protection Act (PL 93-234) Endangered Species Act (PL 93-205) Safe Drinking Water Act (PL 193-523)
1976	---	Resource Conservation and Recovery Act (PL 94-580) Federal Land Policy and Management Act (PL 94-579) Surface Mining Control and Reclamation Act (PL 95-87) Toxic Substances Control Act (PL 94-469)
1977	---	Soil and Water Resources Conservation Act (PL 95-102)
1980	---	Comprehensive Environmental Response Compensation and Liability Act (PL 96-510) ("Superfund")
1982	---	Coastal Barrier Resources Act (PL 97-348)
1984	---	Hazardous and Solid Waste Amendments (PL 98-616)
1985	--	Food Security Act (PL 99-198)
1986	---	Superfund Amendments and Reauthorization Act (PL 99-499)
<i>Source: U.S. Public Law (PL</i>		

Table # 1 - Selected Federal Environmental Laws 1970 to 1986

The National Environmental Policy Act (NEPA) was the keystone of federal environmental reforms in the 1970s. NEPA united a statutory declaration of national commitment to a safer, healthier environment with a new decision-making procedure applicable to all federal agencies. It also created a new agency, the U.S. Council on Environmental Quality, to administer the new policy and procedures established by the Act. NEPA reflected a perception that the federal government should get its own house in order before, or at least while, it sought improvement in nonfederal activities affecting the environment. Federally sponsored domestic and military construction programs of the 1950s and 1960s were accompanied by widespread land degradation, air and water pollution, habitat destruction, and aesthetic blight. Also federal licensing and regulatory authorities were deemed to be administered in disregard of environmental consequences of proposed actions.

The federal government was responsible for a number of harmful environmental impacts that arose from a myriad of federal loans, grants, projects, and other programs enacted for specific public purposes. The most significant federal activities include the highway, airport, and mass transit programs, the sewer and water grant programs, and the location of Federal facilities, and water resource projects. In addition to such spending programs, environmental neglect was charged in the administration of diverse federal licensing and regulatory activities involving, for example, pesticide usage, offshore oil and gas leasing, nuclear and fossil fuel power plant siting and design, discharges into navigable waters, and federal land management (Annual Report of the U.S. Council on Environmental Quality, 1970). See Table #2 for notable controversies involving federal actions during the 1960s.

There were precedents established requiring adverse implications of a proposed action to be identified before a federal action is taken. The Fish and Wildlife Coordination Act of 1958 required that any proposal to impound, divert, deepen, or otherwise control or modify any stream or water body under the auspices of a federal project or permit must be reviewed by the U.S. Fish and Wildlife

Service (FWS) of the Department of Interior. The objective of this review is "the conservation of wildlife resources by preventing loss of a damage to such resources" (Strelow, 1974). The FWS cannot veto directly a project that would endanger wildlife habitat, but its comments are appended to the report to Congress or other authorizing agency. Disclosure of potentially serious impacts may lead to modification or abandonment of the project by Congress or the agency sponsor.

→	The proposal by the Bureau of Reclamation to dam portions of the Grand Canyon.
→	A proposed 39-square-mile jetport to be built just north of Everglades National Park in Florida
→	The Cross-Florida Barge Canal initiated (but never completed) by the Army Corps of Engineers.
→	Competing proposals for a national park and a federally funded harbor in the Indiana Dunes on Lake Michigan.
→	The 1969 oil spill disaster in Santa Barbara Channel.
→	Innumerable conflicts over the siting and design of Interstate Highways.
→	The Rampart Dam proposal for the Yukon River in Alaska.
→	The North American Water and Power Alliance proposal to impound massive quantities of water form British Columbia for diversion to arid regions of the United States and Canada.
Source: Platt, 1988	

Table # 2 - Federal Action Controversies

NEPA is like the declaration of Independence in that its goal is to:

"... foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans " (PL 91-190, Sec. 1010(a)). To add force to this goal, NEPA requires all federal agencies to prepare "detailed statements", known as environmental impact statements (EIS), disclosing potential environmental consequences of their proposed actions. The

requirements apply to any proposed major federal actions significantly affecting the quality of the human environment. This includes direct federal actions, funding commitments for nonfederal activities, federal licensing and permits, and proposals for federal legislation (Platt, 1988).

Several issues must be considered under NEPA's environmental impact statement process.

Following you will find a brief list of issues needing consideration.

- i) The environmental impact of the proposed action;
- ii) Adverse environmental effects which cannot be avoided should the proposal be implemented;
- iii) Alternatives to the proposed action;
- iv) The relationships between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and
- v) Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should be implemented.

The enforcement of the EIS component of NEPA will be discussed in further detail in Chapter five, when we look at the Environmental Assessment process. In the next two chapters we will look at how environmental policy is enforced in the United States and how U.S. environmental policy components were adopted by the European Community.

CHAPTER THREE: ENFORCEMENT OF ENVIRONMENTAL POLICY IN THE UNITED STATES

In the United States Environmental Impact Statements (EIS) are required on the federal, state, and local levels with the administration of federal activities being fragmented. Responsibilities for managing environmental resources such as forestry minerals, fisheries, and water is distributed amongst a number of different agencies. In times past the federal system of environmental management did not adapt well to changing environmental values. This brought about the formulation of a national policy for the environment, which would affect federal government environmental decision-making across the board.

Two factors stimulated the formulation of NEPA. First, there was no national policy for the environment that existed, and maintenance of environmental quality was not a national priority. It became a necessity for the federal government to establish legislation controlling its own activities, since many of them had major impacts upon the surrounding environment. Secondly, there was general dissatisfaction with agency decision-making, because individual agencies often were not responsive to their legislative mandates or public opinion. In addition, the reason for particular decisions were never made explicit. Prior to the Act environmental legislation dealt with pollution control and the conservation of special environmental protection.

Under NEPA there are a number of environmental protection areas considered when an impact statement is reviewed in relation to societal effects. The establishment of the Act has given a number of agencies environmental review responsibilities. Individual agencies are responsible for balancing environmental, economic, social, and technical considerations for each proposal. In the beginning, having many agencies implement impact analysis proved to be inadequate. A lot of the agencies refused to acknowledge the reordering of national priorities demanded by NEPA and many would not change policies which had developed over the years. To require compliance with the Act the courts began to play an important role in the process. The role the courts played began to show how some



agencies had poorly developed methods and techniques, subsequently the quality of appraisal began to improve (Stoel and Scherr 1978). The other significant feature of the Act is that it has opened the decision-making process to the public. The intent of the Act will not be realized by the preparation of an environmental impact statement alone. This document must be used in decision making and the result can be subject to judicial review (Strelow 1974).

The duties of the Council on Environmental Quality (CEQ) with respect to the preparation of the environmental impact statements was issued in a key document on March 1970, known as Executive Order 11514. It establishes the interrelationships of the Council with other government agencies affected by NEPA. The Council is responsible for issuing guidelines to Federal agencies for the preparation of EISs and other necessary requirements for their implementation of the Act. They are also directed to evaluate the existing and proposed activities of Federal agencies and public education programs relating to the environment (Executive Order 11514, 1970).

The National Environmental Policy Act, NEPA, was enacted on January 1, 1970 and divided into two main sections called titles (see Table # 3).

TITLE I	TITLE II
▶ States national policy for the environment ▶ Outlines procedures for implementing policy ▶ Provides action-forcing provisions;	▶ Established the CEQ and defined its functions.

Table # 3 - NEPA Titles

The first title is concerned with stating a national policy for the environment and outlining procedures for implementing that policy. The most important provisions are those requirements referred to as action-forcing provisions. The remaining sections only require agencies to have regard for environmental factors in discharging their statutory obligation. The most effective component of the Act is the requirement, to produce a detailed statement on the environmental impact of all major

Federal actions significantly affecting the quality of the human environment, these statements being referred to as EIS'. Accounts of the requirements of the Act are given by the US Council on Environmental Quality (CEQ).

Title Two established the CEQ and defined its functions; its charged with administering the Act. CEQ guidelines establish the detailed procedures for environmental impact statement preparation. Before decisions on whether to implement major federal actions are taken, agencies must prepare environmental impact statements. Initially, a draft statement is prepared which is submitted to CEQ, circulated to other agencies and is made available to the public. A period of review, lasting 45 days, must elapse before the next stages in the procedure can be implemented. Subsequently, a final impact statement is produced, taking into account the comments made during the review period. This final document is considered to be a public document. Proposals cannot be implemented for at least 90 days after a draft statement has been prepared and for at least 30 days after a final statement has been filed. Guidance is given on identifying proposals for which an EIS should be prepared, the content of an EIS and the way in which it should be prepared (Clark 1980). Title I will be discussed in further detail under the Environmental Impact Statement section in chapter five.

There are five aspects that are identified by NEPA and CEQ as it relates to the impact statement proposals (see Table # 4). These aspects are as follow: a description of impacts, a discussion of unavoidable impacts, alternatives to the proposal, short-term in relation to long-term use of environment, and the irreversible and irretrievable commitment to the proposals. It also includes a discussion of the problems that result from the ambiguous wording of the legislation (Kross, 1972).

- | |
|---|
| <ul style="list-style-type: none">- Description of impacts- Unavoidable impacts- Alternative proposals- Short & long term environmental use- Irreversible/irretrievable commitments |
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Table # 4 - Five aspects of Impact Statements

The Council on Environmental Quality is responsible for reviewing a number of Environmental Impact Statements (EIS). The review process is being used to evaluate the enforcement of pollution control from new industrial sources. Initially, it proved difficult for agency staff to review effectively, because of the timing of their involvement. As a result of this they have decided to review at an early stage in the planning process. Consultations can take place before impact statements are prepared (Hammer 1978).

Draft regulations to implement NEPA were issued by the Council on Environmental Quality (CEQ) for public consultation, and were intended to replace the 1973 CEQ guidelines. The regulations were formulated to make the environmental impact statement process more efficient and useful. The purpose was to reduce paperwork, save time, and be able to make better decisions. The major changes to the procedures involved the establishment of scoping, identification of a least damaging alternative, and release of a record of decisions. The regulations also addressed other aspects of NEPA concerned with implementation of national policy for the environment (US Council on Environmental Quality 1978).

In the U.S., federal responsibility for environmental protection and conservation is shared among the 50 states. The federal government's role is not confined to matters of narrowly construed federal interest; it embraces a national leadership, standard-setting, target-formulating function. Coupled with the influence of federal funding in specific areas, direct responsibility for a large and

important system of national parks and reserves, and regulatory control. Under NEPA the federal role has more control than other federal systems, for instance, Germany and Canada where federal governments enjoy positive roles, and considerably more so than in Australia where the states remain supreme about many environmental matters in their jurisdictions. Environmental concerns in the U.S. can be traced back through the decades to the clean-up campaigns in Pittsburgh (darkness at noon) and St. Louis, and the protracted campaign against photo-chemical smog in Los Angeles. Conflicts about national parks and natural resource conservation date back to the nineteenth century (Stoel, 1978).

Since the 1970s, in the USA, pollution control, environment protection and conservation policies have become more vigorous than in previous years. The US Environmental Protection Agency (EPA) was created as an independent agency in 1970, with a mandate to mount an integrated, coordinated attack on environmental pollution with state and local governments. The EPA became responsible for the federal programs for air and water pollution abatement, solid and toxic waste disposal, pesticide registration, setting radiation standards, and noise control; it is also responsible for the emerging policy of the environmental assessment process. The agency also undertakes enforcement procedure. NEPA created the EPA and the Council on Environmental Quality (CEQ), to issue regulations and to ensure the effectiveness of impact statements, by reducing paperwork. The CEQ held public hearings during 1977 on how the EA procedures could work more efficiently. Regulations introduced a set of criteria for the preparation of an EIS and the establishment of better procedures. The objective was to produce impact statements that were concise, readable, and based upon competent professional analysis.

As mentioned earlier, one of the most significant innovations to evolve under NEPA is a process known as scoping. When an agency decides that an impact statement is necessary, it takes prompt action to identify issues requiring a full analysis, and separates them from less significant matters requiring a less detailed study. To ensure effective coordination, affected federal, state, and local

agencies, and all interested members of the public are invited to participate in this scoping process. Public participation is a cornerstone of the NEPA process.

The NEPA process is made up of an evaluation of the environmental effects of the federal undertaking, and its alternatives. There are three levels of analysis: an undertaking might be excluded from detailed analysis as having no significant environmental impact; at the second level, a federal agency prepares a written EA to establish whether the undertaking might significantly affect the environment; and at the third level, if the EA reveals that the consequences might be significant, an EIS is prepared. If the EA reveals that, in fact, there is no significant impact, a finding of no significant (FONSI) impact will be issued. This process will be reviewed in detail in chapter five.

Following the passage of NEPA, which only applies to federal proposals, a number of states introduced laws to take into account the environmental effects of state actions. The systems implemented by states, were modeled on NEPA, and became frequently known as 'little NEPAS'. These little NEPAs varied a great deal in their legal basis, administration, and requirements. By 1992, 19 states, the District of Columbia and Puerto Rico, had enacted 'little NEPAS'. Some states, such as California, New York, and Washington, have established vigorous EIA systems, supported by comprehensive regulations and active judicial enforcement. Other states have systems that apply to a narrower range of activities, appearing to be less dynamic in their relationship with state decision-making (United States of America, 1992).

In 1986, the Montana Environmental Quality Council held a conference focusing on Montana's EA process. In 1987, the CEQ co-sponsored with the Environmental Law Section of the New York State Bar Association, a conference focusing on the preparation and review of Environmental Impact Statements at both the state and federal levels. The state of Washington undertook a major revision of its Environmental Protection Act in 1988, and, in 1989 the Council of the District of Columbia passed its first 'little NEPA' law. Also in 1989, the governor of New Jersey revised the state's executive

order governing the New Jersey EA process. Other states such as Michigan and Maine have their Environmental Assessment review procedures established as well (Lester 1995).

As NEPA enters into its third decade, there has been emphasis on improving compliance with the act and addressing new environmental issues through this mechanism. The CEQ and the EPA have conducted workshops to promote a better understanding of the process and the advantages of integration, and NEPA training has been accelerated. Under Executive Order 12114, which mandates the analysis of the environmental effects of federal actions abroad, the scope of NEPA has been widened.

A distinctive characteristic of US EA legislation has been the opportunities present for litigation, that is, engagement in legal proceedings, seeking judicial review of EIA decisions. This has been avoided in most other countries, as expensive and time-consuming, with outcomes of variable character. During the first 13 years after the enactment of NEPA (January 1, 1970 to the end of December 1982), 70 federal agencies prepared approximately 16,000 impact statements and 1602 NEPA law suits were filed; that is 10 percent of all federal proposals for which an EIS was prepared went before the courts. The number of law suits peaked in 1974 at 189, dropped steadily until 1982, and then cases increased again. By 1987, the incidence of litigation had still not returned to the lower levels reached in the late 1970s (Kennedy, 1987).

Legal actions are often taken by US citizen action groups, and are based upon an assertion that an impact statement has not been adequately prepared. Such actions are assisted by the US Freedom of Information Act, whereby American citizens have access to all planning documents. One of the outcomes is that recommendations and guidelines published by the US EPA, the CEQ, federal and state bodies, have tended to become embodied in law through court decision. The requirement of the US that all federal agencies prepare an EIS on 'major actions significantly affecting the quality of the human environment' immediately raised the question as to whether this applied to the action of

providing foreign aid to countries outside of the US legal jurisdiction.

In 1975, the US Agency for International Development was sued by a public interest group to enforce the preparation of impact statement on its loans and grants to other countries. As a consequence of this lawsuit the agency, in 1976, introduced a process of an EA on many of the projects with which it had been involved. Later, the US Export-Import Bank and the State Department were sued on similar issues. Early in 1978, the CEQ, reporting directly to the president, circulated draft regulations on the extension of NEPA to foreign aid; these were not well received by all federal agencies. The President's Council asked CEQ and the State Department to deliberate on an acceptable approach for consideration by the president. These resulted in 1979 in a president's executive order (an order with the force of law), entitled 'Environmental effects abroad of major federal actions'.

The order required that EISs, multilateral studies, or concise review of environmental issues, be prepared and considered in making decisions for actions significantly affecting: (1) the environment of the global commons; (2) the environment of a foreign nation not participating with the USA and not otherwise involved in the action; (3) the environment of a foreign nation when the activity involves radioactive substances or an emission of effluent prohibited or strictly regulated by US law; or (4) natural or ecological resources in the participating nation that are designated to be of global importance by the president of the USA or by international agreement. For category (1) an EIS is a standard requirement. All communications between federal agencies and foreign governments under this order are coordinated by the State Department.

Particular activities largely about national security and arms transfers are exempted from this order. This is, however, consistent with the statement of objective of the order which is 'to further environmental objectives consistent with the foreign policy and national security policy of the United States'. Actions not having a significant effect on the environment, as determined by the involved agency, are also exempt. We will now turn our attention, in chapter four, to how environmental policy

in the U.S. has affected foreign environmental policy, particularly within the European Community.

CHAPTER FOUR: ENFORCEMENT OF ENVIRONMENTAL POLICY IN EUROPEAN COUNTRIES

Certain European countries have introduced impact assessment requirements into their planning process. The Federal Republic of Germany has guidelines requiring a review of major public proposals, which must identify harmful effects and remedies or alternatives suggested; public participation is not requirement. In Sweden a study of environmental effects must precede the authorization of a polluting industry, both public and private projects are covered. Legislation in Switzerland applies to both public and private proposals. In 1975, the French Assembly introduced a bill which carried a declaration that all development undertaken by public authorities or requiring authorization from a government department or agency must respect the environment (Kiss and Prieur, 1975).

The European Communities have shown increased interest in the role of environmental impact analysis in Member states. The Commission of the Communities has sponsored research to analyze current practice and highlight factors which would have to be considered in the formulation of a directive requiring the introduction of impact statements in Member states. This paper summarizes some of the findings of this research. Most states have land-use planning and authorization mechanisms to control major development. Interest in environmental impact analysis is focused on a consideration of ways of integrating procedures into current practice, rather than in formulating new proposals outside the planning system.

In particular, member states focus solely on the role they play in the project planning process. They restrict themselves to the project planning system and fail to realize how it relates to policy development. Policy development would overcome many of the difficulties and constraints encountered when implementing projects solely with the project planning system. There are considerable institutional differences between the various member states, but a number of common

underlying themes can be recognized in the environmental impact analysis process. In project planning, however, appraisal and control in the public sector is less well developed than in the private sector (Lee and Wood, Built Environment, 1978).

The European Communities are committed to the objective of ensuring that environmental aspects are considered in planning and to the integration of environmental considerations in the decision-making process. In 1975, the Commission recommended that flexible environmental impact assessment procedures should be introduced in Member countries through a directive. Impact statements should become part of the project, plan, and program assessment. Certain organizational provisions are identified in a manual developed to describe the best assessment methods, but detailed proposals vary between countries. The European Commission is responsible for reviewing the implementation process and procedures that formulate the guidelines (Hammer, European Environmental Bureau edition, 1976).

The Netherlands Provisional Central Council for Environmental Hygiene produced a document which looks at the purpose of impact statements as being the presentation of information on impacts to decision -makers. Impact statements are a means of improving policy by ensuring that policy decisions are made only after an assessment of impacts. It is considered that impact statements would be given more weight if public participation and comment were included in the assessment procedure. The expected consequences of introducing a mandatory impact statement requirement in the Netherlands are reviewed. These include: greater environmental awareness among public and private developers, classification of environmental data, financial savings on environmentally damaging projects, aid in formulation of limit values and quality standards, identification of alternative , and greater coordination of environmental policy. A number of means of reducing the likelihood of delay resulting from an impact statement requirement are listed. It is advocated that separate types of impact statements should be prepared for government policies, government projects, and private projects. The

Council recommends that a general Act requiring preparation of these types of impact statements should be introduced. However, the possibility of fitting an impact statement requirement into existing and proposed legislation is considered, as a transitional measure, prior to implementation of a specific Act requiring impact statements. After consideration of this option, the Council reiterate their preference for a general Act. Finally, it is recommended that impact statements should be prepared for policy and project actions prior to the introduction of legislation, as a means of gaining experience and information which might be useful for the drafting of a gender Act. This document presents an excellent justification for the utility of impact statements and the necessity of ensuring the requirements to prepare such statements in law (Netherlands Provisional Central Council For Environmental Hygiene, 1976).

Lee and Wood discuss United States procedures for impact analysis and preparation of impact statements in their article "The Assessment of Environmental Impacts in Project Appraisal in the European Communities". The advantages of a formal system for impact analysis are considered to outweigh the disadvantages. Current procedures for appraising developments in Member countries of the European Communities are described briefly in its assessments. The problem of deciding which developments are suitable candidates for impact analysis is considered. Development types which would require preparation of an impact statement are listed. A number of methods for guiding impact analysis are discussed in relation to the scope of impacts to be discussed in an impact statement. It is concluded that only environmental impacts should be included in a statement. To be effective, impact assessment procedures should provide for production of an impact statement, should involve consultation and public participation, and should include provision for post-auditing of impact statements. Costs should be borne by developers. Providing care is taken to fit procedures for impact analysis into existing assessment procedures in Member states, the disadvantages of the US system should avoided (Lee and Wood, Journal of Environmental Management, 1978).

Lee and Wood also talk about U.S. procedures in detail and some of the problems arising from the use of certain assessment methods in their article published by the Journal of Common Market Studies. Emphasis is placed on the problem of economic externalities and the current role of environmental impact assessment in each of the Member states of the European Communities is outlined. Reasons for a differential allocation of costs and benefits between Member states if a common communities' assessment system were not implemented. Finally, the main features of a possible assessment system for the Communities are outlined in the form of suggested guidelines (Lee and Wood, Journal of Common Market Studies, 1978).

Today the most important policy alternatives in the European Community address deteriorating air and water quality, restoration of eco-systems functions and nature preservation. Although the European legislation has already achieved a considerable degree of harmonization, significant differences remain among member states as to their economic ability and political willingness to create an effective environmental policy agenda for the 1990s and beyond. The core problem deals with differences in settlement densities, environmental quality concerns, and socioeconomic status. High income regions of the north are critically reviewing the agricultural sector, environmental nutrient loading by traditional farming systems and bio-industry, and a shift in societal land use perspectives cause dramatic changes in land use policies. Implications of emerging environmental policy perspective reflect new economic opportunities and explicit recognition of the social cost of environmental externalities of current land use distractions and practices (Schultink, 1993).

Within European communities in the past, large projects were often undertaken without prior calculation of environmental effects. This resulted in harmful effects to the environment. The government use to allow certain level of pollutants to be released from projects through the granting of permits, or by adjusting regional plans without considering the consequences. The Environmental Impact Assessment (EIA) regulation changed this. The EIA regulation is a tool aiding in government

decision-making, it makes the proponent aware of the environmental effects of his project, and it streamlines the decision-making process. Another aim is to give the environment a prominent place in the decision-making on projects and plans with important negative effects on the environment, such as the construction of a chemical plant; large infrastructure projects such as high-speed railway lines; or the expansion of airports.

As in the U.S. before any action can be taken developers of a project must describe all potential environmental effects in a public document, known as the Environmental Impact Statement (EIS). The report must also describe the environmental effects of a number of alternative solutions. This allows the developer, the competent authority, and the public to be provided with the facts on the environmental effects of the project and any alternative solutions in advance. In its decision-making the competent authority is obliged to take the EIS results into account. The EA procedure is always linked to a procedure for the adoption of a decision that pertains to a project with a potential impact on the environment. There are numerous parties involved in the EIS process: The proponent, either from the private sector or a government agency, intends to undertake a project which is subject to an EA. It is the responsibility of the proponent to supply an EIS. The proponent can be the same as the competent authority deciding on the project. For instance, the Minister of Transport, Public Works and Water Management initiates the construction of a new road, but is also the competent authority deciding on such projects. The competent authority is the government authority deciding on the proposed project and is responsible for a correct EIA procedure. In case of multiple decisions, there can be multiple competent authorities, one of which may be appointed as coordinating the procedures. The competent authority draws up the guidelines, with the information the EIS should contain, and reviews the finished statement on the basis of the legal requirements and the guidelines. The EIA Commission consists of independent experts on the various activities subject to EIA. For every project, the Commission appoints a working party that provides the competent authority with the guidelines for

the EIS. After the proponent has delivered the EIS, the Commission reviews it on its correctness, completeness and quality in a so-called review document. All persons, legal or private, that are in some way involved in the proposed project may give their opinion on the guidelines and the EIS. Such persons may be people living near the site, environmental organizations or other interest groups (ITC Handout, 1996).

The European Community (EC) is made up of 12 member states at present: Belgium, Germany, Denmark, Greece, Spain, France, Ireland, Italy, Luxembourg, The Netherlands, Portugal, and Britain. This is the order in which they take the chair of the European Council, the governing body of the EC. Under the Single European Act 1987 the aim of the EC is to work towards European unity (see Table #5).

EUROPEAN MEMBER STATES			
1.	Belgium	7.	Ireland
2.	Germany	8.	Italy
3.	Denmark	9.	Luxembourg
4.	Greece	10.	The Netherlands
5.	Spain	11.	Portugal
6.	France	12.	Britain

Table # 5 - Twelve Member States of the European Community

The EC is home to 340 million people. About 80 percent of the combined territory is agricultural, 15 percent urbanized. The average population density of 139 persons per square kilometer hides very wide variations, from less than 20 to over 700 per square kilometer. The proportion of urban to rural population shows similar differences; for example, 97 percent of the Belgian population is urban, but only 32 percent of the Portuguese is urban. The economic structure of the EC shows equally important variations, and marked differences in gross domestic product (GDP) per head with significant regional difference (Commission of the European Communities, 1992a).

The EC has recognized that environmental concerns are a priority inseparable from most other policy areas: the EC has thus come to adopt a broad approach to environmental policy formulation within the EC, complemented by reflection and action on global issues. The first EC environment program was adopted in 1973, shortly after the UN Conference on the Human Environment, held in Stockholm in 1972. This program involved three broad categories of actions: to reduce and prevent pollution and nuisances; to improve the environment and the quality of life; and action through international organizations on environmental questions.

The second environmental action program, agreed by the EEC environment ministers in 1977, accepted that the measure initiated in the first program would continue. The 1977 agreement placed a new emphasis on preventive action, particularly about pollution, land misuse, and the production of waste. An important aspect of that program was a study of how appropriate environmental impact procedures might be introduced in the EC. The polluter-pays principle was also endorsed.

Directives, decisions, and regulations, are intended to be adopted by member countries and embodied in national legislation; hence EC rules affecting the environment follow this same process. Any member country failing to implement EC directives can be brought before the European Court of Justice. From 1970 to 1985 and the EIA directive in 1985, there were 23 directives about the environment (Gilpin, 1986). In 1980, a draft directive on EIA was issued, followed, in 1982, by a second draft directive. During the latter half of the 1980s, about 450 draft and final impact statements were prepared annually on proposed federal actions; during the same period, between 10,000 and 20,000 EAs were prepared annually (Economic Commission for Europe, 1991).

Finally a European Council directive on EIA was finalized on June 27, 1985. It was noted by the European Council, that the disparities between the existing laws in the various member countries about the EA of public and private projects could create unfavorable competitive conditions, and affect the functioning of the European common market. A greater degree of uniformity than then existed and

more effective and adequate laws were the primary aim of the EC. The 1985 directive distinguishes between those projects that are likely to have significant effects on the environment and hence should be subject to rigorous EIA procedures; and those which might have significant effects and should receive close preliminary study.

However, the directive recognizes three classes of exemption, which is disturbing. First, the directive shall not apply to projects the details of which are adopted by a specific Act of national legislation. The fact is that too many projects attract their own separate piece of national, state or provincial legislation and quite often are taken right out of all normal planning, assessment and licensing procedures. The preferred action is to have a requirement that EIA procedures are built into all legislation, whether of general application in the community, or specific to a major project. The directive conceded that it may be appropriate in exceptional cases to exempt a specific project from the assessment procedures, subject to appropriate information being supplied to the European Commission. Projects serving national defense purposes are also exempt from the directive. No explanation is given in these three categories as to why these exemptions should be granted, but experience suggests that projects exempted under these headings are quite often the most important and controversial. This aspect of the directive represents a flaw, but is no doubt the result of governments wishing to keep ultimate power.

Further, the directive is confined to projects and not extended to program and policies. However, the term 'project' embraces not only construction works and also other installations and schemes, but includes the extraction of natural resources and other activities which might be detrimental to the natural surroundings and landscape. More importantly, the term 'developer' embraces the proponent in respect of both private and public works (see Table #6).

<u>DIRECTIVE EXEMPTIONS</u>	
I.	Projects which are adopted by a specific Act of national legislation.
II.	Exceptional cases, where appropriate, may be exempt from the assessment procedures.
III.	Projects serving national defense purposes.

Table # 6 - Three Classes of Directive Exemptions

The member countries were given three years to comply with the directive, through national legislation. The review of the EC countries in this work indicates wide application of the principles. While deficiencies are apparent, the measure represents a great leap forward. Nor is it the end of the road. At the UN Conference on Environment and Development in 1992, the European Commission (Commission of the European Communities, 1992a, p.61) stated that it was necessary to extend the EIA principle 'upstream' to the policy-making and planning stages of development. The main argument here was that it is often too late to take alternatives or cumulative effects into account at a project stage.

It also helps to ensure the integration of an environmental dimension into the economic, industrial, agricultural, and other policies of the EC and its member states. The EC supports the convention on EIA in a Transboundary context. An extension of the EIA principle also facilitated the implementation of directives, such as the habitats directive in preparation, which aims to cover the protection of fauna and flora and their habitats. EIA principles have permeated the work of the European Bank for Reconstruction and Development, a bank created by western governments and financial institutions in 1991 to assist the private and public sectors in eastern European countries. The bank's role is to coordinate and channel western aid and investment into the region, helping to ensure an orderly transition from command to market economies. EIAs are now required for projects financed by the bank. The bank has also promoted reviews, guides, and EIA training.

CHAPTER FIVE: THE ENVIRONMENTAL ASSESSMENT COMPONENT OF NEPA

Since the 1970s the environmental assessment component of NEPA has taken a prominent role in federal, state, and local decision-making. It has caused pressures to be felt at the local level, and has encouraged assessments to become a part of the local planning and decision-making process.

The Environmental Assessment (EA) is a logical evolution of the planning process, and should be conducted at the earliest stages of decision making. Environmental assessments should be integrated into whatever planning process that already exists at the local level. Assessments should not be treated as a separate and distinct entity from the local planning processes. If it is, it will only weaken the quality of the product itself, and expose governmental decisions to attack by the courts.

Local responsibility for environmental assessment may be either generalized or specific, and can stem from a number of sources. Federal, state, county, or municipal legislation may call for a generalized National Environmental Policy Act (NEPA) type environmental input into the decision making process, or legislation may call for particular attention to certain specific components of the environment (e.g., flood plain management, water quality, etc.). Federal programs call for greater attention to environmental concerns due to the applicability of specific environmental requirements of NEPA. Even in cases where the local community itself may not be directly responsible for conducting a generalized environmental assessment it must still be sensitive to designing a proposal that will not, jeopardize funding of the program.

Most environmental legislation has been enacted in an attempt to curb the overall degradation of our nation's environment. Although most of this legislation identifies goals for particular components of the environment and are aimed at developing strategies for achieving these particular goals (e.g., Clean Air Act, Clean Water Act), NEPA legislation is directed more towards establishing a process that will ensure consideration of environmental factors in project decision making.

The basic action forcing clause of NEPA (section 102(2)(c)), requires agencies to include in every

recommendation or report, the impact of all major federal actions. This report is known as the Environmental Impact Statement (EIS), and must be submitted by the responsible official or entity.

A detailed statement must include the following:

- (i) The environmental effects of the proposed action,
- (ii) Any adverse environmental effects which cannot be avoided should the proposal be implemented,
- (iii) Alternatives to the proposed action, uses of man's environment and the maintenance and enhancement of long-term productivity, and
- (iv) Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Section 102(2)(c) also requires government agencies to conduct some type of environmental assessment for all of their proposed actions, in order to document the fact that most of their actions are not major. These lower level environmental assessments typically parallel the format and content of an EIS, but lack its depth and formal dissemination procedures.

The Council on Environmental Quality (CEQ) has made it very clear that a wide range of environmental components must be studied in each environmental assessment. "Environmental" is a term used to define a wide range of individual factors which, collectively, describe our surroundings. The initial stage is thus one of carefully examining the components of the environment and either identifying issues or of documenting their absence. Environmental must be defined broadly to include physical (natural and manmade), social, and even aesthetic factors. One must examine the full range of environmental concerns for both the impact of the environment on the proposed project and also the impact of the project on the environment.

This group of environmental components should be very broad and should include all that may have a bearing upon the question of site suitability (if action is project related) and all those

components which might describe any aspect of the project's direct or indirect impact. Table # 7 provides one example of this type of component list.

COMPONENTS		
PHYSICAL	SOCIAL	AESTHETIC
Natural Climate (Air Quality) Geology Topography Soils Hydrology - ground water - surface water - storm water Ecological Communities - flora - fauna Noise Man-Made Roads Mass Transit Water Systems Other Utilities Solid Waste Historic Structures Energy	Political Jurisdiction Planning Jurisdiction Community Facilities - Schools - Recreational - Open Space - Cultural - Police - Fire - Health Care Employment Commercial Character of Community Views of Community about the Project	Style Mass Proportion and Orientation Proximity Shadows
Source: Goldfarb, 1998		

Table # 7 - Environmental Components

Once an initial list of components is developed the following types of information for each component must be collected:

1. Data describing existing conditions for the subject component.
2. Data describing the impact of the proposed action upon the particular subject component.
3. Standards and/or guidelines upon which to evaluate the suitability of existing conditions for the proposed action and the impact of the proposed action upon the particular component.

Information gathered can be used as a tool to identify the presence, or lack, of environmental concerns surrounding the action in question. An issue presents itself when there is a dispute as to choice of alternative regarding the design of either a sub-component of the project or the overall project itself (see Figure 1).

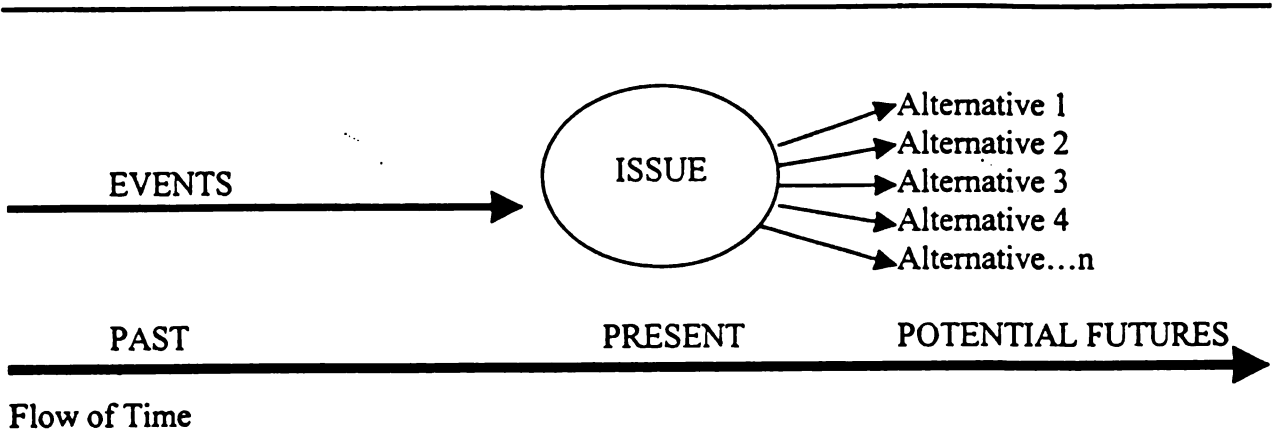


Figure # 1 – Issue Alternative

Source: HUD, 1976

The issue of alternative choices, produces differing opinions between the project sponsor and the funding agency. This issue also creates static between various groups or agencies affected by the action. The purpose of an environmental assessment is to clearly identify and analyze the relevant issues. It also produces a forum for discussion, so funding agencies may reach an informed decision that will reflect the public's interest relative to the issues at hand. In his working paper, "Critical Elements of the Environmental Assessment Process", Goldfarb describes two methods used to identify issues. One method is planning oriented and the other is issue oriented. These methods are referred to as congruence testing and controversy testing (Goldfarb, 1998).

Each governmental agency that has been called upon to perform environmental assessments has formulated standards and guidelines for use in evaluating the impacts of their actions upon the various components of the environment. Standards and guidelines are sometimes directly developed

by the agency; at other times they are adopted from those of other agencies which have recognized expertise in particular areas. Often these standards and guidelines are in a state of flux and thus change over the years. In congruence testing the evaluating agency takes the proposed action, and depending upon the question that is being asked, either assesses the suitability of the site for the proposed action and/or attempts to estimate the range of possible impacts of the action on each component of the environment. This impact is then measured against the objective set, or standards and guidelines, of the agency (HUD, 1976 - see Figure 2).

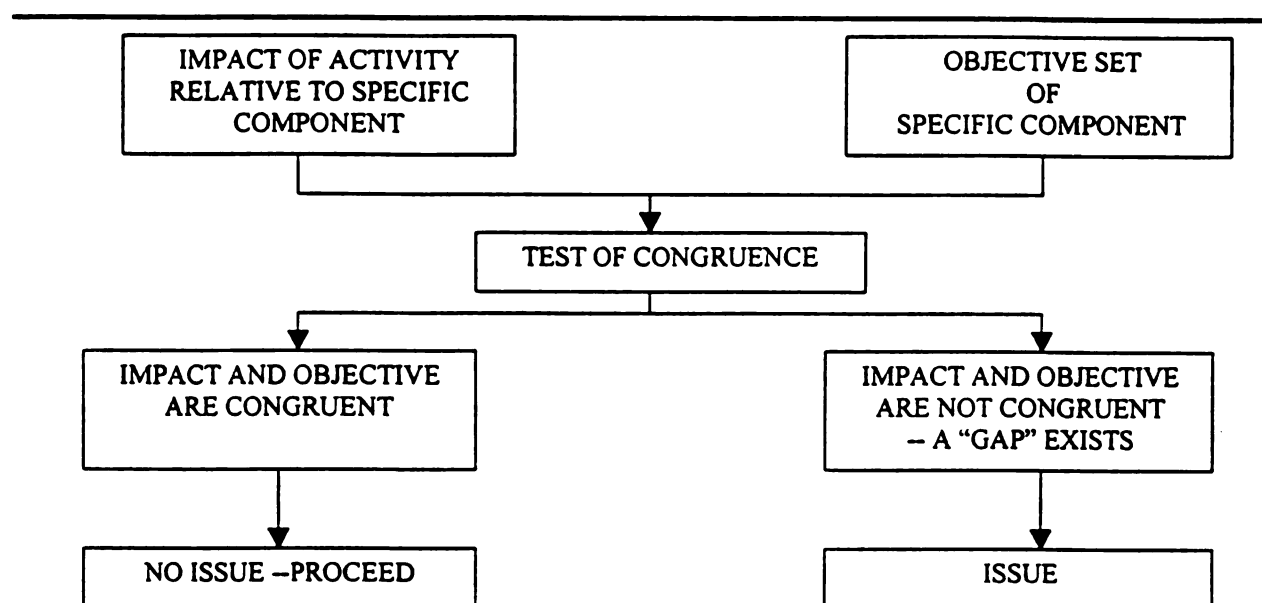


Figure # 2 – Issue Identification

Source: HUD, 1976

If both the impact and objective set are congruent then there is no issue and no further study is necessary for that particular component. If there is a "gap" between the impact and objective set then this is an indication that higher level testing, or issue analysis, is required. Issue analysis contemplates the use of detailed tests oriented toward either identifying a range of alternative solutions that might

be acceptable and/or quantifying the adverse impact of the proposed action. Another method of identifying issues which supplements the congruence testing method is that of controversy testing. This method simply notes any controversies surrounding the proposed project and automatically confers issue status upon the substance of the controversy. Sometimes this is relatively easy as the controversy has clearly illuminated the relevant issue; at other times it is difficult to extract the substance from what has become an amorphous opposition whose rhetoric fails to articulate the underlying issues upon which the opposition to a proposed project is based. In controversy testing, as in congruence testing, higher level analysis of the issues is also called for (Goldfarb, 1998).

There are two basic formats for the preparation of an environmental assessment: a formal EIS and a lower-level assessment. The format for a formal EIS is presently guided by CEQ guidelines (40 CFR 1500) and the particular set of regulations promulgated by the agency responsible for the preparation of the EIS. The Council on Environmental Quality circulated a set of draft regulations among federal agencies that may provide more specific guidelines for EIS preparation in the future.

Of more concern to most local government officials is the type of format needed to reach the decision that a particular activity is not a "major federal action..." A checklist format documenting the fact that a wide range of environmental components and feasible alternatives have been studied is usually the most effective and efficient means of performing this task. HUD's Environmental Reviews at the Community level presents a good example of this type of checklist format (see Appendix - Environmental Checklist). These types of lower-level assessments parallel the format of an EIS and should be thought of as merely different products of the same process. The difference is principally in the intensity and level of study, not in the framework used to arrive at one's findings (Goldfarb, 1998).

In the environmental assessment review process it is very important that all effects of an action are considered, and significant ones identified so that they may be analyzed in depth. Effects (or

impacts) are identified as to whether they are direct or indirect. Direct effects are caused by the action and occur at the same time and place. Indirect effects, are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

A. THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM (CDBG)

All Federal, State, and Local agencies using federal funds must prepare an environmental assessment for each proposed projects. Environmental assessments may or may not lead to the preparation of a more detailed study known as the Environmental Impact Statement (EIS). Table # 8 depicts examples of Federal projects or activities using federal funds.

PROGRAMS REQUIRING EAs	
▶	Entitlement Block Grants
▶	HUD-administered non-entitlement Cities (Small Cities)
▶	UDAG (Urban Development Action Grants)
▶	Grants to Indian Tribes and Alaskan Natives Territories
▶	Special Projects
▶	State administered programs for non-entitlement cities (Small Cities)
▶	Categorical Program Settlement
▶	Discretionary Grants (when environmental review is required)
▶	108 Loans and Loan Guarantees
▶	State administered Small Cities Programs.
<i>Source: HUD-CPD-782, 1985</i>	

Table # 8 - Programs/Projects Requiring an Environmental Assessment

Federal regulations require entitlement cities, urban counties, small cities to meet their environmental responsibilities. Each entity is required to perform environmental reviews of projects and other applicable activities identifying likely impacts of proposed projects on the environment.

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Environmental review procedures for federal activities are not taken lightly by Congress. The Department of Housing and Urban Development (HUD) has a set of "Environmental Review" regulations that every Community Development Block Grant (CDBG) recipient must adhere to. These set of regulations were developed to require all recipients of federal funds to meet the requirements of the National Environmental Policy Act (NEPA) as well as several related Federal laws and regulations and Executive Orders.

The Environmental Review process for all CDBG grant recipients require an environmental assessment to take place, to determine whether an Environmental Impact Statement (EIS) is necessary. If an EIS is required, additional detail must be provided by the recipient. If the environmental review process is to result in better CDBG projects, it must be based upon the best available information, consider all relevant issues, and incorporate a rigorous and consistent evaluation procedure.

The CDBG Environmental Review Process

CDBG recipients are required to assume the responsibility and have or develop the technical capacity for conducting environmental reviews. The review process consists of two sets of requirements: (1) The first set is based on NEPA and the implementing regulations issued by CEQ (40 CFR Parts 1500 through 1508). All CDBG projects other than those exempt (24 CFR 58.34) or categorically excluded (24 CFR 58.35) must be approved according to environmental review requirements; (2) The second set derives from other statutory and regulatory requirements of various Federal agencies such as the Environmental Protection Agency (EPA), the Advisory Council on Historic Preservation (ACHP), or HUD's own requirements such as those relating to noise. The environmental reviews of all projects other than those exempt (24 CFR 58.34) are subject to this second set of requirements.

There are three types of environmental reviews depending on the action being proposed. Categorically Excluded Projects are for activities listed in 20 CFR 58.35. Actions requiring an environmental assessment is carried out to determine whether the project will or will not have a

significant impact on the human environment (24 CFR Part 58 Subpart F). Actions requiring an environmental impact statement (EIS) is prepared in accordance with NEPA requirements, the CEQ regulations at 40 CFR Part 1502 and the EIS process described in 24 CFR 58.37.

An EIS is required either because (1) thresholds established in 24 CFR 58.37(a)(4), (5), and (6) and are exceeded, or (2) a finding is made after or during completion of an environment assessment that the action may significantly affect the quality of the human environment. As stated earlier the National Environmental Policy Act (NEPA) is the law which requires compliance of all Federal actions with national environmental policy. The Council on Environmental Quality (CEQ) was established as the oversight agency for compliance strategies under NEPA. Section 102(2)(c) of NEPA mandates all agencies of the Federal Government to "include in every recommendation or report on proposals for legislation, and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official" (Clark, 1980). This is the basis for the CEQ regulations which require an Environmental Impact Statement (EIS) for major Federal actions including federally assisted projects significantly affecting the quality of the human environment. EIS requirements are not limited to the CDBG projects, but extend to a wide range of major Federal actions.

In 1978 CEQ issued regulations which emphasized integration of NEPA requirements with other environmental obligations under related laws and authorities. Emphasis was placed on the consideration of cost benefit and technical feasibility studies concurrently with environmental factors, and the designation of "major decisions points" of the action. Entities have to also define and evaluate selected alternatives, including the proposed action, and standardize techniques for making the EIS process more simple and less time consuming.

In a nutshell, the environmental assessment process consists of four stages (see Table # 9).

ENVIRONMENTAL ASSESSMENT STAGES OF REVIEW	
STAGE 1	Early Planning/Assessment Procedures
STAGE 2	Beginning the Environmental Assessment
STAGE 3	Completing the Environmental Assessment and Reporting the Findings (when no EIS is required.)
STAGE 4	Preparing the Environmental Impact Statement
<i>Source: HUD-CPD-782</i>	

Table # 9 - Four Stages of Review

At the first stage, the grant recipient should identify the environment which potentially will be affected by the project. The short and long term costs and benefits likely to effect the conducting of an area-wide Environmental Impact Statement, broad scale environmental review, or other forms of joint environmental analysis should be considered. The environmental analysis will also determine the likely environmental state of the project as to whether it is exempt or categorically excluded from NEPA requirements; or whether the nature and scope of the project is such that an EIS will be required or an environmental assessment is needed to test the probability or absence of significant environmental impacts. Every project, whether or not it is categorically excluded from NEPA procedures, must comply with or consider other laws and regulation associated with environmental review (see Table #10). An environmental assessment is performed at the second stage. The assessments for those projects which are categorically excluded from NEPA requirements should cover only the non-NEPA statues and regulations. The recipient then has to issue a notice of intent to request the release of funds (NOI/RROF) and after 7 days submit the actual request on HUD Form 7015.15 and a certification that is has complied with all the related laws and authorities (24 CFR 58.5) and taken into account their requirements and obligations.

Once an environmental assessment has been done, a finding must be made as to whether the

project does or does not significantly affect the environment. If the assessment does not significantly affect the environment then one must proceed to stage three and complete the EA clearance process. If the finding indicates significant impacts, proceed to stage four the EIS process. In stage three the public must be given an opportunity to review and comment on this decision before funds for the project are released by HUD. Stage four consists of preparing an Environmental Impact Statement (EIS). If there is a Finding of Significant Impact, an EIS must be prepared.

Legislation	Regulation	Applicability	General Requirements;	Coordination/Consultation
Historic Preservation				
	36 CFR art 1294, 36 CFR Part 800	All actions affecting properties on or eligible for National Register of Historic Places	Protect sites, buildings, and objects with National, State, or local historic or cultural significance (i.e., historic properties that are listed on or are eligible for listing on the National Register of Historic Places). Identify effects of project on properties.	Coordinate with SHPO, ACHP, DOI (Keeper of the Register)
Flood plains				
E.O. 11988, Floodplain Management	24 CFR Part 55 (when issued)	Any action proposed for a floodplain	Avoid direct or indirect support of floodplain development wherever there is a practicable alternative	
Wetlands				
E.O. 11990, protection of Wetlands	24 CFR Part 55 (when issued)	Any action proposed for construction in a wetland	Avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative	
Noise				
Noise Control Act 42 U.S.C. 4903	24 CFR Part 51, Subpart B	All actions	Compliance with special provisions for CDBG projects required	
Air Quality				
Clean Air Act 42 U.S.C. 7400, et seq., Section 176 and Section 117	40 CFR Part 50 and portions of CFR Parts 51, 52, and 61	All actions	Federal action must conform with the SIP	Coordinate with EPA and State and local air pollution control agencies in making conformity determinate as appropriate
		Large stationary pollution sources	Compliance with stationary source air pollution standards for major sources emitting 100 tons per year of a single air pollutant	
		All actions	Screen to determine if site is in a location in violation of ambient air quality standard __ assess impacts on project	
Hazards				
	HUD Notice 79-33 24 CFR Part 51 Subpart C and D	All actions	Minimize the impact of environmental hazards on HUD-assisted activities—chemical and radioactive materials, activities of flammable or explosive nature, aircraft hazards	Coordinate with EPA and other Federal agencies, as appropriate
Water Quality				
Clean Water Act, 33 U.S.C 1251-1376, et seq., Section 404	33 CFR Part 320-325, 33 CFR Part 230	Any activity involving disposal or placement of dredged or fill material in navigable waters	The 404 permit program is administered by Corps of Engineers. EPA has authority to veto permit.	Applicant must have permit before decision on appropriate environmental document
Safe Drinking Water Act, 42 U.S.C. 300			Compliance with 208 plan	
		Federally assisted projects which may contaminate an aquifer designated by EPA as the sole source of drinking water for a community	Prohibits financial assistance of projects with EPA determines may contaminate a designated sole source aquifer	Request from EPA a determination whether project may contaminate the aquifer

Legislation	Regulation	Applicability	General Requirements	Coordination/Consultation
Solid Waste Disposal				
Resources Conservation and Recovery Act 42 U.S.C. 6901-6987		Any activity which generates solid waste	Requires compliance with Section 209 guidelines	Coordinate with EPA
Coastal Areas				
Coastal Zone Management Act 16 U.S.C. 1451-1464	15 CFR Part 930 44 CFR 37142	Any proposed activity affecting areas covered by an approved coastal zone management plan	Ensure that projects are consistent with coastal zone programs	Coordinate with State Coastal Zone Management Agency. If federally funded action is inconsistent with approved land, coordinate with DOC Office of Coastal Zone Management
Coastal Barrier Resource Act 1982 16 U.S.C. 3501, et seq.		Any proposed construction or development action which may occur on an undeveloped coastal barrier listed in Section 4 of the Act. (Section 6 cites exceptions.)	Prohibits Federal Flood Insurance and other Federal assistance on actions which encourage development of coastal barrier resources.	Coordination with U.S. Fish and Wildlife Service and State Coastal Zone Management Agencies
Endangered Species				
Endangered Species Act 16 U.S.C. 1531, Section 7	50 CFR Part 402	Any action which might jeopardize continued assistance of endangered or threatened species or result in destruction or modification of critical habitat	Federal agencies shall insure that their actions conserve listed species and ensure, in consultation with FMS/NMGS, that their actions do not jeopardize listed species or modify critical habitat	Coordinate with FMS concerning terrestrial and freshwater species, NMFS concerning marine species
Farmlands Protection				
Farmland Protection Policy Act of 1981 7 U.S.C. 4201, et. seq.	7 CFR Part 658	Any federally assisted action which encourages the conversion of prime, unique, State/locally important farmlands	Minimize the extent to which Federal programs contribute to the unnecessary conversion of farmland to nonagricultural uses.	Coordination with SCS(USDA) State Resource Conservation Office
Wild and Scenic Rivers				
Wild and Scenic Rivers Act 16 U.S.C. 1271-1257	President's Environmental Message, 8-2-79, CBQ Memorandum, 8-10-80, Interagency Consultation on Rivers in the Nationwide Inventory	Rivers designated under the Act Proposed activity affecting rivers on the Nationwide inventory of potential wild, scenic and recreational rivers	Preserve wild and scenic rivers Assure that Federal actions do not foreclose designation under the Wild and Scenic Rivers Act	Coordinate with HCRS and USDA Forest Service, as appropriate Coordinate with HCRS
<i>Source: HUD-CPD-782</i>				

Table # 10 - Applicable Federal Laws and Regulations

B. The Environmental Impact Statement

As mentioned in chapter three, the National Environmental Policy Act (NEPA), consists of a declaration of Congressional purpose plus two titles. Title I has four parts, which we will discuss in further detail. Title II requires the President to transmit an annual report to Congress that discusses, among other things, the current status of the major aspects of the environment, both natural and man-made, major trends in the quality, management, and utilization of the environment, and the effects of those trends on the social, economic, and other requirements of the nation. The second title also creates the CEQ to aid the President in the preparation of this report, to supervise research concerning environmental quality, to provide advice to the President concerning improvement of environmental quality, and to aid federal agencies in modifying their activities to conform to national environmental policy as expressed in Title I of the act. This council consists of three members appointed by the President as well as such staff as is necessary to carry out the requirements of the title.

Title I is a series of commands to federal agencies to conduct themselves in a specified fashion. These commands created new responsibilities for federal agencies through which the fulfillment may be judicially compelled. Based on numerous Court of Appeals decisions, the federal courts can compel production of an impact statement by an agency that has failed to comply with the requirements of NEPA. It is also clear that the revision of an inadequate impact statement can be compelled.

Title I contains four major parts: (1) It requires the production of an Environmental Impact Statement (EIS); (2) States the need for federal government to provide for environmental quality and a policy of protection of the environment; (3) Requires that policies, regulations, and public laws of the United States be interpreted and administered in accordance with the policies set forth in NEPA; and (4) Requires the use of certain research techniques by federal agencies (Clark, 1980).

TITLE I SUBPARTS	
I.	Requires production of Impact Statement
II.	States government's need to protect the environment
III.	Requires NEPA policies to be Administered
IV.	Requires federal agencies to use a specific set of research techniques

Table # 11 - Title I Subparts

The EIS is also referred to as the Environmental Impact Assessment (EIA). The EIS should be sufficiently specific for a reasonably intelligent mind to examine the potential environmental consequences, good and bad, of carrying out, or not carrying out, that proposal. It should meet the requirement to alert the decision-maker, the proponent, members of the public, and the government, to the consequences for the community; it should also explore possible alternatives to the project that might maximize the benefits while minimizing the disadvantages. The primary purpose of an EIS is to assist the decision-maker in arriving at a better informed decision than would otherwise have been the case. A decision might involve the outright rejection of the proposal or its deferment for further studies or revision, though more usually the project is approved, subject to a range of legal conditions and requirements that are attached to the development consent, approval, or permit.

As discussed in chapter four, the enactment of NEPA influenced many countries to adopt major components into their existing planning processes. Countries such as, Canada, Australia, Europe, Asian countries, and other developing countries have developed and implemented NEPA related policies. Within these countries and EIS usually include the following: a full description of the proposed project, or activity; a statement of the objectives of the proposal; an adequate description of the existing environment likely to be affected by the proposal; the identification and analysis of the likely environmental interactions between the proposal and the environment; the justification of the proposal; economic, social and environmental consideration; the measure to be taken with the proposal for the protection of the environment, and an assessment of the likely effects of those measures; and feasible alternatives to the proposal; and the

consequences of not carrying out the proposal for the proponent, community, region, and state.

Although an EIS should take full account of all matters affecting, or likely to affect, the environment, there are reasonable limits to this. Sometimes an EIS does not and cannot address every aspect of a problem that experts, analysts, and member of the public, consider it should explore. The responsible government agency or commission of inquiry must then decide if further work and research is justified, given available time and costs. The termination of the EIS process might prove necessary, although sometimes it is possible to cover loose ends through the legal conditions imposed.

An accurate and adequate description of the existing environment of the site and environs of a proposed development is a vital component in the EIS, for it is the possible effects on this environment that are considered. The study serves as a protection to the proponent against later justified claims of damage to the environment by the project, during the construction or operational phases of the project. However, a survey of the environment conducted during a necessarily limited period gives only a snapshot impression though this might be invaluable. It is important to identify some of the changes that might be taking place in the character of that environment in its ecological, archeological, cultural, and urban aspects, in order to assess the future of the site should the development not take place. Some aspects of the environment might require monitoring and thorough analysis over an extended period to establish all the existing background levels of possible concern. This could apply to air and water pollutants such as fluorides, or heavy metals, which might be attributed to the new plant.

A proposed major power plant, for example, might well require a study to be conducted for 2 or even 5 years before development approval, to establish backgrounds for meteorological characteristics, existing air pollutants, or radiation. This stresses that a background survey cannot start soon enough. The total area surveyed must be large enough to embrace all possible adverse environmental effects from the proposed project; this is a matter of judgement. Much depends, for example, on the nature and characteristics of pollutants discharged and the level of discharge. Potential effects, if any, might be quite close or at great

range. Further, some potential adverse effects might be confined to the construction phase, while other adverse effects might only occur in very unlikely circumstances. The question then of area and the potential nature of adverse effects remains, therefore, an difficult one, not likely to satisfy everyone. Whatever boundary is defined, the rationale must be included in the EIS.

Scoping

Experience of NEPA in the U.S. led many to a conclusion that with EISs there should be a process that starts early, involves all affected parties, and enables agencies and the writers of the EISs to pinpoint significant issues warranting study and analysis. Such a process, it was felt, could lead to fewer delays and greater satisfaction with the completed EIS. Consequently, in 1978, the US CEQ introduced, as NEPA regulation, that there shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues relating to a proposed action. This process was to be called "scoping".

Thus the scope of an EIS might vary greatly depending on the input from scoping meetings which usually last one day. Sometimes the meetings can involve large numbers of people and resemble fully fledged public hearing and inquiries. However, more often than not, scoping meetings are small informal gatherings of representatives of the key players: the proponent, the government agency involved, the environmental agency, state and local agencies, and citizens' environmental groups. They meet and with the help of presentations, decide together on the scope of the EIS, the alternative to consider, and the types of effects to closely examine and assess (Gilpin, 1995).

It is important that the community understands the issues well enough to participate in the process, and this involves adequate steps to inform the public and its voluntary organizations as soon as possible. The role of the media here is clearly pertinent. EIS processes require proponents to consult the review body or decision-making body for initial guidance on the prospective content of an EIS.

Alternatives

In all prescriptions for EISs, there is emphasis on the question of alternative techniques and alternative sites. Furthermore, it has been stressed by the US CEQ, this search must be genuine and well-documented, done before, not after, a choice has been made. In a range of industries, reasonable alternative sites within a region are often appropriate. Power stations, aluminum smelters, oil refineries, dams, airports, highways, chemical processing works, light industry, incinerators, transmission lines, urban developments, landfills, nuclear facilities, defense facilities, forestry operations and so on, lend themselves often to much debate on the choice of site.

In instances where there cannot be an alternative site, an EIS is pointless to discuss the issue, save to stress that the project is site specific. The issue here is simply yes or no, without alternative locations being discussed, although there may be a range of choices about scale, appearance, technology, waste discharges, mitigation measures, and traffic management.

Ethics

Environmental Impact Statements are prepared by the proponent (developer). To accomplish this, it is common practice for either in-house staff to be employed, or more commonly, outside consultants. As a consequence, some people feel that the process is essentially flawed from the outset. In-house and outside consultants are employed, it is argued, to please those who employ them, and not to meet the needs of the wider community, and the decision-making body. In all organizations, whether public or private, people with strong social consciences or religious zeal, or sound integrity, often find that they are excluded from crucial discussions, and excluded from major projects calling for flexibility. When an individual of high competence challenges the emerging patterns, there is invariably some reference to a lack of confidence somewhere in the higher management in that individual (Bullard, 1994).

Some feel that EISs are essentially sleazy documents, a product of a single interest, lacking

objectivity, full of carefully selected words to disguise a multitude of shortcomings. Professional individuals working within organizations recognize the occasional ethical dilemma, of either stating the truth reasonably and objectively, or serving the narrow interest of the employer, even though such service might prove to be a disservice to the same employer in the end. Clearly, some of the shortcomings of EISs indicated elsewhere in this text must be a result, surely, of these compromising factor. Consequently, EISs, should be carried out by independent bodies, though at the expense of the proponent. This approach does not seem to have attracted much support. Many governments require consultation with the developer on the contents of the EIS, and there is an increasing trend to scoping meetings at which the whole range of possible issues might emerge. As problems rise during the EIS process, matters are referred to the developer for further exposition and research. Insufficient work can be costly in time and effort.

The key factor to remember, is that an EIS is a basic document allowing input to be given during the Environmental Assessment process. There really isn't any escape from the necessity of good work. Poor quality, dishonesty, unskilled presentation, and unconvincing conclusions often lead to increased costs to the proponent, and the in-house staff, or consultants who provide the EIS. Sound integrity can be achieved by employing, for particular sections of an EIS, experts and authorities whose interests are not closely tied to the interest of the proponent, financially, or otherwise.

At all times the analyst should try to reduce the subjective element and increase the objective content of all assessments. All-in-all, EISs of good quality are an advantage to all parties: the public, the relevant government agencies, and the proponent. Apart from gaining development consent with a minimum of delay and indirect costs, proponents frequently find that appropriate mitigation measures and correct siting, result in reduced direct costs of production, or implementation. The additional effort in the preparation of EISs giving attention to many procedures and processes often yield, in practice, a more competent enterprise.

Decision-making

Before a formal or statutory EIS process takes place, the developers and decision-makers meet to make decisions of major importance for potential development of the site. This is referred to as ad hoc decision-making. This category of decision-making is an assessment of potential costs and benefits, but in a context of business policy and political considerations. For proponents, it is usually a decision not to proceed with a project on the grounds of actual or anticipated public concern; for governments it is often a decision to proceed regardless of public opinion.

For government, in some cases, decisions are made behind closed doors, leading to a major project proceedings on a particular site. The decision and any financial arrangement with the developer could take place.

Costs

The direct compliance costs of the assessment process is not a significant problem for large companies, especially if the EA is integrated with feasibility studies. Usually these costs represent only a small portion of total project costs. A corporation's planning horizon needs to be extended to allow for the whole of the planning, environmental, public inquiry, and licensing procedures. In some instances this involves planning 5 to 10 years ahead, or even longer in the case of electricity generation, or requirements. Indirect costs can be considerable, amounting to about 10 percent of total project costs. They are particularly onerous in the case of the large electricity generating system and transmission network. The direct and indirect costs of an EIS should be set, however, in the context of other environmental costs such as the costs of pollution control measures which must be subsequently incurred during construction.

CHAPTER 6: STRENGTHS AND SHORTCOMINGS OF THE NATIONAL ENVIRONMENTAL POLICY ACT

Reasons for caring about how human actions influence the environment include a desire to use resources efficiently, the need to maintain the earth as a human habitat, and a variety of religious and philosophic beliefs. Several of these concerns have been translated into ethical norms and government policies that guide the way decisions affecting the environment are made. Commonly used norms and policies rest on the idea that human welfare is diminished when natural resources are wasted, air and water is made unhealthy, and so forth. This approach to setting policies and norms is said to be anthropocentric in that the concern for the natural environment is based ultimately on the welfare of the people. There are many criteria for choosing among alternative actions affecting the environment that are consistent with an anthropocentric perspective. One that is commonly used is an adaptation of utilitarian philosophy known as the benefit-cost criterion. In considering alternative policies lawmakers should estimate the beneficial and harmful consequences of each policy to the society as a whole. They should select the policy that produces the greatest net balance of beneficial over harmful consequences to society. One of the benefits of the Environmental Impact Statement is that it tries to address the issue of fairness or justice. The concept of fairness is relevant to decisions affecting environmental quality because the individuals enjoying the benefits from such decisions are often different from those who pay the costs.

Although many people agree that equity issues should be considered in making decisions that affect the environment, these issues are not easily analyzed. The following are among the difficult questions that must often be treated in examining the equity of alternative proposals: How should fairness be defined and measured? If a decision leads to an unfair distribution of benefits and costs, should the inequity be tolerated if the social gains far outweigh the social costs?

The enactment of the National Environmental Policy, as with anything else, has its strengths and weaknesses, I refer to them as strengths and shortcomings. Overall the act has helped improve the issue

of environmental pollution, we know that pollution will never cease, but this act has done a great job in curbing hazardous actions. Following is a table that depicts some of the strengths and shortcomings of the National Environmental Policy Act.

STRENGTHS;	SHORTCOMINGS
▶ Increases Public Involvement in Decision Making ▶ Creates a Standard Framework for Decision Making ▶ Improves Understanding of Ecosystems ▶ Creates More Environmentally Sound Federal Actions	▶ Need Better Integration of Environmental and Socioeconomic Analysis ▶ Earlier Start on Analysis ▶ More Targeted Monitoring Programs ▶ Improved Collection of Necessary Baseline Data ▶ Better Communication Among and Inclusion of Stakeholders

Table #12 - Strengths and Shortcomings of the National Environmental Policy Act

In light of the above strengths and shortcomings, the greatest strength and shortcoming NEPA faces is centered around "sustainable development". NEPA establishes sustainable development as a national policy, it explicitly includes nearly all the sustainable provisions called for by contemporary sustainable development proponents. Although this is the case the United States continues to witness a lack of sustainability. Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their needs (Clark 1997).

NEPA's limited implementation has prevented it from achieving its full potential to help the country develop in a sustainable manner. With current attention to sustainable development at the federal level, a review of NEPA is imperative. This would avoid "reinventing the wheel" and ensure that the elements of success and failure in the status quo are understood, so that any modifications to the statute and its implementing regulations or other alternatives will have the greatest likelihood of success. The public and political leaders should take advantage of historical hindsight as they craft environmental, social, and economic policies appropriate to the 1990s and the coming century.

Before any new sustainable development policies or scenarios are drafted, sustainable development advocates should consider steps to help fulfill NEPA's potential. A few things that should be considered involve: thorough review of the statute and regulations relating to sustainable development should be initiated; recognizing barriers that prevent NEPA policy from being implemented to its full potential; examination of CEQ potential to fulfill NEPA's sustainable development mandates. See Table # 13 for other step that can be taken.

STEPS TOWARDS SUSTAINABILITY	
1.	Conduct a thorough review of the statute and the regulations with sustainable development goals in mind.
2.	Determine what barriers to more thorough NEPA policy implementation may exist and how they could be overcome.
3.	Increase awareness of NEPA and its goals among local, state, and federal agencies and the public.
4.	Take fuller advantage of NEPA's participatory provisions through CEQ, outside consultation, and international interchange.
5.	Examine the role of the CEQ in light of its potential to fulfill NEPA's sustainable development mandates.
6.	Create a mechanism to monitor the success of NEPA's renewed role in sustainable development and to make periodic adjustments in its implementation.
Table # 13 - Steps to Fulfill NEPA's Sustainable Development Goals.	

NEPA has clear limitations as a tool for sustainable development, but it does spell out an exemplary sustainable development policy for the country. If the policy were adhered to and CEQ used its authority to see that all sections of the statute were implemented, NEPA would more than adequately provide a sound, comprehensive, national framework for sustainable development. In this case the strength and shortcomings of NEPA are centered around the issue of sustainable development. The NEPA policy creates a framework

for sustainable development, but does not use its potential to implement its as a sustainable development tool. Overall NEPA has effected the state of our environment positively, but not enough. The more were continue to build, the more we need to consider the sustainability of our environment.

CHAPTER SEVEN: CONCLUSION

As you have read throughout this paper, NEPA requires Environmental Assessments, and when necessary, impact statements on all major federal actions and actions using federal funds. We discussed the Environmental Impact Statement (EIS) process and how it is designed to provide decision-makers with a forecast of environmental and social changes likely to be caused by a proposal. Indirectly, the function of impact statements should be to restore and improve environmental quality by encouraging good design and planning. It is important to consider the situations in which statements should be prepared, the level of public participation, the requirement of data, and the appropriate analyses. In addition, consideration should be given to the ways in which impact statements can be used to affect planning and decision-making.

Environmental Impact Statements should be part of the planning process which, in essence, involves establishing the existing use of a piece of land, and generating a range of possible alternative future uses. Consequently, impact assessments should begin immediately after these alternatives have been identified and should become the basis for a decision, concerning the optimum use of a particular area of land. In an impact statement each of the alternatives should be tested to determine how it relates to community goals for the use of land. The criteria which determine whether impact statements should be prepared should be discussed, their form and content should be analyzed and an indication of the timing of impact statement preparation should be given.

As a result of the environmental impact statement requirements, in the U.S., the Department of Housing and Urban Development (HUD) has fundamentally altered proposals after environmental studies or impact statements. Some projects have been modified after the preparation of impact statements, while others have been terminated. These requirements have tended to improve cooperation between agencies. The NEPA act has significant effects upon agencies and has led to a routine assessment of the environmental implications of many projects for which not impact statement is prepared subsequently. It also gives citizens and groups the right to sue an agency if it were believed that the agency had not complied

with the requirements of the Act (Clark, 1980).

We've also discussed how the European Community (EC) has committed themselves to ensuring that environmental aspects are considered in their planning process and decision-making. Environmental impacts are taken into account at the earliest possible stage in the technical planning and decision-making processes, and have become incorporated into the European Community.

NEPA has been praised for preventing many actions with potentially severe adverse environmental impacts from taking place. It is also praised for causing modifications to public involvement in the planning and decision-making processes of the U.S. federal agencies. It certainly has increased public access to information about agency planning activities. Nearly 100 federal agencies have designated officials with NEPA responsibilities, revolutionizing consideration by government agencies of the environmental effects of their proposed projects and programs. Nearly half of the states have developed their own localized NEPA laws.

On the other hand, coupled with these praises are criticisms of the process. Individuals adversely affected argue that the EIS process produces too little improvement for the amount of dollars and human resources currently expended and that it inconsistently addresses their concerns. Others, who appreciate NEPA's mandate, still criticize the process as too narrowly interpreted and not capable of achieving NEPA's intended goals and suggest that perhaps other evolving considerations such as sustainable development and ecosystem management can provide more dynamic, substantive, and sophisticated approaches to protecting the environment. However, these concepts are inconsistent with NEPA and could be integrated into the existing NEPA framework rather than creating an entirely new system. Still others claim that the reoccupation with the preparation of NEPA documents and fears of related litigation have actually undermined agencies' powers, responsibilities, and initiatives and may have lessened environmental improvements and innovations which could have accrued under environmental improvements and innovations which could have and citizen participation.

Congress enacted NEPA to enable environmental quality to compete on an equal footing with other important policies.

Based on the research of this topic, thus far, I have found that there is extensive information written on the topic of environmental policies and their effects. The field of environmentalism is forever evolving, and rightly so. We as humans need to continue studying and finding ways to preserve as much of the livable environment as we can. It is our duty and our lives depend on it.

AI PENDICES

APPENDIX A

CHECKLIST OF ENVIRONMENTAL RECORDS

State Recipients and Grantees under the HOME Single Family Rehab (HOME SFPR) and the Community Development Block Grant Program (CDBG), should maintain records which document their compliance environmental review requirements. This checklist is provided for the guidance of grantees in determining the required content of these records and for the guidance of the HUD personnel reviewing these records. At a minimum, the locality's environmental records should document the following:

the Certifying Officer for non-profit Grantees will be designated, and will be responsible for publishing required notifications. Copies of notices should be retained in your environmental file.

	<u>YES</u>	<u>NO</u>	<u>N/A</u>
1. Designation of "Certifying Officer" (For non-profit Grantees Only)	___	___	___
2. Written notification to State Historic Preservation Officer (Response Date: ___)	___	___	___
3. Identification and location of Flood Plain and Wetlands (Response Date: _____)	___	___	___
4. Written notification to Coastal Zone Management (Response Date: _____)	___	___	___
5. Identification and location of Wild and Scenic Rivers (Response Date: _____)	___	___	___
6. Written notification to DNR regarding Air Quality (Response Date: _____)	___	___	___
7. Identification of any Endangered Species (DNR Information)	___	___	___
8. Completion of Noise Assessment for:	___	___	___
- Roadways Noise	___	___	___
- Railway Noise	___	___	___
- Aircraft Noise	___	___	___
A) Elevation of airport clear zone	___	___	___
9. Establish an Environmental Review Record	___	___	___
A) Publication of NOI/RROF and forward Notice to Interested Public Agencies	___	___	___
B) Mail to HUD a copy of publication with RROF and certification form, 16 days after publishing	___	___	___

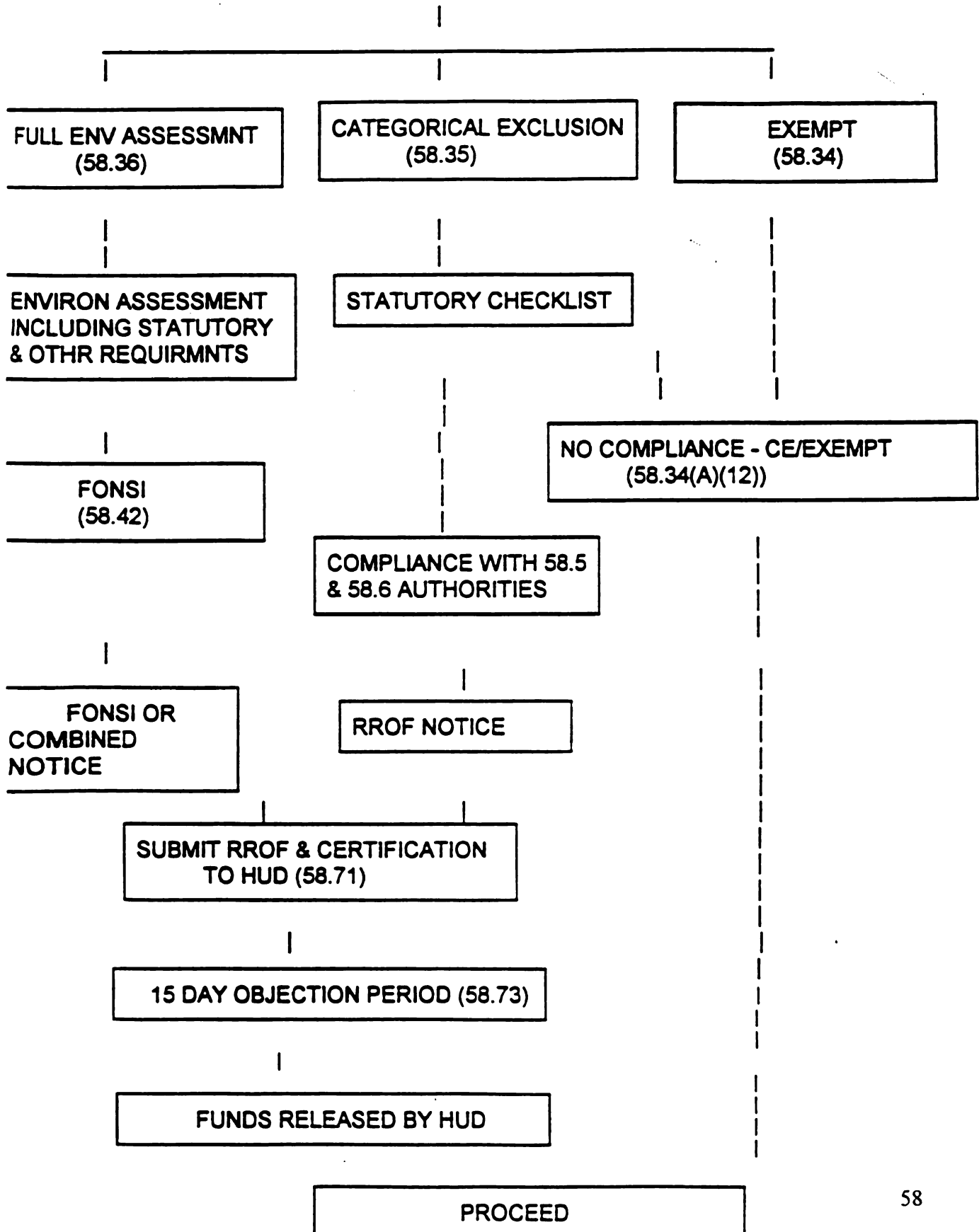
**CHECKLIST FOR REVIEW OF
GRANTEE ENVIRONMENTAL RECORDS**
Page Two

	<u>YES</u>	<u>NO</u>	<u>N/A</u>
C) HUD releases 16 days after date received, if no problems arise (Release Date: _____)	_____	_____	_____
10. Documentation of:			
A) Categorically excluded, or	_____	_____	_____
B) Exempt Activities, or	_____	_____	_____
C) Environmental Assessment			
1) Publication of FONSI and NOI/RROF and distributed to interested public agencies	_____	_____	_____
2) Mail to HUD 16 days after publishing	_____	_____	_____
3) HUD releases 16 days after date received, if no problems (Release Date: _____)	_____	_____	_____
11. Maintain all correspondence and comments pertaining to Environmental Review			
Environmental File established	_____	_____	_____

APPENDIX B

ENVIRONMENTAL REVIEW REQUIREMENTS

PROJECT AGGREGATION (58.32)
SELECT PROJECTS FOR REVIEW



PROCEED

APPENDIX C

Statutory Checklist

Project Name and Identification No. _____

Table of Statutory-Regulatory Compliance

Instructions for applicable statutes
regulations are printed on
back of this Checklist. Full
discussion of each is provided in
Appendix B)

Not Applicable to This Project

Consultation Required

Review Required

Permits Required

Determination of Consistency
Approvals, Permits Obtained
Conditions and/or Mitigation
Actions Required

Provide compliance
documentation

Additional material
may be attached

Historic Properties

Wetland Management

Wetlands Protection

Radioactive Hazards

Thermal/Explosive Hazards

Airport Clear Zones

Water Quality

Water Quality - Aquifers

Wetland Areas
Coastal
Zone Management

Coastal
Barrier Resources

Endangered Species

Wetlands Protection

Wetland Scenic Rivers

Statutory Checklist

Permits, Licences, Forms of
Compliances Under Other Laws
(Federal, State and Local Laws)

Project Name and Identification No. _____

OTHER AREAS OF STATUTORY AND REGULATORY COMPLIANCE APPLICABLE TO PROJECT	<i>Not Applicable to This Project</i>	<i>Consultation Required</i>	<i>Review Required</i>	<i>Permits Required</i>	<i>Determination of Consistency Approvals, Permits Obtained</i>	<i>Conditions and/or Mitigation Actions Required</i>	Provide compliance documentation Additional Material may be attached
Water Quality							
Solid Waste Disposal							
Fish and Wildlife							
State or Local Statutes (to be added by local community)							

Note: See HUD-399-CPD, "Environmental Reviews at the Community Level", as revised for further details regarding the use of assessment formats.

Prepared By _____

Title _____

Date _____

APPENDIX D

Environmental Assessment Checklist

Project Name and Identification Number:

	No Impact Anticipated	Potentially Beneficial	Potentially Adverse (Requires Documentation)	Potentially Adverse (Requires More Study)	Needs Mitigation	Requires Project Modification	Source or Documentation (Note date of contact or page reference). Additional materials may be attached
Development							
Consistency with Comprehensive Land Use and Zoning							
Compatibility and Urban Impact							
Stability							
Health and Nuisances, Including Safety							
Resource Consumption							
Effect on Ambient Noise and Contribution to Community Noise							
Quality							
Effect on Ambient Air Quality on and Contribution to Air Quality Pollution Levels							
Environmental Design and Historic Values							
Visual Quality - Coherence, Diversity, and Land Use, and Scale							
Cultural, and Archaeological Resources							
Economic							
Topographic/Character Changes							
Development							
Population and Income Patterns							

Environmental Assessment Checklist

Project Name and Identification Number: General Demolition (B98-MC170008)

	No Impact Anticipated Potentially Beneficial Potentially Adverse (Requires Documentation) Potentially Adverse (Requires More Study) Needs Mitigation Requires Project Modification						Source or Documentation (Note date of contact or page reference). Additional materials may be attached
Community Facilities and Services							
Education Facilities							
Commercial Facilities							
Health Care							
Public Services							
Waste							
Water							
Water							
Supply							
Safety Police							
<i>Fire</i>							
<i>Emergency Medical</i>							
Open Space and Recreation							
<i>Open Space</i>							
<i>Recreation</i>							
<i>Cultural Facilities</i>							
Other							

Environmental Assessment Checklist

Project Name and Identification Number: General Demolition (B98-MC170008)

	No Impact Anticipated Potentially Beneficial Potentially Adverse (Requires Documentation) Potentially Adverse (Requires More Study) Needs Mitigation Requires Project Modification Source or Documentation (Note date of contact or page reference). Additional materials may be attached					
Physical Features						
Resources						
Water						
Vegetation						
Soils						
Seismic Zone						
Natural Features and Cultural Lands						
Human and Wildlife						

Prepared By:

Environmental Assessment Checklist

Summary of Findings and Conclusions:

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

Summary of Environmental Conditions:

[illegible]

**Project Modifications
and Alternatives
Considered:**

[illegible]

Assessment Checklist

Study or Summary):

Needed:

Environmental Assessment Checklist

1. Is project in compliance with applicable laws and regulations? ☐ Yes ☐ No
2. Is an EIS required? ☐ Yes ☐ No
3. A Finding of No Significant Impact (FONSI) can be made. Project will not significantly affect the quality of the human environment. ☐ Yes ☐ No

Prepared by:

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.[illegible]

Date _____

APPENDIX E

Request for Release of Funds Certification

U.S. Department of Housing
and Urban Development
Office of Community Planning
and Development

OMB No. 2506-0087
(exp. 6/30/2001)

This form is to be used by Responsible Entities and Recipients (as defined in 24 CFR 58.2) when requesting the release of funds, and the authority to use such funds, for HUD programs identified by statutes that provide for the assumption of the environmental responsibility by units of general local government and States. Public reporting burden for this collection of information is estimated to average 36 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and reviewing the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless that collection displays a valid OMB control number.

Program Description and Request for Release of Funds (to be completed by Responsible Entity)		
Title(s)	2. HUD/State Identification Number	3. Recipient Identification Number (optional)
Catalog Number(s)	5. Name and address of responsible entity	
Information about this request, contact (name & phone number)		
State Agency and office unit to receive request	7. Name and address of recipient (if different than responsible entity)	
Recipient(s) of assistance under the program(s) listed above requests the release of funds and removal of environmental conditions governing the use of the assistance for the following		
Activity(ies)/Project Name(s)	10. Location (Street address, city, county, State)	

Activity/Project Description

Environmental Certification (to be completed by responsible entity)

In reference to the above Program Activity(ies)/Project(s), I, the undersigned officer of the responsible entity, certify that: the responsible entity has fully carried out its responsibilities for environmental review, decision-making and action pertaining to the project(s) named above.

The responsible entity has assumed responsibility for and complied with and will continue to comply with, the National Environmental Policy Act of 1969, as amended, and the environmental procedures, permit requirements and statutory obligations and laws cited in 24 CFR 58.5; and also agrees to comply with the authorities in 24 CFR 58.6 and applicable State and local laws.

After considering the type and degree of environmental effects identified by the environmental review completed for the proposed project described in Part 1 of this request, I have found that the proposal ☐ did ☐ did not require the preparation and submission of an environmental impact statement.

The responsible entity has disseminated and/or published in the manner prescribed by 24 CFR 58.43 and 58.55 a notice to the public in accordance with 24 CFR 58.70 and as evidenced by the attached copy (copies) or evidence of posting and mailing procedure.

Deadlines for all statutory and regulatory time periods for review, comment or other action are in compliance with procedures and requirements of 24 CFR Part 58.

In accordance with 24 CFR 58.71(b), the responsible entity will advise the recipient (if different from the responsible entity) of any special environmental conditions that must be adhered to in carrying out the project.

I, the designated certifying official of the responsible entity, I also certify that: I am authorized to and do consent to assume the status of Federal official under the National Environmental Policy Act of 1969 to the HUD responsibilities for environmental review, decision-making and action that have been assumed by the responsible entity. I am authorized to and do accept, on behalf of the recipient personally, the jurisdiction of the Federal courts for the enforcement of these responsibilities, in my capacity as certifying officer of the responsible entity.

Certifying Officer of the Responsible Entity	Title of Certifying Officer
	Date signed

Certifying Officer

to be completed when the Recipient is not the Responsible Entity

The recipient requests the release of funds for the programs and activities identified in Part 1 and agrees to abide by the special procedures and requirements of the environmental review and to advise the responsible entity of any proposed change in the project or any change in environmental conditions in accordance with 24 CFR 58.71(b).

Authorized Officer of the Recipient	Title of Authorized Officer
	Date signed

HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

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