

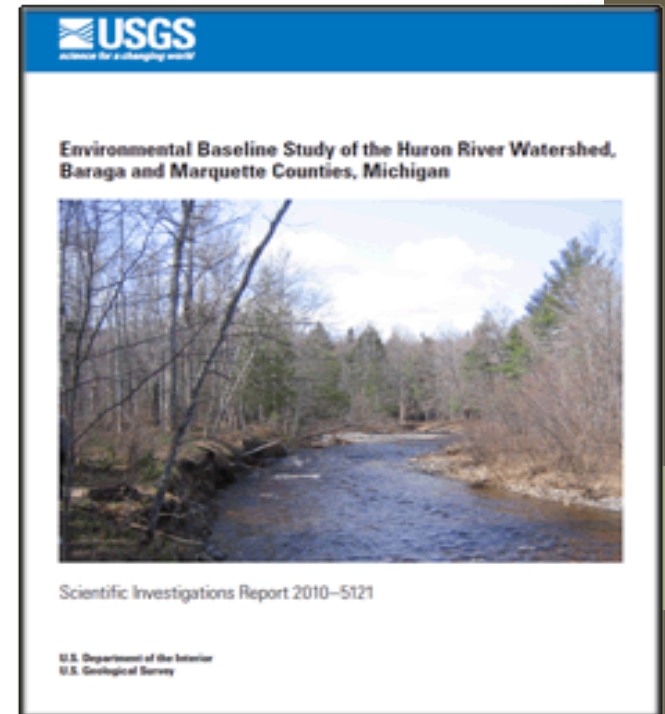
Phase I Environmental Site Assessment (ESA) or NEPA Environmental Assessment (EA): Which Do You Need?

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Purpose of Environmental Assessments

- Evaluate status of site conditions
- Extent and impact of site contamination
- Compliance with applicable regulations
- Gauge risks of non compliance



Property Environmental Assessments

- Two types:
 - Property Transactional Environmental Site Assessments (ESA)
 - Contamination Assessments
- Purpose to understand scope and extent of property environmental liability
- Expanded assessments are used to determine remedial options

Property Transactional Environmental Assessments

- Commonly referred to as a Phase I Assessment
- Identify Recognized Environmental Conditions (RECs) (as defined by ASTM) indicating likely presence of hazardous or petroleum based chemicals
- Not intended to include de minimis conditions (e.g. a small, superficial spill of oil that is not anticipated to cause a significant concern)

Property Transactional Environmental Assessments

- Usually initiated by buying agents or financial institutions as part of due diligence process
- Process helps to identify risk and liabilities associated with purchasing property with associated or suspected pollution
- Court rulings in 1980s found purchasers and lenders of acquired property potentially liable for pollution/contamination/costs even if caused by previous owner

Property Transactional Environmental Assessments

- “Innocent landowner” defense - incorporated in certain federal regulations to combat negative effect of prior rulings.
- Most common cited standards for transactions:

ASTM E1527-05, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process

ASTM E2247-08, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property

U.S. Environmental Protection Agency (EPA) Rule, Standards and Practices for All Appropriate Inquiries (AAI); Final Rule (AAI Rule), 40 Code of Federal Regulations (CFR) Part 312

ASTM E1903-11, Standard Practice for Environmental Site Assessments: Phase II Environmental Site Assessment Process

Property Transactional Environmental Assessments

- Both ASTM E1527-12 and E2247-14 include requirements for file review, interviews and report; difference is 14 is for voluntary use for property >120 acres
- ASTM E1527-05 requires site reconnaissance, E2247-14 can be done by remote sensing (e.g. aerial photos)

Property Transactional Environmental Assessments

- ASTM Phase I ESA Key Provisions:
 - Definition of terms, including qualifications of person certifying assessment
 - Review and interview of past/current owners
 - Researching environmental liens
 - Review of government records
 - Review aerial photos over time
 - Site visit to assess current conditions as well as surrounding property
 - Summary of information that was inconclusive or unavailable
 - Written report describing work, findings and conclusions of RECs, whether present or not

Property Transactional Environmental Assessments

- Phase I ESA do not include sample collection
- If Phase I ESA concludes that RECs exist or are suspected evidence, the property owner/buyer may want to collect samples (Phase II ESA)
- Phase II ESA can be done voluntarily and used to evaluate presence of hazardous materials
- Phase III ESA is the Remedial Investigations/Feasibility Studies stage
 - *Need to be resolved before financial institutions release the money

National Environmental Policy Act (NEPA)

Signed into law on January 1, 1970

- National environmental policy
- National goals
 - Protection
 - Maintenance
 - Enhancement of the environment

Applies only to a “Federal undertaking” or a project that has a “significant Federal nexus”

- Major Federal agency decisions (i.e. permit applications)
- Adopting federal land management actions
- Projects receiving federal funding

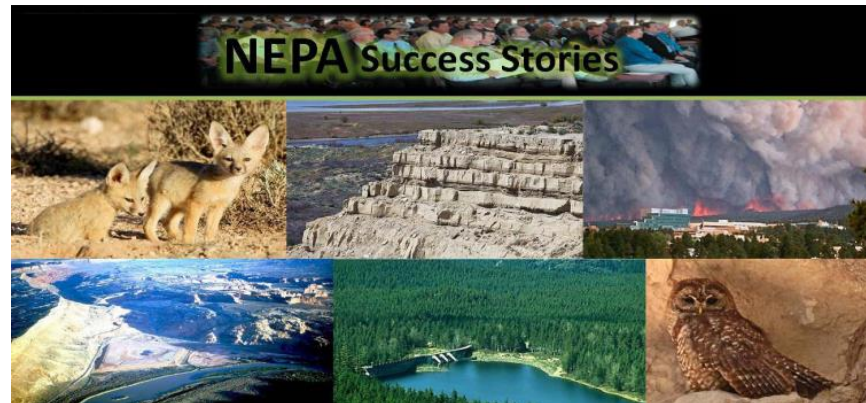


NEPA Requirements

1. Title I of NEPA contains a Declaration of National Environmental Policy
 - Create and maintain conditions under which man and nature can exist in productive harmony
2. Section 102 - Title 1
 - Environmental Impact Statements (EIS) and Environmental Assessments (EA)
3. Title II
 - Established the President's Council of Environmental Quality (CEQ) to oversee NEPA implementation and ensure federal government agencies compliance with Executive Orders (EOs)

The NEPA Process

- CEQ issues regulations (40 CFR 1500-1508) and guidance to implement NEPA
- Many federal agencies have developed their own NEPA processes to meet CEQ NEPA regulations
- Environmental Impact Statements (EIS) are submitted to and reviewed by EPA



Three Levels of NEPA Analysis

1. Categorical Exclusion (CATEX)

- Federal action does not, "individually or cumulatively have a significant effect on the human environment"

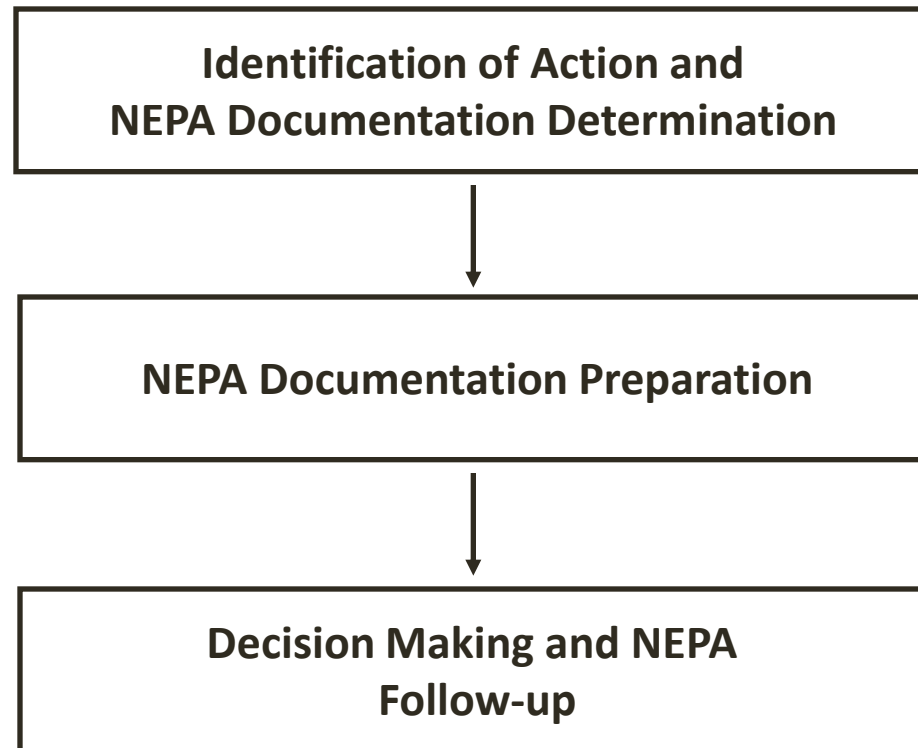
2. Environmental Assessment (EA)

- Determines whether or not a federal action has the potential to cause significant environmental effects

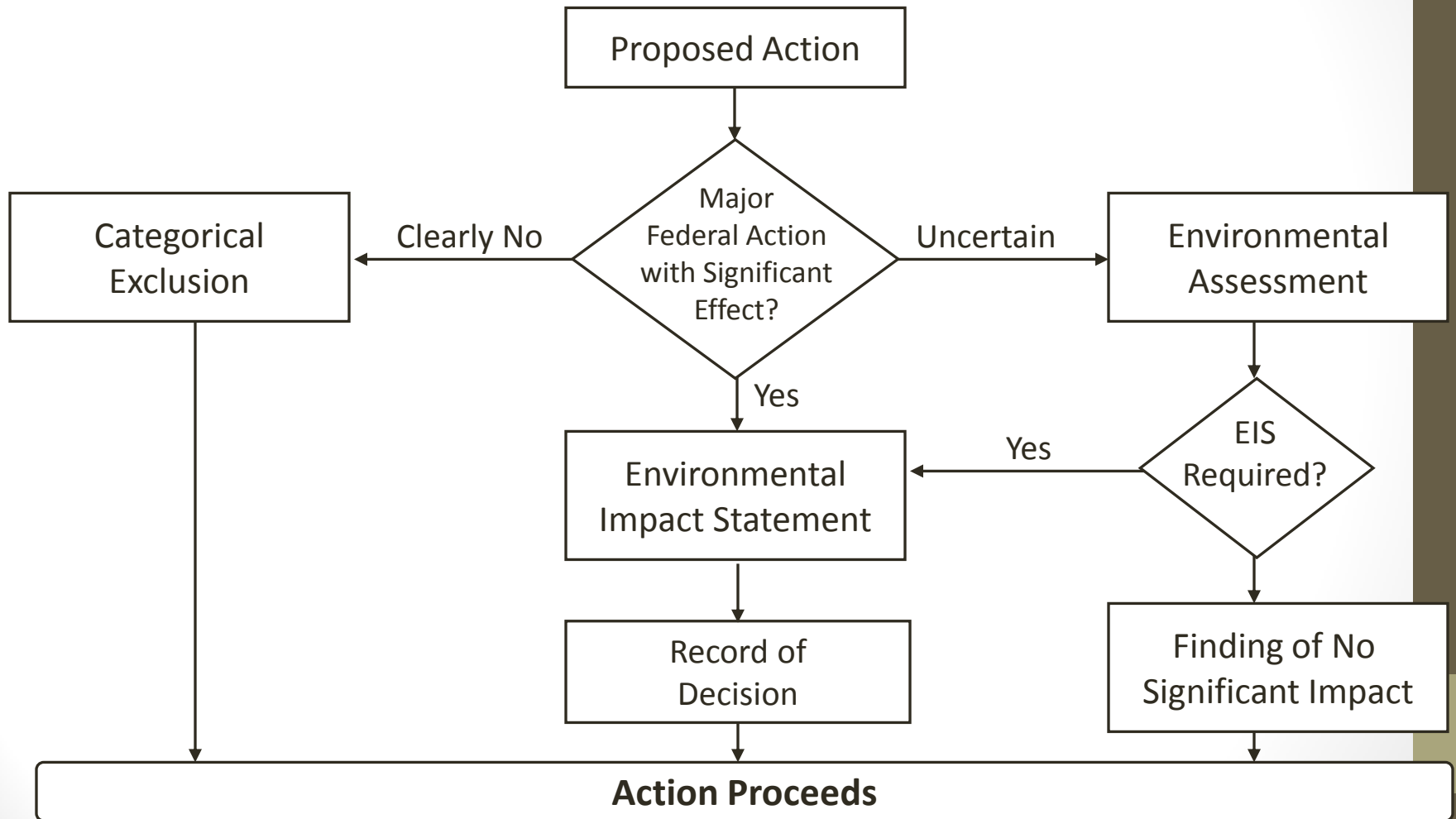
3. Environmental Impact Statement (EIS)

- Prepared if a proposed major federal action is determined to significantly affect the quality of the human environment

Basic Elements of NEPA Compliance



General NEPA Process



NEPA Accomplishments

- **Plum Island**

The Department of Homeland Security (DHS) reexamined alternatives and relocated the scientific laboratory to Kansas

- **Maryland Oyster Restoration**

A reinvigorating effort to bring back the native oyster species to improve the Chesapeake Bay's water quality and increase its economic viability

- **El Yunque Rainforest Preserve**

Federal Highway Administration (FHWA) decided not to conduct an environmental impact statement (EIS), a violation of NEPA. FHWA dropped the project rather than study and disclose all of the impacts

Thoughts/Considerations

*NEPA is heavily litigated

1. Department of Interior
2. Department of Transportation

Performing a NEPA does not necessarily stop a project



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