Base Realignment and Closure Guidelines for Compliance with the National Environmental Policy Act

April 2006

Guidance on Preparing Environmental
Documentation for Army Base Realignment
and Closure Actions in Compliance with
the National Environmental Policy Act of 1969 (NEPA)

Table of Contents

1.0 Introduction and Overview 1-1
1.1 Introduction to Base Realignment and Closure and the National Environmental Policy Act 1-1
1.2 Purpose of the Guidelines 1-1
1.3 What the Guidelines Cover 1-2
1.4 Relationship of These Guidelines to Other Army BRAC and NEPA Guidance 1-2
1.5 The National Environmental Policy Act 1-2
1.5.1 The Law 1-2
1.5.2 The NEPA Process 1-3
1.5.3 Integration of Other Environmental Regulations 1-3
1.5.4 Implementing Regulations and Guidance 1-5
1.6 NEPA in Base Realignment, Disposal, and Reuse 1-5
1.6.1 Realignment 1-7
1.6.2 Disposal and Reuse 1-7
1.6.2.1 Disposal 1-8
1.6.2.2 General Disposal Process for BRAC 2005 1-8
1.6.2.3 Identifying Other DoD Component and Federal Agency Property Needs 1-8
1.6.2.4 Identifying Sensitive Land 1-10
1.6.2.5 Reuse 1-10
1.7 Complying with NEPA in BRAC 1-11
1.7.1 NEPA Analysis Plan of Action 1-11
1.7.2 Notice of Intent 1-12
1.7.3 Categorical Exclusion/Record of Environmental Consideration 1-12
1.7.4 Scoping Process 1-13
1.7.5 Environmental Assessment 1-13
1.7.6 Finding of No Significant Impact 1-13
1.7.7 Notice of Availability for a Draft FNSI 1-14
1.7.8 Environmental Impact Statement 1-14
1.7.8.1 Preparation 1-14
1.7.8.2 Draft EIS 1-15
1.7.8.3 Notice of Availability for an EIS 1-15
1.7.8.4 Public Meeting or Hearing 1-15
1.7.8.5 Final EIS 1-15
1.7.8.6 Supplemental Environmental Impact Statement 1-15
1.7.8.7 Record of Decision 1-16
1.7.8.8 30-Day Waiting Period following the FEIS 1-16
1.8 Other NEPA Concepts Encountered in BRAC 1-16
1.8.1 Programmatic Documentation 1-16

1.8.2 Tiering 1-16
1.8.3 Segmenting and Sequencing 1-17
1.8.4 Mitigation 1-18
1.8.5 Cumulative Effects Analysis 1-18

2.0 Roles and Responsibilities 2-1
2.1 Overview 2-1
2.2 Proponents 2-1
2.3 Participants 2-1
2.3.1 Installations 2-1
2.3.1.1 Garrison Commander 2-1
2.3.1.2 Public Affairs Officer 2-2
2.3.1.3 Base Transition Coordinator 2-3
2.3.1.4 BRAC Environmental Coordinator 2-3
2.3.1.5 Local Redevelopment Authority 2-3
2.3.2 Headquarters, Department of the Army 2-4
2.3.2.1 Base Realignment and Closure Division 2-4
2.3.2.2 Lead Organizations 2-4
2.3.2.3 NEPA Support Team 2-5
2.3.3 Army Staff and Secretariat 2-6
2.3.4 U.S. Army Corps of Engineers 2-7

3.0 Planning and Initiating a BRAC NEPA Project 3-1
3.1 Selecting the Appropriate Level of Analysis and Documentation 3-1
3.2 Timelines and Schedules 3-1
3.2.1 Realignment Schedules 3-2
3.2.2 Disposal Schedules 3-2
3.2.3 Environmental Assessment Schedules 3-2
3.3 Identifying the Purpose of and Need for a BRAC Action 3-2
3.4 Defining the Proposed Action 3-3
3.5 Types of Proposed Actions 3-3
3.5.1 Directed Realignments 3-4
3.5.2 Discretionary-Location Moves 3-4
3.5.3 Enclaves 3-5
3.5.4 Disposal and Reuse 3-5
3.6 Scoping Process 3-6
3.6.1 Scoping in Environmental Impact Statements 3-6
3.6.2 Scoping in Environmental Assessments 3-7
3.6.3 Cooperating Agencies 3-7
3.6.4 Community Reuse Plan 3-8

3.7 Determining Alternatives in Realignment Actions 3-8
3.8 Determining Alternatives in Disposal and Reuse Actions 3-8
3.8.1 Accelerated Disposal Alternative 3-9
3.8.2 Traditional Disposal Alternative 3-9
3.8.3 Caretaker Status Alternative 3-9
3.8.4 No Action Alternative 3-10
3.8.5 Intensity-based Probable Reuse Scenarios 3-10
3.9 Identifying Issues for Analysis 3-11
3.10 Evaluating Impact Potential 3-11
3.11 Significance 3-12
3.12 Administrative Record 3-13
4.0 NEPA Document Format and Content 4-1
4.1 Introduction 4-1
4.2 Document Characteristics 4-1
4.3 Reference Documentation 4-2
4.3.1 Installation Restoration Program (IRP) Documentation 4-2
4.3.2 Reuse Development Plan 4-3
4.4 Document Components 4-3
4.4.1 Document Cover 4-3
4.4.2 Signature/Cover Sheet 4-3
4.4.3 Executive Summary 4-4
4.4.4 Table of Contents 4-5
4.5 Order and Content of Sections in Document Body 4-5
4.5.1 Document Body, Section 1.0: Purpose, Need, and Scope 4-5
4.5.2 Document Body, Section 2.0: Description of the Proposed Action 4-7
4.5.3 Document Body, Section 3.0: Alternatives 4-8
4.5.4 Document Body, Section 4.0: Environmental Conditions and Consequences 4-9
4.5.5 Document Body, Section 5.0: Conclusions 4-13
4.6 List of Preparers 4-14
4.7 Distribution List 4-14
4.8 Index 4-14
4.9 References 4-14
4.10 Persons Consulted 4-14
4.11 Appendices 4-14
4.12 Acronym List 4-15
4.13 Document Review Checklist 4-15
4.14 Specific Guidance for Evaluation of Realignment Actions 4-15
4.15 Specific Guidance for Disposal and Reuse Actions 4-15

5.0 Current Topics for Special Attention 5-1
5.1 President's Five-Part Plan 5-1
5.1.1 Real Property Screening 5-1
5.1.2 Local Redevelopment Plan 5-1
5.1.3 Economic Development Conveyances 5-2
5.1.4 Leasing of Real Property 5-3
5.1.5 Personal Property 5-4
5.1.6 Maintenance, Utilities, and Services 5-4
5.2 BRAC Fast Track Cleanup 5-4
5.2.1 BRAC Cleanup Teams 5-5
5.2.2 Restoration Advisory Board 5-5
5.2.3 Technical Review Committee 5-5
5.2.4 Accelerating NEPA Analysis 5-6
5.3 CERCLA/RCRA-NEPA Interface in BRAC 5-6
5.3.1 Installation Restoration Program 5-6
5.3.2 Analysis and Documentation 5-7
5.4 Air Quality Analysis 5-8
5.4.1 Required Air Quality Analysis 5-8
5.4.2 The General Conformity Requirement 5-9
5.4.3 NEPA Requirements 5-10
5.4.4 Integration of Conformity and NEPA 5-11
5.4.5 Separation of NEPA and Conformity 5-11
5.5 Ecological Resources 5-11
5.5.1 Wetlands 5-12
5.5.2 Threatened and Endangered Species 5-12
5.5.3 Biological Diversity 5-13
5.6 Treatment of Cultural Resources in BRAC NEPA Analyses 5-14
5.6.1 Laws and Regulations 5-14
5.6.2 Process 5-15
5.6.3 Options for Integration of Cultural Resource Requirements into the NEPA Document 5-16
5.7 Native American Issues 5-17
5.8 Environmental Justice 5-17
5.8.1 Executive Order 12898 5-17
5.8.2 Evaluation Process 5-18
5.9 Cumulative Effects Analysis 5-19
5.9.1 Scoping for Cumulative Effects 5-19
5.9.2 Description of the Affected Environment 5-21
5.9.3 Performing Cumulative Effects Analysis 5-21
5.10 Real Estate Requirements, Reports, and Findings 5-22

5.10.1 Authorities 5-23
5.10.2 Real Estate Screening Process 5-23
5.10.3 Report of Availability 5-23
5.10.4 Finding of Suitability to Lease 5-24
5.10.5 Finding of Suitability to Transfer or for Early Transfer 5-25
5.11 Community Environmental Response Facilitation Act 5-25
5.11.1 Environmental Condition of Property Report 5-26
5.11.2 Procedures and Responsibilities 5-27
5.11.3 Redevelopment Plan 5-28
5.12 Related Real Estate Transactions 5-28
5.12.1 Agreements to Limit Encroachments and Other Constraints 5-28
5.12.2 Conveyance of Surplus Real Property for Natural Resource Conservation 5-29
5.12.3 Comparison of Provisions 5-29
6.0 Document Processing: Review and Approval 6-1
6.1 General Authority 6-1
6.2 Document Review Procedures 6-1
6.2.1 Review Precepts 6-1
6.2.2 Documents Subject to Review 6-2
6.2.3 Designation of Review Participants 6-2
6.2.4 Use of the World Wide Web for Public Review 6-3
6.3 Document Approval and Signature Authority 6-3
6.4 Documents: Authority to Release 6-3
6.5 Document Drop Meetings 6-4
6.6 NOA Publication in the *Federal Register* 6-4

List of Appendices

Appendix A. Statutes and Regulations Associated with BRAC Activities A-1

Appendix B. NEPA (Law) B-1

Appendix C. CEQ Regulations C-1

Appendix D. CEQ Forty Most Asked Questions D-1

Appendix E. Scoping Guidance E-1

Appendix F. 32 CFR Part 651 (*Federal Register* March 29, 2002) F-1

Appendix G. History of the BRAC Process G-1

Appendix H. Guidance on Compilation of an Administrative Record H-1

Appendix I. Sample Table of Contents I-1

Appendix J. Sample DOPAA J-1

Appendix K. Helpful Hints for Developing Data for Baseline Documentation and Impact Assessment K-1

Appendix L. Technical Guidance for Compliance with the General Conformity Rule L-1

Appendix M. Cultural Resource Content for NEPA Documents M-1

Appendix N. Socioeconomics and Community Facilities N-1

Appendix O. Checklist for NEPA Document Review O-1

Appendix P. Sample Release Package P-1

Appendix Q. Sample FNSI Q-1

Appendix R. Sample ROD R-1

List of Figures

Figure 1-1. Integrating Other Environmental Regulatory Requirements into the NEPA Process 1-4

List of Tables

Table 4-1 Land Use Intensity Parameters 4-19

Table 5-1 Sample Geographic Scope 5-21

.

1.0 Introduction and Overview

1.1 Introduction to Base Realignment and Closure and the National Environmental Policy Act

In keeping with evolving global security requirements, the United States continues to develop a defense force structure to meet national military strategy objectives. The Congress, in response to changing conditions, passed two defense realignment laws mandating closure, consolidation, and realignment of unspecified defense installations. Identification of specific installations is made by the component services, subject to their own mission requirements and the specific attributes of the installations under consideration. These two laws were the Defense Authorization Amendments and Base Closure and Realignment Act of 1988, Public Law 100-526, known as Base Realignment and Closure (BRAC) I, and the Defense Base Closure and Realignment Act of 1990, Public Law 101-510, which authorized actions known as BRAC 1991, BRAC 1993, and BRAC 1995. Title XXX of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107-107) amended the 1990 BRAC law by authorizing another round of realignments and closures in 2005. As amended, the 1990 BRAC law specifies procedures for identifying the affected installations and bases and prescribes schedules for implementing the closure and realignment actions.

The National Environmental Policy Act of 1969 (NEPA) requires the analysis and documentation of potential environmental effects associated with all major federal decisions. NEPA ensures that environmental factors are considered equally with the technological and economic components of a decision, and that the public is fully informed and appropriately involved in the environmental impacts analysis process. The BRAC laws specifically excluded from the NEPA process the need to consider alternative installations. However, all subsequent decisions related to BRAC actions fall fully within the NEPA requirements. These decisions include the timing of actions, disposal and reuse of property, and all other activities associated with carrying out the BRAC mandate. Although compliance with many other environmental laws is also part of this process, NEPA provides a valuable framework for both integrating environmental compliance requirements and providing necessary information to the decisionmaker, other agencies, and the public.

1.2 Purpose of the Guidelines

These guidelines are intended to (1) provide comprehensive information in a simple, understandable, and manageable format suitable for use at all levels throughout the Army, (2) standardize and streamline the process for BRAC NEPA analyses, and (3) outline the roles and responsibilities at each participating level. Preparers of Army BRAC NEPA documents should closely follow the guidance and procedures presented in the manual. Major deviation will require the approval of Headquarters, Department of the Army.

This is the third edition of a BRAC NEPA Guidelines. It is based on (1) the need to provide a current compilation of all Army BRAC NEPA policy and guidance; (2) comments received during “lessons learned” sessions following earlier BRAC rounds; (3) the success of the August 1991 first edition, which demonstrated the need to provide updates and keep guidance current; (4) review of an October 1993 draft revision of the first edition; and (5) review of the September 1995 BRAC NEPA manual. Since publication of the preceding manuals, new issues have arisen and procedures have been streamlined, necessitating a more comprehensive revision. This version is being produced as a “living” document, compiled in a looseleaf format, to facilitate further updating as new guidance becomes necessary to address additional or changing issues.

These guidelines are not a reinvention of current NEPA guidance; rather, it is a program-specific guide for the Army on implementing current laws, regulations, and policies related to BRAC 2005 and NEPA.

1.3 What the Guidelines Cover

The guidelines provide comprehensive guidance addressing all stages of the BRAC NEPA process. It is divided into six sections.

1. **Introduction and Overview.** Provides background information on the BRAC NEPA process.

2. **Roles and Responsibilities.** Describes the various levels and nature of internal Army and Department of Defense (DoD) involvement in the BRAC NEPA process.

3. **Planning and Initiating a BRAC NEPA Project.** Describes the initial stages of the BRAC NEPA process and provides directions to characterize, frame, and focus BRAC NEPA activities.

4. **NEPA Document Format and Content.** Provides BRAC-focused information and guidance on the format required by Title 32 Code of Federal Regulations (CFR) Part 651 (Environmental Analysis of Army Actions) and the Council on Environmental Quality (CEQ) regulations.

5. **Current Topics for Special Attention.** Focuses on pertinent issues and activities associated with BRAC and NEPA.

6. **Document Processing: Review and Approval.** Describes the reviews and approvals that are part of the Army's BRAC NEPA process, from initial planning to decisionmaking and the initiation of the action.

1.4 Relationship of These Guidelines to Other Army BRAC and NEPA Guidance

These guidelines are designed to incorporate the latest Army and other pertinent environmental regulations and guidance into the NEPA analysis of realignment or disposal of excess property. The major statutes, Executive Orders, and regulations pertaining to BRAC activities are listed in Appendix A.

1.5 The National Environmental Policy Act

NEPA is a federal statute that requires the identification and analysis of potential environmental impacts of certain proposed federal actions and alternatives before those actions are initiated. The law also contains specific requirements for informing and involving the public. The text of the law is presented in Appendix B.

1.5.1 The Law

The passage of NEPA legislated a structured approach to environmental impact analysis in the planning of federal agency programs and projects. NEPA's stated purpose is "to declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the

ecological systems and resources important to the Nation; and to establish a Council on Environmental Quality."

NEPA requires that all federal agencies "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 on impacts, irreversible effects, alternatives to the action, long-term environmental impacts, and irretrievable commitments of resources. NEPA is a "full disclosure" law with provisions for public access to, and full public participation in, the federal decisionmaking process.

1.5.2 The NEPA Process

The process for implementing the law is set forth in the CEQ's *Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act* at 40 CFR Parts 1500–1508. The CEQ's regulations are provided in Appendix C.

The Army BRAC NEPA process is designed to develop high-quality decisions that are formed from a clear understanding of environmental consequences and to take actions that protect, restore, and enhance the environment. It is a fundamental management support mechanism involving

- *Pre-decision analysis.* A forecast tool that informs the decisionmaker and also affords the public the opportunity to provide information relevant to the decision.
- *Post-decision management.* A requirement to measure actual performance against desired goals and objectives.

The process is accomplished by the following actions:

- Integrating other environmental requirements
- Involving the public
- Identifying associated effects
- Operating on the principle of "full disclosure"
- Analyzing relevant technical information
- Documenting analyses, their results, and decisions resulting from them
- Summarizing technical information for the public and the decisionmaker
- Identifying a preferred course of action
- Designing and implementing mitigation and monitoring

1.5.3 Integration of Other Environmental Regulations

The NEPA process does not replace the procedural or substantive requirements of other environmental statutes and regulations. Rather, it addresses them in one place so the decisionmaker has a concise and comprehensive view of the major environmental issues and understands the interrelationships and potential conflicts between them. NEPA is the "umbrella" that facilitates coordination by integrating processes that might otherwise proceed independently (Figure 1-1). Specific standards and protection requirements are defined by the laws and regulations listed in Appendix A.

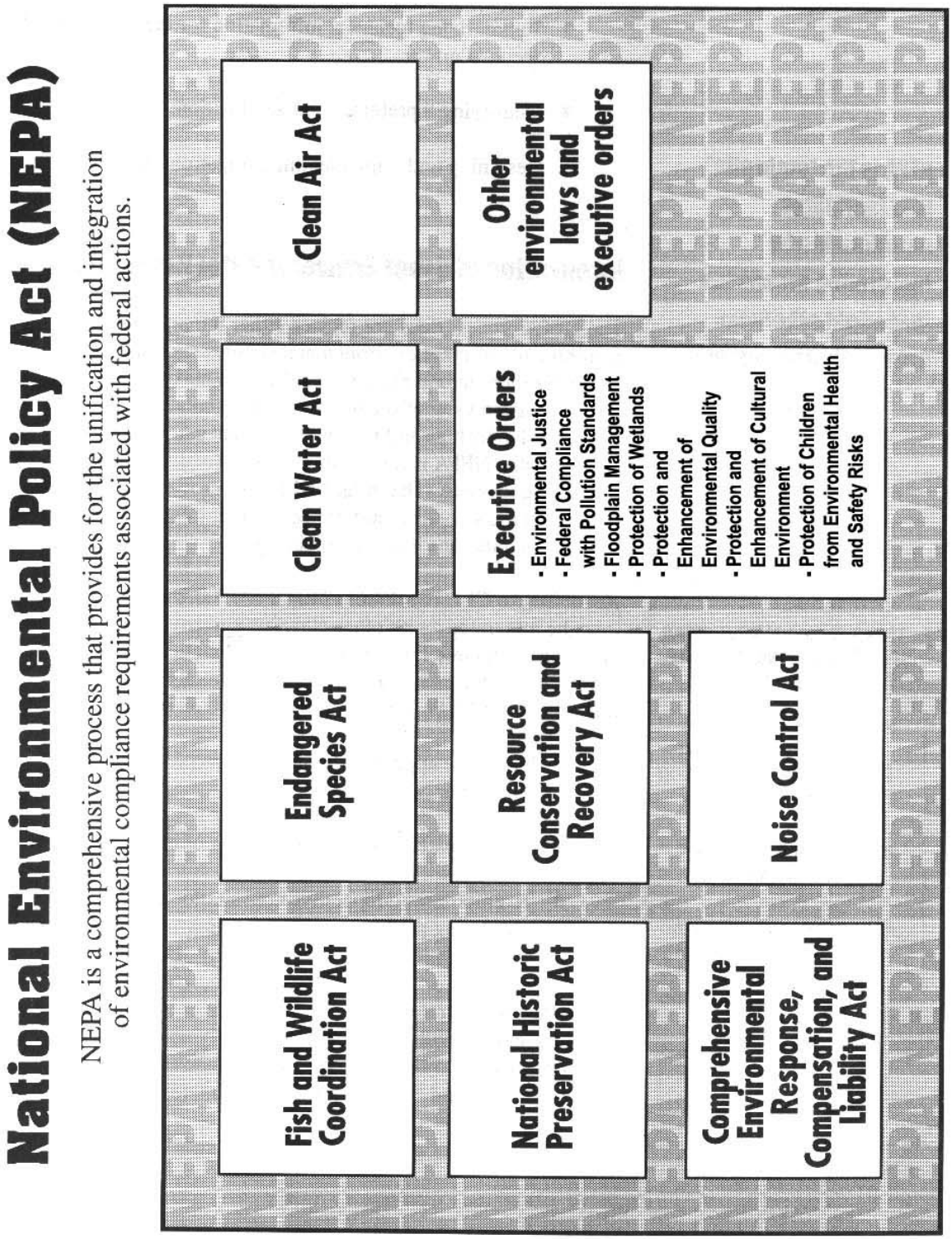

Figure 1-1. Integrating Other Environmental Regulatory Requirements into the NEPA Process

According to the CEQ regulations (40 CFR 1500.2(c)), NEPA's requirements must be integrated "with other planning and environmental review procedures required by law or by agency practice so that all such procedures run concurrently rather than consecutively." The purposes of integrating the NEPA process into early BRAC planning are

- To ensure appropriate consideration of regulatory requirements during the NEPA process
- To eliminate delay and duplication of effort
- To emphasize cooperative consultation among agencies before and during preparation of an Environmental Assessment (EA) or an Environmental Impact Statement (EIS)

Applying an integrated NEPA process early in BRAC planning and decisionmaking will result in (1) the timely completion of all required environmental analyses, (2) more meaningful documents as a result of coordinated and focused efforts of all interested parties, and (3) better decisions.

1.5.4 Implementing Regulations and Guidance

From 1973 to 1978, the CEQ had guidelines in effect for the preparation of environmental impact analyses. Executive Order 11991 directed the CEQ to establish regulations for these studies. In 1978, the CEQ solicited extensive public and agency input and developed the *Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act*. The Council's goals were to reduce paperwork, reduce delays, and produce better decisions based on better analysis. The regulations emphasized that agencies should clearly and concisely present only the most pertinent background information, emphasizing an analysis of real alternatives and issues.

NEPA and the CEQ regulations require federal agencies to develop internal implementing procedures to ensure that environmental factors are considered in decisionmaking by using a systematic, interdisciplinary analytical approach. Several CEQ memoranda, including *Forty Most Asked Questions* (1981) and *Scoping Guidance* (1981), have clarified various aspects of the CEQ regulations. These memoranda are presented in Appendix D and Appendix E, respectively. DoD Instruction 4715.0, *Environmental Planning and Analysis*, provides NEPA guidance for the military services and other DoD components. The Army's implementing regulation for NEPA, *Environmental Analysis of Army Actions* published at 32 CFR Part 651, is presented in Appendix F.

The Army's NEPA regulation provides controlling guidance in that it

- Sets forth policies, responsibilities, and procedures for integrating environmental considerations into Army planning and decisionmaking
- Describes the Army's process for preparing an EA or an EIS
- Establishes criteria and procedures for determining Army actions that may be "categorically excluded" from requirements to prepare either an EA or an EIS

1.6 NEPA in Base Realignment, Disposal, and Reuse

The concept of realignment and consolidation of DoD installations is not new. In the early 1960s, Secretary of Defense Robert S. McNamara closed many bases to reduce military overhead and created the DoD Office of Economic Adjustment (OEA) to ease the economic effects of closures on communities and to facilitate the reuse of former bases. In the 1960s and 1970s, accusations were made that the executive branch was using base closures to punish uncooperative legislators,

prompting Congress to require that DoD notify Congress if an installation became a closure candidate and to apply NEPA to base closure recommendations. For several years these stipulations, combined with congressional reluctance to close military bases, effectively prevented DoD from closing any major military installations that were no longer needed to support national security. A brief history of base closure and the BRAC enactments is provided in Appendix G.

As the U.S. Supreme Court has often noted, NEPA does not dictate a course of action but simply ensures that decisionmakers and the public are provided with relevant information about (1) the environmental effects of a proposed action and (2) the environmental effects of reasonable alternatives to the proposed action. As a vehicle for public comment and litigation, however, NEPA has been used by some to delay indefinitely the realignment and closure of certain bases. In drafting the Base Closure and Realignment Acts, the administration and Congress agreed that it was imperative to limit the reach of NEPA as it applied to the decision to close and realign. The intent was to streamline the process, reduce the time and resources spent preparing certain analyses, and decrease the threat of time-consuming litigation.

In establishing the new base closure and realignment procedures in the 1990 Defense Base Closure and Realignment Act (Public Law 101-510), the Congress waived certain procedural elements of NEPA. This served to streamline the environmental impact analysis process associated with closure and realignment actions. Specifically, Public Law 101-510 waived the procedures of NEPA as it would have applied to the actions of DoD and the Defense Base Closure and Realignment (BRAC) Commission in recommending bases for closure and realignment, and to the actions of the President in approving or disapproving the Commission's recommendations. NEPA does apply, however, to DoD's actions in disposing of property and relocating functions to receiving bases.

NEPA provisions do not apply to:

- Closing actions
- The need to close the installation
- The need to realign the installation
- The need to transfer the function
- Alternative closing installations
- Alternative realigning installations
- Alternative receiving installations (for Commission-designated actions)

These "streamlining" provisions of BRAC do not relieve defense agencies of their responsibilities to incorporate environmental considerations into all subsequent realignment and disposal decisionmaking. Army policies implementing BRAC make it clear that NEPA provisions do apply to:

- Realignment-related actions at receiving installations
- Realignment-related actions at installations that will lose functions but not close
- Disposal of closed property—reuse must also be considered as a secondary action to disposal

Sections 1.6.1 and 1.6.2 describe the need to apply NEPA to facility realignments and to disposal and reuse. They also provide reference to other sections of the manual containing policy and procedures for analyzing these actions.

1.6.1 Realignment

Installations might gain new units or organizations because of realignment of mission activities from other facilities. Because Public Law 101-510 does not require NEPA analyses at closing installations from which functions would be realigned, relocation analyses are prepared only for receiving installations and for installations that will remain open, but will lose functions. A thorough description of the environmental baseline of receiving installations is probably the most important part of the NEPA process for realignments. This baseline can facilitate the development of alternatives by establishing environmental "carrying capacities" at receiving installations and by identifying sensitive natural or historic areas. With this information, the Army can intelligently relocate functions and, equally important, identify areas that will need to be avoided or protected through mitigation measures.

Potential environmental issues for receiving installations include the following:

- Effects on historic properties
- Modification of critical endangered species habitat due to operations or construction of facilities
- Wetland impacts due to construction activities or increased training
- Traffic and associated air and noise effects
- Higher levels of noise due to increased training or new missions
- Severe soil erosion or habitat destruction due to increased intensity or use of training ranges
- Violation of permits (effluent or emission limitations) by an infrastructure facility, such as a wastewater treatment plant, incinerator, or power plant
- Socioeconomic impacts on the community, including environmental justice issues

1.6.2 Disposal and Reuse

Installations designated for closure are subject to NEPA analysis for both disposal and subsequent reuse of the facility. Disposal of closed facilities is a major action planned by the Army as a result of BRAC. NEPA fosters environmentally sound Army decisionmaking associated with meeting that primary action requirement and with subsequent secondary action decisions on facility reuse by the new owners.

Potential issues associated with disposal and reuse includes:

- Deterioration of installation infrastructure, buildings, and grounds during the period from closure to disposal
- Consideration of historic properties during and after disposal
- Consideration of Endangered Species Act requirements during and after disposal
- Protection of wetlands and other valuable or unique environmental or cultural resources during and after disposal

- Installation restoration activities
- Timely disposal of DoD property to the community
- Effects on the real estate market
- Traffic and air quality effects associated with potential reuse
- Fiscal effects of reuse on adjacent communities

1.6.2.1 Disposal

NEPA analysis for the primary Army action of disposal of property addresses the transfer of real property to other federal, state, or local agencies, or to public or private entities. The BRAC process of property disposal, further described in Section 3, Planning and Initiating a BRAC NEPA Project, and in Section 5, Current Topics for Special Attention, involves predisposal activities, disposal, and subsequent reuse development. Predisposal activities can include contaminated site cleanup, interim uses for the property, and the establishment of caretaker status.

In keeping with desires for accelerating community revitalization and DoD guidance on streamlining BRAC disposal NEPA analysis, the Army's goal is to complete NEPA analysis within 24 months.

1.6.2.2 General Disposal Process for BRAC 2005

Disposal of BRAC 2005 property includes an extensive screening process for potential new owners. The screening process, performed at the DoD, federal, state, local, and private levels, offers available property to interested parties on a prioritized basis.

To speed the economic recovery of communities affected by closures and realignments, it is DoD's policy to identify DoD components and other federal entities interested in real property at closing and realigning bases as quickly as possible. The Army is responsible for identifying such entities with respect to closing and realigning Army installations and for keeping the Local Redevelopment Authority (LRA), described in Section 2, Roles and Responsibilities, fully informed of them.

1.6.2.3 Identifying Other DoD Component and Federal Agency Property Needs

The Army is required by law (Section 2904 of Title XXIX of Public Law 103-160) to identify other DoD and federal agency property needs at closing and realigning installations no later than 6 months after the date of approval of closure or realignment.

Notice of potential availability. Upon the President's submission of the recommended list of base closures and realignments to Congress, in accordance with the Defense Base Closure and Realignment Act of 1990 (Part A of Title XXIX of Public Law 101-510), the Army will issue a notice of potential availability (including a list of property and buildings at closing or realigning installations that will potentially become available) to the other DoD components and other federal agencies. This notice should be made available to the public, upon request. Potential recipients of the list could include the LRA (if recognized), elected officials, local developers, and businesses. Federal agencies are encouraged to review this list with respect to their prospective property requirements and to evaluate whether they might have a requirement for the listed properties. Any interest received should be forwarded to the LRA, if one exists.

Proponents should consider LRA input in making determinations on the retention of property (e.g., the size of cantonment areas), if provided. Generally, determinations on the retention of property and the size of cantonment areas should be made prior to the date of approval of the closure. The date of approval is the date on which the decision to close or realign a base becomes final and assumes the force of law. The date of approval occurs when the recommendations of the Defense BRAC Commission have been forwarded to Congress by the President and the allotted time for congressional action ends. The Assistant Deputy Under Secretary of Defense (ESOH) must approve the proposed cantonment areas, unless such retention is specifically authorized by the Defense BRAC Commission.

Withdrawn public domain lands. Withdrawn public domain lands are those lands that have been transferred from the Department of the Interior to the Army (withdrawn from the public domain) for military use. Public domain lands suitable for return to the public domain are not real property governed by the Federal Property and Administrative Services Act of 1949, as amended; nor are they governed by the property management and disposal provisions of the Defense Base Closure and Realignment Act of 1990 or the Defense Authorization Amendments and Base Closure and Realignment Act of 1988. Public domain lands are under the jurisdiction of the Secretary of the Interior and administered by the Bureau of Land Management (BLM) unless the Secretary of the Interior has withdrawn the lands and reserved them for another federal agency's use.

Upon the President's submission of the recommended list of base closures and realignments to Congress, the Army will provide the BLM a notice of potential availability (including a list of property and buildings at closing or realigning installations that will potentially become available) as well as information about which, if any, public domain lands will be affected by an installation's closing. The BLM will review the notice of potential availability to determine whether the installation contains withdrawn public domain lands. Before the date of approval of the closure, the BLM will review its land records to identify any withdrawn public domain lands at the closing installation. Any record discrepancies between the BLM and the Army should be resolved during this time period. The BLM will notify the Army of the final agreed-upon withdrawn public domain lands. Upon agreement on the withdrawn lands, the BLM will begin determining whether the lands are suitable for the Department of the Interior's programs.

The Army will transmit a notice of intent to relinquish (43 CFR 2372.1) to the BLM as soon as the property is identified as excess to DoD needs. The BLM will complete its suitability determination within 30 days of receiving the notice of intent to relinquish.

If BLM determines that the land is suitable for return to the public domain, it will notify the Army that the Secretary of the Interior will accept the Army's relinquishment. If the land is not found to be suitable for return to the public domain, the land will be disposed of in accordance with the authorities in the BRAC statutes.

Reversionary rights. Property for Army installations was sometimes obtained from state and local governments at a reduced price or at no cost. In such cases, the deed or other instrument conveying the property to the military might contain reversionary rights or reverter clauses that provide for return of the property to its former owner once the military need has ended. Therefore, the Army should review the provisions of its title(s) to the property to identify any preexisting claims. If such claims or rights exist, the availability of the property for other uses might be limited, and the property will generally not be available for disposal as surplus property. The mere fact that property had been donated to the military does not *per se* establish a reversionary right on the part of the donor.

Notice of Availability. Within 1 week of the date of approval of the closure, the Army must issue a notice of availability that identifies and describes the buildings and property at the installation that will be available for transfer. Withdrawn public domain lands that the Secretary of the Interior has determined suitable for return to the public domain will not be included in this notice.

The Army will make its surplus determination within 100 days of the notice of availability and will inform the LRA of the determination. The Army will provide information describing the surplus real property to the Department of Housing and Urban Development (HUD) and the LRA. The Army will publish that description of surplus real property in the *Federal Register* and in a local newspaper of general circulation. The notice will include information about the LRA, including name, address, and point of contact.

The LRA should begin working on a local redevelopment plan for the surplus property. The LRA should address assistance to homeless people, pursuant to the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Public Law 103-421), in the local redevelopment plan.

After the local redevelopment plan is received by the Army and HUD, surplus property will be offered to public agencies in accordance with 41 CFR 101-47.303-2. The public agencies will be informed that there is a local redevelopment plan for the installation and that requests for public use should be consistent with that plan.

1.6.2.4 Identifying Sensitive Land

In the realignment and disposal of DoD real property, the responsibility to protect sensitive resources (e.g., sensitive ecosystems, floodplains, wetlands) is mandated by several statutes. Acknowledging this fact, the 1991 Defense Appropriations Act mandated a "Legacy Resource Management Program" to identify and manage significant biological, geophysical, and cultural resources on DoD land. The accompanying Senate report gave priority to identifying such lands for closing or realigning bases. BRAC NEPA analyses should identify valuable land areas and make recommendations that sensitive natural and cultural resources be protected after the installation is closed. The document should also address the sale of appropriate protected properties to other responsible federal, state, or private organizations.

1.6.2.5 Reuse

Facility reuse by new owners is a secondary action by others resulting from the Army's primary action of disposal. The development of reuse alternatives is coordinated with federal, state, and local agencies and includes extensive community involvement. The local community is responsible for establishing an LRA, which is expected to produce a plan for reuse of the property. It has historically been very difficult to predict the exact type, distribution, and intensity of reuse activities that will occur on property available for disposal. Factors that affect these issues include local land use planning and zoning decisions, numerous market and economic forces, legal requirements, and the actions of individual developers. In some cases, the final use of the land might not be known until a private owner actually obtains the property and obtains local zoning approval. (See Section 3.6.4, Community Reuse Plan, Section 3.8.4, Intensity-based Probable Reuse Scenarios, and Section 5.1.2, Local Redevelopment Authority, and Section 5.11.3, Reuse Development Plan.)

Although timely development and approval of the community's reuse plan and ultimate decisions on reuse of installation property are beyond the direct control of the Army, close coordination between the local community's regulatory agencies and the Army can provide sufficient

information on probable reuse scenarios to perform a NEPA analysis adequately, even in the absence of a final reuse plan.

1.7 Complying with NEPA in BRAC

NEPA requires the Army to make a definitive statement about (1) the potential environmental impact of a proposed Army BRAC action, (2) adverse effects that cannot be avoided, and (3) alternatives to the proposed action. The analysis must fully disclose the environmental effects of the action and demonstrate that the decisionmaker has taken an interdisciplinary "hard look" at the environmental consequences of implementing the action. The provision of a quality analysis is essential to making quality decisions. Good analysis must build on regulatory compliance, legal sufficiency, appropriate mitigation, mitigation monitoring, public concerns, and senior-level NEPA guidance—all identified and built into the analysis from the start.

The environmental analysis of a proposed Army BRAC action must parallel other decision support processes to help commanders and principal staff officers make sound decisions. It cannot be an "after-the-fact" justification for implementation of decisions already made. Such justification is transparently obvious, leads to regulatory agency and public mistrust, and will be rejected by the Army leadership. The analysis must clearly and concisely inform the leadership of all the environmental consequences of the proposed action.

BRAC actions are different from other major actions because the major decision to close or realign the installation has already been made. Therefore, it is in the area of disposal and the implementation of realignment actions that alternatives must be most carefully selected and analyzed before Army decisions are made.

The Army's BRAC NEPA process normally includes several considerations (notices, meetings, and documents). These are usually encountered in the order shown in the following sections.

1.7.1 NEPA Analysis Plan of Action

One of the earliest measures in the BRAC NEPA process involves the preparation of NEPA analysis plans of action (NAPAs). Each NAPA aids in the determination of the level of NEPA documentation, supporting studies, schedules, and budget to implement BRAC 2005 actions. Where necessary, cultural resources plans of action (CRPAs) and natural resources plans of action (NRPAs) are also prepared.

The purpose of each NAPA is to ensure that proposed actions, alternatives, and timelines are consistent with Army direction and policy and that Army participants are consistent in applying the process from the beginning. Supported by questionnaires designed to elicit information bearing on potential environmental effects, NAPAs are prepared by the Army Lead Organization (See Section 2.3.2.2) with the assistance of the U.S. Army Corps of Engineers (USACE) NEPA Support Team for gaining installations and for disposal actions. The Assistant Chief of Staff for Installation Management (ACSIM), Base Realignment and Closure Division (DAIM-BD) reviews and approves each plan prior to initiation of NEPA analysis.

Each NAPA consists of 12 principal elements, as follows:

- *Installation.* The full name of the installation and state in which it is located.
- *Type of action.* Notation of whether the installation is a gaining, discretionary location, enclave, disposal action, or combination (i.e., disposal with establishment of an enclave).

- *Description of action.* Recitation of the BRAC Commission's recommendation (e.g., realignment, discretionary realignment, enclave, or closure action).
- *Alternatives to be covered in the analysis.* In addition to the no action alternative, this element will identify potential alternatives appropriate to the type of action (e.g., Commission-directed realignment, discretionary realignment to installation not specified by the Commission, or Commission-directed closure and/or establishment of an enclave).
- *Level of NEPA proposed.* Recommendation for preparation of an EIS, EA, or Record of Environmental Consideration (REC) for use of a categorical exclusion.
- *Rationale for level of NEPA documentation.* Justification for choice of level of document.
- *Proposed/required NEPA completion date.* Explanation of how the date is derived, including a proposed schedule for completion of NEPA documentation.
- *Owning/responsible Lead Organization.* Identification of the cognizant Lead Organization.
- *Attachments.* Plans of action for cultural resources and natural resources, as required, are referenced here and attached.
- *Cost estimate for funding.* Attach copy of environmental program requirements (Army Environmental Database—Restoration) funding estimate.
- *Request authority to complete NEPA document without HQDA/Secretariat staffing/approval.* Where delegation of document preparation is requested, provide and attach justification.
- *Installation/Lead Organization NEPA point of contact.* Provide the name, phone number, e-mail address, and physical location of the point of contact.

1.7.2 Notice of Intent

The notice of intent (NOI) is the official public notification that a NEPA analysis is planned for a proposed action. The NOI is published in the *Federal Register* to advise the public and other entities of the Army's intent. An NOI describes the proposed action and possible alternatives, if known at the time. It outlines the Army's proposed public scoping and public involvement process, as applicable, and gives the name, address, and telephone number of the Army's point of contact. DAIM-BD will issue an NOI for each EIS for the BRAC 2005 program.

1.7.3 Categorical Exclusion/Record of Environmental Consideration

A categorical exclusion (CX) is an action that does not individually or cumulatively have a significant effect on the human environment and does not normally require an EA or EIS. Every federal agency has a list of such actions that do not require formal analysis or assessment. A record of environmental consideration (REC) is a written record that an action has been evaluated and falls under the CX criteria as described in 32 CFR Part 651 (*Environmental Analysis of Army Actions*) or that the action has been analyzed in a separate NEPA document. Appendix B of 32 CFR Part 651 contains the Army's list of categorically excluded actions. 32 CFR 651.28–651.31 govern the use of CXs. It is anticipated that some BRAC actions, including some discretionary location moves (see Section 3), may qualify for a CX. The Army's list of CXs will be reviewed for potential applicability. Actions may not be "segmented" to use a CX for one or more parts (segments) of a larger (connected) action. As a matter of policy, all uses of CXs for BRAC actions will be accompanied by a REC.

1.7.4 Scoping Process

Scoping is the process of identifying the issues and resources to be considered in the NEPA analysis. Good scoping is essential to a good analysis. Scoping begins by involving the public to identify the issues to be addressed. Public notice includes an announcement of the location(s) and time(s) of scoping meeting(s) and the solicitation of comments to identify issues of special interest to other agencies and the public that should be addressed in the analysis. Public scoping meetings are not required for EAs and will be held only when specific circumstances are identified by the NEPA proponent in the NAPA process to warrant one.

Scoping for an EIS involves meetings with members of the public, other federal agencies, state and local governments, tribal governments, and special interest groups to discuss pertinent issues and topics in the EIS. Scoping also assists in collecting baseline data to be discussed in the affected environment section of the EIS. A scoping meeting may result in changes, additions, or deletions to the scope, alternatives, and emphasis of the EIS. Further information on implementing the scoping process in BRAC is presented in Section 3.

1.7.5 Environmental Assessment

The CEQ regulations (40 CFR 1508.9) describe an EA as a concise public document that succinctly provides sufficient evidence and analysis to determine the need for an EIS. Its purpose is to assist the decisionmaker in identifying the environmental effects of a proposed action and alternatives in determining whether any of the impacts are significant and thus warrant the preparation of an EIS.

An EA should not be initiated when significant impacts are obvious or can be presumed. The CEQ regulations (40 CFR 1501.3) allow an agency to initiate the EIS process without preparing an EA.

The EA typically provides the appropriate level of environmental analysis for a BRAC action. EAs are also often used to assess the environmental effects of interim leases of real property during the predisposal phase of a closure action (see Section 5). The required format for a BRAC EA, which is similar to that for an EIS, is described in Section 4. External coordination in the preparation of an EA is not explicitly required by 32 CFR Part 651 although, in some cases, coordination with regulators and the public might be well advised. An offer of outside coordination should usually be accepted. Coordination of the proposed action under the Endangered Species Act and the National Historic Preservation Act is required as a component of the EA.

1.7.6 Finding of No Significant Impact

If an EA concludes that impacts are insignificant, a draft finding of no significant impact (FNSI) is prepared to document this conclusion and explain that an EIS will not be prepared. A draft FNSI, along with the final EA, is made available to the public for 30 days, during which time agencies and the public may submit comments on either. If an EA concludes that an EIS is warranted, an NOI is issued to begin the EIS process. Draft FNSIs prepared as a result of BRAC EAs are announced to the public through publication of a notice of availability (NOA) in a local newspaper. At the end of the 30-day comment period, and subject to review of any comments received, proponents may execute a final FNSI. The proposed action may then begin.

The 30-day public review period for a draft FNSI may be reduced as provided in 32 CFR 651.14(b)(2)(iii). In cases where the 30-day comment period jeopardizes the project and the full

comment period would provide no public benefit, the period may be shortened with appropriate approval by a higher decision authority. In no circumstances should the public comment period for an EA/draft FNSI be less than 15 days.

1.7.7 Notice of Availability for a Draft FNSI

An NOA is a formal public notification that an agency document is being made available to other agencies and the public. It is intended to inform the public of the completion of the EA and availability of the EA and draft FNSI and to initiate a 30-day review period prior to final action on the FNSI.

1.7.8 Environmental Impact Statement

The EIS is the centerpiece of the NEPA process. It is the "detailed statement" called for in the act itself (Public Law 91-190, Section 102(2)(c)). An EIS analyzes the biophysical and socioeconomic effects of the proposed action and alternatives. It provides the baseline (affected environment) against which effects are evaluated and identifies potential consequences and required mitigation. The EIS is an important planning and decisionmaking tool (40 CFR 1505.1) that directly involves the public in the process (40 CFR 1506.6). Public comments should be accepted throughout the process; formal opportunities (including public meetings) are required in the process during scoping and review of the draft EIS (DEIS).

The potential for significant environmental impact associated with a proposed action is the basis for performing an EIS. An EIS analyzes and discloses the known or suspected context, duration, and intensity of all impacts on the environment, direct and indirect, that would result from implementing the proposed action and alternatives. It also presents mitigation measures (and their environmental effects) that could be undertaken to lessen impacts. The general steps in preparing and processing an EIS are shown in Figure 4 of 32 CFR Part 651 (see Appendix F). Section 4, below, describes in detail the format and content of an EIS. BRAC-specific features for processing an EIS are discussed in Section 6.

1.7.8.1 Preparation

Once preparation of an EIS is formally announced through publication of the NOI in the *Federal Register*, document preparation usually begins with the development of a work management plan for the EIS and arrangements for the scoping process, including public meetings. A work management plan addresses the formulation of the description of the proposed action, alternatives to the action, and a schedule for EIS completion. The plan also identifies project team members and their responsibilities. Detailed project planning depends on a number of factors, including the following:

- Mechanisms selected to accomplish the analysis (in-house versus contract)
- Timeframes dictated by the proposed action, the NEPA process, or data/model analysis requirements
- Priorities placed on specific actions
- Budgetary constraints and requirements
- Roles, responsibilities, and availability of the analysis/documentation team members

NEPA planning and execution must be done carefully and thoroughly to facilitate meaningful analysis and avoid later challenges and delays.

1.7.8.2 Draft EIS

After the scoping meeting(s), potential impacts of the proposed action and alternatives are analyzed, and a preliminary draft EIS (PDEIS) is prepared. Section 4, below, discusses document format and content in detail. The preliminary draft is circulated for internal Army review. After any necessary changes are made to the preliminary draft, a DEIS is prepared and filed with EPA, and the Army publishes a notice of availability (NOA; see below) in the *Federal Register* and in newspapers in the vicinity of the proposed action. A 45-day comment period begins on the date EPA announces the availability of the draft EIS in the *Federal Register*.

1.7.8.3 Notice of Availability for an EIS

An NOA is a formal public notification that a DEIS, a final EIS (FEIS), a draft Supplemental EIS, or a final Supplemental EIS is being made available to other agencies and the public for review and comment. The Army publishes NOAs in the *Federal Register* and in newspapers in the vicinity of the proposed action. The Army's NOAs are distinct from announcements made by EPA in the *Federal Register*. Time periods specified in the CEQ regulations for processing EIS documentation are measured only by EPA's announcements.

1.7.8.4 Public Meeting or Hearing

During the 45-day comment period, but after at least 15 days following publication of the NOA, a public meeting or hearing is typically held to provide an opportunity for the public, organizations, and regulatory agencies to present comments and information.

1.7.8.5 Final EIS

The proponent of an EIS must consider and respond to all comments on the DEIS. Comments might be provided orally at a public meeting on the DEIS, or they might be written submittals from agencies or interested organizations or individuals. A preliminary final EIS (PFEIS) is prepared after comments have been received, reviewed, and addressed. This document is reviewed by the same elements that internally reviewed the PDEIS. Once the PFEIS is approved, the final EIS is prepared, filed with EPA, and made available to the public through NOA publication in the *Federal Register*. A final decision on the proposed action may be made after a 30-day waiting period, and it is documented in a Record of Decision (ROD).

Without delays, the total estimated time for EIS preparation is about 18 months; 2 years is often the case with the average EIS. More complex or controversial EISs can take several years to complete. In keeping with the Presidential mandate to accelerate the BRAC process, BRAC NEPA documentation and compliance requirements are to be completed no later than 12 months from the receipt of an officially adopted reuse plan.

1.7.8.6 Supplemental Environmental Impact Statement

A supplemental EIS (SEIS) contains additional analysis and documentation on a proposed action and alternatives. It is prepared when conditions become substantially altered from the action initially proposed or when changes in alternatives or baseline conditions occur after preparation of the DEIS or FEIS. If conditions warrant a supplemental document, these documents are processed in the same way as an original EA or EIS. No new scoping is required for a supplemental EIS filed within one year of the filing of the original ROD.

1.7.8.7 Record of Decision

A ROD is a public document that states the decision, the alternatives and factors considered, the preferred alternative, and any mitigation measures in the associated EIS. The NOA of the ROD is published in the *Federal Register*. It summarizes the major issues and considerations, documents the decision, and identifies necessary steps (mitigations) to lessen the impacts on the environment. Mitigation actions, upon being adopted by the Army, become formal requirements once they have been stated in a ROD. Further information on the contents of the ROD are provided in CEQ regulations at 40 CFR 1505.2.

1.7.8.8 30-Day Waiting Period following the FEIS

40 CFR 1506.10 requires that no decision on a proposed action be made or recorded in a ROD until after the later of the following: (1) 90 days from publication of the notice for a DEIS or (2) 30 days from publication of an FEIS.

1.8 Other NEPA Concepts Encountered in BRAC

1.8.1 Programmatic Documentation

Programmatic NEPA documents are prepared on an area-wide or subject/topic basis or for broad federal actions that include a number of phases of individual actions. With broad federal actions, the lead agency may evaluate the proposal based on common geographic locations or similarities of impacts or by stages of development (40 CFR 1502.4). Programmatic documents often require additional supplemental or subsequent site-specific NEPA documents (EAs or EISs). Follow-on documents concentrate on site- or phase-specific issues and may efficiently incorporate information from the programmatic NEPA document by reference.

Programmatic documentation is not commonly used for BRAC actions. The Army might sometimes choose, however, to prepare a programmatic analysis on certain realignments or for common reuse scenarios for closing installations.

1.8.2 Tiering

Tiering refers to the process of preparing multiple levels of environmental review, typically addressing general matters in a large-scale EIS (e.g., national program or policy statements) with subsequent smaller-scale EISs or EAs addressing the details (e.g., regional program statements). The smaller-scale EIS often incorporates the general discussions included in the large-scale EIS by reference and concentrates on the issues specific to the site. Tiering is appropriate when the sequence of statements is

- From a larger program (or plan or policy) EIS to a program (or plan or policy) statement (or analysis) that is of lesser scope or site-specific
- From an EIS on a specific action at an early stage (such as concept plan or site selection) to a supplemental (or subsequent) statement (or analysis) at a later stage (such as site-specific designs)

Tiering in such cases is appropriate when it helps the Army to focus on relevant issues for which decisions need to be made rather than on those for which decisions have already been made or are too far in the future to be clearly defined.

1.8.3 Segmenting and Sequencing

CEQ regulations (40 CFR 1508.25(a)) state that an agency should analyze "connected actions" and "cumulative actions" in one document. An agency should also analyze "similar actions" in one document when that is the best way to adequately assess the combined impacts of the similar actions or reasonable alternatives.

Connected actions are those that automatically trigger other actions that may require environmental analysis, cannot proceed unless other actions are taken previously or simultaneously, or are interdependent parts of a larger action and depend on the larger action for justification. Cumulative actions are those that, when viewed with other proposed actions, have cumulatively significant impacts and, therefore, should be discussed in the same NEPA document. Similar actions are those that, when viewed with other reasonably foreseeable or proposed actions, have similarities that provide a basis for evaluating their environmental impacts together, such as common timing or geography (see 40 CFR 1508.25(a)).

The CEQ regulations are directed at avoiding improper segmentation, wherein the significance of the environmental impacts of an action as a whole would not be evident if the action were to be broken into component parts and the impact of those parts analyzed separately. Although the CEQ regulations do not specifically direct consideration of connected actions, cumulative actions, and similar actions in defining the scope of an EA or EIS, the impacts from such actions should be considered together in a single NEPA document.

An example of segmenting in the BRAC process would be to separately analyze (or categorically exclude) the environmental effects of disposal and reuse of individual buildings or parcels of land when the intent of the overall action is to dispose of the installation.

Situations often develop during base realignment, closure, and disposal that require interim actions such as leasing, transfer of property to another federal agency, or other actions of a similar nature. Certain interim actions are a form of "sequencing" and are permissible.

Actions that meet the following conditions are considered "sequencing" rather than "segmentation:"

- The interim action does not foreclose future uses.
- The interim action does not produce an irreversible or irretrievable commitment of resources.
- The interim action is consistent with the reasonable alternatives being considered as part of the broader NEPA analysis.
- The interim action itself is covered by another NEPA analysis.
- The broader NEPA analysis evaluates the cumulative impacts of the action.

An example of sequencing in connection with BRAC is the leasing of buildings or parcels for a use similar to past uses. These interim leases may not include major alterations to the parcels or buildings or changes in activities associated with their use that would constitute a new set of impacts. Proposed interim actions must also be reviewed and the appropriate level of NEPA analysis and documentation (REC, EA/FNSI, or EIS/ROD) applied.

Interim uses that may constitute "segmentation" include the leasing or transfer of parcels for new uses (different from historical use) and uses that could cause an irreversible or irretrievable commitment of resources or foreclosure of future options.

1.8.4 Mitigation

Mitigation measures are actions required for the specific purpose of reducing the significant environmental impacts of implementing a proposed or alternative action.

Only those mitigation measures that can be reasonably accomplished will be identified in environmental documentation (EA/FNSI, or EIS/ROD). Several mitigation approaches are listed below:

- *Avoidance*. Avoids impacts altogether by not performing certain activities or by restricting where they may be performed.
- *Limitation of action*. Limits the degree or magnitude of an activity and thereby limits its impacts.
- *Restoration*. Restores or enhances existing environmental conditions. The effectiveness of and required commitment to such measures should be closely scrutinized.
- *Protection and maintenance*. Changes the design of the action to include engineered systems (e.g., erosion control devices, air pollution scrubbers, or oil/water separators) or management actions that preclude the emission of pollutants. This technique is often a long-term, continuing procedure that can be expensive to implement and maintain. As with restoration, this technique, without commitment, might not be completely effective.
- *Replacement/compensation*. Attempts to replace or otherwise compensate for resources destroyed by the action. Replacement can be an expensive and controversial mitigation technique.

Mitigation measures or programs must be clearly identified in a NEPA document for the decisionmaker to understand and approve. Such measures become Army commitments that must be met within a reasonable and specified time frame. All measures planned to minimize or mitigate expected significant environmental impacts must be identified in the EIS and the ROD. Responsibility for implementation will be determined based on coordination and consultation between the proponent of the NEPA analysis and the affected installation. The status and results of mitigation measures associated with the proposed action will be made available to members of the public upon request.

An EA may specify mitigation measures that, if implemented, would prevent significant impacts that would otherwise require an EIS. In such cases, the measures must be clearly described in the FNSI.

Mitigation measures presented in a FNSI or ROD are binding. These measures must be funded, and efforts to ensure their successful completion or implementation should be treated as compliance requirements. In appropriate cases, the proponent must monitor mitigation measures for completion and effectiveness.

1.8.5 Cumulative Effects Analysis

NEPA requires analysis of the cumulative environmental effects of the proposed action and other actions at the installation and in the region, recognizing that impacts on traffic congestion, air

quality, noise, socioeconomic conditions, utility system capacities, and other resource areas are often manifested only at that level. Other actions could include, for instance, previously approved Army Modular Force or Integrated Global Presence Basing Strategy (IGPBS) decisions. Cumulative effects analysis is discussed in detail in Section 5.9.

This page intentionally left blank.

2.0 Roles and Responsibilities

2.1 Overview

Development of BRAC NEPA analyses requires participation from each level of the Army, from the installation to the Army Staff and Secretariat. All participants, having distinct functions and responsibilities in the document preparation and review process, must function as a team to provide timely information, concurrence, or approval as required by their area of responsibility. This section describes the roles and responsibilities of the major Army participants.

2.2 Proponents

Two levels of proponents exercise responsibility for BRAC NEPA documentation.

- *Program proponent.* The Assistant Chief of Staff for Installation Management (ACSIM), Base Realignment and Closure Division (DAIM-BD) serves as the Headquarters, Department of the Army (HQDA) program proponent.
- *Project proponent.* For realignment actions in general, the Lead Organization serves as the individual project proponent. The Army National Guard or major commands (MACOMs) having special installation responsibility (e.g., U.S. Army Reserve Command and U.S. Army Medical Command) may be designated as a Lead Organization and serve as the proponent for the NEPA documentation. For joint service realignment actions, DAIM-BD will determine Lead Organizations to serve as proponents on a case-by-case basis. For disposal actions, DAIM-BD serves as the individual project proponent.

2.3 Participants

Numerous participants contribute to the BRAC NEPA process. Principal actors include staff functions at affected installations, IMA, MACOMs, and the Army Staff and Secretariat. Other participants include entities such as the NEPA Support Team and Army Environmental Center. The following sections identify the participants and discuss their contribution to the BRAC NEPA effort.

2.3.1 Installations

Installation participation is central to the NEPA process. Because of their experience and proximity, the Garrison Commander and his or her staff are the officials who are most aware of the critical local environmental issues and public concerns.

2.3.1.1 Garrison Commander

The Garrison Commander has been, and will remain, the official primarily responsible for execution of the environmental stewardship function. The Garrison Commander is responsible for compliance with all applicable environmental laws and regulations, including those involving public participation. The comparison of the Garrison Commander's function to the preventive maintenance process is appropriate. Just as all parts of a vehicle must be in good working order for the vehicle to move forward, all parts of the installation staff must be kept informed and involved if the BRAC program is to move forward. Each BRAC site, however, will have a slightly different group of responsible persons. Whether the installation is gaining, closing, or realigning, the Garrison Commander should establish procedures to ensure that each part is aware of what the others are doing throughout the long and extremely complex series of BRAC-related

actions. While the proponents for NEPA analysis and documentation will be entities other than the installation, it is ultimately the efforts of the Garrison Commander and his or her staff that keep the entire BRAC program synchronized.

The Garrison Commander supports the NEPA proponent during preparation of the BRAC NEPA documentation by supervising his or her staff in their role of furnishing data; keeping the public informed; performing liaison with the Local Redevelopment Authorities (LRAs), as appropriate; and supporting special environmental studies required for the NEPA process. The basic source of data for a NEPA document is existing data contained at the installation. The Garrison Commander, if requested by the NEPA proponent, chairs the scoping meeting and public hearing or meeting. The Garrison Commander's staff also participates in the review of the NEPA documents.

2.3.1.2 Public Affairs Officer

The installation Public Affairs Officer (PAO) should be included in every staffing action related to BRAC activities. The PAO should determine what information is needed as he or she communicates on the installation's behalf. The PAO is responsible for ensuring that the release of information to the public is coordinated with other staff elements beforehand. The PAO should also serve as a knowledgeable clearinghouse for requests from the public about the installation and BRAC-related activities. Unless PAOs are kept in the information network, this task will be difficult to accomplish, and more time might be spent putting rumors to rest than accomplishing the mission.

To ensure full participation of, and coordination with, the public during the BRAC process, the Army has established the following basic principles for installations designated to *gain* missions or functions:

- The Army is committed to mitigating the hardships inherent in any realignment on its soldiers and civilian employees, their families, and the surrounding communities.
- The Army will follow the BRAC law and the letter and intent of the President's report transmitting the BRAC Commission's recommendations to Congress.
- The Army will be open and forthcoming about implementation planning and execution.
- The Army will support and be responsible to the Installation Commander and the surrounding communities.
- The Army will be environmentally active and responsive.

To ensure full participation of, and coordination with, the public during the BRAC process, the Army has established the following basic principles for installations designated to *close* or *realign* (lose troops or functions):

- The Army is committed to mitigating the hardships inherent in any base closure or realignment on its soldiers and civilian employees, their families, and the surrounding communities.
- The Army will follow the BRAC law and the letter and intent of the President's report transmitting the BRAC Commission's recommendations to Congress.
- The Army will be open and forthcoming about implementation planning and execution.

- The Army will support and be responsive to the Garrison Commander and the surrounding communities.
- The Army will ensure a timely transfer of facility assets.
- The Army will seek innovative ways to allow reuse pending completion of environmental restoration.
- The Army will provide civilian employee assistance through such programs as the DoD Priority Placement Program.

2.3.1.3 Base Transition Coordinator

The Base Transition Coordinator (BTC) is appointed by the Army to be an on-site representative at closing or realigning installations to assist the community in the installation redevelopment program. The BTC works with the LRA and the installation to develop reuse options and to identify appropriate levels of cleanup. The BTC monitors the BRAC process and facilitates the interaction of all participants. The BTC assists the community with organizing the LRA and with securing study funds from the Office of Economic Adjustment (OEA).

2.3.1.4 BRAC Environmental Coordinator

The BRAC Environmental Coordinator (BEC) is designated by the Lead Organization responsible for the installation. The BEC facilitates planning and execution of environmental cleanup programs with the installation environmental staff and regulatory agencies and participates in community involvement activities.

2.3.1.5 Local Redevelopment Authority

The LRA is any authority or instrumentality established by state or local government and recognized by the Secretary of Defense, through the OEA, as the entity responsible for developing the redevelopment plan with respect to an installation or for implementing such a plan. Further information about LRAs is provided in 32 CFR Part 175 (*Revitalizing Base Closure Communities—Base Closure Community Assistance*).

The local community's role is to provide for the reuse of excess Army property that becomes available as the result of BRAC actions. Consequently, community leaders should participate early in the closure and disposal process and maintain close coordination with the Installation Commander and BRAC office as well as the DoD OEA and elected officials at both the state and national levels. As appropriate, an LRA may be a cooperating agency in the preparation of a NEPA document.

The community is responsible for establishing an LRA to act as the legal entity for participation by the community in reuse actions. The LRA is responsible for developing and obtaining community approval of a reuse plan for Army property to be disposed of. This plan must be provided to the Army in a timely manner for coverage in the NEPA analysis. The LRA needs timely access to Army environmental baseline data to conduct its reuse planning.

2.3.2 Headquarters, Department of the Army

2.3.2.1 Base Realignment and Closure Division

The Department of the Army, ACSIM, DAIM-BD is responsible at the program level for management and oversight of Army BRAC actions. DAIM-BD coordinates with the Secretariat and the Army staff to provide guidance, policy, and action decisions to the field. DAIM-BD assembles all pertinent data submitted from the field as required to support decisionmaking and submits the package to the Secretariat for decision. The Secretariat's decision is transmitted to the field for execution and is monitored by DAIM-BD to ensure implementation. As appropriate, NEPA-related documents (EAs; EISs; and decision action papers, such as NAPAs or RODs) are submitted through DAIM-BD to obtain Secretariat approval.

DAIM-BD is responsible for approval of BRAC NAPAs and the provision of funds for completing required NEPA studies. DAIM-BD is also responsible for approval and submission of Release Packages (consisting of Information for Members of Congress (IMC), Memorandum for Correspondents (MFC), and Questions and Answers (Q&A)) and RODs after Army Staff coordination to the Deputy Assistant Secretary of the Army for Environment, Safety, and Occupational Health (DASA-ESOH) for approval or authority to release, as appropriate.

DAIM-BD coordinates the following documents and information with the Army Staff and Secretariat: NAPAs, NOIs, EAs and EISs, NOAs for draft and final EISs, RODs, and Release Packages.

DAIM-BD forwards matters requiring approval by the DASA-ESOH through the ACSIM. Upon approval and signature by DASA-ESOH, DAIM-BD prepares a memorandum forwarding the approval of the NEPA package to the appropriate NEPA document proponent.

DAIM-BD serves as the project proponent for BRAC Commission recommendations for disposal actions. In this role, and working with the USACE NEPA Support Team (NST), DAIM-BD carries out the NAPA for each installation. As the proponent, DAIM-BD is responsible for ensuring the timely preparation, review, and approval of all BRAC NEPA documentation for each installation recommended for disposal. In doing so, DAIM-BD is guided by the contents of this manual.

2.3.2.2 Lead Organizations

Lead Organizations (LOs) include the ACSIM, Installation Management Agency (IMA); the Army National Guard; and MACOMs having special installation responsibility (e.g., U.S. Army Reserve Command and U.S. Army Medical Command). LOs serve as the proponent for BRAC Commission recommendations for realignment actions. Working with the USACE NST, the LO carries out or oversees the NAPA for each realignment action or gaining installation. The LO is responsible for ensuring the timely preparation, review, and approval of all BRAC NEPA documentation for each installation recommended for realignment. In doing so, the LO is guided by the contents of these guidelines.

2.3.2.3 NEPA Support Team

DAIM-BD has designated the USACE NST to centrally manage and contract for the preparation of all NEPA documents and to validate documents for consistency and compliance with applicable laws, regulations, policy, and guidance before review and decision by the Secretariat, HQDA, or other proponents. This assignment responds to DoD guidance for timely NEPA analyses for base realignment and closure decisions, and it improves Army BRAC NEPA documentation development and processing in general.

The NST is responsible for determining whether Army BRAC NEPA documents comply technically and procedurally with NEPA, comply with current DoD and Army policy and guidance, and meet the Army's expectations. This oversight role pertains to all BRAC NEPA actions involving realignments, disposal/reuse (lease, transfer, or deed conveyances), and discretionary move actions. The NST assists DAIM-BD and the LO throughout the NEPA process with interpretation and guidance on policy, as well as the development of procedures and strategies, so that documents are consistent and require the least amount of modification possible after Army Staff and Secretariat review. In addition, the NST will support proponents in their Section 106 actions under the National Historic Preservation Act and their Section 7 consultations under the Endangered Species Act. These responsibilities are not expected to add time to Army Staff and Secretariat review because the NST works closely with the NEPA document proponents and Corps of Engineers Districts throughout the process to help them accomplish their missions.

General duties of the NST. The following are the general duties the NST is to perform:

- Determine whether BRAC NEPA documents comply technically and procedurally with NEPA, current policy and guidance, and Army Staff and Secretariat expectations
- Serve as the Army BRAC NEPA overseer, problem solver, and information consultant throughout the NEPA process
- Help DAIM-BD and the LO meet BRAC NEPA requirements in a timely manner, identify significant accomplishments and issues, raise warning flags, and recommend solutions
- Facilitate all levels of Army participation and team building in the BRAC NEPA process
- Monitor and facilitate implementation of changing laws, regulations, policy, and guidance
- Enhance the Army's BRAC NEPA institutional knowledge
- Provide oversight and advice for specific environmental issues, such as cultural resources, socioeconomic impacts, hazardous materials, air quality, water quality, and infrastructure

NST assistance to DAIM-BD and Army Lead Organization participants. The DAIM-BD, LO, or any other Army BRAC NEPA participants may request assistance from the NST as a unit or from designated subject matter experts. NST personnel are available throughout the process to provide assistance with:

- Understanding the NEPA level-of-analysis strategy (CX, REC, EA, or EIS)
- Developing a scope of work, timelines, and cost estimates
- Preparing the NAPA for submittal to the LO

- Developing a public involvement plan
- Executing a comprehensive scoping process
- Supporting NEPA project kickoff meetings
- Advising preparers on current Army policy and guidance
- Monitoring preparation of draft and final NEPA documents
- Participating in in-process reviews (IPRs)
- Conducting public hearings, meetings, and workshops
- Finalizing NEPA documents
- Facilitating the review process

NST NEPA document certification. Prior to forwarding final documents to the Army Secretariat, Staff, or proponents, the Executive Agent of the NST will certify each document's compliance with all appropriate requirements. The certification signed by the Executive Agent will substantively reflect that "The attached document conforms to Council on Environmental Quality regulations and Army implementing regulations, policy, and guidance for BRAC realignment and disposal actions, that the document is technically adequate, and that the document meets the purposes for which it has been prepared."

2.3.3 Army Staff and Secretariat

The DASA-ESOH establishes Army BRAC environmental policy and coordinates and resolves environmental issues at the national level.

For each BRAC action, the proponent designates reviewers prior to preparation of the final document. (See Section 6.2.3.) Selection of Army Staff and Secretariat elements to conduct reviews of EAs and EISs varies on the basis of the complexity of the proposed action and issues applicable to an installation. The following elements of the Army Staff and Secretariat review BRAC NEPA documents for their specific interests:

- *Office of General Counsel (OGC)*. Review for legal sufficiency.
- *Deputy of Chief of Staff for Logistics (DLO-POD)*. Review for the impacts of the action on Army logistics and maintenance actions.
- *Assistant Secretary of the Army (Manpower and Reserve Affairs) (SAMP-CP)* and *Deputy of Chief of Staff for Personnel (DAPE-MBB-P, DAPE-HR-S)*. Review for the impacts of the action on Army personnel actions.
- *Office of Congressional Legislative Liaison (OCLL)*. Focal point between the Army and the congressional staff with responsibility for notification of and coordination with Congress on such actions as public notices.
- *Secretary of the Army Public Affairs Office (SAPA)*. Representation of the Army in public affairs and coordination with public officials.
- *Office of the Surgeon General (DASG-RMZ)*. Review for the action for health impacts.
- *Deputy Assistant Secretary of the Army for Installations and Housing (DASA-IH)*. Overall responsibility for Army installations.

- *Deputy Assistant Secretary of the Army for Environment, Safety, and Occupational Health (DASA-ESOH)*. Responsibility for all environmental issues affecting Army installations.
- *Office of the Judge Advocate General, Environmental Law Division (DAJA-EL)*. Review for final legal sufficiency for the Army.
- *Deputy Chief of Staff for Operations and Plans, Stationing (DAMO-FDO).* Validation of planned actions for the gaining installations and enclaves.
- *Resource Analysis/Integration (DAMO-ZR)*. Review of the priority of the BRAC action in relation to other Army initiatives.
- *Assistant Chief of Staff for Installation Management, Directorate of Environmental Programs (DAIM-ED*). Review for environmental compliance.
- *Assistant Chief of Staff for Installation Management, Facilities and Housing Directorate, Plans Division (DAIM-FDP)*. Validation of implementation plans.
- *Headquarters, U.S. Army Corps of Engineers (HQ USACE)*. Technical environmental assistance and support for real estate disposal (CEMP-MB, CERE-C).
- *National Guard Bureau (NGB-ARO-TS)*. Review for BRAC actions affecting Army National Guard organizations.
- *Office, Chief of Army Reserve (DAAR-EN).* Review for BRAC actions affecting U.S. Army Reserve organizations.
- *Office of Economic Adjustment (OEA)*. Review of the proposed reuse alternatives for disposal and reuse NEPA documents.
- *Assistant Secretary of the Army (Financial Management) (SAFM-BUC)*. Review of fiscal concerns that might pertain to proposed alternatives.
- *Army Environmental Center (SFIM-AEC-BC)*. Review of the environmental investigations, remediation, and proposed mitigation actions. SFIM-AEC-EC reviews impacts on cultural and historic properties on the installation. AEC also supports NST efforts for issues related to conservation, natural resources, protected species, air, water, and NEPA. SFIM-AEC-TSP provides support for NEPA considerations on ranges.

2.3.4 U.S. Army Corps of Engineers

In addition to performing design, construction, and cleanup at hazardous waste sites on BRAC properties, the USACE helps prepare NEPA analyses and documentation and helps conduct special environmental or cultural resource studies, either in-house or by contract. It is not anticipated that USACE Districts, with the exception of the NST, will be contracting for or preparing BRAC NEPA documentation.

This page intentionally left blank.

3.0 Planning and Initiating a BRAC NEPA Project

Lead Organizations (LOs), as the Army's designated proponents for BRAC actions, are responsible for determining the scope of the NEPA analysis; defining the proposed action; and identifying alternatives that should be considered, what resources the proposed action and alternatives might affect, and the appropriate level of the analysis and documentation (CX, EA, EIS).

The proponent, through use of the NAPA process, should have the planning for the NEPA analysis close to completion by the time the President forwards the BRAC list to Congress. It is not prudent, however, to formally initiate NEPA process work on the analysis and documentation until the BRAC Commission's recommendations become law because the Commission's recommendations could be rejected by the President or Congress. The DoD's policy in support of community revitalization after base closure is to complete the NEPA documentation no later than 12 months from the receipt of an officially adopted reuse plan. The Army's goal is to complete the entire NEPA process in 24 months after the Commission's recommendations become law.

3.1 Selecting the Appropriate Level of Analysis and Documentation

The level of analysis to be used for a realignment or disposal action primarily depends on the anticipated significance of the environmental effects associated with the action. The levels of analysis that may be employed range from CXs to environmental impact statements (EISs).

The BRAC NEPA process begins with the identification and description of the proposed action and alternatives (realignment or disposal) by the LO serving as the proponent. An objective evaluation is essential to ensure that the level of analysis for the proposed action (e.g., CX, EA, EIS) is appropriate, and that the necessary commitments of time and resources for accomplishing the analysis are identified and agreed upon in the beginning. BRAC activities have a series of unique milestones that are directly related to closure, realignment, or disposal of installation property. The evaluation must also consider these requirements and pertinent milestones.

3.2 Timelines and Schedules

Timelines established for BRAC activities are mandated by statute and by DoD guidance on accelerating NEPA analysis for timely disposal decisions. Section 2904 of Public Law 101-510, Defense Base Closure and Realignment Act of 1990, the law governing current BRAC actions, establishes the following milestones for execution:

- Initiate closures and realignments no later than 2 years after the President transmits the recommendations to the Congress.
- Complete closures no later than 6 years after the President transmits the recommendations to the Congress.

Defense budgetary requirements also dictate expedited execution. DoD guidance for community revitalization (see, generally, 32 CFR Parts 174, 175, and 176) is designed to transfer excess property to local communities to create jobs and income as quickly as possible. These conditions necessitate that development of an analysis of alternatives and presentation of the results for informed decisionmaking be accomplished expeditiously and on tight and usually firm schedules. It is essential that NEPA requirements be completed and incorporated into the Army's overall plan for meeting BRAC mandates. The Army has developed the following policy for timelines and schedules for completing the BRAC NEPA compliance documents for BRAC 2005.

3.2.1 Realignment Schedules

The need to initiate realignment within 2 years after the President approves the list carries with it, in most cases, the need to construct or renovate facilities to receive the realigning mission. To meet BRAC 2005 milestones, NEPA schedules will be developed to support the Army's construction plans. The NEPA document proponent, in conjunction with DAIM-BD, will develop specific timelines to meet project milestones. Additional specific guidance is forthcoming.

3.2.2 Disposal Schedules

In only a few cases does the BRAC Commission's language mandate disposal. Rather, the BRAC statute implies disposal by specifying procedures and establishing an account to receive sales revenue. The statute is silent on disposal schedules as well. Disposal of excess property in earlier BRAC rounds, BRAC I and BRAC 1991, was scheduled at the discretion of the services, considering the workloads and budgets at the time. Disposal actions for BRAC 1993 and BRAC 1995 were controlled by DoD guidance for community revitalization. DoD requires that the NEPA document be completed no later than 12 months after the LRA officially adopts a reuse plan (see *DoD Base Reuse Implementation Manual* and 32 CFR Parts 174 and 175).

In some cases, an LRA might not exist or the LRA might be delayed in preparing its plan; consequently, an adopted community reuse plan would not be available. To accommodate the 12-month requirement and take into consideration the absence of or delayed preparation of a reuse plan, the Army established internal milestones for completing disposal and reuse NEPA analysis and accelerating disposal. The Army's goal requires that DAIM-BD ensure that the disposal/reuse NEPA document is completed no later than 12 months from the time the LRA adopts an official reuse plan. The NEPA process usually parallels the reuse plan development and incorporates the LRA proposal in the draft stage. The Army's goal is to complete the NEPA analysis process as soon as possible after congressional approval of the BRAC Commission's recommendations, even if the reuse plan is still in development. Once the plan is officially adopted, the Army will evaluate the effectiveness of the NEPA analysis. If the analysis is found to be inadequate, additional NEPA documentation that evaluates actions not originally considered will be prepared. DAIM-BD will develop specific timelines to meet the milestones needed to achieve this goal.

3.2.3 Environmental Assessment Schedules

The conditions and timelines mentioned above relating to NEPA analysis and documentation specifically apply to EISs for realignment and disposal actions. The conditions should be applied in the preparation of EAs as well. The emphasis should be on preparing the EA as quickly and effectively as practicable with a goal of completion within 6 to 12 months. EAs for disposal actions may take slightly longer if the Army waits for general reuse concept input from the LRA.

3.3 Identifying the Purpose of and Need for a BRAC Action

The identification of the purpose of, and need for, an agency action is a basic requirement of the CEQ and Army NEPA regulations. It is the first opportunity in the NEPA process for informing readers why the Army is proposing to undertake an action and what objectives the action is intended to satisfy. Section 4 provides further information on the requirement as it pertains to BRAC actions, and it contains standard purpose and need statements for BRAC realignment and disposal actions that have been approved by the Department of the Army.

3.4 Defining the Proposed Action

The second step in the process is to clearly define the proposed action. The description of the proposed action is the foundation for the entire environmental analysis. It should be carefully and concisely written. A poorly defined proposed action leads to an inadequate impact identification and analysis. It is important that all activities associated with the BRAC action be sufficiently identified and described. All participants should be provided with the most accurate information possible early in the process. If the action is defined too narrowly, the result could be constant modifications to the analysis and the document. If the action is defined too broadly, the specifics of the action might be misunderstood, or the analysis might not indicate real impacts. Either case is a disservice to reviewers and the decisionmaker, and is an invitation to legal challenge. Army policy requires HQDA approval of the description of the proposed action for all BRAC NEPA documents through the NAPA approval process. Proposed actions for BRAC environmental analyses should be framed broadly enough to allow for possible changes, while maintaining openness and candor with other agencies and the public, and giving accurate and objective information about the nature of the action.

The description of the proposed action should answer the following questions:

- *Who* is proposing to undertake the BRAC action, and *which* agencies have authority over it and responsibility for it?
- *What* is the Army decision to be made, and *what* is involved in the proposed action?
- *When* would the proposed action occur, and *what* would its duration be?
- *Where* would the action occur?
- *How* would the action take place, and *how many* components would it contain?

The description of the proposed action should also include the following:

- Connected actions (whether the action is dependent on, or part of, another action or actions)
- Similar actions (whether incoming mission activities during realignment are the same as existing mission activities or other recent or pending actions)
- Frequency of activities associated with the proposed action

The description of the proposed action in the EA or EIS should be straightforward and concise, but sufficiently detailed to form the basis for the analysis that will follow. Base closures and realignments, and the processes and procedures for the analysis of their environmental effects, are outlined in public law, and the words of the law should be included in describing the proposed action. The documentation that resulted in the creation of BRAC public law and the BRAC Commission's findings should be reviewed to provide the reader with insight into and definition of those actions that are "directed," or required to implement the Commission's recommendations and thus, are exempt from certain NEPA analysis requirements.

3.5 Types of Proposed Actions

BRAC closure actions are mandated by statute and imply the subsequent disposal of the closed property. Related actions apply to the long-term reuse of the property by others and include both Army actions (e.g., easements and restrictions on certain reuses) and actions associated with reuse likely to be taken by other agencies or private interests. Directed BRAC realignments are the

result of a legislative process that Congress has imposed on DoD's normal management process. Proposals for realignment actions involve activities to implement realignments at gaining installations and, in some cases, certain activities at installations that lose missions or mission functions but remain open.

3.5.1 Directed Realignments

Realignment actions implementing recommendations of the Commission include (1) reduction or realignment of missions or mission elements at an installation through downsizing, (2) realignment of missions or mission elements from closing installations, (3) realignment of missions or mission elements from one operating installation to another, and (4) any combination of these. Receiving installations must conduct a NEPA analysis on the incoming BRAC-related activities. Depending on the incoming activity and its compatibility with the existing conditions on the installation, NEPA documentation can include the development of a REC, an EA, or an EIS, as appropriate. The proposed action for such activities should follow the guidance provided above and should provide sufficient details of proposed implementation activities to facilitate the analysis.

The description of the proposed action for a directed realignment should include the following information at a minimum:

- Incoming mission activities
- Number of personnel (military and civilian)
- Equipment associated with the mission (e.g., vehicles, weapons)
- Construction requirements
- Training requirements
- Land use requirements

The proposed action for realignments should be defined knowing that personnel figures and facility requirements will likely change as time progresses. The description should, therefore, address the proposed action in terms of ranges and approximations that represent the most likely figures, and it should include a statement to describe the level of certainty. For example, rather than specify "the realignment of D Company, 108th Engineer Battalion, with 168 soldiers and associated equipment," the proposed action should be described more broadly: "realignment of D Company, 108th Engineer Battalion, with approximately 170 soldiers and associated equipment. Note, however, that actual unit strength might be affected by other ongoing force modernization and restructuring initiatives."

3.5.2 Discretionary-Location Moves

Realignment actions other than those specifically identified by the Commission are considered discretionary-location moves. A NEPA analysis must be conducted for actions of this type (e.g., loss or gain of a unit or organization). The installation staff, in coordination with the realignment proponent, will determine what level of analysis and documentation will be prepared. Appropriate documentation must be completed before implementing these actions. Unless the proposed discretionary-location move may be categorically excluded under the provisions of Army Regulation 5-10 and 32 CFR Part 651, Appendix B, Sections II(b)(12) or II(b)(14), a full NEPA analysis (EA or EIS), including consideration of alternative realignments and implementation scenarios, must be completed before the move. In the event that a discretionary move unit is going to an installation that is a receiving installation for directed realignments, the

discretionary move should be considered part of the proposed action for the receiving installation's BRAC NEPA document.

3.5.3 Enclaves

Enclaves are portions of a closing installation (e.g., land, buildings) designated in the recommendations of the BRAC Commission for retention. Establishment of the enclave "footprint" and the movement into the enclave by those activities designated by the BRAC Commission are exempt from NEPA in the same manner as Commission recommendations for closures or realignments. Proposed construction, changes in activities within the enclave, or discretionary moves into the enclave are not exempt from NEPA analysis. The entity proposing the construction or new activity within an enclave is the proponent for that action.

3.5.4 Disposal and Reuse

Descriptions of the proposed action at installations directed to close under BRAC should address both (1) the primary Army action of disposal and (2) the activities associated with the disposal process and subsequent reuse of installation land and infrastructure by others. This is the point in the NEPA document where DAIM-BD lays out for reviewers, the decisionmaker, and the public as clearly as possible (considering the extent of factual reuse information available) what it proposes to do to implement disposal and to address the probable reuse of the property. The community's reuse planning efforts will be closely monitored by DAIM-BD and, to the extent that the reuse plan has been developed, will be the generic basis for the secondary reuse aspects of the proposed action (see Section 4.15).

Disposal. Disposal-related topics normally addressed in answering the five proposed action questions (who, what, when, where, and how) might include the following:

- Roles of DAIM-BD and others
- Nature of the disposal process
- How disposal will occur
- Disposal schedule
- Predisposal activities (e.g., cleanup, interim uses)
- Activities realigning
- Retained parcels (enclaves)
- Restrictions potentially affecting future use
- Disposal screening
- Disposal of legacy resources
- Finding of Suitability to Transfer (FOST) and Finding of Suitability to Lease (FOSL)

Reuse. The following are among the activities and processes associated with reuse that should be considered for inclusion in the description of the proposed action:

- Army reuse analysis process, including development of alternatives
- Community reuse planning process

- Community reuse plan (in generic terms, but with specific information to the extent known)
- Reuse screening
- Reuse schedule

3.6 Scoping Process

Scoping is an early and open process for (1) actively bringing the public into the decisionmaking process, (2) determining the scope of issues to be addressed, and (3) identifying the major issues related to a proposed action (40 CFR 1501.7). CEQ regulations and 32 CFR Part 651 require the use of this process for an EIS. A proponent normally employs a lesser scale of scoping in preparing an EA. Appendix E of this manual contains scoping guidance developed by CEQ.

3.6.1 Scoping in Environmental Impact Statements

Scoping is necessary in providing the focus of the EIS analysis in the early stages. NEPA requires the incorporation of public viewpoints and recommendations into the decisionmaking process. The public scoping process solicits public and agency participation in identifying issues to be addressed in the EIS.

Scoping sessions are held to help proponents and preparers involved in BRAC actions identify the following:

- Public concerns
- Community reuse plan
- Significant issues
- Range of actions (e.g., connected, cumulative, and/or similar)
- Range of alternatives (e.g., no action, reasonable alternative actions, and possible mitigation measures)
- Range of impacts (e.g., direct, indirect, and/or cumulative impacts)
- Permit and consultation requirements
- Appropriate levels (and sequence) of environmental reviews

In accordance with 32 CFR Part 651, the preparation of an EIS normally involves the proponent's conducting a scoping meeting to provide the public an opportunity to learn about and comment on the proposed action and the NEPA analysis. Scoping meetings are an important means of receiving feedback from the public. They can assist in refining the issues and alternatives being considered. To ensure its involvement, the public must be made aware of an action and must realize that the Army needs its input during planning. Notices may not be in fine print or contain highly technical language; they must communicate with the public in lay terms to ensure understanding and encourage participation. Persons representing the Army installation should not attempt to justify actions or directly answer speculative questions about the actions during the scoping meeting. The purpose of the meeting is to provide an opportunity for the public to present issues and concerns that might need to be addressed in the NEPA analysis.

In addition, effective scoping can help to identify or clarify

- Community concerns
- Regulatory or natural resource agency concerns
- Environmental justice issues
- Time frames for the analysis
- Geographic extent of the analysis
- Existing data
- Information related to impact significance
- Possible mitigation strategies
- Other opportunities for public involvement in the process

An example list of participants that should be involved in the scoping process follows:

- Appropriate Army personnel
- Federal, state, and local regulatory and natural resource agencies
- Local redevelopment authority
- Interested private and nongovernmental organizations
- Experts on local and regional history and environment
- Local and regional media publications (e.g., newspapers, magazines)
- Local and regional governments
- Local and regional environmental organizations

3.6.2 Scoping in Environmental Assessments

Scoping for an EA typically includes internal scoping and scoping with regulators. Army and CEQ regulations do not require a formal public scoping meeting for an EA. In an exceptional case, such a meeting might prove valuable, especially for a proposed action that could become controversial or have potentially significant impacts. In some cases, a scoping meeting may be held with regulatory and natural resources agencies for BRAC EAs.

3.6.3 Cooperating Agencies

The LO, as the proponent of an EA or EIS, represents the Army as the "lead agency." Other agencies may ask, or be asked by the Army, to be "cooperating agencies." Normally, only a federal agency that has jurisdiction by law would function as a cooperating agency. For example, the U.S. Fish and Wildlife Service might be invited to be a cooperating agency, if federally listed threatened or endangered species might be affected by a proposed action. The Federal Aviation Administration might be invited if there is an airfield on the installation. The proponent, with HQDA approval, should request the participation of each cooperating agency early in the NEPA process and should use the proposals and analyses of those agencies to the maximum extent possible, consistent with its responsibility as a lead agency. The lead agency should meet with cooperating agencies at their request.

At the request of the lead agency, the cooperating agency should participate in the scoping process. It should assume the responsibility for developing and preparing information related to its area of expertise and should make staff available to enhance the lead agency's interdisciplinary capability. The lead agency must maintain a working dialogue with the cooperating agency throughout the analysis and development of the document and strongly consider the comments of the cooperating agency. However, the lead agency is ultimately responsible for decisions related to the entire analysis and documentation.

3.6.4 Community Reuse Plan

The local community's reuse plan, to the extent that it is available and timely, will be identified and evaluated in the NEPA analysis as the basis for defining the proposed action in BRAC disposal actions and for evaluating reuse alternatives (unless the local plan conflicts with statutory or regulatory requirements). In the absence of an approved local reuse plan, the analysis will use the best available information, including draft reuse plans, to describe the probable reuse options. The analysis of impacts should be as thorough and specific as possible. Where specific information is not available, the analysis should reflect a range of effects on the affected environment so as to encompass details that might evolve later as reuse planning is completed. Depending on the nature of the reuse plan developed, it is conceivable that additional NEPA analysis (or related environmental documentation) might need to be prepared. The community reuse plan is discussed further in Section 5.

3.7 Determining Alternatives in Realignment Actions

Because consideration of alternative receiving installations is one of the requirements legislatively waived for BRAC, the development of realignment alternatives focuses on activities associated with proposed implementation at an installation that will gain missions or mission elements as a result of the BRAC decisions.

Implementation alternatives that might be appropriate for analysis at a receiving installation include

- *Housing*. Construction, leasing, or use of temporary/relocatable structures.
- *Training*. Rotation of scheduling, leased land, land acquisition, increased use of simulation technology equipment.
- *Maintenance and maintenance facilities*. On post, commercial, other military facilities.

Other realignment implementation-related considerations include

- Scheduling of arriving missions/units
- Obtaining permits for new, changed, or increased activities
- Use or disposition of vacated structures and facilities at losing installations remaining open
- Requirements for new or modified Standard Operating Procedures

3.8 Determining Alternatives in Disposal and Reuse Actions

Disposal actions involve consideration of four alternatives: accelerated disposal, traditional disposal, caretaker, and no action. For reuse actions, the Army considers two approaches in its development of alternatives. As a basis for analysis, one approach uses the range of alternatives

developed by the LRA and included in its approved reuse plan (when available). The other approach, which is followed by the Army in the absence of a final community reuse plan, is more generic. Following consideration of the alternatives related to disposal, five "generic" but representative levels of probable reuse intensity (low, low/medium, medium, medium/high, and high) are considered using the best information available. Both approaches identify and analyze the environmental effects of activities associated with a range of reasonable reuse alternatives to provide the decisionmaker with a meaningful analysis encompassing the most likely (or probable) reuse scenarios.

3.8.1 Accelerated Disposal Alternative

Under this alternative, the Army will take advantage of various property transfer and disposal methods that allow the reuse of the property to occur before environmental remedial action has been taken. One of these methods is to lease the property to a non-Army entity. For this, a finding of suitability to lease is prepared (see Section 5.10.4). Another method is to transfer the property to another federal agency and arrange for that other federal agency to be responsible for all environmental response.

Another possibility is to defer the requirement to complete environmental cleanup and allow an early transfer of the property. Such deferral requires concurrence of environmental authorities and the governor of the affected state. The property must be suitable for the new owner's intended use, and that use must be consistent with protection of human health and the environment (see Section 5.10.5). Another method is to transfer the property to a new owner who agrees to perform all environmental remediation, waste management, and environmental compliance activities that are required for the property under Federal and state requirements. (BRAC law §2905(e)).

3.8.2 Traditional Disposal Alternative

Under the BRAC law, the Army is required to close all military installations recommended for closure by the BRAC Commission. The Army is also given broad authority to transfer the property to other government agencies or to dispose of it to non-government organizations. Under this alternative, the Army will transfer or dispose of property once environmental remediation and other environmental clearance is complete for individual parcels of the installation. The Army is required under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) to identify speedily uncontaminated property. Uncontaminated property is defined as property on which no hazardous substances and no petroleum products or their derivatives were known to have been released or disposed of (see Section 5.11). Such property will be available for transfer or disposal fairly quickly. For property on which hazardous substances were stored for 1 year or more, known to have been released, or disposed of, other provisions apply. The Army must be able to certify that all required environmental action necessary to protect human health or the environment has been taken before the transfer or disposal. Transfer of property is allowed if a long-term environmental remedy is shown to be operating properly and successfully. Some environmental remedial actions may take a long time to be selected, approved, and implemented. Because of this, there may be a prolonged period under this alternative during which parcels are not available for transfer or disposal.

3.8.3 Caretaker Status Alternative

Under the caretaker status alternative, the Army will secure the property after the military mission has ended, to insure public safety and the security of remaining government property and

environmental remediation actions. Under the BRAC law, the Army must initiate closure of installations within 2 years after the President submits the BRAC report to Congress. Because of environmental remediation and other requirements, there will almost inevitably be a period of time between the end of the major military presence and the transfer of the property to new owners. It is during this period that the Army must maintain the property in caretaker status. This condition should not be a permanent one because Army policy is to dispose of the closed installation. Experience has shown, however, that the period of caretaker status could be lengthy for some parcels on any given installation.

3.8.4 No Action Alternative

The no action alternative would be to continue the missions at BRAC-affected installations as they were being performed in November, 2005. Because the law mandates closure and realignment of installations, the no action alternative is not possible. Nevertheless, it serves as a baseline alternative against which other alternatives can be measured.

3.8.5 Intensity-based Probable Reuse Scenarios

NEPA analysis of disposal and reuse must be prepared and approved at a relatively early point in the overall property disposal process to allow various disposal and reuse actions to proceed in a timely manner. If the local community fails to reach consensus on, or does not submit, an approved final reuse plan by the time DAIM-BD needs to initiate the NEPA analysis to support future disposition and reuse decisions for the property (decisions normally made at least by the time of installation closure), DAIM-BD must prepare the analysis using reasonable assumptions as to the likely reuse scenarios and their reasonable alternatives.

In response to this need, the Army has identified five scenarios (reuse alternatives) for relative reuse development intensity that could reasonably be expected to occur on property under consideration for disposal: low-, low/medium-, medium-, medium/high-, and high-intensity reuse. Present and future specific reuse plans might evolve and change; however, the reuse intensity scenarios can identify the range of potential activities and the environmental effects that could occur under all (or most) foreseeable alternatives. Information derived from this analysis is provided for consideration by future decisionmakers and the public as required by NEPA.

Reuse alternatives should consist of a range of generic reuses and associated activities based on the “most likely” or “probable” intensity level of land use, given the best available information relative to local ordinances and land use plans and trends. A detailed guide for developing and analyzing intensity-based probable reuse scenarios is presented in Section 4.15.

Identification of probable reuse scenarios (alternatives) may include such factors as

- Existing use of facilities
- Local zoning
- Encumbrances
- Highest and best use studies
- Real estate screening process results
- Proposals from public benefit transfer applicants and others
- Known specific, reasonable proposals or plans for the reuse of parcels

- Prior experience in reuse actions at similar installations or parcels

The community's final reuse development plan, when available, is evaluated and incorporated into the EA or EIS. DAIM-BD should closely monitor community reuse planning and use preliminary planning results as appropriate. The Army's analysis of potential environmental consequences can have an important and environmentally beneficial influence on the community reuse plan that is ultimately adopted. Relevant extracts of final (or draft) community reuse plans should be included as an appendix to the EA or EIS.

3.9 Identifying Issues for Analysis

Environmental issues in NEPA analysis have six components: activities, effects, receptors of the effects, criteria or standards against which the effects are measured, an area affected, and a time element. Analysis of each issue addresses the potential impact (relative to the criteria or standards) that an activity might have on a receptor within a defined area during a specific period of time.

Issues are used in environmental analysis for formulating alternatives, developing mitigation, and tracking effects. Issues for analysis should be identified and clearly defined. They can be identified by various methods including discussion, debate, and dispute resolution. The scoping process, described earlier, provides an effective forum for issue identification.

Issues can be characterized by their extent of geographic distribution, the duration that the issues are likely to be of interest, and the level of interest (e.g., potential amount of conflict). Issues should then be grouped into similar categories (e.g., common resource, common geography, linked to the same action, or linked to cause-effect relationships). The issues should be defined in detail. A statement of the issue should be written without bias and objectively show conflicts between the proposal and some known or likely consequences should be written. Units of measure used to describe issues need to be identified. Units of measure should be quantitative, measurable, predictable, and linked to cause-effect relationships.

Agreements on issues and alternatives can be reached through coordination of information on the basis of past experiences, consultation with environmental staff, and review of existing materials. Methodologies can be applied to the existing environmental conditions at the facility to simulate future conditions under each alternative. Significance is determined by comparing the foreseeable impact with established criteria or standards. Issue resolution is often achieved through mitigation measures where significant impacts are foreseen.

3.10 Evaluating Impact Potential

Environmental impact analysis and documentation in accordance with NEPA involves a determination of whether a proposed action is a "major federal action significantly affecting the quality of the human environment" (Public Law 91-190, Section 102(2)(c)). Making this determination requires an understanding of the various terms that make up the phrase. The CEQ regulations are the basis for the following explanations of these terms.

Major federal action. A major federal action is any action with effects that might be major and are potentially subject to federal control and responsibility. The term "major" reinforces, but does not have a meaning independent of, "significantly." Actions can include circumstances where responsible officials fail to act. That failure is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as an agency action (40 CFR 1508.18). More than one agency might make decisions about aspects of a major action.

Significantly. This term requires consideration of both context and intensity. The significance must be analyzed in several contexts, such as society as a whole (human, national), the affected region, the affected interests, and the locality. Intensity refers to the severity of impact. Several factors that should be considered in evaluating intensity are listed at 40 CFR 1508.27. The installation and its environs are the appropriate frame of reference for BRAC-related environmental and socioeconomic analysis, including the cumulative effects of other ongoing or reasonably foreseeable actions (regardless of whether those actions are BRAC or other federal or non-federal actions).

Affecting. The term "affecting" means that an action or activity "will" or "may" have an effect on a receptor (40 CFR 1508.3).

Human environment. This term includes all aspects of the natural and physical environment and the relationship of people to that environment (socioeconomics). Potential socioeconomic impacts by themselves do not necessitate preparation of an EIS (40 CFR 1508.14).

3.11 Significance

Impacts are determined through an analysis of the effects of the proposed action, alternatives, and mitigation and the "significance," magnitude, and extent of the environmental consequences (effects) of implementing the action. Significance of impact is determined through a systematic evaluation of the effects of the action, alternatives, and mitigation measures on each individual environmental component (e.g., ecosystems, water resources, air quality) and the associated direct and indirect impacts, as well as cumulative effects. The following is a list of factors that should be considered when evaluating significance:

Irreversible and irretrievable commitments of resources. The proposed action might cause environmental damage that cannot be reversed or mitigated. Such damage is more likely to be considered significant than a similar impact that is temporary or even long-term, yet reversible. Indirect and cumulative impacts can also lead to irreversible and irretrievable commitments of resources.

Indirect impacts. Often, indirect impacts are not obvious during a quick analysis of an action and might be overlooked. Many indirect impacts affect social and cultural values of the local communities and region. These effects include alterations of lifestyle and quality of life that might be triggered by the proposed action. Public input is a good source of information about the indirect effects of a proposed action that could be significant or controversial (see Section 3.6, Scoping Process).

Cumulative impacts. Individual minor actions, if taken collectively, could have a significant impact. Incremental development or changes might also have significant impacts if considered cumulatively. Cumulative effects must be assessed. (See Section 5 for a discussion of cumulative effects.)

Relevant legal requirements. The legal requirements that should be considered in determining significance might appear in local, state, or federal statutes, regulations, or court decisions. Actions likely to result in violation of regulatory standards are usually considered to have significant impacts. (For a list of statutes and regulations associated with BRAC activities, see Appendix A.)

Other considerations. Specific unique characteristics of the action might influence the determination of significance. The level of significance might need to be determined by using the

advice and judgment of environmental professionals (such as installation environmental coordinators, environmental, natural, or cultural resource agency staff, contractor staff), as well as by using established guidelines that are generally accepted by experts in a given discipline.

Applicable court decisions. Findings in court cases involving NEPA can often provide guidance in understanding the types of effects likely to be considered significant. A single court case, however, might not be an up-to-date, definitive statement of the law; appropriate legal staff should be consulted.

3.12 Administrative Record

The administrative record for an EIS or an EA is the entirety of the information and data relied on to prepare the document. The record includes all data, information, and analyses generated or obtained from other sources and used to support documentation and analyses. It is essentially the agency's file related to the action, and it can become the backup data used in court proceedings to validate the evaluation process and agency decisionmaking.

The EIS or EA preparer should organize the data and information composing the record as an accessible file, indexed by topic, to the extent practicable. A complete administrative record should include information in the possession of the agency (and any contractor) and all information in other locations listed in the reference section of the EIS or EA. Communications of all types (e.g., memoranda, internal notes, telephone conversation records, letters, and minutes of meetings) are typical. Data sources that should be part of the administrative record include maps (e.g., wetlands, endangered species ranges, habitat, surface water, geology, topography, and land use); drawings (e.g., as-built roadways, and drainage, water, sewerage, and electrical systems); studies; reports; documents; opinions; appraisals; special data compilations; correspondence from subject area experts; legal opinions; and other types of written information that were relied on during the environmental analysis process.

Guidance on compilation of an administrative record, published in the *United States Attorneys' Bulletin* in February 2000, is included in Appendix H.

This page intentionally left blank.

4.0 NEPA Document Format and Content

4.1 Introduction

Based on CEQ guidance at 40 CFR 1502.10, the Army's NEPA regulations (32 CFR Part 651) prescribe the permissible variants that proponents may use for the format and content of their EAs and EISs. The CEQ guidance leaves room for agency interpretation, however, that has sometimes resulted in varied presentation formats that contributed some confusion and delays in preparing earlier BRAC NEPA documents. Participants in the process have reported that a well-structured, standardized format greatly facilitates the process, especially during review. The Army has established the format described in this section as the one to be used for all Army BRAC NEPA documents. The format is an interpretation, not a reinvention, of how the Army and CEQ regulations are to be implemented. It includes a slight enhancement of the regulations in that it uses separate sections for describing the proposed action and the alternatives rather than combining the two. This separation allows for a more focused and detailed description of the proposed action, thereby improving the document's usefulness to preparers and reviewers of the NEPA analysis. Earlier documents, especially those for actions prior to the BRAC 1995 round, often did not provide sufficient focus and detail.

The list of considerations presented in this section offers only guidelines; it is not intended to be all-inclusive. It is the preparer's responsibility to independently identify, analyze, and document all the issues and effects relative to a proposed action and alternatives. However, the preparer must organize and format the NEPA document as specified in this section.

This section focuses on EA and EIS format and content. In some instances, proponents may achieve compliance with NEPA through use of a Record of Environmental Consideration (REC). A REC is a signed statement submitted with project documentation that briefly documents that an Army action has received environmental review. RECs are prepared for CXs that require them, and for actions covered by existing or previous NEPA documentation. A REC briefly describes the proposed action and timeframe, identifies the proponent and approving official(s), and clearly shows how an action qualifies for a CX or is already covered in an existing EA or EIS. When used to support a CX, the REC must address the use of screening criteria to ensure that no extraordinary circumstances or situations exist. A REC has no prescribed format, as long as the preceding information is included. Further information on the use of a REC and sample format are provided at 32 CFR 651.19.

4.2 Document Characteristics

Preparers of BRAC NEPA documents will meet the following standards and objectives:

- *Recycled paper.* Army policy states that all EAs and EISs must be prepared on recycled paper. The recycled paper symbol should be presented on the inside of the document cover. Plastic covers will not be used.
- *Document length.* Army policy (32 CFR Part 651) provides that an EA is a document that should be from 1 to 25 pages in length. Text of a final EIS should not exceed 150 pages, although proposals of unusual scope or complexity might require up to 300 pages.
- *Document focus.* Each major section of the NEPA document should be well focused: Purpose, Need, and Scope; Proposed Action; Alternatives; and Environmental Conditions and Consequences. In some cases, preparers inadvertently mix discussions of these subject areas, unnecessarily increasing the length of the document and obscuring the line

of thought for the analysis. Each section should be "pure" in its presentation of the subject matter. For example, the section describing the proposed action should not include a discussion of alternatives, and the section on alternatives should not contain analyses of environmental effects. Information concerning the affected environment should be included in the document only if required to support the analyses of identified issues. All other data are extraneous to the document. The description of the affected environment should not become a "dumping ground" for data just because they are available. Tutorials on climate, geology, environmental setting, and inapplicable regulatory standards are typical of the extraneous material often included inappropriately.

- *Readability.* EAs and EISs should be written as clearly and concisely as possible. Because the intended audience is often not technically versed in all subject areas, the documents should be written in plain language (CEQ Regulations 1502.8; see Appendix C) and should include appropriate graphics that support the text and are easily interpreted by the public. Whenever possible, preparers should employ editors to review or edit the document so that it is written in "one voice" and understandable by a person of average intelligence and reading ability.

BRAC NEPA documents will adhere to the following format conventions:

- The lines of text of all draft and final versions of documents will be single-spaced.
- Section 1 of an EA or EIS (Purpose, Need, and Scope) will begin at the top of a right-hand page. Subsequent sections, through Section 5 (Conclusions), may flow continuously.
- All draft documents circulated for internal Army review will contain page numbers and line numbers in the left margin. Documents released outside the Army will not contain line numbers.

4.3 Reference Documentation

Numerous additional analyses are conducted, and a considerable amount of documentation is compiled before or parallel to the BRAC NEPA analyses (e.g., endangered species surveys, historic property inventories, air emissions inventories). These studies are often used as reference material for characterizing the baseline for the BRAC action and can identify areas of special interest or concern. Several of these topics are discussed in Section 5. Two examples of reference documents, found during the BRAC 1995 round to be especially relevant to the NEPA process, are described in Sections 4.3.1 and 4.3.2, below.

4.3.1 Installation Restoration Program (IRP) Documentation

The Army's Installation Restoration Program (IRP) was implemented to identify and characterize contamination at installations. It was established to ensure that environmental contaminants, either migrating in the groundwater or present in the soils, are treated, contained, eliminated, or managed to protect human health and the environment and to comply with the standards that require such protection.

The Army's cleanup goal for BRAC is to accomplish land disposal actions with no restrictions on the property's future use. The Army will also consider, case-by-case, whether potential non-Army future land uses are compatible with existing land use. Where appropriate, these properties may be disposed of to other governmental agencies with restrictions placed on their future use. Such disposal may not take place where unacceptable human health risk is involved, and this decision would be made only after the environmental conditions and risks have been assessed.

The following are steps in the Army's IRP:

- *Preliminary Assessments/Site Inspections.* This stage involves the examination of existing facility documentation for evidence of any handling, treatment, storage, or disposal of hazardous materials or wastes. Interviews and visual inspections are conducted to supplement or verify documentation.
- *Remedial Investigation/Feasibility Study (RI/FS).* The RI/FS involves documenting the past practices of handling, treating, storing, or disposing of hazardous materials or wastes on the installation. Samples of soil, surface water, and groundwater are taken and analyzed to confirm or discount any contamination. If contamination is confirmed, alternatives for remediation of the contamination are analyzed in the FS.
- *Record of Decision (ROD).* The ROD is a formal document that identifies which specific alternative, among those analyzed in the FS, is the methodology chosen to remediate the site.
- *Remedial Design/Remedial Action.* The final stage of the IRP develops the necessary designs and implements the remediation identified in the selected alternative.

4.3.2 Reuse Development Plan

Completion of a comprehensive reuse development plan is the primary focus of the LRA. The LRA is unique to BRAC disposal actions. The reuse plan should include a range of feasible reuse options. The reuse options developed in the plan are incorporated into the alternatives considered in the NEPA analysis and documentation. This incorporation satisfies the requirement in the BRAC law that the reuse plan be considered part of the proposed Federal action for BRAC NEPA analysis. The plan should identify, at a minimum, the following:

- Parcels recommended for transfer to other federal agencies and their intended uses
- Parcels recommended for transfer or conveyance for homeless assistance, public benefit purposes, or other qualifying public-purpose programs and their intended uses
- Parcels recommended for conveyance by negotiated sale at estimated fair market value to the LRA or local developers (with or without recoupment) and their intended uses

If the LRA intends to request an economic development conveyance, the reuse plan should discuss how it will enhance the prospects for economic development and job creation. (For more information on economic development conveyances, see Section 5.)

4.4 Document Components

4.4.1 Document Cover

The document cover should contain the name of the project, the month and year of the document version, and the Army logo. It is helpful to use different colors for the covers of different versions of the EA or EIS. The cover should be of a heavier paper stock than the text pages.

4.4.2 Signature/Cover Sheet

For an EA, the signature page will be the first interior page. It will include the title of the proposed action, spaces for signatures, and an abstract of the document. EAs will be signed as prescribed in Section 6.3. The abstract, which will not exceed one paragraph, will provide a brief statement of the proposed action, the alternatives considered in detail in the document, and a

summary of expected environmental and socioeconomic consequences.

For an EIS, the signature page will be the first interior page, and it will contain the title of the proposed action and spaces for signatures. It will be executed as prescribed in Section 6.3.

For an EIS, a separate cover sheet will be prepared in accordance with Appendix E to 32 CFR Part 651. Not exceeding one page, the cover sheet will include (1) the title of the proposed action, with a designation of the document as draft, final, or supplemental; (2) identification of the lead agency and any cooperating agencies; (3) identification of the affected jurisdiction(s); (4) the name, address, and telephone number of the person at the lead agency who can supply further information concerning the proposed action; (5) the date by which comments must be received; and (6) an abstract. The abstract will consist of a single paragraph that describes only the proposed action, alternatives evaluated in detail in the document, and the principal consequences of the proposed action and alternatives.

4.4.3 Executive Summary

The executive summary should stress the major conclusions of the environmental analysis and identify unresolved or controversial issues. The executive summary must outline any mitigation (to which the Army is legally and financially committed) and should list all federal permits necessary to initiate the action. It should also include a table of environmental laws applicable to the proposal and the status of compliance with those laws. New information should not be mentioned in the executive summary; only data and key findings covered in the EA or EIS should be summarized. The executive summary should be succinct (no more than 10 pages for an EA and 15 pages for an EIS). Executive summaries typically consist of the following sections:

- *Introduction*.
- *Background/Setting*.
- *Proposed Action*. A description of the proposed action with information about the action or the property that is important to the environmental analysis being performed.
- *Disposal Process (if applicable)*. A brief description of the disposal process, and results of the real estate screening process.
- *Alternatives* (e.g., Realignment, Disposal/Reuse Alternatives Overview). A description and comparison of the relevant impacts of the alternatives analyzed in the EA or EIS. The preferred alternative, if any, should be identified.
- *Environmental Consequences*. A summary of the key findings of the environmental analysis presented in the EA or EIS, including any controversial issues. The main impacts of each alternative should be stated (e.g., impacts on socioeconomics, transportation, infrastructure).
- *Mitigation Responsibility and Permit Requirements*. A brief description of mitigation, including responsible parties, recommended in the EA or EIS. Permit requirements for the preferred alternative should also be described.

4.4.4 Table of Contents

The table of contents for both an EA and an EIS should consist of the title of each document section (cover sheet through acronym list), along with its corresponding page number. Pages of the executive summary should be numbered as "ES-1" through "ES-X." Pages of the table of contents (sections, list of tables, list of figures, and list of appendices) should be numbered in lowercase Roman numerals. The contents section should also include:

- *List of Tables.* The list of tables should include the titles of all tables shown in the document and their corresponding page numbers.
- *List of Figures.* Similar to the list of tables, the list of figures should consist of the captions of all figures included in the document and their corresponding page numbers.
- *List of Appendices.* The list of appendices should include the titles of all appendices in the document, as well as the appendix section in which they are located (A, B, C, etc.).

Sample tables of contents for a proposed realignment and a proposed disposal and reuse are included in Appendix I.

4.5 Order and Content of Sections in Document Body

The sections that follow serve as an annotated outline for an EA or EIS and also describe, in general and by example (where appropriate), the content of each document section for either a realignment action or a disposal/reuse action. Preparers should consult the appropriate sections of this manual for detailed guidance on completing the various sections and subsections of the EA or EIS.

The body of a NEPA document, discussed in the following subsections, consists of

- Section 1: Purpose, Need, and Scope
- Section 2: Description of the Proposed Action
- Section 3: Alternatives
- Section 4: Environmental Conditions and Consequences
- Section 5: Conclusions (for EAs only)

The contents of the first three sections are generally known as the "DOPAA" (description of the proposed action and alternatives). A representative, sample DOPAA is provided in Appendix J.

4.5.1 Document Body, Section 1.0: Purpose, Need, and Scope

This section should state the purpose of the proposed action and explain why it is needed. It should go beyond stating that the need is to implement the Defense Base Closure and Realignment Act or to comply with NEPA. This section should also state clearly that by law, the Army does not need to reconsider the decision of the BRAC Commission to close or realign an installation or to transfer a function to another installation.

Purpose and Need. The purpose statement should indicate that the action is being proposed to implement recommendations of the BRAC Commission. The need defines what requirement is being fulfilled by the proposed action (e.g., *for realignments*, to facilitate continuation of essential mission functions; *for disposal*, to transfer closing installations to new owners). The following example is approved language to be included as part of the "Purpose and Need" section of all

Army BRAC NEPA disposal/reuse documents. The addition of relevant, site-specific detail is appropriate.

Example:

> "Recommendations of the Defense Base Closure and Realignment Commission made in conformance with the provisions of the Base Closure and Realignment Act of 1990, Public Law, 101-510, as amended, require the closing of Fort _____ and realignment of essential missions to other installations. The deactivated installation property is excess to Army military need and will be disposed of according to applicable laws, regulations, and national policy. Pursuant to the National Environmental Policy Act of 1969 (NEPA) and its implementing regulations, the Army has prepared this environmental assessment [or environmental impact statement] to address the environmental and socioeconomic impacts of disposing of the property and reasonable, foreseeable reuse alternatives."

Scope. This section should state the geographic area (e.g., county or state) that will be affected by the proposed action and the scope of the environmental analysis (e.g., realignment or disposal and reuse). This is also the section that describes the BRAC-modified NEPA process.

Example:

> "The Defense Base Closure and Realignment Act of 1990 specifies that the National Environmental Policy Act (NEPA) does not apply to actions of the President, the Commission, or the Department of Defense, except "(i) during the process of property disposal, and (ii) during the process of relocating functions from a military installation being closed or realigned to another military installation after the receiving installation has been selected but before the functions are relocated (Sec. 2905(c)(2)(A), Public Law 101-510, as amended).
>
> "The Defense Base Closure and Realignment Act of 1990 further specifies that in applying the provisions of NEPA to the process, the Secretary of Defense and the secretaries of the military departments concerned do not have to consider "(i) the need for closing or realigning the military installation which has been recommended for closure or realignment by the Commission, (ii) the need for transferring functions to any military installation which has been selected as the receiving installation, or (iii) military installations alternative to those recommended or selected (Sec. 2905(c)(2)(B), Public Law 101-510, as amended).
>
> "The Commission's deliberation and decision, as well as the need for closing or realigning a military installation, are exempt from NEPA. Accordingly, this EA [or EIS] does not address the need for closure or realignment. NEPA does, however, apply to disposal of excess property as a direct Army action, and to reuse of such property as a secondary effect of disposal; therefore, those actions are addressed in this document."

Public Involvement. A major component of NEPA is involvement of the public in the federal decisionmaking process. NEPA is the vehicle by which the public is informed, involved, and given opportunity to participate. This section of the document is designed (1) to inform the public of opportunities to participate and (2) to document Army actions taken to involve the public. This section should be framed to be proactive in informing the public and definitive in describing opportunities to participate. For information to be included in this portion of the NEPA document, see the discussion on environmental justice in Section 5.

Discussion of public involvement must be tailored to the circumstances of each NEPA project. Information that may be included extends, as appropriate, to the public involvement process in general; notice of intent; scoping process; workshops (if held); issuance of the draft document for public review (for an EIS); public hearing (for an EIS); issuance of a final document (EA or EIS); length of applicable review periods for submission of public and agency comments; and, for installations listed on the National Priorities List, a brief comparison of the public involvement opportunities under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and under NEPA.

Impact analysis performed. The main point of this subsection is to document the fact that an interdisciplinary team has taken a "hard look" at the proposed action and alternatives. This section also documents tiering and any programmatic or supplemental NEPA documents relied on in conducting the analysis. Subject to tailoring for specific circumstances, the following wording may be used.

Example:

> "This Environmental Impact Statement (EIS) identifies, documents, and evaluates the effects of disposal and reuse of the Fort _____ property under a variety of scenarios. The processes associated with disposal and reuse are shown in Figure (___). The existing conditions at Fort _____ as of [year] are described in Section 4.0, Environment Conditions and Consequences, which, with information presented in the no action alternative, constitutes the baseline for the analysis of the effects of disposal and reuse. Conditions in [year] reflect the operating status of the facility prior to the BRAC Commission's decision.
>
> "An interdisciplinary team of ecologists, planners, economists, engineers, archeologists, historians, scientists, and military technicians analyzed the proposed action against existing conditions and identified the relevant beneficial and adverse effects associated with the action. The effects are described in Section 4.0, immediately following presentation of each resource area and condition relevant to the proposed action.
>
> "The effects of the proposed action on socioeconomics were assessed using the Economic Impact Forecast System (EIFS) developed by the U.S. Army Construction Engineering Research Laboratory (CERL). This model allows all base closure and realignment actions to be evaluated in the same way."

4.5.2 Document Body, Section 2.0: Description of the Proposed Action

Introduction. The proposed action is to implement the Commission's recommendation as mandated by the BRAC legislation, Public Law 101-510. The introduction to this section should quote the Commission's recommendations, giving mandated timelines to initiate and accomplish the proposed action. The Commission's recommendation should not be paraphrased or interpreted; it should be quoted. For disposal NEPA documents, the Community Reuse Plan, to the extent that it has been developed, should be briefly described here and included as an appendix.

Proposal Implementation. This section must be framed carefully to describe how the Army plans to implement the proposed action. Information in this section drives the identification of relevant issues and conditions to be evaluated, thus generating the impacts that must be identified and evaluated. The information presented here must be accurate, concise, comprehensive, and sufficiently detailed to permit a complete NEPA analysis. Omission of planned associated

actions will lead to omission of the evaluation of relevant impacts, producing a legally insufficient document. Note carefully: alternatives should be described in Section 3.0 of the NEPA document, not in this section.

- *Realignment Actions.* This section should include details on such matters as location; mission; personnel/mission realignment; facilities/areas to be declared excess; and other relevant information, such as number of personnel and vehicles to be relocated between installations, number or extent of buildings to be remodeled or demolished, and planned construction.
- *Disposal and Reuse Actions.* This section should include details on such matters as areas (and acreage) of real property available for reuse; areas to be retained by the Army (enclaves); designation of property condition or description of restrictions placed on property (e.g., light industrial, heavy industrial use); cultural or historic resources/buildings located on the facility; BRAC-mandated date of disposal; and if applicable, any results of the real estate screening process.

Pre-Disposal Actions (if applicable). In this section, describe the primary action as disposal of real property. Then, discuss actions that would occur prior to the disposal process.

- *Caretaker of Property Until Disposal.* Identify the level of maintenance and other relevant management actions to be provided for facilities in the event this aqlgternative is selected for implementation.
- *Cleanup of Contaminated Sites.* Discuss the property to be declared excess.
- *Interim Uses (if applicable).* Identify any planned interim uses (federal or private sector leasing or licensing of real property) and any limitations on them.

Real Estate Disposal Process (if applicable). This subsection should note the possibility that the Army might dispose of property as a package or in parcels. The section should then summarize the disposal process, including specific information on anticipated real estate disposal methods and procedures. Section 5 provides information on real estate requirements, reports, and findings associated with disposal of real property. Preparers may consult with supporting USACE district real estate offices for specific information.

4.5.3 Document Body, Section 3.0: Alternatives

This section describes reasonable alternatives to the proposed action, including the alternative of no action. If there is a preferred alternative, it should be presented and described as early in the documentation process as possible. Usually this section indicates that the preferred action is the proposed action, as described in Section 2.0. Any planned mitigation measures should also be described.

Introduction. An introductory paragraph may summarize the proposed action and indicate the "roadmap" for the materials presented in the section.

Realignment Alternatives (for proposed realignment-related activities). The description of alternatives for realignment activities includes a discussion of the necessity for new construction on the property, alternative sites for new construction or the location of an incoming mission, and alternative sites with existing facilities available for use.

Disposal Alternatives (for proposed disposal/reuse). When closure is mandated by the BRAC Commission's recommendations, property becomes excess and, therefore, available for disposal.

There is no alternative to disposal without further legislative direction.

In cases of disposal and reuse, disposal of all property may occur as a complete "package" or in parcels (depending, typically, on the status of cleanup actions, as required).

Reuse Alternatives (for proposed disposal/reuse). Reuse alternatives are developed to reflect the most likely scenarios of reuse in terms of intensity. This section must describe the appropriate and applicable land use intensity categories and how they relate to the property at hand. The section also describes the local reuse plan, subject to the extent of its development. Where known, proposals for changes in land use; changes in infrastructure; and construction, demolition, or renovation of facilities should be identified.

No Action Alternative. The no action alternative reflects continuation of the operational status of the installation as it was at the time of the Commission's decision. For disposal and reuse, the Army includes "caretaker" in the no action alternative (see Section 3.8.3).

Alternatives Not to Be Addressed in Detail. If an alternative is identified but dismissed from detailed analysis as unreasonable (e.g., operationally infeasible, too expensive), the document must explain why, rather than assuming that the reason is obvious.

4.5.4 Document Body, Section 4.0: Environmental Conditions and Consequences

The environmental conditions and consequences section of an EA and EIS contains a description of the current environmental conditions of the area that would be affected should the proposed action (or an alternative) be implemented. It also includes analysis of potential effects arising from implementation of the proposed action or alternatives. Descriptions of environmental conditions represent the "as is" or "before the action" conditions at the installation. The environmental consequences portion of the presentation forms the scientific and analytic basis for the comparison of alternatives. Proponents should present the analysis performed and compare and contrast the environmental effects of each alternative. Direct, indirect, and cumulative effects of the proposed action should be addressed, as well as the anticipated effects of mitigation. (See also the discussion of cumulative impacts in Section 5 of this manual.)

Only those environmental resource areas and conditions that would be affected by the proposed action or alternatives should be included in the description. The introduction to the environmental conditions and consequences section should also briefly explain why certain resource areas not to be included were excluded (likely, that they would not be affected by the proposed action or alternatives).

The content of the Environment Conditions and Consequences section is generally the same for EAs and EISs. Discussions and analyses in an EIS, however, might be more detailed to fully describe the nature of significant impacts. Assistance and guidance for various media and resource areas (Appendix K), representing the combined wisdom and experience of technical experts in the Army and the NEPA Support Team, is available to those preparing BRAC NEPA analyses for the Army.

Specific guidance is provided for analysis of the effects of realignment actions in Section 4.14 and for analysis of the effects of disposal and reuse actions in Section 4.15, below.

Introduction. The purpose of the introduction is to orient the reader to the organization of the material and to identify the procedures or methods used in the analysis. The introduction should

explain that the "baseline" is defined as the level of operations and environmental conditions at the time of the BRAC Commission's decision. The baseline facilitates subsequent identification of changes in conditions that would result from realignment, disposal and reuse, or enclave creation. It permits identification of the likely consequences of implementation, including any adverse effects for which mitigation would be appropriate. Also, where environmental resources or conditions are not included in the presentation, an explanation for their omission should be included in the introductory section.

The standard format to be used for BRAC NEPA documents consists of presentation of existing environmental conditions, followed immediately thereafter by evaluation of potential effects of no action, realignment, disposal and reuse (including analysis of appropriate reuse scenario intensities), and enclave creation. This format is especially reader-friendly because for each resource area and condition, it lets the reader connect baseline conditions to impacts without having to jump back and forth between two different sections (as occurs in many NEPA documents).

The resource areas and conditions typically encountered in BRAC NEPA analyses are identified below. For each, there are suggestions of what information should be included in describing the baseline to ensure appropriate analysis. Not all BRAC NEPA documents will include all the following topics. Proponents must ensure evaluation of only those resource areas and conditions that have a bearing under the proposed action so that the Army can achieve its objective of having focused analyses.

Land Use. The installation setting and land use conditions should be described in terms of the following elements:

- Geographic setting and location
- Climate (describe only briefly unless details are needed later as a specific factor in analyzing environmental consequences)
- Land and airspace use within the site and in its surrounding region (see also the discussion of cumulative effects in Section 5.9)

The installation should be described in terms of the type, architecture and arrangement of buildings, landscapes, recreation sites, training areas, and other relevant topics.

Air Quality. Ambient air quality in the project area should be described, as well as all existing air emission sources, air pollution monitoring and controls, and other features or factors that would be integral to the action. The National Ambient Air Quality Standards (NAAQS) attainment status of the affected area(s) should be included in this section. The basis of the air conformity determination to support the analyses that will be presented in the discussion of environmental consequences should also be provided. (See also discussion in Section 5.4 and Appendix L.) Suggested records to review containing necessary information include

- State and local air pollution control regulations
- Agency air pollution control regulations
- Emissions inventories
- Air pollution source permits
- Plans and procedures applicable to air pollution control

- Emission monitoring results
- Notification of violations to regulatory authorities
- Instrument calibration and maintenance records
- Reports or complaints concerning air quality
- State and/or federal regulatory inspections

Noise. This section should describe the following, as relevant:

- Land use compatibility (noise contours, Environmental Noise Management Plan)
- Existing noise sources remaining
- Stationary sources (e.g., airfield operations, ordnance demolition, firing ranges, maintenance facilities, and construction)
- Mobile sources (e.g., vehicular traffic, large- and small-caliber weapons firing, and aircraft)

Water Resources. This section should describe surface water and groundwater hydrology and quality. For the latter, all point and nonpoint sources of pollution should be discussed. Presentation of data in tabular form, when appropriate, is very useful.

Geology. Information in this section should describe, as appropriate

- Geologic structure
- Soils
- Topography
- Mining activity

Infrastructure. The following elements should be included in the discussion of infrastructure:

- Potable water supply (treatment design capacity, quantities available)
- Wastewater treatment (plant design capacity, excess capacities available)
- Solid waste disposal (landfill capacities)
- Roadways and traffic (internal and external to the installation)
- Landfills (capacity, types of wastes received, years of operation at the time of BRAC action)
- Railways
- Incinerators
- Runways
- Energy (electric power, natural gas, fuel oil, coal, or steam)

Training Areas. This section should discuss the relative amounts of land and water resources used for training purposes, locations of training areas, types of training activities, and training area restrictions.

Hazardous and Toxic Materials. Using information obtained through CERCLA and Community Environmental Response Facilitation Act (CERFA) processes, describe any contaminated buildings or sites and the BRAC Cleanup Plan (BCP) process in terms of

- Storage and handling (areas)
- Disposal
- Contaminated sites
- Asbestos, radon, lead-based paint, and polychlorinated biphenyls (PCBs)
- Ranges and munitions and explosives of concern (MEC)
- Underground and aboveground storage tanks
- Spills

Permits and Regulatory Authorizations. This section should include the authorizations against which the proposed action must be evaluated or authorizations that must be obtained to execute the proposed action. This should not be a list of all permits obtained or needed by the installation.

Biological Resources and Ecosystems. This section should include a description of the plant and animal species, including those federally or state-listed threatened and endangered, located on and in the vicinity of the installation site. Habitat use (e.g., nesting or overwintering) by animal species should also be discussed. Both aquatic and terrestrial ecosystem types (e.g., river, forest, wetland, field) should be described, as well as the total size (in acres for terrestrial systems) of each type. Any ongoing wildlife management projects at the time of closure or realignment should be discussed.

When listing plant and animal species, both the common name and the scientific name should be given. The first time a plant or animal species is mentioned in the text of the EA or EIS, the common name should be used, followed by the genus and species in parenthesis. Each time the same species is mentioned thereafter, the common name should be used. For example, the first mention of a species (e.g., aspen) should read "aspen (*Populus tremuloides*)" and any later mention of the species should read "aspen (*P. tremuloides*)." If another species from the same genus is mentioned later, the genus name may be abbreviated—for example, "aspen (*Populus tremuloides*)" and "cottonwood (*P. deltoids*)."

Cultural resources. This section should include a brief discussion of the area's prehistory (when relevant to the proposed action) and a summary of the status of the cultural resources inventory for the BRAC project area. A more detailed summary concerning the minimal cultural resources information that must be included can be found in Section 5.6 and Appendix M of this manual. Information on historic and archeological resources, the status of Section 106 coordination (under the National Historic Preservation Act), and any programmatic agreements should be provided.

Sociological Environment. To address the sociological concerns of an installation, the following elements should be discussed:

- Demographics
- Housing, to include programs for the homeless and other aid programs
- Public services (law, fire protection, medical)
- Environmental justice pursuant to Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (February 11, 1994). (For information to be included in this portion of the NEPA document, see discussion on environmental justice in Section 5.8.)
- Protection of children pursuant to Executive Order 13045, *Protection of Children from Environmental Health Risks and Safety Risks*, 21 April 1997

The region of influence should be defined, and the rationale for determining the region should be briefly discussed. See also applicable portions of Section 5 of this manual.

Economic Development. This section should include information on the following:

- Regional economic activity
- Installation contribution, local expenditures
- Military force structure, salaries and expenditures, property values

To fully characterize the analysis, be sure any elements required as input for the Economic Impact Forecast System (EIFS) analysis are considered. At the proponent's option, EIFS model outputs may be compiled in a separate report and filed in the administrative record prepared for the NEPA document. A summary of the results may then be presented in the analysis portion of the economic development section. See also Appendix N.

Quality of Life. This topic pertains to the amenities available to military personnel, their dependents, and civilian employees of an installation. It is applicable to realignment and some enclave-creation actions but is not often applicable to disposal and reuse. When applicable to an action, the section should include a description of the following:

- Barracks and single officer quarters
- Family housing
- Schools for DoD dependents
- Family support services
- Medical facilities
- Shops and services
- Recreation

4.5.5 Document Body, Section 5.0: Conclusions

This section is included only in an EA. It should provide clear, supportable statements summarizing the negligible, minor, or insignificant nature of expected effects, and it should identify the environmentally preferred alternative. Relevant conclusions to be presented in this

section include (1) a statement that none of the predicted effects of the proposed action would result in significant impacts (assuming such to be the outcome of the analyses) and (2) a statement of whether the results of the analyses warrant issuance of a FNSI or preparation of an NOI for an EIS. Any mitigation actions necessary to enable a FNSI must be clearly identified.

4.6 List of Preparers

The format for listing the preparers is provided in 32 CFR Part 651, Appendix E, at paragraph (b)(8). Preparers include those persons who were primarily responsible for preparing the document through conducting research, collecting data, and writing. Preparers include those who prepared significant background or support papers or basic components of the document. When applicable, this section will include the disclosure statement of a contractor specifying that it does not have a financial or other interest in the outcome of the project.

4.7 Distribution List

This section should include a list of all people who are to receive copies of the document (EA or EIS). Copies of the final EA or EIS should be supplied to all parties who have provided information or comments or have specifically requested a copy. The names of these parties should be included on the distribution list. As a general practice, the recipients should be listed on a hierarchy: Members of Congress (U.S. Senators, U.S. Congressmen), state governors, state representatives (senators, etc.), federal agencies, state agencies, regional agencies, municipal governments, organizations, individuals, and libraries.

4.8 Index

An index is usually not provided in an EA. An index may be provided in an EIS to show the section and page number of topics and frequently used terms. Experience has shown that an index is usually not required because any of the limited number of topics may just as easily be located by use of the table of contents.

4.9 References

The references section should provide bibliographical information for sources cited in the text of the EA or EIS. References may include (and provide citations to) sources on the World Wide Web.

4.10 Persons Consulted

Persons and agencies that were contacted for information for the document should be listed in this section regardless of whether a response was received.

4.11 Appendices

Appendices typically attached to an EA and EIS include the following:

- Notice of Intent
- Final coordination or consultation letters to and from other agencies (e.g., the U.S. Fish and Wildlife Service)
- Final programmatic memorandum of agreement on compliance documentation regarding historic and cultural resources
- Economic Impact Forecast System (EIFS) model description and modeling results

- Technical data
- Pertinent excerpts from the most recent version of the community reuse plan (applies only to disposal/reuse EA or EIS)

4.12 Acronym List

A list of the acronyms used throughout the EA or EIS should be provided. For the reader's convenience, it may be included at the back of the document.

4.13 Document Review Checklist

Appendix O of this manual is a checklist that can be used for quality assurance/quality control (QA/QC) before submission of draft and final document(s) for circulation for internal review or release for public review. The appendix provides the document preparer with a basic list of the information required for BRAC NEPA documents.

4.14 Specific Guidance for Evaluation of Realignment Actions

BRAC realignments involve the transfer or relocation of a mission or portions of a mission from one installation to another. Realignment-related activities are analyzed in a step-by-step process through which alternative implementation measures are identified and evaluated. The following steps are used in the evaluation process.

Step 1: Define the proposed action to be evaluated. The proposed Army action is implementation of the realignment of mission(s) or portions of mission(s) to another installation. The document should focus on providing information to the Army decisionmaker regarding the impacts of various implementation alternatives. Realignment activities include the transfer of the mission, equipment, testing and training activities (if applicable), and personnel and their families, as well as related facility construction or modification.

Step 2: Identify implementation alternatives. The preparer should identify all reasonable realignment implementation alternatives that satisfy the purpose of and need for the proposed action and a no action alternative.

Step 3: Analyze impacts of the proposed action and alternatives. After the proposed action is defined and the alternatives are identified, the preparer evaluates their environmental and socioeconomic effects on the baseline conditions at the site. Analyses of proposed and alternative sites for construction (if necessary) are also conducted. Proposed mitigation measures and consideration of their likely effects, both beneficial and adverse, are included.

Step 4: Evaluate cumulative effects. The cumulative effects associated with each alternative, including the no action alternative, should be identified and described. See the discussion on cumulative effects analysis in Section 5.9.

4.15 Specific Guidance for Disposal and Reuse Actions

The Army has established a unique process for performing NEPA analysis and documentation of potential impacts associated with Army property disposal and reuse. The process is designed to comply with NEPA and related laws, protect and enhance the affected environment, and respond to local communities' needs and wishes in keeping with Army objectives for assisting in rapid economic revitalization.

The Army's approach is to identify the primary and secondary actions associated with BRAC; to describe the known or probable reuse alternatives in generic terms based on their reuse "intensity level," but with as much specificity as practicable; and to evaluate the direct, indirect, and cumulative effects of both disposal and reuse.

The primary action evaluated is *disposal of the excess property* made available by the legislatively mandated closure. This is an action for which the Army has responsibility, and both the authority and ability, to control. The secondary action is *reuse development of the property* after ownership is transferred, an action taken by others as a result of the Army's decision to dispose of the property.

An important reason for developing an intensity basis for evaluating reuse alternatives stems from experience with earlier BRAC actions. Reuse options frequently evolve as the community considers new goals and opportunities. If development of the NEPA document were to wait for the final design of the reuse plan, completion of the document could be excessively delayed. By describing, with specific detail where available, all reasonable and foreseeable reuse alternatives in terms of developmental intensity, the document allows for the eventual reuse alternative selected by the LRA to be considered. Therefore, Army decisionmakers always have before them the full range of alternatives needed to make timely decisions on disposal.

Step 1: Define proposed actions to be evaluated. The primary Army action is real estate disposal. The NEPA document should focus analysis on providing information to the Army decisionmaker regarding the impacts of various disposal alternatives. The document should also describe related and ongoing processes leading to disposal. These typically include

- NEPA documentation and the integrating "umbrella" process
- Environmental restoration and compliance
- Cultural resource surveys and programmatic agreement(s)
- Real estate screening process
- Other installation-specific surveys and investigations required to support the disposal decision (e.g., surveys for threatened and endangered species)
- Caretaker operations (as an alternative that may be implemented between closure and disposal)

The Army's determination of surplus, which underlies real property disposal, specifies acreages and facilities subject to the disposal process. At an installation, information in the determination of surplus translates into the disposal "footprint." This footprint, which constitutes the project site that is the subject of the NEPA document, must be described accurately and fully. Use of graphics to portray the disposal footprint materially aids understanding of the proposed action.

Clear identification of the acreage or facilities, their location, and related information (e.g., expected time frames for disposal) are to be articulated in Section 2 of the EA or EIS. Also, Section 2 will identify encumbrances that might exist at the time of disposal.

A secondary action by other (non-Army) entities is property reuse. See Steps 5 and 6.

Step 2: Identify encumbrances and other considerations affecting reuse. The Army's methodology to ensure environmentally sustainable redevelopment of BRAC disposal property identifies natural and man-made resources and conditions that must be used wisely or protected

after ownership is transferred out of federal control. The Army develops this information from the environmental baseline information early in the NEPA process and provides it to the LRA with the recommendation that the reuse plan consider protecting these resources. The LRA can then develop a reuse plan that satisfies community redevelopment goals and objectives while achieving a high environmental standard.

Encumbrances are legal constraints imposed to protect environmental values, to meet requirements of federal law, to implement results from Army negotiations with regulatory agencies, or to address specific Army needs. Encumbrances can also arise as a result of past Army management of real property. For example, the presence of special hazardous materials such as asbestos-containing material, lead-based paint, radon, PCBs, and radiological material might require specific handling or management strategies. In most cases, these conditions will not materially and adversely affect redevelopment. Some other types of conditions may be identified to an LRA as potentially limiting redevelopment but not classified as legal encumbrances because they are not within the ability of the Army to control or modify.

Five major categories of encumbrances are typically involved in BRAC actions:

- *Easements and rights-of-way.* Real estate might be burdened with utility system, other infrastructure-related, roadway, or access easements and rights-of-way.
- *Use restrictions*. Activities on property might be limited by existing conditions or in recognition of adjacent land uses. For example, use of a former landfill site would preclude ground disturbance of a clay cap but could permit passive uses such as recreation. The presence of munitions and explosives of concern would preclude many uses of a parcel because of the potential safety hazards. In other cases, restrictive covenants could impose or maintain buffer zones between incompatible uses. Use restrictions might also require that transferees of property take certain actions (e.g., remediate asbestos-containing materials or lead-based paint prior to use of buildings for residential purposes) or refrain from certain actions (e.g., prohibit use of on-site groundwater pending completion of cleanup activities).
- *Habitat and wetlands protection*. The presence of federally listed threatened or endangered species of wildlife, plants, or wetlands might constrain unlimited use of property.
- *Historic building or archeological site protection*. Negotiated terms of transfer or conveyance might result in requirements for new owners to maintain the status quo of historic buildings or archeological sites or might impose a requirement for consultation with the State Historic Preservation Office before any actions affecting such resources take place.
- *Water rights*. Protective covenants might be required to protect existing well fields or aquifers.

The preparer should identify all encumbrances (restrictions, limitations) and other considerations (existing natural features and infrastructure) that might affect or limit potential reuse options. These encumbrances are identified by examining the baseline information on the entire project site. Encumbrances are presented in detail in Section 3 of the EA or EIS and identified as circumstances that will accompany property at the time of accelerated or traditional disposal.

Step 3: Determine disposal alternatives. Disposal alternatives include the consideration of whether to dispose of the property on ac accelerated or traditional basis. The following alternatives (see Section 3.8) are available for consideration in a disposal action:

- Accelerated disposal
- Traditional disposal
- Caretaker status
- No action

Step 4: Analyze the environmental effects of the disposal alternatives. With respect to the Army's primary action of disposal, analysis must account for all adverse and beneficial effects on relevant resource areas and conditions within the project site. Results of the analyses should be presented immediately following the baseline presentation of each resource area and condition.

Step 5: Identify feasible reuse scenario intensities. The Army treats the community's reuse plan as a primary factor in developing reuse alternatives. This incorporation satisfies the requirement in the BRAC law that the reuse plan be considered part of the proposed Federal action for BRAC NEPA analysis. CEQ regulations require evaluation of reasonably foreseeable actions, without limitations on the party conducting them, and evaluation of consequent environmental impacts. Reuse of the property is therefore evaluated as an action secondary in time, following the Army's primary action of disposal. Because of the speculative and changeable nature of reuse planning, however, specific reuse activities typically cannot be precisely identified at the time the EA or EIS is prepared. Accordingly, the Army considers the LRA's reuse plan as the primary factor in defining the reuse scenarios to be considered.

Reuse planning for the excess property consists of establishing reuse objectives, planning for compatible land uses that support environmentally sustainable reuse and the community's needs, and marketing among potential public and private sector entities to generate interest in use of the property. The reuse planning process is dynamic and often dependent on market and general economic conditions beyond the control of the reuse planning authority.

Recognizing the dynamics attending reuse planning, the Army uses intensity-based probable reuse scenarios to identify the range of reasonable reuse alternatives required by NEPA and by DoD implementing directives. That is, instead of predicting exactly what will occur at a site, the Army establishes ranges or levels of activity that might occur. These levels of activity, referred to as reuse intensities, provide a flexible framework capable of reflecting the different kinds of reuse that could occur at a location and their likely environmental effects. Reuse intensity levels also take into account the effects that encumbrances exert on reuse.

The Army's analytical process recognizes five intensity-based levels of redevelopment for the evaluation of potential environmental and socioeconomic effects: low-intensity reuse (LIR), medium-low-intensity reuse (MLIR), medium-intensity reuse (MIR), medium-high-intensity reuse (MHIR), and high-intensity reuse (HIR). The five levels of reuse intensity can be viewed as a continuum. At the low end, the LIR represents a minimal level of activity, such as might be found in undeveloped lands or in uses not requiring substantial building or infrastructure improvements (e.g., parks, recreation areas, or golf courses). At the other end of the continuum, the HIR represents the greatest intensity of use, such as might be found in highly developed urban areas. At any given installation, analysis of all five levels of intensity might not be appropriate because of historical usage, physical limitations, or other reasons.

Indicators of levels of intensity can be quantified by counting the number of people at a location (employees or residents), the potential number of vehicle trips generated as a result of the nature of the activity, or the number of dwelling units. Other indicators of the intensity of use are the rates of resource consumption (electricity, natural gas, water) and the amount of building floor space per acre (identified as the floor-area ratio, or FAR, expressed as the number of square feet per acre).

The Army has selected four representative, illustrative use intensity parameters to evaluate reuse actions in BRAC. These are residential density, employee density (general space), employee density (warehouse space), and floor area ratio. These use intensity parameters aid evaluation of environmental effects at various levels of redevelopment.

- *Residential density*. Identifies the number of dwelling units per acre; indicates the number of people who might reside in an area.
- *Employee density (general)*. Indicates the number of square feet available per employee in all types of facilities at an installation except warehouses or storage structures.
- *Employee density (warehouse)*. Indicates the number of square feet available per employee engaged in warehouse or storage activities at an installation. Only built, fully enclosed and covered storage space is calculated; sheds or open storage areas are excluded. In describing Army uses of facilities, estimates of the number of employees engaged in warehouse or storage operations are used to determine the portion of the installation workforce applicable to warehouse employee density.
- *Floor-area ratio*. Reflects how much building development occurs at a site or across an area. For example, a 3-story building having a 7,500-square-foot footprint on a 4-acre site would represent an FAR of 0.13 (22,500 square feet of floor space over 4 acres [174,240 square feet]).

The Army's use intensity parameters (shown in Table 4-1) may be considered together in evaluating the intensity of reuse of a site so as to provide a full context. Use of any single parameter in isolation, on the other hand, might unduly emphasize certain aspects of a site or preclude broader consideration.

Table 4-1
Land Use Intensity Parameters

Intensity Level	Residential Intensity[1]	Square Feet per Employee (General Space)	Square Feet per Employee (Warehouse Space)	Floor-Area Ratio
Low	< 2	> 800	> 15,000	< 0.05
Medium-low	2–6	601–800	8,001–15,000	0.05–0.10
Medium	6–12	401–600	4,000–8,000	0.10–0.30
Medium-high	12–20	200–400	1,000–4,000	0.30–0.70
High	> 20	< 200	< 1,000	> 0.70

[1] Dwelling units per acre.

The use intensity parameters in Table 4-1 enable identification of baseline land use intensities (what a project site has historically supported) and potential future land use intensities.

The NEPA document should look at the range of reasonable, foreseeable reuse alternatives that,

to the extent practicable, reflect the community's preferred reuse and are developed in conjunction with the LRA planning process, zoning commissions, and real estate experts knowledgeable of the local market. Intensity-based reuse alternatives encompass a range of generic reuses based on the "most likely" or "probable" intensity levels of land use. They should be defined based on the best available information relative to local ordinances and land use plans and trends and, to the extent available, the LRA's plan. The Army's reuse intensity levels should track with the community plan as closely as practicable to conform to DoD guidance calling for the community plan to provide a basis for the reuse alternatives and with BRAC law.

To analyze the potential effects associated with reuse, the proponent should consider the nature of the project site (types of facilities, size, location, and the like) and select representative reuse intensities consistent with the characteristics of the site and the LRA's plans. In most cases, two or three reuse intensities will capture the likely nature and extent of redevelopment that will occur at an installation. The intensity of scenarios to be evaluated should be presented, with supporting rationale, in Section 3.0 of the EA or EIS.

Because reuse is a "secondary action" to the Army's "primary action" of disposal and involves decisions ultimately made by others, the Army does not identify a preferred reuse alternative.

Step 6: Analyze the environmental effects of reuse. The proponent must analyze and document the impacts of each reuse alternative on baseline resources and conditions described in the Environmental Conditions and Consequences section. The analysis must take into account any limitations imposed by encumbrances (if any) described in Section 2 of the document. Depending on the intensity level under analysis, the nature of the proposed redevelopment, and the particulars of each project site, direct and indirect impacts on resources and conditions might be found with respect to land use, air quality, water resources, and other resources.

Proponents should also understand that Army use of real property differs from public and private sector use in several significant respects. Army land use planning and facilities siting proceed on an area basis; in the public sector, property is typically divided into parcels within areas that are zoned for particular uses. The first requirement for Army use of property is accomplishment of mission; in the public sector, numerous considerations come into play in determining the highest and best use of property. In analyzing potential effects on resources, the proponent might be required to give great weight to factors that are not usually encountered in land use and resource evaluations within the Army. These include such matters as zoning and land use compatibility among a variety of uses, population mobility, housing needs, and community needs. Rates of resource consumption and the ability to provide for resource protection also need to be considered. Depending on the reuse intensity of a given location or area, there will be a variety of effects on traffic, air quality, generation and disposal of wastes, water quality, biological resources, cultural resources, and social and economic conditions.

The analyses of the effects of reuse intensities on particular resources and conditions should appear immediately following the analyses of disposal in Section 4 of each EA and EIS.

Step 7: Evaluate cumulative effects. In this section, the analyst identifies and describes the cumulative effects associated with the disposal alternatives, caretaker status, no action, and each reuse alternative. This analysis must consider the impacts associated with the ultimate disposal and reuse of all excess property on resource attributes that can be evaluated only at the cumulative level. Typical cumulative impact categories are

- Adjacent community land use and zoning
- Socioeconomic and demographic conditions
- Regional community facilities and housing
- Utility system capacities
- Regional solid waste disposal/wastewater treatment systems
- Surface water and groundwater supply and quality
- Roadway systems and traffic congestion
- Air quality
- Noise
- Public health and safety

Further guidance on assessment of cumulative effects is provided in Section 5.9.

This page intentionally left blank.

5.0 Current Topics for Special Attention

This section presents information on current "hot topics" associated with the BRAC and NEPA processes. Preparers and reviewers of BRAC NEPA analyses should be aware of the special attention given these topics and should closely follow the Army's policies and guidance for addressing them.

5.1 President's Five-Part Plan

In 1993, an initiative known as the President's Five-Part Plan was designed to revitalize the economies of communities adversely affected by base closures and realignments. The plan gave top priority to early reuse of surplus and excess property and established the following:

1. Job-centered property disposal that put local economic redevelopment first
2. Fast-track environmental cleanup that removed needless delays while protecting human health and the environment
3. Transition coordinators at major bases slated for closure
4. Easy access to transition and redevelopment help for workers and communities
5. Larger economic development planning grants to base closure communities

Congress endorsed the President's Five-Part Plan by enacting Title XXIX of the National Defense Authorization Act for Fiscal Year 1994, popularly known as the Pryor Amendment in recognition of its principal legislative sponsor. DoD regulations carrying out the Pryor Amendment's provisions and procedures are found at 32 CFR Parts 174 and 175. The Pryor Amendment and its implementing regulations modified the property disposal process set forth in the 1988 and 1990 BRAC laws in several significant respects, some of which are summarized below.

DoD has promulgated regulations (32 CFR Parts 174 and 175) and policies consistent with the objectives of the President's Five-Part Plan and the Pryor Amendment. The following subsections highlight specific matters for accelerating closure and cleanup to lease or transfer real property to the community.

5.1.1 Real Property Screening

Pursuant to the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, which amended the Defense Base Closure and Realignment Act of 1990, property that is surplus to the federal government's needs is to be screened by means of an LRA's solicitation for notices of interest from state and local governments, representatives of homeless persons, and other interested parties. An LRA's outreach efforts to potential users or recipients of the property include working with the Department of Housing and Urban Development (HUD) and other federal agencies that sponsor public benefit transfers under the Federal Property and Administrative Services Act. Incorporating the notices of interest submitted to it, the LRA then prepares a redevelopment plan identifying the overall reuse strategy for the installation.

5.1.2 Local Redevelopment Plan

An LRA should have broad-based membership, including representatives from those jurisdictions with zoning authority over the property. The LRA must be a state or local government or an

instrumentality of a state or local government. The Secretary of Defense officially recognizes an LRA for planning and/or implementation through the Office of Economic Adjustment. The primary focus of the LRA is to develop a comprehensive local redevelopment (reuse) plan for the entire installation. The LRA begins a local reuse plan when the Army identifies surplus property in the *Federal Register* within 6 months after the base is named as a closing base. The plan must include identification of homeless assistance requirements and accommodate those needs. The LRA must then send the plan to HUD and DoD for review. The plan should incorporate DoD and federal requests for leases, as well as any public benefit uses, such as a public park, recreation, education, transportation, public health, economic development conveyances, or private sector uses envisioned for the installation.

5.1.3 Economic Development Conveyances

An LRA is the only entity eligible to receive property under an economic development conveyance (EDC). An EDC is a process for transferring real estate to an LRA to help spur local economic development and job creation. An EDC may require initial payment or only partial payment at time of transfer; may be negotiated at, or below, the estimated fair market value of the property; and allows for negotiated terms and conditions of payment (consideration) to the Army. Section 2821 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106-65) amended the 1988 and 1990 BRAC laws to enable an LRA to obtain an EDC at no cost. However, Section 3006 of the National Defense Authorization Act for Fiscal Year 2002 amended the provision again to provide that an EDC "… may be without consideration."

An EDC is not intended to supplant other federal property disposal authorities, and it may not be used if the proposed reuse can be accomplished through another authority. An LRA should use an EDC to obtain large parcels of the installation rather than individual buildings.

The LRA must apply to acquire property through an EDC, addressing certain criteria in its application in order to receive a favorable review. Information on submission of EDC applications is contained in 32 CFR Part 175 (*Revitalizing Base Closure Communities—Base Closure Community Assistance*) and in the *DoD Base Reuse Implementation Manual*.

Typically, an EDC application is submitted to the U.S. Army Engineer District handling the disposal of a closing base. The District simultaneously reviews and contracts for an evaluation of the application and forwards it through channels to HQDA, USACE, and DAIM-BD, where the EDC is reviewed for overall effect on the disposal of the entire installation being closed, then forwarded with recommendations to the Army Staff and Army Secretariat. After approval by the Army Secretariat, the USACE handles implementation of the EDC.

The Army has the discretion to enter into one of three types of agreements:

1. *Consideration within the estimated range of present fair market value, as determined by the Secretary.* The Army may be flexible about the terms and conditions of payment and can provide financing on the property. The payment may be in cash or in-kind, and it may be paid at the time of transfer or in the future.

2. *Consideration below the estimated range of fair market value, where proper justification is provided.* If the Secretary finds that a discount is necessary, the amount of consideration can be below the estimated range of fair market value. The terms and conditions of payment will be negotiated between the Army and the LRA. Proper justification for a discount will be based on the findings in the business and development plan contained in the EDC application.

3. *Consideration at no cost, where proper justification is provided and the LRA agrees to legislatively specified terms*.

In rural areas, defined as those outside defined Standard Metropolitan Statistical Areas, an EDC approved by the Secretary may be made without consideration when the installation's closure will have a substantial adverse impact on the economy of the communities in the vicinity of the installation and on their prospects for economic recovery. The Secretary determines whether these two conditions are met, using all the information considered in the application for an EDC.

5.1.4 Leasing of Real Property

Leasing of real property early in the reuse process is an effective way to quickly attract new jobs to replace those lost by base closure. Because the Army cannot convey contaminated property until cleanup measures are in place and proven effective, leasing is often the only means to allow suitable economic reuse to occur immediately on substantial portions of closing bases. The Secretary of the Army is authorized by 10 U.S.C. 2667 to lease real and personal property for less than the fair market value if the public interest will be served as a result of the lease and if the fair market value of the lease is unobtainable or not compatible with such a public benefit.

The three options for leasing—interim leases, leases in furtherance of conveyance, and master leases—are discussed below.

Interim lease. Generally, an interim lease is a short-term lease that makes no commitment to the lessee for future use or conveyance of title to the property upon its disposal. An interim lease is usually entered into before final disposal decisions are made by the Secretary of the Army.

Before the requirements of NEPA have been met, the term of an interim lease may last for up to 5 years, including options to renew. At the completion of the NEPA process, the lease could convert into a long-term lease or deed transfer. Separate NEPA analyses (as well as air pollution, wetland, floodplain, historic structure, and other natural and cultural resource determinations and consultations) might be required prior to a decision to lease.

An interim lease must be preceded by an Environmental Condition of Property (ECP) report and a Finding of Suitability to Lease (FOSL). Interim leases typically end at the time that final reuse and disposal decisions are implemented. Interim leases may be for consideration at or below the estimated fair market rental value for the leasehold. Capital improvements may be made by the lessee except where, in the judgment of the Army, they will trigger a requirement for an EIS under NEPA.

Lease in furtherance of conveyance. A lease in furtherance of conveyance may be entered into after the Army (1) has complied with NEPA and (2) has issued a final disposal decision for the property that provides immediate possession of the property to the entity identified in the disposal decision as the recipient of the property. Such a lease may be long-term and may be for all or for a portion of the property identified for conveyance to the lessee in the disposal decision.

A lease in furtherance of conveyance must be preceded by an ECP and a FOSL. A lease in furtherance of conveyance will terminate when a deed transfer can be accomplished.

Master lease. A master lease may be an interim lease or a lease in furtherance of conveyance. It is a lease that serves as the principal lease instrument for the entire base or for major portions of it. Individual parcels and properties may be sublet under the terms of a master lease. The master

lease and each subsequent sublease must comply with appropriate ECP, FOSL, NEPA, and other applicable natural and cultural resource determinations and consultation requirements.

5.1.5 Personal Property

Personal property on closing bases is often very useful to the redevelopment of the real property. Personal property includes all property except land and fixed-in-place buildings, naval vessels, and records of the federal government. An inventory must be completed soon after the base is approved for closure, and consultation with local officials must be initiated. The consultation might include a walk-through of the facilities to familiarize local officials with potentially available property. The community can then identify in its reuse plan the personal property it wishes to acquire. The Army may opt to keep much of the personal property at the base during the preparation of the redevelopment plan.

5.1.6 Maintenance, Utilities, and Services

To ensure quick reuse of an installation, minimum levels of maintenance, utilities, and services will be provided in accordance with 32 CFR Part 175 and the *DoD Base Reuse Implementation Manual.* The Installation Commander, in concert with the LRA, will develop a plan specifying the levels of maintenance, utilities, and services to be provided for a specified duration. This plan will be forwarded to DAIM-BD for approval. These levels will not exceed those in effect on the date of closure or realignment approval or will not be less than the minimum required to be consistent with federal government standards for excess and surplus properties in accordance with 41 CFR 101-47.402 and 41 CFR 101-47.4913. Support will continue for no longer than 1 year after operational closure of the base, or 180 days after the NEPA analysis and decisionmaking for the relevant property have been approved by the Secretary of the Army unless reuse has already been achieved. Extension of these periods must be approved by the Secretary of the Army.

5.2 BRAC Fast Track Cleanup

Consistent with achieving rapid community reuse, DoD implements various initiatives to achieve cleanup on a "fast track" basis. These initiatives, described in the subsections below, apply to all Army installations slated for closure where property is available for transfer to the community pursuant to the Base Closure and Realignment Act of 1988 (Public Law 100-526; BRAC '88) or the Defense Base Closure and Realignment Act of 1990 (Public Law 101-510; BRAC 1991, 1993, 1995, and 2005). Additional related real estate requirements, reports, and findings are described in Section 5.10. The policy's scope includes environmental cleanup programs and activities that support the lease or transfer of real property at affected installations under applicable statutes, regulations, and authorities, including the following:

- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
- Resource Conservation and Recovery Act (RCRA)
- National Environmental Policy Act (NEPA)
- Executive Order 12580, *Superfund Implementation*
- Community Environmental Response Facilitation Act (CERFA)
- National Contingency Plan (NCP)
- Defense Environmental Restoration Program (DERP)

It is the Army's policy to expeditiously conduct environmental cleanup actions and programs to protect human health and the environment, and to facilitate the reuse and redevelopment of closed bases as quickly as possible.

5.2.1 BRAC Cleanup Teams

As a fast track cleanup initiative, the policy to establish cleanup teams applies to all Army installations slated for closure or realignment where property is available for transfer to the community. The BRAC Cleanup Teams (BCT) are to be composed of one representative of the DoD component; one representative of the state; and, where appropriate, one representative of the U.S. Environmental Protection Agency (EPA). The BCT Army representative, who works for the Army, is known as the BRAC Environmental Coordinator (BEC). The BEC has the responsibility and implementation authority for environmental cleanup programs related to the transfer of an installation's real property. A BCT must conduct a "bottom-up" review of the environmental cleanup program and related activities of its assigned base. The review includes an evaluation of existing environmental programs, such as the Installation Restoration Program, closure-related compliance programs, and asbestos abatement programs, to identify opportunities for accelerating cleanup and expediting conveyance of the property.

5.2.2 Restoration Advisory Board

The policy of improved public involvement in accelerated base cleanup includes the local community in the installation cleanup program by making information available, providing opportunities for comment, and establishing and seeking active public participation on a Restoration Advisory Board (RAB).

A RAB is established at every closing and realigning base where property will be available for transfer to the community. The RAB works in partnership with the BCT on cleanup issues and related matters. The RAB is composed of an Army representative, EPA and state representatives, and members of the local community. The RAB is jointly chaired with the BEC. The responsibilities of the RAB are to conduct oversight of public outreach activities, to act as a vehicle for disseminating information, and to develop and implement community relations plans. The RAB conducts regular meetings that are open to the public and maintains mailing lists of stakeholders who wish to receive information on the cleanup program of a particular base. On January 28, 2005, pursuant to 10 U.S.C. 2705(d)(2)(A), the DoD published a proposed rule by which the operations and activities of RABs would be governed, in the *Federal Register* (Volume 70, No. 18, p. 4061).

5.2.3 Technical Review Committee

A Technical Review Committee (TRC) is an interagency technical review body (usually three or four representatives) made up of installation representatives, Army environmental program managers, regulatory agencies (e.g., EPA and state), and local government and community representatives. A TRC is an interagency technical review body established under 10 U.S.C. 2705c, *Department of Defense Environmental Restoration Program*, and Executive Order 12580 to provide interested parties (federal, state, and local) with a forum to discuss and provide input into site restoration activities. The TRC monitors installation environmental restoration progress and direction, and provides technical comments. In cases where a TRC or other similar group already exists under the Defense Environmental Restoration Program, the TRC will be expanded or modified to become the RAB, rather than creating a separate committee.

5.2.4 Accelerating NEPA Analysis

To expedite community reuse, DoD issued guidance to accelerate NEPA analysis by requiring that any EIS on disposal and reuse must be produced within 12 months of receipt of a community's final reuse plan. This guidance requires expedited, early production of a high-quality environmental analysis that will be useful in the community's ongoing planning efforts. A single NEPA analysis is to be prepared to support decisions regarding both disposal and reuse of the installation.

Close coordination between proponents and preparers of the NEPA analysis and the local community can provide better alternatives for the NEPA analysis. It can also provide information on potential impacts on the community for its decisionmaking.

For EISs, gathering environmental documentation and conducting background analysis for likely reuse scenarios should begin early. Advance EIS information gathering may begin even before publication of the NOI in the *Federal Register*. Information gathering for wetland determinations, threatened or endangered species concerns, and cultural or historic resource concerns should begin at this early stage to facilitate integration into the NEPA analysis, and it should be used to support other related environmental studies and the preparation of cleanup-related documents. Data collection will continue in cooperation with community officials, as well as the EPA and other formal cooperating agencies, after the NOI is published. Information gathered and analyses prepared, which may include in appropriate cases a preliminary draft of the EIS, will be provided to the community to aid in the development of its reuse plan. The Army has adopted procedures, discussed in Sections 3 and 4, for analyzing probable reuse scenarios in the absence of an approved community reuse redevelopment plan.

5.3 CERCLA/RCRA-NEPA Interface in BRAC

CERCLA regulates the cleanup of releases or threats of releases of hazardous substances, pollutants, or contaminants. RCRA regulates the management of hazardous waste, including storage, handling, transportation, treatment, and disposal. In general, RCRA provides regulation of current hazardous waste generators, transporters, and treatment, storage, or disposal facilities, whereas CERCLA provides regulation of the cleanup of past or abandoned hazardous substance release sites.

5.3.1 Installation Restoration Program

The Army's Installation Restoration Program (IRP) includes analyses under CERCLA and the Superfund Amendments and Reauthorization Act (SARA). CERCLA and NEPA processes are similar in many elements of analysis, but they have different approaches to those analyses.

Under CERCLA, if EPA determines through preliminary investigations that some type of response action is required at a site, a removal or remedial action may take place. A removal action is a short-term action intended to stabilize an area that poses an immediate threat to human health or the environment. A remedial action is a long-term action that stops or substantially reduces releases or potential releases of hazardous substances considered serious but not immediately threatening.

Under SARA, EPA is required to identify hazardous waste sites at federal facilities. EPA is directed to establish a list of the most dangerous hazardous waste sites requiring priority for remedial action, called the National Priorities List (NPL). If a federal facility is on the NPL, the agency with jurisdiction over the site is responsible for conducting a Remedial

Investigation/Feasibility Study (RI/FS) within 6 months. The RI fully characterizes the extent of the problems at the site, and the FS develops, screens, analyzes, and selects an appropriate remedial alternative. These processes normally occur simultaneously and are performed in consultation with EPA.

The RI/FS process is similar to the NEPA process. RI/FS activities involve scoping, community relations, comparative analysis of remedial action alternatives, public comment review periods, final selection of a remedial action, and preparation of a Record of Decision.

There are also some differences between the CERCLA process (RI/FS) and the NEPA process (EIS). For example, analysis under CERCLA divides the restoration process into "operable units," whereas NEPA addresses the site as one complete entity. There are also differences in the timing of the studies, analysis of specific alternatives, scope of analysis, and extent of public involvement.

5.3.2 Analysis and Documentation

The BRAC NEPA process requires specific information regarding hazardous substances and waste. Ongoing RCRA program requirements and CERCLA investigation and response efforts must be summarized.

Affected environment. RCRA requirements for ceasing operations at a closing installation and for conducting realignment activities should be included in the Affected Environment discussions of the BRAC NEPA document. This section of the document should also include a discussion of the ECP process and ongoing environmental restoration activities at the installation. It should include baseline information on both current and past hazardous waste sites and describe the status of completed, ongoing, or planned environmental restoration studies. (See the discussion of ECPs in Section 5.11, Community Environmental Response Facilitation Act.)

Both realignment and disposal/reuse documents should present the following types of information related to this section:

- A description of the current status of the installation's hazardous material storage and handling, including types and locations of materials used.
- A description of the hazardous waste disposal process, including the RCRA permit status.
- A description of identified contaminated sites and the status of their remediation.
- A description of the current status of the installation's programs for asbestos, radon, PCBs, lead-based paint, pesticides, refrigerants, and medical and biohazardous wastes. This section should discuss whether areas proposed for disposal or construction have been surveyed for these contaminants.
- A description of the current status of the aboveground and underground storage tank program. Tanks removed and scheduled for removal should be identified. A discussion of ongoing or planned remediation of contaminants from storage tanks should be included.

Information may be presented in chart or table form when appropriate.

Environmental consequences. The NEPA analysis and documentation required for CERCLA/RCRA activities associated with realignment actions and disposal actions will differ slightly. NEPA analyses prepared for realignments will evaluate the potential environmental

impacts resulting from the realignment mission (e.g., construction/demolition projects needed, permit requirements). In the case of a disposal action, the nature, magnitude, and extent of environmental contamination and the level of cleanup will directly affect the identification of prudent land uses for the released property. This, in turn, will affect the ultimate plan for the reuse of the installation. For such a disposal, the NEPA analysis will address contamination and the level of cleanup in evaluating alternative reuse scenarios.

In either case, the Environmental Conditions and Consequences section should discuss all impacts that could reasonably be expected to occur as a result of implementing the proposed action or any of the alternatives. The following information should be provided as a minimum:

- Analysis of the proposed action's impact on the installation's hazardous materials storage and handling.
- Discussion of the proposed action's impacts on the installation's hazardous waste disposal process and any impacts on the RCRA permit status.
- Discussion of the impacts of identified contaminated sites on the proposed action. Identification, for realignment documents, of any contaminated sites within proposed construction areas and plans for remediation. Description, for disposal/reuse documents, of actions that must be completed before disposal of the property.
- Discussion of any impacts associated with the installation's programs for asbestos, radon, PCBs, lead-based paint, pesticides, refrigerants, and medical and biohazardous wastes. This section should discuss what steps must be taken to prepare any sites for realignment or disposal.
- Identification of any aboveground or underground storage tanks that will be affected by the proposed action, emphasizing storage tanks that must be removed and impacts associated with storage tank remediation.

5.4 Air Quality Analysis

The Clean Air Act Amendments of 1990 (CAAA-90) provide a comprehensive national program with the goal of reducing the levels of pollutants in the ambient air. The DoD strategy for air quality compliance includes prevention, control, and abatement of air pollution from stationary and mobile sources. The CAAA-90 provide the framework for most of the air quality regulations and guidelines with which Army installations must comply. The CAAA-90 are implemented by detailed federal, state, and local regulations.

5.4.1 Required Air Quality Analysis

In planning projects and activities, installations must consider the impacts on air quality. Two independent legal requirements govern consideration of air quality impacts: (1) the NEPA and (2) the general conformity provision of Clean Air Act section 176(c), including EPA's means of implementation, the General Conformity Rule. Depending on the action and the installation's conformity attainment status, an installation might have to complete a separate conformity document in addition to the NEPA documentation. Applicability of the two requirements must be considered separately. Exemption from one requirement does not automatically exempt the action from the other requirement, nor does fulfillment of one of the requirements constitute fulfillment of the other requirement. Although installations should integrate compliance to save time and resources, the two requirements are very different, necessitating separate analyses and documentation.

5.4.2 The General Conformity Requirement

Applicability. The General Conformity Rule requires federal agencies to make written conformity determinations for federal actions in or affecting National Ambient Air Quality Standards (NAAQS) nonattainment areas or maintenance areas (nonattainment areas that have been redesignated as attainment areas based on NAAQS compliance). The requirements of the General Conformity Rule generally do not apply to actions in or affecting NAAQS attainment areas.

A written conformity determination is not required for actions that are specifically exempted by the EPA General Conformity Rule. For example, the disposal of BRAC properties is generally exempt from the rule. On the other hand, however, reuse of closing installations by others would not normally be covered by exemptions. Because these proposed reuses are part of the proposed federal action for purposes of NEPA assessment, conformity information about them is necessary for the Army's closure NEPA document. In addition, actions where the total direct and indirect emissions of criteria pollutants will be de minimis, as defined in the rule, are exempt. Several other applicability exemptions are also provided in the text of the rule. Current Army guidance should be consulted to determine proper analysis, documentation, and signature authority requirements for exempt actions, including those actions that result in emissions below de minimis levels. Other actions, however, such as the realignment of missions and units to other installations, are not exempt.

If a conformity determination is required, it must be based on a detailed air quality analysis. A determination is required for only the action that the federal agency approves and not for all alternatives. The General Conformity Rule and current Army guidance should be consulted to determine procedural requirements and proper signature authority for conformity determinations.

Section 176(c) conformity requirements in attainment areas. Although the procedural requirements of the General Conformity Rule are not applicable to actions in or affecting NAAQS attainment areas, conformity with the State Implementation Plan (SIP) or Federal Implementation Plan (FIP) in these areas must still be ensured. EPA intends to promulgate a conformity rule in the near future for NAAQS attainment areas. Until EPA issues such a rule, installations must ensure conformity with SIPs and FIPs through NEPA analysis and documentation.

Guidance. Specific guidance detailing conformity requirements and Army policy regarding documentation is contained in Appendix L.

Army guidance requires that installations prepare a Record of Non-Applicability (RONA) for potentially significant federal actions that do not require a written conformity determination because they fall under the transportation conformity rule, they are specifically exempted under EPA's General Conformity Rule, or the total emissions are *de minimis*. The RONA documents the decision not to prepare a written conformity determination for an action, and it is signed by the installation's environmental coordinator. Because the General Conformity Rule is inapplicable in attainment areas, a RONA need not be prepared for a BRAC action occurring in an attainment area.

If a conformity determination is prepared, the installation must forward a draft to the Army Environmental Center (AEC) for review and comment before offering the document for public comment. Final conformity determinations are signed by the Deputy Assistant Secretary of the Army for Environment, Safety, and Occupational Health (DASA-ESOH).

5.4.3 NEPA Requirements

NEPA requires broad consideration of the direct, indirect, and cumulative effects of an action on the environment as a whole, including air quality. This requirement must be fulfilled regardless of the applicability of the General Conformity Rule. Relative to the proposed action and alternatives, the air quality analysis under NEPA should include an investigation of the affected environment, environmental consequences, significance criteria, and mitigation. These matters are discussed below.

Affected Environment. This section should include a description of air quality conditions present at the installation. The description should include the attainment status of the installation for all criteria pollutants and the air quality control district in which the installation resides. Air pollution sources that have permits should be identified. In addition, any available information relative to the general air quality of the area should be included (e.g., ambient monitoring results).

Environmental Consequences. This section should discuss all changes to local air quality that could reasonably be expected to occur as a result of implementing a proposed alternative. The following are examples of possible environmental consequences:

- Changes in the type or amount of air emissions due to changes in the operation of current air pollution sources or the addition of sources
- Changes in air emissions due to construction activities (vehicular emissions and fugitive dust)
- Changes in local/regional ambient air quality due to changes in emissions
- Potential exposure to asbestos during building demolition or renovation (if asbestos has not been removed prior to demolition or renovation)
- Changes in public opinion (favorable or adverse) due to projected changes in air quality (especially for incinerator projects)
- Impact on compliance status due to construction or modification of air emission sources.
- Effects on the timely attainment or maintenance of the NAAQS or any air quality standard or milestone contained in the SIP or FIP

Significance Criteria. The environmental consequences described above should be compared with all applicable federal, state, and local regulations. These regulations provide an indication of the significance of various air quality parameters. The following are examples of significance criteria:

- Source-specific emission limits
- Permitting and licensing requirement
- NAAQS
- State or local ambient air quality standards
- SIPs and FIPs
- Exposure of sensitive populations to pollutants
- Any other applicable regulations or standards

Mitigation. Mitigation strategies should be explored if significant negative air quality impacts are foreseen. Possible mitigation techniques include the following:

- During construction activities, application of dust suppressant or use of operational controls to prevent excess fugitive emissions
- Acquisition of emission offsets
- Use of air pollution control equipment
- Transportation control programs

5.4.4 Integration of Conformity and NEPA

Both NEPA and the General Conformity Rule provide for public participation in development and review of air pollution impact documentation. With appropriate planning, the NEPA proponent can structure the public participation elements of both processes to allow for simultaneous review and comment on the relevant documents. Although integration in this manner will not be appropriate in all circumstances, the NEPA documentation should summarize the findings and conclusions contained in the conformity determination document prepared for the action. Two other potential areas for integration of the two processes are the selection of emission reduction measures and the analysis of impacts and effects.

5.4.5 Separation of NEPA and Conformity

As discussed above, the different legal requirements of NEPA and the General Conformity Rule dictate that the NEPA proponent conduct separate processes that result in separate documents. The analysis necessary to satisfy the General Conformity Rule requirements differs from traditional NEPA analysis in several ways. For example, a written conformity determination is required only for the preferred alternative, not for all alternatives, under NEPA, and it is limited to the criteria pollutant for which the area is in nonattainment. In addition, even when the proponent believes that a proposed action could be categorically excluded under NEPA, conformity review may still be required. The affected agency must maintain separate, thorough administrative records for each process to substantiate the separate administrative decisions and conclusions. Although the General Conformity Rule requires a determination only for the preferred alternative, such a determination should be done for all applicable reuse scenarios in a BRAC closure NEPA document. In a realignment NEPA document, the conformity analysis should be performed for all realignment scenarios subject to full consideration, when not otherwise subject to an exemption.

5.5 Ecological Resources

Although ecological resources are specifically mentioned in connection with BRAC only in terms of “identification of sensitive land” (see Section 1), the concepts of ecosystems and ecological resources are central to NEPA. Section 102(2)(H) of NEPA requires that analyses conducted must consider “ecosystems” and “ecological effects.”

The potential for ecological impacts must be considered in both EAs and EISs conducted for BRAC actions. Topics for special attention include the protection of sensitive environments such as wetlands, threatened and endangered species, and biological diversity.

5.5.1 Wetlands

Wetlands are of critical importance to the protection and maintenance of living resources, including a significant number of threatened and endangered species. Wetlands provide essential breeding, spawning, nesting, and wintering habitats for a major portion of the Nation's fish and wildlife species. Wetlands also protect the quality of surface waters by impeding the erosive forces of moving water and trapping waterborne sediment and associated pollutants, protecting regional water supplies by assisting the purification of surface water and groundwater resources, maintaining base flow to surface waters through the gradual release of stored flood waters and groundwater, and providing a natural means of flood control and storm damage protection through the absorption and storage of water during high-runoff periods.

Executive Order 11990 *Protection of Wetlands* requires that federal agencies minimize the destruction, loss, or degradation of wetlands and that action be initiated to enhance their natural value. It is the Army's policy to avoid adverse impacts on existing aquatic resources and to offset those adverse impacts which are unavoidable. The Army will also strive to achieve a goal of no net loss of values and functions to existing wetlands, and permit no overall net loss of wetlands on Army-controlled lands, including lands being transferred to others through BRAC. This responsibility must be incorporated into the consideration of encumbrances placed on an installation or on separable parcels considered for disposal in conjunction with BRAC.

5.5.2 Threatened and Endangered Species

Endangered Species Act. In fulfilling its conservation responsibilities under the Endangered Species Act (ESA), the Army works closely and cooperatively with the other federal agencies charged with enforcement of the act—the U.S. Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration Fisheries (NOAA Fisheries, also known as the National Marine Fisheries Service). In planning projects and activities, including BRAC actions, installations must engage in informal consultation with the USFWS or NOAA Fisheries at the earliest opportunity to ensure that BRAC actions that might affect listed species or critical habitat are consistent with the requirements of the ESA. If there is any question whether an Army BRAC action might affect a listed species or critical habitat, the Army Lead Organization should informally consult with USFWS or NOAA Fisheries to determine the need for formal consultation. Working closely and cooperatively with the USFWS and NOAA Fisheries through informal consultation to develop mutually satisfactory courses of action in connection with realignment and closure is essential.

Protection of threatened and endangered species. Section 7(a)(2) of the ESA requires the Army to ensure that any Army action authorized, funded, or carried out is not likely to "jeopardize" the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. "Jeopardize" means to engage in an action that would be expected, directly or indirectly, to reduce appreciably the likelihood of the survival and recovery of a listed species by reducing its reproduction, numbers, or distribution. Regardless of any opinion, action, or inaction by the USFWS or NOAA Fisheries, the Army Lead Organization is ultimately responsible for ensuring that its actions do not jeopardize listed species or result in the destruction or adverse modification of critical habitat.

Section 7(a) of the ESA requires *formal* consultation with the USFWS or NOAA Fisheries whenever the Army anticipates taking any action (including BRAC activities) or is engaging in ongoing action, such as caretaker activities at a closed installation, that might affect (beneficially or adversely) a listed species or critical habitat. Formal consultation, however, is not required if the Army Lead Organization determines, with the written concurrence of the USFWS or NOAA

Fisheries, that the action is not likely to adversely affect any listed species or critical habitat. Entering into informal consultation with the USFWS or NOAA Fisheries early is key to resolving potential problems and establishing the foundation to address issues in a proactive, positive manner; it is the preferred method of consultation. The Army Lead Organization must also confer with the USFWS or NOAA Fisheries when an action is likely to jeopardize any species proposed for listing as threatened or endangered or to result in the destruction or adverse modification of proposed critical habitat under the ESA. Informal consultation with the USFWS or NOAA Fisheries is always appropriate to clarify the Army Lead Organization's ESA responsibilities in connection with BRAC.

Consultation and conference procedures and the requirement to prepare Endangered Species Management Plans and Guidelines are discussed in Army Regulation 200-3. NEPA applies to actions taken in managing listed and proposed species and critical habitats. Consultation under section 7 of the ESA does not replace compliance with NEPA requirements. Consultation, conference, and biological assessment procedures under section 7 of the ESA should be integrated with NEPA procedures to the maximum extent feasible. Simultaneous compliance with NEPA and ESA procedures minimizes duplication of effort and avoids delay. Army Lead Organizations may combine ESA and NEPA documentation (such as the biological assessment and the environmental assessment) to reduce paperwork as long as the requirements of both statutes are met. Generally, the Army Lead Organization should determine the effect of a proposed action on listed species or critical habitat in accordance with ESA section 7 *before* completing NEPA documentation. Avoiding consultation with the USFWS or NOAA Fisheries to accelerate the NEPA process is not an acceptable Army practice.

5.5.3 Biological Diversity

It is an Army goal to systematically conserve biological diversity on Army lands and to encourage continuation of such conservation activities in connection with the closure and reuse of Army facilities. Natural ecosystems can best be maintained by protecting the biological diversity of naturally occurring organisms, the ecological processes that they perform, and the physical environment with which they interact.

Wherever practicable, the Army will cooperate with future landowners in support of the following objectives:

- Maintenance of viable populations of the Nation's native plants and animals throughout their geographic range
- Maintenance of natural genetic variability within and among populations of native species
- Maintenance of functioning representative examples of the full spectrum of ecosystems, biological communities, habitats, and their ecological processes
- Implementation of management solutions that integrate human activities with the conservation of biological diversity
- Increased scientific understanding of biological diversity and conservation
- Public awareness and understanding of biological diversity
- Encouragement of private sector development and application of innovative approaches to the conservation of biological diversity

5.6 Treatment of Cultural Resources in BRAC NEPA Analyses

NEPA requires consideration of "important historic, cultural, and natural aspects of our national heritage ..." but provides no specific definition of these "aspects." Based on statutory requirements, cultural resources for NEPA analyses should be considered to include buildings, sites, structures, districts, and objects eligible for or included in the National Register of Historic Places; cultural items as defined in the Native American Graves Protection and Repatriation Act (NAGPRA) of 1990; Native American, Native Alaskan, or Native Hawaiian sacred sites for which access is protected under the American Indian Religious Freedom Act (AIRFA) of 1978; archeological resources as defined by the Archeological Resources Protection Act of 1979; and archeological artifact collections and associated records as defined by 36 CFR Part 79.

5.6.1 Laws and Regulations

As noted above, NEPA is an appropriate authority for considering a project's effects on all types of cultural resources. A number of laws define and set requirements for the identification and treatment of cultural resources. As part of the NEPA analysis, the requirements of the following laws must be considered when determining the effects of a project on cultural resources:

- *National Historic Preservation Act of 1966, as amended.* The National Historic Preservation Act (NHPA) requires identification and stewardship of properties included in or eligible for inclusion in the National Register of Historic Places. It requires the Army to give priority to the use of such properties for mission and other purposes. NHPA requires the Army to consider the effects of any action on such properties. The NHPA and regulations implementing 36 CFR Part 800 also provide the means for determining the effect a particular undertaking or action might have on historic resources. The Section 106 consultation process is the means by which a federal agency may make decisions on the treatment and protection of historic properties. This typically includes the State Historic Preservation Officer (SHPO), appropriate Federally-recognized Indian tribes, and the Advisory Council on Historic Preservation (ACHP). The three major sections of NHPA that affect the BRAC process are Section 106 (the consultation process), Section 110 (preservation planning and federal agency responsibilities), and Section 111 (leases, transfer of property, and management contracts).
- *American Indian Religious Freedom Act.* AIRFA establishes a U.S. policy to "protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise traditional religions . . . including but not limited to access to sites." Compliance with AIRFA implies the need to consult with Native Americans, Native Alaskans, and Native Hawaiians about traditional religious and cultural sites on Army lands and on possible ways to protect and provide access to such sites.
- *Native American Graves Protection and Repatriation Act.* NAGPRA establishes that Native Americans (Indian tribes, Native Hawaiians, and Native Alaskans) own the remains of their ancestors, certain goods associated with ancestral graves, and some artifacts that have significance to their entire society, called "cultural patrimony." This law imposes consultation requirements on the Army in connection with BRAC projects. The requirements include consultation with Native American groups about any excavation of remains these groups own under the law (for example, in advance of construction related to realignment). In the event such items are discovered during construction, work in the vicinity must halt for at least 30 days while further consultation occurs.

5.6.2 Process

The NEPA umbrella covers historic, archeological, and sacred sites; historic records, artifacts, and relics; and properties of significance to Indian tribes, Native Hawaiian, and Native Alaskan organizations. NEPA is designed to ensure that federal agencies consider the value of these and other resources before they receive significant adverse impacts, and that the agencies seek ways to avoid or reduce such impacts. However, actions taken to comply with NEPA do not necessarily meet all the compliance requirements of the NHPA, which is a separate law with very specific, but similar, compliance requirements. There are many ways to minimize effort by coordinating the compliance with each law. Regardless of the NEPA actions taken, compliance with the NHPA must be addressed before the BRAC action can be completed. Starting cultural resource actions as soon as possible after the BRAC announcement allows NHPA actions to be completed without jeopardizing adherence to the BRAC NEPA timeline.

Compliance with the NHPA Section 106 process (as well as NEPA evaluation) is accomplished by first identifying and determining the National Register eligibility of historic properties within the area that would be affected by the proposed undertaking. Effects of the undertaking on historic properties are to be evaluated using the criteria at 36 CFR 800.5(a). The direct and indirect effects of federal undertakings are adverse if they result in loss, alteration, or destruction of properties on or determined eligible for listing on the National Register. Disposal (removing of the property from Federal ownership) is an adverse effect. When an undertaking would have an adverse effect on eligible or listed historic properties, the Army must consult with the ACHP, the appropriate SHPO, and, in many cases, the appropriate Federally-recognized Indian tribes, and other consulting and interested parties to determine what actions it will take regarding these properties. The results of these consultations must be taken into consideration as part of the evaluation process for the BRAC NEPA document.

When considering whether a project will have an adverse impact on traditional cultural properties, efforts must be made to identify and consult with appropriate Federally-recognized Indian tribes or Native Hawaiian groups that have historical ties to the project area. For BRAC projects, it is recommended that consultations for traditional cultural properties be handled at the same time as the NHPA consultation. This is being done for several reasons. Many of the cultural resources identified during the historic properties inventory required by the NHPA are of specific interest to Federally-recognized Indian tribes and Native Hawaiian groups. NAGPRA established Native American ownership of human remains and items of cultural patrimony, and it requires consultation with these groups to establish appropriate disposition of such items.

The area of potential effect (APE) for cultural resource evaluations is the geographic area that includes all credible effects of an undertaking, both direct and indirect. The APE for an installation would include not only the land within the base boundary, but also areas outside the base boundary that might be indirectly affected by the closure action. A common-sense approach needs to be taken to identify the APE. The indirect effects must be readily identifiable and actually caused by the undertaking. The definition of APE under the NHPA is not otherwise applied under NEPA, so care must be taken when using this term.

It is necessary to integrate cultural resource considerations into BRAC NEPA analysis. If at all possible, these studies should be completed and the results included in the NEPA document. In those instances where it is not possible to complete all necessary historic resource studies within the timeframe scheduled for NEPA document preparation, a Memorandum of Agreement (MOA) or Programmatic Agreement (PA) should be prepared by the Army with the appropriate SHPO and the ACHP. The PA can be used to set up a procedure for completing the consultation process

after completion of the NEPA document but before finalization of the mandated BRAC action.

There are, therefore, two options for integrating the NHPA into the NEPA process: (1) complete the cultural resource inventory and assessment work, determination of mitigation measures, and coordination of decisions before completing the final NEPA document or (2) complete the required process later, as specified in a formal agreement among the consulting parties and explained in the NEPA document.

5.6.3 Options for Integration of Cultural Resource Requirements into the NEPA Document

Option 1: Completion of Requirements Prior to Final NEPA Analysis. Under option 1, the EA or EIS must contain the following:

- Summary of information from a completed cultural resource inventory.
- Summary of information from a completed assessment of the significance of cultural resources.
- Documentation of consultation with the SHPO, Federally-recognized Indian tribes or Native Hawaiian groups, other consulting and interested parties (as appropriate), and the ACHP.
- Determination of effect under NHPA and determination of impact significance under NEPA.
- A list of identified concerns related to cultural resources, including tribal consultation issues.
- Documentation on any decision regarding mitigation of adverse effects and comment by the ACHP. (If the Army makes a commitment to mitigation, the agreement document (MOA) should be attached to the EA or EIS to provide documentation of consultation and agreement between the interested parties.)
- The specific mitigation measures taken to reduce or avoid the adverse effects of the selected action on cultural resources.

Option 2: Delayed Completion of Requirements. Under option 2, the EA or EIS must contain the following:

- A clear statement that the Army will treat historic properties in accordance with a PA or MOA.
- A copy of the PA or MOA attached as part of the environmental document.
- A definition of the APE on cultural resources.
- A summary of existing information about the location, identification, and evaluation of cultural resources within the APE.
- An evaluation of the existing data and identification of information gaps with respect to the ability of the data to meet compliance requirements for the BRAC action.
- A list of references and personnel consulted to make the determination of study needs.

- Documentation of initial coordination with the SHPO and Federally-recognized Indian tribes or Native Hawaiian groups, other consulting and interested parties (as appropriate), and the ACHP.
- Discussion of possible determination of effect under Section 106 and determination of impact significance under NEPA.
- A list of identified concerns related to cultural resources, including tribal consultation issues.
- Delineation of mitigation measures contained in the above-referenced PA or MOA.
- A statement in the Record of Decision (ROD) or Finding of No Significant Impact (FNSI) that specific mitigation measures will be taken to reduce or avoid the BRAC action's adverse effects on cultural resources and that these measures will be carried out following stipulations in the PA referenced above.
- A commitment, in the FNSI or ROD, to a specific time frame or date for full compliance with the PA or MOA.

Appendix M contains an outline of the types and general level of information that should be included in the cultural resource section of the Environmental Conditions and Consequences section of the BRAC NEPA documents. Presentation of data in the NEPA documents should generally follow the sequence noted in Section 4, above.

Under option 2, requirements to complete cultural resource inventory actions and consultations will continue after the completion of the NEPA document. Care should be taken to determine that all actions required by a PA or MOA have been completed prior to conducting any activities that might affect cultural resources (e.g., disposal of real estate or remediation actions).

5.7 Native American Issues

For the BRAC NEPA program, in most cases, Native American issues as defined by NAGPRA and AIRFA are handled as part of the cultural resource consultation process (see Section 5.6). This is done for several reasons among which is that many of the cultural resources identified during the historic properties inventory required by the NHPA are of specific interest to Native American and Hawaiian groups. In addition, NAGPRA established Native American ownership of human remains and items of cultural patrimony and requires consultation with Native American groups to establish appropriate disposition of these items.

(Note the requirement that consultation with Federally-recognized American Indian tribes must be government-to-government (see Presidential Memorandum of 1994; Federal Register, Volume 59, No. 85, May 4, 1994)

5.8 Environmental Justice

The central idea behind environmental justice is that no segment of the population should bear a disproportionate share of adverse human health or environmental effects. In some cases, low-income and minority communities are disproportionately affected by negative environmental effects, receiving few of the benefits while absorbing much of the societal cost.

5.8.1 Executive Order 12898

To address environmental justice concerns, the President issued Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*,

in February 1994, requiring each federal agency to "make the achievement of environmental justice part of its mission by identifying and addressing disproportionately high and adverse human health and environmental effects on minority and low-income populations." The Executive Order and a contemporaneous Presidential Memorandum direct federal agencies to identify and analyze the potential socioeconomic impacts of proposed actions in accordance with health and environmental laws. Public involvement and data collection efforts are also addressed by the Executive Order to ensure that such efforts specifically consider the potential for impacts from environmental hazards on minority and low-income communities. The Executive Order further mandated the creation of the Federal Interagency Working Group on Environmental Justice, whose responsibilities include (1) developing a strategy for federal agencies to use in the implementation of environmental justice requirements and (2) monitoring federal agencies in that implementation to ensure that activities and policies are undertaken in a consistent and appropriate manner.

Environmental justice issues must be considered and addressed in the BRAC NEPA process during the identification and analysis of the potential environmental and socioeconomic impacts of proposed BRAC actions. It is important to be sensitive to considerations of environmental justice throughout preparation of an EA or EIS. It is especially appropriate for this issue to be included in public scoping because during this early step in the NEPA process, minority and low-income populations can be identified, their participation facilitated, and their concerns determined.

5.8.2 Evaluation Process

Public involvement in the NEPA process meets two requirements of the Executive Order: (1) it aids in identifying minority and low-income groups, and (2) it provides the means for these groups to participate in the decisionmaking process. When describing actions taken to involve the public (e.g., scoping meetings, workshops, public meetings, media advertisements) in Section 1, Purpose, Need, and Scope, of a NEPA document, a sentence that describes actions taken to address environmental justice issues should be included; for example, "Persons and organizations known or thought to have a potential interest, including minority, low-income, disadvantaged, and Native American groups, were identified, informed, and given the opportunity to participate in the decisionmaking process."

Such a statement can document efforts made during the public involvement phase, especially the scoping process, to reach minority and low-income groups.

Affected environment. Environmental justice conditions should be addressed in the affected environment section of the NEPA document. An appropriate statement could be:

Example:

> "On February 11, 1994, President Clinton issued Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.* The purpose of the order is to avoid the disproportionate placement of adverse environmental, economic, social, or health impacts from federal actions and policies on minority and low-income populations. The first step in the process is to identify minority and low-income populations that might be affected by implementation of the proposed action or alternatives. It is a critical step in addressing environmental justice. Demographic information on ethnicity, race, and economic status is provided in this section as the baseline against which potential impacts can be identified and analyzed."

Environmental and socioeconomic consequences. In the Environmental Conditions and Consequences section of the NEPA document, impacts of the proposed action and alternatives on minority and/or low-income populations in the region of influence should be analyzed and documented. (See the subsection on sociological conditions in Section 4.5.4 of this manual.)

5.9 Cumulative Effects Analysis

Cumulative effects are defined as the "impacts on the environment that result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions" (40 CFR 1508.7). In January 1997, CEQ published *Considering Cumulative Effects under the National Environmental Policy Act*. This section of the manual focuses on some of the important issues and themes concerning developments in cumulative effects analysis. The BRAC analyst can benefit from the following considerations: scoping and the determination of spatial and temporal boundaries; determining the baseline data and affected environment; and performing cumulative effects analysis using recognized methods, techniques, and tools.

CEQ regulations on the scoping process (40 CFR 1508.25) make it clear that one function of scoping is to discover potential cumulative actions and effects (see Appendix E). Connected and similar actions should be analyzed and recorded in the same document. The scoping process is one very important way to identify other previous, current, or planned actions on the installation and in the geographic area. Moreover, scoping for cumulative effects must include consideration of other federal and non-federal actions that take place within the spatial and temporal boundaries identified.

Effects of human perturbations on the environment accumulate when the frequency of individual perturbations is so high that the ecosystem has not fully rebounded before another stressor is introduced. Spatial and temporal crowding of these perturbations creates cumulative effects. Preparers must obtain data on the status of significant natural, recreational, cultural, and economic resources with an understanding of not only how the proposed action might affect those resources directly or indirectly but also what more remote systemic perturbations the proposed action might create.

Cumulative effects analysis poses many challenges to the preparers of NEPA analyses. By its very nature, the environment contains a complex set of interdependent relationships that are infinite in scope. Historically, NEPA analysis and documentation have been deficient in the substantive treatment of cumulative effects. New guidance from CEQ and the information in the following paragraphs should provide better guidance for Army NEPA practitioners involved in the BRAC process.

5.9.1 Scoping for Cumulative Effects

Scoping not only provides information to the decisionmakers but also helps to build public confidence. Both of these factors are critical to the defensibility of NEPA analysis generally and cumulative effects analysis specifically. In addition to using their own expertise, practitioners should seek input from others during the scoping process to determine the spatial and temporal scope of direct, indirect, and cumulative effects. Preparers can begin to identify cumulative effects issues by pursuing answers to the following general questions:

- Is the proposed action one of several similar past, present, or future actions in the same geographic area?

- In what way do other agencies or activities in the region have environmental effects similar to those of the proposed action?
- Will the proposed action, in combination with other planned activities, affect any natural resources, cultural resources, social or economic units, or ecosystems or contribute pollutants of regional, national, or global public concern?
- Have any recent NEPA analyses or ongoing NEPA analyses (of similar actions in the Nation, or any other actions in the region) identified important adverse or beneficial cumulative effect issues?
- Have impacts been historically significant or controversial, such that the importance of a resource is defined by past loss, past gain, and investments to restore resources to adequate levels or conditions?

In addition, the preparers should consider whether the proposed action might affect any of the following resources or issues, which typically should be assessed in a cumulative manner:

- Public health and safety beyond the site area
- Air quality parameters of regional significance
- Water quality in a regionally important water body
- Wastes that are candidates for disposal in regional, state, or federal disposal or storage facilities
- Wetlands
- Migratory populations or habitats of fish and wildlife
- Historic, cultural, or archeological resources
- Federally and state-listed threatened and endangered species, or federally designated critical habitat

Methods of conducting the determination of the temporal and spatial scope of the affected environment and impact analysis should begin to emerge during consideration of the questions and issues above.

Of the three general temporal frames of reference (past, present, and reasonably foreseeable future), determining what actions are reasonably foreseeable in the future tends to prove most difficult. One way to overcome the uncertainty related to future actions is to focus attention on the resources and actions discussed in public planning documents; for example, by surveying state, regional, and local comprehensive plans related to urban and regional growth management and public works. These plans include regional resource management plans, ecosystem management plans, and land management planning documents. Preparers should heavily solicit public input to help scope for past, present, and reasonably foreseeable future impacts.

Geographic scope is determined by the types of issues and resources of concern and by the areal extent of the proposed action. Table 5-1 contains a sample listing of possible geographic area boundaries and the affected resources to which they relate.

A goal of the scoping process should be to obtain a list of cumulative effects issues to be assessed, a time frame and geographic boundary assigned for each resource, and a list of other actions, if possible, that contribute to each cumulative effects issue.

5.9.2 Description of the Affected Environment

Scoping for cumulative effects, as with direct and indirect effects, provides a context and preliminary database from which the preparer can complete an appropriate description of the affected environment. The description of the affected environment in a NEPA document should

Table 5-1
Sample Geographic Scope

Affected Resource	Geographic Area Boundary
Air quality	Metropolitan area, air shed, global atmosphere
Water quality	Stream, river basin, estuary, or parts thereof
Vegetative resources	Watershed, forest type, ecosystem
Resident wildlife	Habitat, ecosystem
Migratory wildlife	Breeding grounds, migration route, wintering areas, or total range
Fishery resources	Stream, river basin, estuary; spawning areas and migration route
Cultural resources	Historic properties or districts; historic or prehistoric cultural areas
Land use	Community, county, region, or state
Coastal zone	Region of state
Recreation	River, lake, geographic area, or land management unit
Socioeconomics	Community, metropolitan area, county, or state

- Characterize the resources identified during scoping, including a summary of data relating the status and relative importance of significant natural, recreational, cultural, or economic resources.
- Integrate the above factors into an overall characterization or baseline depiction of the affected area, and discuss this in relation to data and other information that characterize past, present, or reasonably foreseeable future environmental, cultural, or economic stress factors and environmental and social trends.

In addition to baseline data, information on known cumulative effects in the project area should be included to provide a basis for subsequent analysis of the cumulative effects contributed by the proposed action and alternatives.

5.9.3 Performing Cumulative Effects Analysis

The analysis of cumulative effects should be viewed as an extension of the analysis performed to determine the significance of direct and indirect project-specific impacts. In performing cumulative effects analysis, the following steps should be taken:

- Identify the environmentally important resources to be included in the analysis of the proposed action, reasonable alternatives to the proposed action, and the no action alternative.
- Identify the important cause-and-effect relationships between the alternatives and the environmentally important resources.
- Identify the spatial and temporal boundaries of each alternative scenario.

- Identify the relevant past, present, and reasonably foreseeable future actions in the region that could cumulatively affect each scenario.
- Determine the magnitude and significance of the cumulative effects.
- Determine the magnitude and significance of cumulative effects with mitigation and enhancement; develop a strategy to eliminate, avoid, or reduce cumulative impacts.

The following are some of the methods, techniques, and tools (in broad, general categories) that can be employed to analyze cumulative effects:

- Information-gathering techniques such as surveys, interviews, and public meetings
- Checklists
- Network and system diagrams
- Trend analysis
- Map overlay techniques
- Tables
- Matrices
- Mathematical modeling and simulation
- Carrying capacity analysis
- Ecosystem analysis
- Synoptic landscape approach
- Economic impact models
- Social impact assessment
- Geographic information systems
- Remote sensing

These tools are familiar to preparers of NEPA analyses. Their use to address cumulative effects requires some adjustment to account for the availability of data, the geographic scale of the analysis, and other uncertainties unique to the BRAC NEPA process.

5.10 Real Estate Requirements, Reports, and Findings

Real estate work requirements are interwoven throughout all portions of the base closure process. These requirements are normally applicable to BRAC leasing and disposal activities. Closure and disposal are two completely separate actions. Therefore, when concluding an EIS, the ROD should clearly identify whether a decision to dispose of the real estate has been made. Leasing is often an interim activity associated with disposal. It is usually implemented where portions of the installation are available for immediate reuse but have encumbrances (e.g., contamination) temporarily precluding complete transfer.

Real estate requirements associated with revitalization of base closure communities, introduced earlier in Section 5, are described below.

5.10.1 Authorities

The General Services Administration has delegated authority to the Secretary of Defense to dispose of base closure real property in accordance with applicable laws and regulations. The USACE, through its district offices, serves as the real estate agent for both the acquisition of necessary leased space and the disposal of the closed installation. Neither Public Law 100-526 nor Public Law 101-510 *requires* the Army to dispose of real property, but it is in the Army's best interest to do so promptly. When property is declared surplus, it is the Federal Property and Administrative Services Act and implementing regulations that trigger disposal action.

5.10.2 Real Estate Screening Process

The BRAC real estate screening process is described in Section 1.6.2.

5.10.3 Report of Availability

Consistent with AR 405-80 (*Management of Title and Granting Use of Real Property*) a Report of Availability (ROA) is prepared by the Installation Commander when a piece of real estate is no longer needed and can be made available either concurrently with the Army or exclusively for use by other military departments, federal agencies, or private organizations. The following information should be included in the ROA:

- Elements that relate to legal, policy, and military considerations that might affect the outgrant, including essential items.
- All supporting justification required when submitting reports to the Department of the Army or DoD.
- Statement that the real estate is safe for nonmilitary purposes. (If this statement cannot be made, explain the degree and type of contamination of land or buildings with explosives or toxic material and the reason that an outgrant should be approved despite the contamination.)
- Description of real estate, including acreage, character of land, and number, type, and condition of improvements.
- Map depicting area and the relationship of improvements to the installation boundary.
- If land is being made available for a public road, a statement indicating whether limited access is proposed, and the type of legislative jurisdiction held by the United States over the land involved. If exclusive or partial legislative jurisdiction is held by the United States, the statement will indicate whether there is any objection to retrocession. If retrocession is desired, the Installation Commander should send a written request through the chain of command to the appropriate USACE district for retrocession action (Army Regulation 405-20).
- If only building space is involved, the total usable square feet, the type of construction, and whether it is feasible and necessary for the prospective user to obtain utilities from the DA on a reimbursable basis. If only a portion of the building is available, a floor plan should also be included.
- Statement of the reasons that the land cannot be declared excess and cannot be disposed of in accordance with Army Regulation 405-90.
- EA or EIS describing all potential impacts of the proposed action. This analysis must fully comply with the provisions of NEPA and CEQ and Army regulations. Specifically

this information will detail, as appropriate, impacts on the ecosystems (ecological effects) in addition to other requirements of NEPA and other environmental statutes, regulations, and executive orders. This requirement can be satisfied by incorporation into the BRAC NEPA analysis.

- Statement as to whether the affected property meets the criteria of the National Register of Historic Places.
- Flood hazard evaluation if the lands are on a floodplain.
- Details on any proposed destruction, relocation, and replacement of Army facilities.
- Remarks and recommendations as to whether the proposed use might prove embarrassing for the Army.
- Recommendations as to any limitations to be imposed on the use. Specific emphasis will be given to any use restrictions required to comply with the spirit of the following:
  - Executive Order 11990, Protection of Wetlands
  - Executive Order 11988, Floodplain Management
  - Endangered Species Act
  - Wilderness Act of 1964
  - Wild and Scenic Rivers Act
  - Coastal Barrier Resources Act of 1982
  - National Historic Preservation Act
- Date of availability and period of time the property may be made available for use without interference with current or foreseeable Army requirements.
- Estimates of cost, fair market value, and rental.
- In rare instances, approval of the use of Army property for vehicle speed contests.
- Statement of whether the proposed action will jeopardize any threatened or endangered species or their habitat.
- Statement of whether the action is or will be consistent with an approved State Coastal Zone Management Plan.
- Justification for granting a Waiver of Competition, if appropriate.
- Any information or conditions of significance to the availability not listed above.

The Garrison Commander should recommend that real estate is available for non-Army use as far in advance as possible to reduce the time between the availability of the property and the date of use by the grantee. The Garrison Commander will submit the recommendation to HQDA for approval. If approved, the matter will be submitted to the appropriate USACE district for action.

5.10.4 Finding of Suitability to Lease

The DoD's policy on Findings of Suitability to Lease (FOSLs) was established to provide guidance on identifying and documenting parcels of real property that have been made available through the BRAC process and are environmentally suitable for outgrant. The policy meets the following objectives:

- Ensure protection of human health and the environment.
- Develop a DoD-wide process to assess, determine, and document the environmental suitability of properties (parcels) for outgrant.
- Ensure that outgrants of properties do not interfere with environmental restoration schedules and activities being conducted under the provisions of law or regulatory agreements.
- Ensure compliance with all applicable environmental requirements and establish the basis for the DoD components to make notifications to lessees regarding hazardous substances (including asbestos and any substance regulated under CERCLA, RCRA, or state law) and petroleum products (including their derivatives, such as aviation fuel and motor oil) potentially on the property.
- Provide adequate public and regulatory participation.

To determine whether a piece of real property is suitable for leasing by others, an Environmental Condition of Property report (the ECP process is described in Section 5.11.1) is prepared to assess the environmental condition of the property.

After completion and review of the ECP and any appropriate local community reuse plans available, and if it is determined that the property is suitable for lease, the Army will prepare and sign a FOSL. The finding of suitability is based on the following information:

- Hazardous substance notice is not given because no hazardous substances or petroleum products were stored for 1 year or more, or are known to have been released, treated, or disposed of on the parcel.
- Hazardous substance notice is given identifying the types and quantity of hazardous substances or petroleum products, and the time at which storage for 1 year or more, release, treatment, or disposal took place, but the property is currently not contaminated with hazardous substances or petroleum.
- The property contains some level of contamination, and hazardous substance notice will be given. However, the property can be used pursuant to the proposed lease, with specific use restrictions in the proposed lease, with acceptable risk to the environment or human health and without interference with the environmental restoration process.

5.10.5 Finding of Suitability to Transfer or for Early Transfer

Similar to a FOSL, a Finding of Suitability to Transfer (FOST) is prepared once a determination has been made that a property is environmentally suitable for transfer. Amendments to CERCLA in 1996 provided authority for the deferral, under certain conditions, of the CERCLA section 120(h)(3) covenant that all remedial action has been taken. In such cases, the Army prepares a Finding of Suitability for Early Transfer (FOSET).

5.11 Community Environmental Response Facilitation Act

The Community Environmental Response Facilitation Act (CERFA; Public Law 102-425) amended section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (42 U.S.C. 9620(h)) for identifying and documenting all uncontaminated real property, or parcels of it, at installations undergoing closure disposal and reuse. Uncontaminated property is defined as any real property on which no hazardous substances and no petroleum products or their derivatives (including aviation fuel and motor oil)

were stored for 1 year or more, or known to have been released or disposed of on the property. The assessment and determination of uncontaminated property are conducted by the Army command responsible for the property. The assessment and determination should be based on an ECP report.

5.11.1 Environmental Condition of Property Report

As described in DoD and Army guidance on the implementation of CERFA, an ECP report will be prepared for each installation or portion thereof being transferred or leased. The ECP report, based on all existing environmental information related to storage, release, treatment, or disposal of hazardous substances or petroleum products on the property, is intended to determine or discover the presence or likely presence, or a release or threatened release, of any CERCLA or non-CERCLA hazard including asbestos, lead-based paint, radon, and petroleum products. In certain cases, additional data (including sampling and analysis) might be needed in the ECP report to support the determination. A previously conducted ECP may be updated as necessary and used for making a CERFA determination, where appropriate. An ECP report can also support other environmental real estate requirements (e.g., preparation of a FOSL or a FOST).

The ECP process is a systematic process that identifies the scope of investigative effort required and that evaluates and documents the potential for environmental contamination and liability in three distinct stages:

- Programmatic Environmental Review
- Phase I—Assessment
- Environmental Condition of Property Report
- Phase II—Confirmation Sampling

The ECP process begins by conducting a Programmatic Environmental Review (PER). This is a data gap analysis used to determine the extent and quality of available environmental information for a site. The PER indicates what additional data are needed to perform the ECP Phase I and is used to aid in the preparation of a work statement for conducting the Phase I assessment.

The primary purpose of the Phase I ECP is to evaluate the potential for contamination of real property. Phase I consists of a series of investigative reports and surveys that incorporates interviews, a site visit, records review, regulatory review, and geologic and hydrogeologic reviews. This information is analyzed and a report is generated that evaluates the potential for contamination at the site and documents current and past site uses and activities. The ECP Report is drafted following the Phase I assessment and is used to provide background information for the CERFA requirements for disposal of BRAC properties. A separate CERFA Letter Report is submitted to satisfy the CERFA requirement. The Phase I ECP process fully satisfies DoD requirements for an environmental baseline survey. The ECP process integrates the following elements in a Phase I assessment:

- Archive Search Report (MEC Evaluations/Munitions Response Investigations)
- Radiological Survey Report
- Environmental Baseline Survey
- Environmental Investigation Report(s)
- LBP and ACM Surveys

- Installation Infrastructure Knowledge
- Hazardous and Toxic Waste (HTW) Evaluations
- Natural and Cultural Resource Reviews

Each of the above elements used in the Phase I assessment and ECP Report are developed in accordance with appropriate guidance provided by the agencies conducting the work. All guidance requirements are reviewed by DAIM-BD to insure that both the obtained data and reported format is consistent with the ECP process. If after the completion of the Phase I ECP, there remains uncertainty related to potential for environmental contamination on the installation, a Phase II ECP, which typically includes intrusive sampling, may be used to verify or refute specific environmental concerns identified during Phase I.

An important purpose of the ECP is to provide the "baseline" environmental condition of a property and serve as a source document if subsequent contamination occurs and questions about responsibility arise. Whenever BRAC property is to be transferred outside of the federal government, the information contained in the ECP will be used to prepare finding of suitability to transfer, lease, or early transfer of property.

5.11.2 Procedures and Responsibilities

Regulatory agencies are notified at the initiation of the ECP. The process of developing the ECP is designed to ensure that regulators are provided adequate opportunity to express their views. Regulators are provided with workable draft documents as they become available. Comments received during the development of ECP documentation are to be reviewed and incorporated as appropriate. Any unresolved regulatory comments are included as attachments to the ECP.

Once the ECP has been completed, the Army will review it and determine which parcels of property are eligible for identification under CERCLA section 120(h)(4). Once the Army makes this determination, the ECP report and determination are provided to the EPA Administrator and state and local government officials and made available to the public. In submitting the ECP report, the Army requests concurrence in its determination from the appropriate regulatory official. In the case of real property that is part of a facility on the NPL, the appropriate concurring regulatory official is the EPA Administrator or designated representative. In the case of real property that is not part of a facility on the NPL, the appropriate regulatory official will be the governor or other designated state official. In the case of a concurrence that is required from a state, concurrence is deemed to be obtained if, within 90 days after receiving a request for concurrence, the state has not acted (by either concurring or declining to concur) on the request for concurrence. The Army will submit its determination under CERCLA section 120(h)(4) with a request for concurrence from the appropriate regulatory official at the earliest possible time, but no later than 18 months after the BRAC 2005 recommendations become final.

When preparing to make identifications under CERCLA section 120(h)(4), parcels of property may be placed in one of several categories:

- *CERFA parcel*. Real property that has no history of hazardous substance storage for 1 year or more, release, or disposal. This property is eligible for identification under CERCLA section 120(h)(4) if regulatory concurrence is obtained within the 18-month period.

- *CERFA parcel with qualifier*. A parcel that contains non-CERCLA hazards such as asbestos, unexploded ordnance, lead-based paint, radionuclides, or inactive equipment containing PCBs.
- *CERFA disqualified parcel*. Real property where there is evidence that one-time hazardous substances or petroleum products or their derivatives were stored for 1 year or more, released, or disposed of on the property, or evidence that the parcel is threatened by release or disposal.
- *CERFA excluded parcel*. An area that either is to be retained by the DoD or was previously transferred to another federal agency or to a party outside the federal government.

Parcels identified under CERCLA section 120(h)(4) and their respective acreage should be identified in the alternatives section of the BRAC NEPA document (see Sections 3 and 4 of this manual). Although the CERCLA section 120(h)(4) process is designed to rapidly identify uncontaminated property for transfer, environmental restoration of contaminated sites might be occurring, or might occur, at numerous other sites throughout the installation as part of the Defense Environmental Restoration Program. Individual projects are developed and funded according to various regulatory requirements. The overall objective is to provide, as soon as possible, environmentally safe parcels that can be readily disposed of and made available for reuse.

5.11.3 Redevelopment Plan

The redevelopment plan is a comprehensive local community facility reuse plan that describes the range of feasible reuse options for the closing base. According to DoD guidance on accelerating NEPA analysis for base disposal and reuse, the DoD Office of Economic Adjustment (OEA) and the Army should make every effort to aid and encourage the LRA and the community to arrive at a final and approved reuse plan at an early stage. A community's reuse plan is considered "final" when it is officially adopted by the governing body of the state or the local governmental organization with the primary role as the base's reuse planning group. Army policy is that the community's reuse plan, if available, will be the basis for the alternatives addressed in the Army's EIS or other NEPA analysis unless the plan conflicts with statutory or regulatory requirements. If the community fails to submit an approved final reuse plan by the time the Army needs to initiate the NEPA analysis, the Army will prepare the NEPA analysis using reasonable assumptions as to the likely reuse scenarios and their reasonable alternatives.

5.12 Related Real Estate Transactions

Sections 2811 and 2812 of the National Defense Authorization Act for Fiscal Year 2003 expand the military services' capabilities to protect the interests of installations. These two provisions respond to concerns of military leaders, voiced to Congress, regarding issues involving encroachment, other constraints on military use of real property, and natural resource conservation. In appropriate circumstances, the Army may use either of these provisions in BRAC actions involving realignment, disposal and reuse, or enclave creation.

5.12.1 Agreements to Limit Encroachments and Other Constraints

Section 2811 of the National Defense Authorization Act for Fiscal Year 2003 (codified at 10 U.S.C. 2684a) enables the military services to enter into agreements to limit encroachment and other constraints on military training, testing, and operations. The provision enables the Army to enter into an agreement with an eligible entity to address the use or development of real property in the vicinity of a military installation for purposes of (1) limiting any development or use of the

property that would be incompatible with the mission of the installation or (2) preserving habitat in a manner that could eliminate or relieve current or foreseen environmental restrictions adversely affecting installation activities. Eligible entities include a state, a political subdivision of a state, and a private entity that has as its stated principal organization purpose or goal the conservation, restoration, or preservation of land and natural resources. An agreement under Section 2811 may provide for the acquisition by the entity of all right, title, and interest in and to any real property, or any lesser interest in the property, as well as the sharing by the United States and the entity of the acquisition costs.

5.12.2 Conveyance of Surplus Real Property for Natural Resource Conservation

Section 2812 of the National Defense Authorization Act for fiscal year 2003 (codified at 10 U.S.C. 2694a) enables military services to convey surplus real property for natural resource protection. The provision enables the Army to convey to an eligible entity any surplus real property that (1) is under the administrative control of the Army, (2) is suitable and desirable for conservation purposes, (3) has been made available for public benefit transfer for a sufficient period of time to potential claimants, and (4) is not subject to a pending request for transfer to another federal agency or for conveyance to any other qualified recipient for public benefit transfer under real property disposal processes. Eligible entities include a state, a political subdivision of a state, and a nonprofit organization that exists for the primary purpose of conservation of natural resources on real property. The deed of conveyance of any surplus real property will require the property to be used and maintained for the conservation of natural resources in perpetuity; property not so used or maintained will, at the option of the Army, revert to the United States.

5.12.3 Comparison of Provisions

Section 2811 provides authority to *acquire* real property. Suitable tracts would be those that could serve as a buffer between an installation and non-military land uses. Use of section 2811 might arise in a realignment action or where an enclave is established in conjunction with reconfiguring an installation (reducing it in size) or changing land use classifications over large portions of an installation.

Section 2812 provides authority to *dispose* of real property. Use of section 2812 would most likely occur at closing installations having substantial tracts that LRAs deem to be without redevelopment potential. The Army may not resort to use of section 2812, however, until all other avenues for disposal have been reasonably exhausted.

This page intentionally left blank.

6.0 Document Processing: Review and Approval

6.1 General Authority

Under policy established by the Deputy Assistant Secretary of the Army for Environment, Safety, and Occupational Health (DASA-ESOH) on 2 October 1989, the authority to sign, approve, and review execution of actions in all BRAC rounds resides in the Secretariat. The policy recognizes that although all levels of the Army family must be involved in executing such complicated actions, final decisions for implementing legislated realignments and disposal actions should reside in the Secretariat. Where appropriate, select aspects of documenting NEPA compliance are delegated.

6.2 Document Review Procedures

The objective of NEPA and Army NEPA policy is quality analysis in support of Army decisionmaking. To this end, thorough and timely reviews will accompany the preparation of all BRAC NEPA documents. This section establishes review procedures for BRAC NEPA documents.

6.2.1 Review Precepts

Precepts. The following precepts guide review of BRAC NEPA documents:

- *Lead reviewer procedures.* Review of BRAC NEPA documents use "lead reviewer" procedures (see Section 6.2.3).
- *Concurrent reviews.* BRAC NEPA documents are reviewed concurrently, rather than consecutively, by designated echelons of the Army.
- *Electronic transmission.* Preparers transmit documents and reviewers submit comments electronically.
- *Comment consolidation.* Comments are consolidated in a "comment response matrix." These documents form the basis for subsequent changes in the BRAC NEPA document.
- *Document length.* The depth of analyses and length of documents are proportionate to the nature and scope of the action, the complexity and level of anticipated effects on important environmental resources, and the ability of Army decisions to influence those effects in a productive, meaningful way from the standpoint of environmental quality.
- *Focus.* Documents are analytic, not encyclopedic, with emphasis on those issues most important to the decisionmaker and the public. Emphasis is on focusing on major environmental issues affecting decisions; inconsequential or irrelevant matters are eliminated.

All BRAC NEPA documents must be reviewed for legal sufficiency. The purpose of the legal sufficiency review is to ensure that all legal issues of the BRAC NEPA process have been addressed. A legally sufficient document is one that procedurally complies with CEQ and Army regulations and published policies and that identifies and analyzes all relevant issues and conditions. A legally sufficient NEPA document is one that accomplishes the two goals of NEPA: to provide for informed decisionmaking by the federal agency and to disclose to the public the environmental effects of the proposed action and alternatives. To accomplish these goals, the document must clearly identify and analyze the proposed action; reasonable alternatives; impacts associated with the proposed action and alternatives, including cumulative impacts; and means to avoid or minimize adverse effects (mitigation).

Quality. Army Regulation 25-1 (*Army Knowledge Management and Information Technology Management*) incorporates the Data Quality Act (Section 515, Public Law 106-554) into Army procedures relating to dissemination of information to the public. Under the Data Quality Act, the Army is required to maintain a basic standard of quality (objectivity, utility, and integrity) and take appropriate steps to incorporate information quality criteria into public information dissemination practices. The quality of information in BRAC NEPA documents is enhanced through use of sound data gathering methods, objective presentation and evaluation of issues, and thorough reviews prior to the release of the documents. To these ends, proponents will establish appropriate procedures for validating information relied upon in preparing NEPA documents and for ensuring substantive internal reviews of documents.

6.2.2 Documents Subject to Review

Environmental documents prepared to support BRAC actions include RECs, EAs, EISs, NOIs, FNSIs, and RODs. At their various stages of completion, iterations of these documents may be designated as preliminary draft, draft, preliminary final, or final. Documents related to the BRAC process include NOAs and Release Packages (consisting of IMC, MFC, and Q&A). These latter documents aid public involvement and dissemination of information. A sample Release Package is shown in Appendix P. Review of documents should focus on ensuring their substantive accuracy, as well as their consistency with Army procedures.

6.2.3 Designation of Review Participants

Review of BRAC NEPA documents adheres to procedures established at 32 CFR 651.6, which provides that "approving officials may select a lead reviewer for NEPA analysis before approving it. The lead reviewer will determine and assemble the personnel needed for the review process."

The level of analysis to be performed (REC, EA, or EIS) will influence the number of draft document iterations and the number of reviewers. The Lead Organizations serving as proponent for a BRAC action will ensure the sufficiency of each BRAC NEPA document by using adequate review mechanisms. Each document will be reviewed at the critical junctures of its preparation to ensure both substantive accuracy and compliance with requisite procedures. The NEPA document proponent may, as appropriate to the type of proposed action, draw upon the following to review NEPA documentation for BRAC actions:

- NEPA Support Team (primary reviewer on behalf of DAIM-BD)
- Installation staff, including the BEC and BCT
- Lead Organization
- IMA Headquarters and Regional Office staff
- MACOM staff (when affected by realignment or enclave creation)
- BRAC Division staff
- Army Staff and Secretariat (for functional interests in BRAC actions, see Section 2.3.3)
- Other Army entities, as appropriate (e.g., AEC)

Before distributing documents for review, the proponent will establish liaison with the reviewing organization or entity to identify the person responsible for conducting the review. That person will then be the one to receive the document by electronic mail and to provide a timely response directly back to the proponent with comments on behalf of the organization or entity.

The proponent will ensure that, prior to each review, the NEPA document is technically edited. This will relieve reviewers from having to point out errors such as misspellings, typographical mistakes, and poor syntax.

In addition to identifying who will review each iteration of a document, at the outset of preparing documentation for each BRAC action, the proponent will specify the following:

- *Type of NEPA document.* Each BRAC action will be evaluated by use of a categorical exclusion or through an EA or EIS culminating, respectively, in a REC, FNSI, or ROD. Each EIS will involve NOAs and Release Packages at the draft and final stages of preparation.
- *Draft documentation.* In unusual cases, a draft REC may be prepared to allow additional review prior to execution. Analysis through preparation of an EA will normally be accomplished by preparing a draft, check copy draft, and final EA. Analysis through preparation of an EIS will normally be accomplished by preparing a preliminary draft, draft, preliminary final, and final EIS. Additional iterations of EAs and EISs are neither required nor desired.

6.2.4 Use of the World Wide Web for Public Review

DAIM-BD and IMA may establish a World Wide Web site for each BRAC project or for multiple BRAC projects. Information posted to the Web site concerning the BRAC projects might vary because of the nature of the installation or availability of information. Proponents will ensure that all NEPA documents required to be made available for public review are posted on an appropriate Web site. Documents to be posted include all RECs, final EAs, draft and final FNSIs, draft EISs, final EISs, and RODs. Other documents that might be appropriate for posting include copies of any NOI, NOA, or matter relating to scoping. NOAs published in the *Federal Register* or local media will include the Web site address where documents can be viewed. Web sites will be designed to enable submission of comments by the public. All comments will be considered by the proponent and, in appropriate instances, may be responded to either by a memorandum to be filed in the administrative record or by a direct response to the person who submitted the comment. All comments received on draft EISs will be handled as specified in the CEQ regulations and 32 CFR Part 651.

6.3 Document Approval and Signature Authority

The officials designated to approve and sign BRAC NEPA documents will be identified during preparation of analyses. The Army Lead Organization serves as proponent for the NEPA document. The proponent for disposal actions is DAIM-BD. For all other actions, the proponent is IMA. In designated cases, in lieu of IMA, the Army National Guard or major command having special installation responsibility (e.g., Army Materiel Command, Surface Deployment and Distribution Command, Medical Command) will serve as the proponent for the NEPA analysis.

Samples of FNSIs and RODs are contained in Appendix Q and Appendix R, respectively.

6.4 Documents: Authority to Release

As project proponent and document preparer, the DAIM-BD or Lead Organization develops the following documents:

- NEPA documents: EA, draft and final FNSI, draft and final EIS, and ROD

- NOA for *Federal Register* for draft EIS, final EIS, or ROD and NOA for local publication for EA and draft FNSI
- Release Package (consisting of IMC, MFC, and Q&A) for all NEPA documents (NOI, draft FNSI, DEIS, FEIS, and ROD)

BRAC EAs, unless otherwise directed by higher command, will be signed by the Garrison Commander. BRAC EISs will follow the standard procedures contained in 32 CFR 651.14 and 651.4 (Subpart F) unless the authority has been delegated. Proponents will send NOAs for draft and final EISs, Release Packages, and RODS for review and signature by DASA-ESOH. Pursuant to 32 CFR 651.4, decision documents for proposed actions of the Army National Guard are signed within the National Guard Bureau. Signature authority on decision documents for the Army Reserves will be at their discretion.

Proponents will send NOAs for draft and final EISs, Release Packages, and RODs to DAIM-BD for administrative processing to obtain Secretariat approval for release to the public. Upon receipt, DAIM-BD prepares a cover sheet and a memorandum to be signed by ACSIM, forwarded through DASA-ESOH, requesting approval for release of the (1) NEPA document, (2) NOA for a draft or final EIS or ROD, and (3) Release Package.

In conjunction with the preceding steps, DAIM-BD prepares a letter to the *Federal Register* to be signed by DASA-ESOH requesting publication of the NOA for a draft or final EIS or a ROD. DAIM-BD also prepares a letter for DASA-ESOH signature to the EPA's Office of Federal Activities to accompany five copies of a draft or final EIS.

Issuance of a draft FNSI initiates a 30-day review and public comment period. At the end of that period, and subject to any comments received concerning the proposed action, alternatives, or analysis contained in the final EA, the final FNSI will be executed. Implementation of a proposed action may not proceed until the final FNSI is signed. In the case of an EIS, implementation of the proposed action may not proceed until the ROD has been signed.

6.5 Document Drop Meetings

Upon approval of authority to release BRAC NEPA documents, DAIM-BD makes arrangements for the Army's coordinated document release activities. DAIM-BD takes the lead to convene the Drop Meeting. Other participants include DASA-ESOH and the DASA-ESOH NEPA POC, OCLL representative, and OCPA representative. DAIM-BD should be prepared to provide the DASA-ESOH a brief (2-minute) overview of the NEPA document, other environmental issues, and any contentious issues affecting the installation. At the Drop Meeting, the DASA-ESOH signs the memoranda and letters described in Section 6.4. The Drop Meeting ensures synchronization of the following:

- Drop of IMC by OCLL
- Issuance of Release Package, coordinated by OCPA
- Delivery of documents to the *Federal Register* by DAIM-BD
- Delivery of documents to EPA

6.6 NOA Publication in the *Federal Register*

Five copies of a draft EIS or final EIS must be filed with the EPA's Office of Federal Activities. EPA publishes in the *Federal Register* an NOA of all EISs submitted in the preceding week. This NOA is published on the Friday of the week following the filing date. It is EPA's NOA that

starts the 45-day public comment period in the case of the draft EIS and the 30-day period in the case of a final EIS. As EPA requires a full week to process NOA publications, the Army must provide the documents by at least the preceding Friday. DAIM-BD should coordinate with the *Federal Register* to ensure that the Army's NOA is published on the same date as EPA's NOA to prevent confusion regarding when the public comment period begins. EPA's NOA will appear in the EPA section of the *Federal Register*, and the Army's NOA will appear in the DoD section. Army publication of an NOA in the *Federal Register* is a "notice;" it does not initiate the public comment period. Only EPA's publication in the *Federal Register* initiates the comment period. Inquiries concerning deliveries of documents to EPA or EPA's publication of NOAs in the *Federal Register* may be made by calling 202-564-7167.

This page intentionally left blank.

List of Appendices

Appendix A	Statutes and Regulations Associated with BRAC Activities
Appendix B	NEPA (Law)
Appendix C	CEQ Regulations
Appendix D	CEQ Forty Most Asked Questions
Appendix E	Scoping Guidance
Appendix F	32 CFR Part 651 (Federal Register March 29, 2002)
Appendix G	History of the BRAC Process
Appendix H	Guidance on Compilation of an Administrative Record
Appendix I	Sample Table of Contents
Appendix J	Sample DOPAA
Appendix K	Helpful Hints for Developing Data for Baseline Documentation and Impact Assessment
Appendix L	Technical Guidance for Compliance with the General Conformity Rule
Appendix M	Cultural Resources Content for NEPA Documents
Appendix N	Socioeconomics and Community Facilities
Appendix O	Checklist for NEPA Document Review
Appendix P	Sample Release Package
Appendix Q	Sample FNSI
Appendix R	Sample ROD

This page intentionally left blank.

Appendix A
Statutes and Regulations Associated with BRAC Activities

This page intentionally left blank.

APPENDIX A

STATUTES AND REGULATIONS ASSOCIATED WITH BRAC ACTIVITIES

Statutes

Acquisition of Property At or Near Military Bases Which Have Been Ordered to Be Closed (42 U.S.C. 3374).

American Indian Religious Freedom Act (42 U.S.C. 1966).

Archaeological and Historic Preservation Act (16 U.S.C. 469).

Bald and Golden Eagle Protection Act (16 U.S.C. 688).

Base Closures and Realignments (10 U.S.C. 2687).

Clean Air Act (42 U.S.C. 7401 et seq.).

Clean Water Act (33 U.S.C. 1251-1387).

Coastal Barrier Resources Act of 1982 (16 U.S.C. 3501-3510).

Coastal Zone Management Act (16 U.S.C. 1451-1464).

Community Environmental Response Facilitation Act (Public Law 102-426).

Comprehensive Environmental Resource Conservation and Liability Act (42 U.S.C. 9601 et seq.).

Defense Authorization Amendments and Base Closure and Realignment Act, as amended (Public Law 100-526).

Defense Base Closure and Realignment Act of 1990, as amended (Public Law 101-510).

Defense Economic Adjustment, Diversification, Conversion, and Stabilization Act of 1990 (10 U.S.C. 2391).

Defense Conversion Adjustment Program (29 U.S.C. 1622d).

Department of Defense Shelter Program (10 U.S.C. 2546; Shelter for Homeless).

Department of Defense Appropriations Act, 1991 (Public Law 101-511) (Legacy Resource Management Program).

Emergency Planning and Community Right-to-Know Act (42 U.S.C. 11001-11050).

Endangered Species Act (16 U.S.C. 1561-1544).

Federal Facility Compliance Act of 1992 (Public Law No. 102-386, 106 Statute 1505 (codified throughout 42 U.S.C.)).

Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.).

Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 484).

Fish and Wildlife Coordination Act (16 U.S.C. 661-667e).

McKinney Act: Public Health and Welfare (42 U.S.C. 11411; Use of Unutilized and Underutilized Public Buildings and Real Property to Assist the Homeless).

Migratory Bird Treaty Act (16 U.S.C. 703-712).

Military Base Reuse Studies and Community Planning Assistance (10 U.S.C. 2391).

Military Leasing Act: Real Property (10 U.S.C. 2667; Leases: Non-excess Property).

National Defense Authorization Act (Public Law 101-510, Section 2906).

National Historic Preservation Act (16 U.S.C. 470).

National Migratory Bird Treaty Act

Native American Graves Protection and Repatriation Act (Public Law 101-601, U.S.C. 3001-13).

Pollution Prevention Act of 1990 (42 U.S.C. 13101-13109).

Port Facilities: Final Rule for Public Benefit Conveyances (60 CFR 35706).

Public Buildings Cooperative Act (40 U.S.C. 490, 601a, 606, 611, 612a).

Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.).

Safe Drinking Water Act (42 U.S.C. 300f-300j-26).

Superfund Amendments and Reauthorization Act (Public Law 99-499)

Surplus Property Act of 1944 (50 U.S.C. 1622).

Toxic Substances Control Act (15 U.S.C. 260).

Wild and Scenic Rivers Act (16 U.S.C. 1271).

Wilderness Act of 1964 (16 U.S.C. 1131-1136).

Watershed Protection and Flood Prevention Act (16 U.S.C. 1001 et seq.; 33 U.S.C. 701-1).

Executive Orders

Commission on Alternative Utilization of Military Facilities (EO 12682, 3 CFR 229).

Defense Economic Adjustment Programs (EO 12049, 3 CFR 169, reprinted 10 U.S.C. 111).

Environmental Justice (EO 12898).

Federal Compliance with Pollution Standards (EO 12088).

Floodplain Management (EO 11988, 33 U.S.C. 701-1).

Protection and Enhancement of the Cultural Environment (EO 11593, 16 USC 470).

Protection of Wetlands (EO 11990).

Protection and Enhancement of Environmental Quality (EO 11514 and EO 11911).

Regulations

Army Regulation (AR) 200-1, Environmental Protection and Enhancement.

Army Regulation (AR) 200-2, Environmental Effects of Army Actions.

Army Regulation (AR) 200-3, Natural Resources—Land, Forest and Wildlife Management.

Army Regulation (AR) 200-4, Cultural Resources Management.

Army Regulation (AR) 200-5, Pest Management.

Army Regulation (AR) 420-40, Historic Preservation

Army Regulation (AR) 420-74, Natural Resources—Land, Forest, and Wildlife Management.

Army Regulation (AR) 420-76, Pest Management

Clean Air Act Regulations (40 CFR 50, 60, 61, 80).

Clean Water Act Regulations (33 CFR 320-330, 335-338; 40 CFR 104-140, 230-233, 401-471).

Coastal Zone Management Act Regulations (15 CFR 921-933).

Comprehensive Environmental Response and Liability Act Regulations (40 CFR 300-311).

Council on Environmental Quality (CEQ) Regulations for Implementing NEPA (40 CFR 1500 et seq)

DoD Directive 4140.25M, Procedures for the Management of Petroleum Products.

DoD Directive 4150.7, Pest Management Program.

DoD Directive 4165.60, Solid Waste Management—Collection, Disposal, Resource Recovery and Recycling Program.

DoD Directive 4700.4, Natural Resources—Conservation and Management.

DoD Directive 4710.1, Archaeological and Historic Resources Management.

DoD Directive 5030.41, Oil and Hazardous Substances Pollution Prevention and Contingency Program.

DoD Directive 5410.12, Economic Adjustment Assistance to Defense-Impacted Communities.

DoD Directive 4165.57, Air Installation Compatible Use Zones.

DoD Directive 4165.66-M, DoD Base Reuse Implementation Manual.

Department of Defense Selection Criteria for Closing and Realigning Military Installations Inside the United States (57 CFR 59334).

Department of Education Regulations (34 CFR 12, Disposal and Utilization of Surplus Real Property for Educational Purposes).

Department of Health and Human Services Regulations (45 CFR 12, Disposal and Utilization of Surplus Real Property for Public Health Services).

Department of Interior Regulations (41 CFR 114-47, Utilization and Disposal of Real Property).

Department of Justice Regulations (41 CFR 128, Justice Property Management Regulations).

Department of Defense Regulations (32 CFR 365, Office of Economic Adjustment).

Department of Defense Shelter Program (32 CFR 226, Shelter for the Homeless).

Endangered Species Act Regulations (50 CFR 17, 401-424, 450-453).

Federal Insecticide, Fungicide, and Rodenticide Act Regulations (40 CFR 152-186).

General Services Administration Regulations: Federal Property Management (41 CFR 101-47; Utilization and Disposal of Property).

McKinney Act Regulations (24 CFR 581, 41 CFR 101-47, 45 CFR 12a; Use of Real Property to Assist the Homeless).

National Historic Preservation Act Regulations (36 CFR 800, 36 CFR 61, 36 CFR 68).

Resource Conservation and Recovery Act Regulations (40 CFR 240-281).

Safe Drinking Water Act Regulations (40 CFR 141-149).

Wild and Scenic Rivers Act (30 CFR 297).

Appendix B
NEPA (Law)

This page intentionally left blank.

The National Environmental Policy Act of 1969, as amended (Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, as amended by Pub. L. 94-52, July 3, 1975, Pub. L. 94-83, August 9, 1975, and Pub. L. 97-258, § 4(b), Sept. 13, 1982)

An act to establish a national policy for the environment, to provide for the establishment of a Council on Environmental Quality, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Environmental Policy Act of 1969."

PURPOSE

Sec. 2 [42 U.S.C. § 4321]. The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

TITLE I

Congressional Declaration of National Environmental Policy

Sec. 101 [42 U.S.C. § 4331].

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated 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.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may --

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

Sec. 102 [42 U.S.C. § 4332]. The Congress authorizes and directs that, to the fullest extent possible:

(1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall --

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) 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 on --

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship 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 it be implemented. Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes:

(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

(i) the State agency or official has statewide jurisdiction and has the responsibility for such action,

(ii) the responsible Federal official furnishes guidance and participates in such preparation,

(iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and

(iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this Act; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.

(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) assist the Council on Environmental Quality established by title II of this Act.

Sec. 103 [42 U.S.C. § 4333]. All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act.

Sec. 104 [42 U.S.C. § 4334]. Nothing in Section 102 or 103 shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

Sec. 105 [42 U.S.C. § 433]. The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.

TITLE II

Council on Environmental Quality

Sec. 201 [42 U.S.C. § 4341]. The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest dryland, wetland, range, urban, suburban, and rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environment and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals, with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

Sec. 202 [42 U.S.C. § 4342]. There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in title I of this Act; to be conscious of and responsive to the scientific, economic, social, aesthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

Sec. 203 [42 U.S.C. § 4343].

(a) The Council may employ such officers and employees as may be necessary to carry out its functions under this Act. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this Act, in accordance with section 3109 of title 5, United States Code (but without regard to the last sentence thereof).

(b) Notwithstanding section 3679(b) of the Revised Statutes (31 U.S.C. § 665(b)), the Council may accept and employ voluntary and uncompensated services in furtherance of the purposes of the Council.

Sec. 204 [42 U.S.C. § 4344]. It shall be the duty and function of the Council: (1) to assist and advise the President in the preparation of the Environmental Quality Report required by section 201;

(2) to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in title I of this Act, and to compile and submit to the President studies relating to such conditions and trends;

(3) to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in title I of this Act for the purpose of determining the extent to which such programs

and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;

(4) to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;

(5) to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(6) to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(7) to report at least once each year to the President on the state and condition of the environment; and

(8) to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

Sec. 205 [42 U.S.C. § 4345]. In exercising its powers, functions, and duties under this Act, the Council shall --

(1) consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order No. 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments, and other groups, as it deems advisable; and

(2) utilize, to the fullest extent possible, the services, facilities, and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

Sec. 206 [42 U.S.C. § 4346]. Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates (5 U.S.C. § 5313). The other members of the Council shall be compensated at the rate provided for Level IV of the Executive Schedule Pay Rates (5 U.S.C. § 5315).

Sec. 207 [42 U.S.C. § 4346a]. The Council may accept reimbursements from any private nonprofit organization or from any department, agency, or instrumentality of the Federal Government, any State, or local government, for the reasonable travel expenses incurred by an officer or employee of the Council in connection with his attendance at any conference, seminar, or similar meeting conducted for the benefit of the Council.

Sec. 208 [42 U.S.C. § 4346b]. The Council may make expenditures in support of its international activities, including expenditures for: (1) international travel; (2) activities in implementation of international agreements; and (3) the support of international exchange programs in the United States and in foreign countries.

Sec. 209 [42 U.S.C. § 4347]. There are authorized to be appropriated to carry out the provisions of this Act not to exceed $300,000 for fiscal year 1970, $700,000 for fiscal year 1971, and $1,000,000 for each fiscal year thereafter.

This page intentionally left blank.

Appendix C
CEQ Regulations

This page intentionally left blank.

Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR Parts 1500-1508)

PART 1500--PURPOSE, POLICY, AND MANDATE

Sec. 1500.1 Purpose.

(a) The National Environmental Policy Act (NEPA) is our basic national charter for protection of the environment. It establishes policy, sets goals (section 101), and provides means (section 102) for carrying out the policy. Section 102(2) contains "action-forcing" provisions to make sure that federal agencies act according to the letter and spirit of the Act. The regulations that follow implement section 102(2). Their purpose is to tell federal agencies what they must do to comply with the procedures and achieve the goals of the Act. The President, the federal agencies, and the courts share responsibility for enforcing the Act so as to achieve the substantive requirements of section 101.

(b) NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. Most important, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail.

(c) Ultimately, of course, it is not better documents but better decisions that count. NEPA's purpose is not to generate paperwork—even excellent paperwork—but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment. These regulations provide the direction to achieve this purpose.

Sec. 1500.2 Policy.

Federal agencies shall to the fullest extent possible:

(a) Interpret and administer the policies, regulations, and public laws of the United States in accordance with the policies set forth in the Act and in these regulations.

(b) Implement procedures to make the NEPA process more useful to decisionmakers and the public; to reduce paperwork and the accumulation of extraneous background data; and to emphasize real environmental issues and alternatives. Environmental impact statements shall be concise, clear, and to the point, and shall be supported by evidence that agencies have made the necessary environmental analyses.

(c) Integrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all such procedures run concurrently rather than consecutively.

(d) Encourage and facilitate public involvement in decisions which affect the quality of the human environment.

(e) Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.

(f) Use all practicable means, consistent with the requirements of the Act and other essential considerations of national policy, to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment.

Sec. 1500.3 Mandate.

Parts 1500 through 1508 of this title provide regulations applicable to and binding on all Federal agencies for implementing the procedural provisions of the National Environmental Policy Act of 1969, as amended (Pub. L. 91-190, 42 U.S.C. 4321 et seq.) (NEPA or the Act) except where compliance would be inconsistent with other statutory requirements. These regulations are issued pursuant to NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.) section 309 of the Clean Air Act, as amended (42 U.S.C. 7609) and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977). These regulations, unlike the predecessor guidelines, are not confined to sec. 102(2)(C) (environmental impact statements). The regulations apply to the whole of section 102(2). The provisions of the Act and of these regulations must be read together as a whole in order to comply with the spirit and letter of the law. It is the Council's intention that judicial review of agency compliance with these regulations not occur before an agency has filed the final environmental impact statement, or has made a final finding of no significant impact (when such a finding will result in action affecting the environment), or takes action that will result in irreparable injury. Furthermore, it is the Council's intention that any trivial violation of these regulations not give rise to any independent cause of action.

Sec. 1500.4 Reducing paperwork.

Agencies shall reduce excessive paperwork by:

(a) Reducing the length of environmental impact statements (Sec. 1502.2(c)), by means such as setting appropriate page limits (Secs. 1501.7(b)(1) and 1502.7).

(b) Preparing analytic rather than encyclopedic environmental impact statements (Sec. 1502.2(a)).

(c) Discussing only briefly issues other than significant ones (Sec. 1502.2(b)).

(d) Writing environmental impact statements in plain language (Sec. 1502.8).

(e) Following a clear format for environmental impact statements (Sec. 1502.10).

(f) Emphasizing the portions of the environmental impact statement that are useful to decisionmakers and the public (Secs. 1502.14 and 1502.15) and reducing emphasis on background material (Sec. 1502.16).

(g) Using the scoping process, not only to identify significant environmental issues deserving of study, but also to deemphasize insignificant issues, narrowing the scope of the environmental impact statement process accordingly (Sec. 1501.7).

(h) Summarizing the environmental impact statement (Sec. 1502.12) and circulating the summary instead of the entire environmental impact statement if the latter is unusually long (Sec. 1502.19).

(i) Using program, policy, or plan environmental impact statements and tiering from statements of broad scope to those of narrower scope, to eliminate repetitive discussions of the same issues (Secs. 1502.4 and 1502.20).

(j) Incorporating by reference (Sec. 1502.21).

(k) Integrating NEPA requirements with other environmental review and consultation requirements (Sec. 1502.25).

(l) Requiring comments to be as specific as possible (Sec. 1503.3).

(m) Attaching and circulating only changes to the draft environmental impact statement, rather than rewriting and circulating the entire statement when changes are minor (Sec. 1503.4(c)).

(n) Eliminating duplication with State and local procedures, by providing for joint preparation (Sec. 1506.2), and with other Federal procedures, by providing that an agency may adopt appropriate environmental documents prepared by another agency (Sec. 1506.3).

(o) Combining environmental documents with other documents (Sec. 1506.4).

(p) Using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment and which are therefore exempt from requirements to prepare an environmental impact statement (Sec. 1508.4).

(q) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment and is therefore exempt from requirements to prepare an environmental impact statement (Sec. 1508.13).

Sec. 1500.5 Reducing delay.

Agencies shall reduce delay by:

(a) Integrating the NEPA process into early planning (Sec. 1501.2).

(b) Emphasizing interagency cooperation before the environmental impact statement is prepared, rather than submission of adversary comments on a completed document (Sec. 1501.6).

(c) Insuring the swift and fair resolution of lead agency disputes (Sec. 1501.5).

(d) Using the scoping process for an early identification of what are and what are not the real issues (Sec. 1501.7).

(e) Establishing appropriate time limits for the environmental impact statement process (Secs. 1501.7(b)(2) and 1501.8).

(f) Preparing environmental impact statements early in the process (Sec. 1502.5).

(g) Integrating NEPA requirements with other environmental review and consultation requirements (Sec. 1502.25).

(h) Eliminating duplication with State and local procedures by providing for joint preparation (Sec. 1506.2) and with other Federal procedures by providing that an agency may adopt appropriate environmental documents prepared by another agency (Sec. 1506.3).

(i) Combining environmental documents with other documents (Sec. 1506.4).

(j) Using accelerated procedures for proposals for legislation (Sec. 1506.8).

(k) Using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment (Sec. 1508.4) and which are therefore exempt from requirements to prepare an environmental impact statement.

(l) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment (Sec. 1508.13) and is therefore exempt from requirements to prepare an environmental impact statement.

Sec. 1500.6 Agency authority.

Each agency shall interpret the provisions of the Act as a supplement to its existing authority and as a mandate to view traditional policies and missions in the light of the Act's national environmental objectives. Agencies shall review their policies, procedures, and regulations accordingly and revise them as necessary to insure full compliance with the purposes and provisions of the Act. The phrase "to the fullest extent possible" in section 102 means that each agency of the Federal Government shall comply with that section unless existing law applicable to the agency's operations expressly prohibits or makes compliance impossible.

PART 1501--NEPA AND AGENCY PLANNING

Sec. 1501.1 Purpose.

The purposes of this part include:

(a) Integrating the NEPA process into early planning to insure appropriate consideration of NEPA's policies and to eliminate delay.

(b) Emphasizing cooperative consultation among agencies before the environmental impact statement is prepared rather than submission of adversary comments on a completed document.

(c) Providing for the swift and fair resolution of lead agency disputes.

(d) Identifying at an early stage the significant environmental issues deserving of study and deemphasizing insignificant issues, narrowing the scope of the environmental impact statement accordingly.

(e) Providing a mechanism for putting appropriate time limits on the environmental impact statement process.

Sec. 1501.2 Apply NEPA early in the process.

Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts. Each agency shall:

(a) Comply with the mandate of section 102(2)(A) to "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment," as specified by Sec. 1507.2.

(b) Identify environmental effects and values in adequate detail so they can be compared to economic and technical analyses. Environmental documents and appropriate analyses shall be circulated and reviewed at the same time as other planning documents.

(c) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources as provided by section 102(2)(E) of the Act.

(d) Provide for cases where actions are planned by private applicants or other non-Federal entities before Federal involvement so that:

(1) Policies or designated staff are available to advise potential applicants of studies or other information foreseeably required for later Federal action.

(2) The Federal agency consults early with appropriate State and local agencies and Indian tribes and with interested private persons and organizations when its own involvement is reasonably foreseeable.

(3) The Federal agency commences its NEPA process at the earliest possible time.

Sec. 1501.3 When to prepare an environmental assessment.

(a) Agencies shall prepare an environmental assessment (Sec. 1508.9) when necessary under the procedures adopted by individual agencies to supplement these regulations as described in Sec. 1507.3. An assessment is not necessary if the agency has decided to prepare an environmental impact statement.

(b) Agencies may prepare an environmental assessment on any action at any time in order to assist agency planning and decisionmaking.

Sec. 1501.4 Whether to prepare an environmental impact statement.

In determining whether to prepare an environmental impact statement the Federal agency shall:

(a) Determine under its procedures supplementing these regulations (described in Sec. 1507.3) whether the proposal is one which:

(1) Normally requires an environmental impact statement, or

(2) Normally does not require either an environmental impact statement or an environmental assessment (categorical exclusion).

(b) If the proposed action is not covered by paragraph (a) of this section, prepare an environmental assessment (Sec. 1508.9). The agency shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing assessments required by Sec. 1508.9(a)(1).

(c) Based on the environmental assessment make its determination whether to prepare an environmental impact statement.

(d) Commence the scoping process (Sec. 1501.7), if the agency will prepare an environmental impact statement.

(e) Prepare a finding of no significant impact (Sec. 1508.13), if the agency determines on the basis of the environmental assessment not to prepare a statement.

(1) The agency shall make the finding of no significant impact available to the affected public as specified in Sec. 1506.6.

(2) In certain limited circumstances, which the agency may cover in its procedures under Sec. 1507.3, the agency shall make the finding of no significant impact available for public review (including State and areawide clearinghouses) for 30 days before the agency makes its final determination whether to prepare an environmental impact statement and before the action may begin. The circumstances are:

(i) The proposed action is, or is closely similar to, one which normally requires the preparation of an environmental impact statement under the procedures adopted by the agency pursuant to Sec. 1507.3, or

(ii) The nature of the proposed action is one without precedent.

Sec. 1501.5 Lead agencies.

(a) A lead agency shall supervise the preparation of an environmental impact statement if more than one Federal agency either:

(1) Proposes or is involved in the same action; or

(2) Is involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity.

(b) Federal, State, or local agencies, including at least one Federal agency, may act as joint lead agencies to prepare an environmental impact statement (Sec. 1506.2).

(c) If an action falls within the provisions of paragraph (a) of this section the potential lead agencies shall determine by letter or memorandum which agency shall be the lead agency and which shall be cooperating agencies. The agencies shall resolve the lead agency question so as not to cause delay. If there is disagreement among the agencies, the following factors (which are listed in order of descending importance) shall determine lead agency designation:

(1) Magnitude of agency's involvement.

(2) Project approval/disapproval authority.

(3) Expertise concerning the action's environmental effects.

(4) Duration of agency's involvement.

(5) Sequence of agency's involvement.

(d) Any Federal agency, or any State or local agency or private person substantially affected by the absence of lead agency designation, may make a written request to the potential lead agencies that a lead agency be designated.

(e) If Federal agencies are unable to agree on which agency will be the lead agency or if the procedure described in paragraph (c) of this section has not resulted within 45 days in a lead agency designation, any

of the agencies or persons concerned may file a request with the Council asking it to determine which Federal agency shall be the lead agency.

A copy of the request shall be transmitted to each potential lead agency. The request shall consist of:

(1) A precise description of the nature and extent of the proposed action.

(2) A detailed statement of why each potential lead agency should or should not be the lead agency under the criteria specified in paragraph (c) of this section.

(f) A response may be filed by any potential lead agency concerned within 20 days after a request is filed with the Council. The Council shall determine as soon as possible but not later than 20 days after receiving the request and all responses to it which Federal agency shall be the lead agency and which other Federal agencies shall be cooperating agencies.

Sec. 1501.6 Cooperating agencies.

The purpose of this section is to emphasize agency cooperation early in the NEPA process. Upon request of the lead agency, any other Federal agency which has jurisdiction by law shall be a cooperating agency. In addition any other Federal agency which has special expertise with respect to any environmental issue, which should be addressed in the statement may be a cooperating agency upon request of the lead agency. An agency may request the lead agency to designate it a cooperating agency.

(a) The lead agency shall:

(1) Request the participation of each cooperating agency in the NEPA process at the earliest possible time.

(2) Use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise, to the maximum extent possible consistent with its responsibility as lead agency.

(3) Meet with a cooperating agency at the latter's request.

(b) Each cooperating agency shall:

(1) Participate in the NEPA process at the earliest possible time.

(2) Participate in the scoping process (described below in Sec. 1501.7).

(3) Assume on request of the lead agency responsibility for developing information and preparing environmental analyses including portions of the environmental impact statement concerning which the cooperating agency has special expertise.

(4) Make available staff support at the lead agency's request to enhance the latter's interdisciplinary capability.

(5) Normally use its own funds. The lead agency shall, to the extent available funds permit, fund those major activities or analyses it requests from cooperating agencies. Potential lead agencies shall include such funding requirements in their budget requests.

(c) A cooperating agency may in response to a lead agency's request for assistance in preparing the environmental impact statement (described in paragraph (b)(3), (4), or (5) of this section) reply that other program commitments preclude any involvement or the degree of involvement requested in the action that is the subject of the environmental impact statement. A copy of this reply shall be submitted to the Council.

Sec. 1501.7 Scoping.

There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process shall be termed scoping. As soon as practicable after its decision to prepare an environmental impact statement and before the scoping process the lead agency shall publish a notice of intent (Sec. 1508.22) in the Federal Register except as provided in Sec. 1507.3(e).

(a) As part of the scoping process the lead agency shall:

(1) Invite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds), unless there is a limited exception under Sec. 1507.3(c). An agency may give notice in accordance with Sec. 1506.6.

(2) Determine the scope (Sec. 1508.25) and the significant issues to be analyzed in depth in the environmental impact statement.

(3) Identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review (Sec. 1506.3), narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere.

(4) Allocate assignments for preparation of the environmental impact statement among the lead and cooperating agencies, with the lead agency retaining responsibility for the statement.

(5) Indicate any public environmental assessments and other environmental impact statements which are being or will be prepared that are related to but are not part of the scope of the impact statement under consideration.

(6) Identify other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the environmental impact statement as provided in Sec. 1502.25.

(7) Indicate the relationship between the timing of the preparation of environmental analyses and the agency's tentative planning and decisionmaking schedule.

(b) As part of the scoping process the lead agency may:

(1) Set page limits on environmental documents (Sec. 1502.7).

(2) Set time limits (Sec. 1501.8).

(3) Adopt procedures under Sec. 1507.3 to combine its environmental assessment process with its scoping process.

(4) Hold an early scoping meeting or meetings which may be integrated with any other early planning meeting the agency has. Such a scoping meeting will often be appropriate when the impacts of a particular action are confined to specific sites.

(c) An agency shall revise the determinations made under paragraphs (a) and (b) of this section if substantial changes are made later in the proposed action, or if significant new circumstances or information arise which bear on the proposal or its impacts.

Sec. 1501.8 Time limits.

Although the Council has decided that prescribed universal time limits for the entire NEPA process are too inflexible, Federal agencies are encouraged to set time limits appropriate to individual actions (consistent with the time intervals required by Sec. 1506.10). When multiple agencies are involved the reference to agency below means lead agency.

(a) The agency shall set time limits if an applicant for the proposed action requests them: *Provided*, That the limits are consistent with the purposes of NEPA and other essential considerations of national policy.

(b) The agency may:

(1) Consider the following factors in determining time limits:

(i) Potential for environmental harm.

(ii) Size of the proposed action.

(iii) State of the art of analytic techniques.

(iv) Degree of public need for the proposed action, including the consequences of delay.

(v) Number of persons and agencies affected.

(vi) Degree to which relevant information is known and if not known the time required for obtaining it.

(vii) Degree to which the action is controversial.

(viii) Other time limits imposed on the agency by law, regulations, or executive order.

(2) Set overall time limits or limits for each constituent part of the NEPA process, which may include:
(i) Decision on whether to prepare an environmental impact statement (if not already decided).

(ii) Determination of the scope of the environmental impact statement.

(iii) Preparation of the draft environmental impact statement.

(iv) Review of any comments on the draft environmental impact statement from the public and agencies.

(v) Preparation of the final environmental impact statement.

(vi) Review of any comments on the final environmental impact statement.

(vii) Decision on the action based in part on the environmental impact statement.

(3) Designate a person (such as the project manager or a person in the agency's office with NEPA responsibilities) to expedite the NEPA process.

(c) State or local agencies or members of the public may request a Federal Agency to set time limits.

PART 1502--ENVIRONMENTAL IMPACT STATEMENT

Sec. 1502.1 Purpose.

The primary purpose of an environmental impact statement is to serve as an action-forcing device to insure that the policies and goals defined in the Act are infused into the ongoing programs and actions of the Federal Government. It shall provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment. Agencies shall focus on significant environmental issues and alternatives and shall reduce paperwork and the accumulation of extraneous background data. Statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses. An environmental impact statement is more than a disclosure document. It shall be used by Federal officials in conjunction with other relevant material to plan actions and make decisions.

Sec. 1502.2 Implementation.

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

(a) Environmental impact statements shall be analytic rather than encyclopedic.

(b) Impacts shall be discussed in proportion to their significance. There shall be only brief discussion of other than significant issues. As in a finding of no significant impact, there should be only enough discussion to show why more study is not warranted.

(c) Environmental impact statements shall be kept concise and shall be no longer than absolutely necessary to comply with NEPA and with these regulations. Length should vary first with potential environmental problems and then with project size.

(d) Environmental impact statements shall state how alternatives considered in it and decisions based on it will or will not achieve the requirements of sections 101 and 102(1) of the Act and other environmental laws and policies.

(e) The range of alternatives discussed in environmental impact statements shall encompass those to be considered by the ultimate agency decisionmaker.

(f) Agencies shall not commit resources prejudicing selection of alternatives before making a final decision (Sec. 1506.1).

(g) Environmental impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.

Sec. 1502.3 Statutory requirements for statements.

As required by sec. 102(2)(C) of NEPA environmental impact statements (Sec. 1508.11) are to be included in every recommendation or report.

On proposals (Sec. 1508.23).

For legislation and (Sec. 1508.17).

Other major Federal actions (Sec. 1508.18).

Significantly (Sec. 1508.27).

Affecting (Secs. 1508.3, 1508.8).

The quality of the human environment (Sec. 1508.14).

Sec. 1502.4 Major Federal actions requiring the preparation of environmental impact statements.

(a) Agencies shall make sure the proposal which is the subject of an environmental impact statement is properly defined. Agencies shall use the criteria for scope (Sec. 1508.25) to determine which proposal(s) shall be the subject of a particular statement. Proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.

(b) Environmental impact statements may be prepared, and are sometimes required, for broad Federal actions such as the adoption of new agency programs or regulations (Sec. 1508.18). Agencies shall prepare statements on broad actions so that they are relevant to policy and are timed to coincide with meaningful points in agency planning and decisionmaking.

(c) When preparing statements on broad actions (including proposals by more than one agency), agencies may find it useful to evaluate the proposal(s) in one of the following ways:

(1) Geographically, including actions occurring in the same general location, such as body of water, region, or metropolitan area.

(2) Generically, including actions which have relevant similarities, such as common timing, impacts, alternatives, methods of implementation, media, or subject matter.
(3) By stage of technological development including federal or federally assisted research, development or demonstration programs for new technologies which, if applied, could significantly affect the quality of the human environment. Statements shall be prepared on such programs and shall be available before the program has reached a stage of investment or commitment to implementation likely to determine subsequent development or restrict later alternatives.

(d) Agencies shall as appropriate employ scoping (Sec. 1501.7), tiering (Sec. 1502.20), and other methods listed in Secs. 1500.4 and 1500.5 to relate broad and narrow actions and to avoid duplication and delay.

Sec. 1502.5 Timing.

An agency shall commence preparation of an environmental impact statement as close as possible to the time the agency is developing or is presented with a proposal (Sec. 1508.23) so that preparation can be completed in time for the final statement to be included in any recommendation or report on the proposal.

The statement shall be prepared early enough so that it can serve practically as an important contribution to the decisionmaking process and will not be used to rationalize or justify decisions already made (Secs. 1500.2(c), 1501.2, and 1502.2). For instance:

(a) For projects directly undertaken by Federal agencies the environmental impact statement shall be prepared at the feasibility analysis (go-no go) stage and may be supplemented at a later stage if necessary.

(b) For applications to the agency appropriate environmental assessments or statements shall be commenced no later than immediately after the application is received. Federal agencies are encouraged to begin preparation of such assessments or statements earlier, preferably jointly with applicable State or local agencies.

(c) For adjudication, the final environmental impact statement shall normally precede the final staff recommendation and that portion of the public hearing related to the impact study. In appropriate circumstances the statement may follow preliminary hearings designed to gather information for use in the statements.

(d) For informal rulemaking the draft environmental impact statement shall normally accompany the proposed rule.

Sec. 1502.6 Interdisciplinary preparation.

Environmental impact statements shall be prepared using an inter- disciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts (section 102(2)(A) of the Act). The disciplines of the preparers shall be appropriate to the scope and issues identified in the scoping process (Sec. 1501.7).

Sec. 1502.7 Page limits.

The text of final environmental impact statements (e.g., paragraphs (d) through (g) of Sec. 1502.10) shall normally be less than 150 pages and for proposals of unusual scope or complexity shall normally be less than 300 pages.

Sec. 1502.8 Writing.

Environmental impact statements shall be written in plain language and may use appropriate graphics so that decisionmakers and the public can readily understand them. Agencies should employ writers of clear prose or editors to write, review, or edit statements, which will be based upon the analysis and supporting data from the natural and social sciences and the environmental design arts.

Sec. 1502.9 Draft, final, and supplemental statements.

Except for proposals for legislation as provided in Sec. 1506.8 environmental impact statements shall be prepared in two stages and may be supplemented.

(a) Draft environmental impact statements shall be prepared in accordance with the scope decided upon in the scoping process. The lead agency shall work with the cooperating agencies and shall obtain comments as required in Part 1503 of this chapter. The draft statement must fulfill and satisfy to the fullest extent possible the requirements established for final statements in section 102(2)(C) of the Act. If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion. The agency shall make every effort to disclose and

discuss at appropriate points in the draft statement all major points of view on the environmental impacts of the alternatives including the proposed action.

(b) Final environmental impact statements shall respond to comments as required in Part 1503 of this chapter. The agency shall discuss at appropriate points in the final statement any responsible opposing view which was not adequately discussed in the draft statement and shall indicate the agency's response to the issues raised.

(c) Agencies:

(1) Shall prepare supplements to either draft or final environmental impact statements if:

(i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or

(ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

(2) May also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so.

(3) Shall adopt procedures for introducing a supplement into its formal administrative record, if such a record exists.

(4) Shall prepare, circulate, and file a supplement to a statement in the same fashion (exclusive of scoping) as a draft and final statement unless alternative procedures are approved by the Council.

Sec. 1502.10 Recommended format.

Agencies shall use a format for environmental impact statements which will encourage good analysis and clear presentation of the alternatives including the proposed action. The following standard format for environmental impact statements should be followed unless the agency determines that there is a compelling reason to do otherwise:

(a) Cover sheet.
(b) Summary.

(c) Table of contents.

(d) Purpose of and need for action.

(e) Alternatives including proposed action (sections 102(2)(C)(iii) and 102(2)(E) of the Act).

(f) Affected environment.

(g) Environmental consequences (especially sections 102(2)(C)(i), (ii), (iv), and (v) of the Act).

(h) List of preparers.

(i) List of Agencies, Organizations, and persons to whom copies of the statement are sent.

(j) Index.

(k) Appendices (if any).

If a different format is used, it shall include paragraphs (a), (b), (c), (h), (i), and (j), of this section and shall include the substance of paragraphs (d), (e), (f), (g), and (k) of this section, as further described in Secs. 1502.11 through 1502.18, in any appropriate format.

Sec. 1502.11 Cover sheet.

The cover sheet shall not exceed one page. It shall include:

(a) A list of the responsible agencies including the lead agency and any cooperating agencies.

(b) The title of the proposed action that is the subject of the statement (and if appropriate the titles of related cooperating agency actions), together with the State(s) and county(ies) (or other jurisdiction if applicable) where the action is located.

(c) The name, address, and telephone number of the person at the agency who can supply further information.

(d) A designation of the statement as a draft, final, or draft or final supplement.

(e) A one paragraph abstract of the statement.

(f) The date by which comments must be received (computed in cooperation with EPA under Sec. 1506.10).

The information required by this section may be entered on Standard Form 424 (in items 4, 6, 7, 10, and 18).

Sec. 1502.12 Summary.

Each environmental impact statement shall contain a summary which adequately and accurately summarizes the statement. The summary shall stress the major conclusions, areas of controversy (including issues raised by agencies and the public), and the issues to be resolved (including the choice among alternatives). The summary will normally not exceed 15 pages.

Sec. 1502.13 Purpose and need.

The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.

Sec. 1502.14 Alternatives including the proposed action.

This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment (Sec. 1502.15) and the Environmental Consequences (Sec. 1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public. In this section agencies shall:

(a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.

(b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.

(c) Include reasonable alternatives not within the jurisdiction of the lead agency.

(d) Include the alternative of no action.

(e) Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.

(f) Include appropriate mitigation measures not already included in the proposed action or alternatives.

Sec. 1502.15 Affected environment.

The environmental impact statement shall succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration. The descriptions shall be no longer than is necessary to understand the effects of the alternatives. Data and analyses in a statement shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced. Agencies shall avoid useless bulk in statements and shall concentrate effort and attention on important issues. Verbose descriptions of the affected environment are themselves no measure of the adequacy of an environmental impact statement.

Sec. 1502.16 Environmental consequences.

This section forms the scientific and analytic basis for the comparisons under Sec. 1502.14. It shall consolidate the discussions of those elements required by sections 102(2)(C)(i), (ii), (iv), and (v) of NEPA which are within the scope of the statement and as much of section 102(2)(C)(iii) as is necessary to support the comparisons. The discussion will include the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. This section should not duplicate discussions in Sec. 1502.14. It shall include discussions of:

(a) Direct effects and their significance (Sec. 1508.8).

(b) Indirect effects and their significance (Sec. 1508.8).

(c) Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned. (See Sec. 1506.2(d).)

(d) The environmental effects of alternatives including the proposed action. The comparisons under Sec. 1502.14 will be based on this discussion.

(e) Energy requirements and conservation potential of various alternatives and mitigation measures.

(f) Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.

(g) Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures.

(h) Means to mitigate adverse environmental impacts (if not fully covered under Sec. 1502.14(f)).

Sec. 1502.17 List of preparers.

The environmental impact statement shall list the names, together with their qualifications (expertise, experience, professional disciplines), of the persons who were primarily responsible for preparing the environmental impact statement or significant background papers, including basic components of the statement (Secs. 1502.6 and 1502.8). Where possible the persons who are responsible for a particular analysis, including analyses in background papers, shall be identified. Normally the list will not exceed two pages.

Sec. 1502.18 Appendix.

If an agency prepares an appendix to an environmental impact statement the appendix shall:

(a) Consist of material prepared in connection with an environmental impact statement (as distinct from material which is not so prepared and which is incorporated by reference (Sec. 1502.21)).

(b) Normally consist of material which substantiates any analysis fundamental to the impact statement.

(c) Normally be analytic and relevant to the decision to be made.

(d) Be circulated with the environmental impact statement or be readily available on request.

Sec. 1502.19 Circulation of the environmental impact statement.

Agencies shall circulate the entire draft and final environmental impact statements except for certain appendices as provided in Sec. 1502.18(d) and unchanged statements as provided in Sec. 1503.4(c). However, if the statement is unusually long, the agency may circulate the summary instead, except that the entire statement shall be furnished to:

(a) Any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate Federal, State or local agency authorized to develop and enforce environmental standards.

(b) The applicant, if any.

(c) Any person, organization, or agency requesting the entire environmental impact statement.

(d) In the case of a final environmental impact statement any person, organization, or agency which submitted substantive comments on the draft.

If the agency circulates the summary and thereafter receives a timely request for the entire statement and for additional time to comment, the time for that requestor only shall be extended by at least 15 days beyond the minimum period.

Sec. 1502.20 Tiering.

Agencies are encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review (Sec. 1508.28). Whenever a broad environmental impact statement has been prepared (such as a program or policy statement) and a subsequent statement or environmental assessment is then prepared on an action included within the entire program or policy (such as a site specific action) the subsequent statement or environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action. The subsequent document shall state where the earlier document is available. Tiering may also be appropriate for different stages of actions. (Section 1508.28).

Sec. 1502.21 Incorporation by reference.

Agencies shall incorporate material into an environmental impact statement by reference when the effect will be to cut down on bulk without impeding agency and public review of the action. The incorporated material shall be cited in the statement and its content briefly described. No material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment. Material based on proprietary data which is itself not available for review and comment shall not be incorporated by reference.

Sec. 1502.22 Incomplete or unavailable information.

When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking.

(a) If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement.

(b) If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known, the agency shall include within the environmental impact statement: (1) A statement that such information is incomplete or unavailable; (2) a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment; (3) a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment, and (4) the agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community. For the purposes of this section, "reasonably foreseeable" includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.

(c) The amended regulation will be applicable to all environmental impact statements for which a Notice of Intent (40 CFR 1508.22) is published in the Federal Register on or after May 27, 1986. For environmental impact statements in progress, agencies may choose to comply with the requirements of either the original or amended regulation.

Sec. 1502.23 Cost-benefit analysis.

If a cost-benefit analysis relevant to the choice among environmentally different alternatives is being considered for the proposed action, it shall be incorporated by reference or appended to the statement as an aid in evaluating the environmental consequences. To assess the adequacy of compliance with section 102(2)(B) of the Act the statement shall, when a cost-benefit analysis is prepared, discuss the relationship between that analysis and any analyses of unquantified environmental impacts, values, and amenities. For purposes of complying with the Act, the weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations. In any event, an environmental impact statement should at least indicate those considerations, including factors not related to environmental quality, which are likely to be relevant and important to a decision.

Sec. 1502.24 Methodology and scientific accuracy.

Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement. An agency may place discussion of methodology in an appendix.

Sec. 1502.25 Environmental review and consultation requirements.

(a) To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and other environmental review laws and executive orders.

(b) The draft environmental impact statement shall list all Federal permits, licenses, and other entitlements which must be obtained in implementing the proposal. If it is uncertain whether a Federal permit, license, or other entitlement is necessary, the draft environmental impact statement shall so indicate.

PART 1503--COMMENTING

Sec. 1503.1 Inviting comments.

(a) After preparing a draft environmental impact statement and before preparing a final environmental impact statement the agency shall:

(1) Obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved or which is authorized to develop and enforce environmental standards.

(2) Request the comments of:

(i) Appropriate State and local agencies which are authorized to develop and enforce environmental standards;

(ii) Indian tribes, when the effects may be on a reservation; and

(iii) Any agency which has requested that it receive statements on actions of the kind proposed.

Office of Management and Budget Circular A-95 (Revised), through its system of clearinghouses, provides a means of securing the views of State and local environmental agencies. The clearinghouses may be used, by mutual agreement of the lead agency and the clearinghouse, for securing State and local reviews of the draft environmental impact statements.

(3) Request comments from the applicant, if any.

(4) Request comments from the public, affirmatively soliciting comments from those persons or organizations who may be interested or affected.

(b) An agency may request comments on a final environmental impact statement before the decision is finally made. In any case other agencies or persons may make comments before the final decision unless a different time is provided under Sec. 1506.10.

Sec. 1503.2 Duty to comment.

Federal agencies with jurisdiction by law or special expertise with respect to any environmental impact involved and agencies which are authorized to develop and enforce environmental standards shall comment on statements within their jurisdiction, expertise, or authority. Agencies shall comment within the time period specified for comment in Sec. 1506.10. A Federal agency may reply that it has no comment. If a cooperating agency is satisfied that its views are adequately reflected in the environmental impact statement, it should reply that it has no comment.

Sec. 1503.3 Specificity of comments.

(a) Comments on an environmental impact statement or on a proposed action shall be as specific as possible and may address either the adequacy of the statement or the merits of the alternatives discussed or both.

(b) When a commenting agency criticizes a lead agency's predictive methodology, the commenting agency should describe the alternative methodology which it prefers and why.

(c) A cooperating agency shall specify in its comments whether it needs additional information to fulfill other applicable environmental reviews or consultation requirements and what information it needs. In particular, it shall specify any additional information it needs to comment adequately on the draft statement's analysis of significant site-specific effects associated with the granting or approving by that cooperating agency of necessary Federal permits, licenses, or entitlements.

(d) When a cooperating agency with jurisdiction by law objects to or expresses reservations about the proposal on grounds of environmental impacts, the agency expressing the objection or reservation shall specify the mitigation measures it considers necessary to allow the agency to grant or approve applicable permit, license, or related requirements or concurrences.

Sec. 1503.4 Response to comments.

(a) An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed below, stating its response in the final statement. Possible responses are to:

(1) Modify alternatives including the proposed action.

(2) Develop and evaluate alternatives not previously given serious consideration by the agency.

(3) Supplement, improve, or modify its analyses.

(4) Make factual corrections.

(5) Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

(b) All substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous), should be attached to the final statement whether or not the comment is thought to merit individual discussion by the agency in the text of the statement.

(c) If changes in response to comments are minor and are confined to the responses described in paragraphs (a)(4) and (5) of this section, agencies may write them on errata sheets and attach them to the statement instead of rewriting the draft statement. In such cases only the comments, the responses, and the changes and not the final statement need be circulated (Sec. 1502.19). The entire document with a new cover sheet shall be filed as the final statement (Sec. 1506.9).

PART 1504--PREDECISION REFERRALS TO THE COUNCIL OF PROPOSED FEDERAL ACTIONS DETERMINED TO BE ENVIRONMENTALLY UNSATISFACTORY

Sec. 1504.1 Purpose.

(a) This part establishes procedures for referring to the Council Federal interagency disagreements concerning proposed major Federal actions that might cause unsatisfactory environmental effects. It provides means for early resolution of such disagreements.

(b) Under section 309 of the Clean Air Act (42 U.S.C. 7609), the Administrator of the Environmental Protection Agency is directed to review and comment publicly on the environmental impacts of Federal activities, including actions for which environmental impact statements are prepared. If after this review

the Administrator determines that the matter is "unsatisfactory from the standpoint of public health or welfare or environmental quality," section 309 directs that the matter be referred to the Council (hereafter "environmental referrals").

(c) Under section 102(2)(C) of the Act other Federal agencies may make similar reviews of environmental impact statements, including judgments on the acceptability of anticipated environmental impacts. These reviews must be made available to the President, the Council and the public.

Sec. 1504.2 Criteria for referral.

Environmental referrals should be made to the Council only after concerted, timely (as early as possible in the process), but unsuccessful attempts to resolve differences with the lead agency. In determining what environmental objections to the matter are appropriate to refer to the Council, an agency should weigh potential adverse environmental impacts, considering:

(a) Possible violation of national environmental standards or policies.

(b) Severity.

(c) Geographical scope.

(d) Duration.

(e) Importance as precedents.

(f) Availability of environmentally preferable alternatives.

Sec. 1504.3 Procedure for referrals and response.

(a) A Federal agency making the referral to the Council shall:

(1) Advise the lead agency at the earliest possible time that it intends to refer a matter to the Council unless a satisfactory agreement is reached.

(2) Include such advice in the referring agency's comments on the draft environmental impact statement, except when the statement does not contain adequate information to permit an assessment of the matter's environmental acceptability.

(3) Identify any essential information that is lacking and request that it be made available at the earliest possible time.

(4) Send copies of such advice to the Council.

(b) The referring agency shall deliver its referral to the Council not later than twenty-five (25) days after the final environmental impact statement has been made available to the Environmental Protection Agency, commenting agencies, and the public. Except when an extension of this period has been granted by the lead agency, the Council will not accept a referral after that date.

(c) The referral shall consist of:

(1) A copy of the letter signed by the head of the referring agency and delivered to the lead agency informing the lead agency of the referral and the reasons for it, and requesting that no action be taken to implement the matter until the Council acts upon the referral. The letter shall include a copy of the statement referred to in (c)(2) of this section.

(2) A statement supported by factual evidence leading to the conclusion that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality. The statement shall:

(i) Identify any material facts in controversy and incorporate (by reference if appropriate) agreed upon facts,

(ii) Identify any existing environmental requirements or policies which would be violated by the matter,

(iii) Present the reasons why the referring agency believes the matter is environmentally unsatisfactory,

(iv) Contain a finding by the agency whether the issue raised is of national importance because of the threat to national environmental resources or policies or for some other reason,

(v) Review the steps taken by the referring agency to bring its concerns to the attention of the lead agency at the earliest possible time, and

(vi) Give the referring agency's recommendations as to what mitigation alternative, further study, or other course of action (including abandonment of the matter) are necessary to remedy the situation.

(d) Not later than twenty-five (25) days after the referral to the Council the lead agency may deliver a response to the Council, and the referring agency. If the lead agency requests more time and gives assurance that the matter will not go forward in the interim, the Council may grant an extension. The response shall:

(1) Address fully the issues raised in the referral.

(2) Be supported by evidence.

(3) Give the lead agency's response to the referring agency's recommendations.

(e) Interested persons (including the applicant) may deliver their views in writing to the Council. Views in support of the referral should be delivered not later than the referral. Views in support of the response shall be delivered not later than the response.

(f) Not later than twenty-five (25) days after receipt of both the referral and any response or upon being informed that there will be no response (unless the lead agency agrees to a longer time), the Council may take one or more of the following actions:

(1) Conclude that the process of referral and response has successfully resolved the problem.

(2) Initiate discussions with the agencies with the objective of mediation with referring and lead agencies.

(3) Hold public meetings or hearings to obtain additional views and information.

(4) Determine that the issue is not one of national importance and request the referring and lead agencies to pursue their decision process.

(5) Determine that the issue should be further negotiated by the referring and lead agencies and is not appropriate for Council consideration until one or more heads of agencies report to the Council that the agencies' disagreements are irreconcilable.

(6) Publish its findings and recommendations (including where appropriate a finding that the submitted evidence does not support the position of an agency).

(7) When appropriate, submit the referral and the response together with the Council's recommendation to the President for action.

(g) The Council shall take no longer than 60 days to complete the actions specified in paragraph (f)(2), (3), or (5) of this section.

(h) When the referral involves an action required by statute to be determined on the record after opportunity for agency hearing, the referral shall be conducted in a manner consistent with 5 U.S.C. 557(d) (Administrative Procedure Act).

PART 1505--NEPA AND AGENCY DECISIONMAKING

Sec. 1505.1 Agency decisionmaking procedures.

Agencies shall adopt procedures (Sec. 1507.3) to ensure that decisions are made in accordance with the policies and purposes of the Act. Such procedures shall include but not be limited to:

(a) Implementing procedures under section 102(2) to achieve the requirements of sections 101 and 102(1).

(b) Designating the major decision points for the agency's principal programs likely to have a significant effect on the human environment and assuring that the NEPA process corresponds with them.

(c) Requiring that relevant environmental documents, comments, and responses be part of the record in formal rulemaking or adjudicatory proceedings.

(d) Requiring that relevant environmental documents, comments, and responses accompany the proposal through existing agency review processes so that agency officials use the statement in making decisions.

(e) Requiring that the alternatives considered by the decisionmaker are encompassed by the range of alternatives discussed in the relevant environmental documents and that the decisionmaker consider the alternatives described in the environmental impact statement. If another decision document accompanies the relevant environmental documents to the decisionmaker, agencies are encouraged to make available to the public before the decision is made any part of that document that relates to the comparison of alternatives.

Sec. 1505.2 Record of decision in cases requiring environmental impact statements.

At the time of its decision (Sec. 1506.10) or, if appropriate, its recommendation to Congress, each agency shall prepare a concise public record of decision. The record, which may be integrated into any other

record prepared by the agency, including that required by OMB Circular A-95 (Revised), part I, sections 6(c) and (d), and Part II, section 5(b)(4), shall:

(a) State what the decision was.

(b) Identify all alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives which were considered to be environmentally preferable. An agency may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. An agency shall identify and discuss all such factors including any essential considerations of national policy which were balanced by the agency in making its decision and state how those considerations entered into its decision.

(c) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation.

Sec. 1505.3 Implementing the decision.

Agencies may provide for monitoring to assure that their decisions are carried out and should do so in important cases. Mitigation (Sec. 1505.2(c)) and other conditions established in the environmental impact statement or during its review and committed as part of the decision shall be implemented by the lead agency or other appropriate consenting agency. The lead agency shall:

(a) Include appropriate conditions in grants, permits or other approvals.

(b) Condition funding of actions on mitigation.

(c) Upon request, inform cooperating or commenting agencies on progress in carrying out mitigation measures which they have proposed and which were adopted by the agency making the decision.

(d) Upon request, make available to the public the results of relevant monitoring.

PART 1506--OTHER REQUIREMENTS OF NEPA

Sec. 1506.1 Limitations on actions during NEPA process.

(a) Until an agency issues a record of decision as provided in Sec. 1505.2 (except as provided in paragraph (c) of this section), no action concerning the proposal shall be taken which would:

(1) Have an adverse environmental impact; or

(2) Limit the choice of reasonable alternatives.

(b) If any agency is considering an application from a non-Federal entity, and is aware that the applicant is about to take an action within the agency's jurisdiction that would meet either of the criteria in paragraph (a) of this section, then the agency shall promptly notify the applicant that the agency will take appropriate action to insure that the objectives and procedures of NEPA are achieved.

(c) While work on a required program environmental impact statement is in progress and the action is not covered by an existing program statement, agencies shall not undertake in the interim any major Federal

action covered by the program which may significantly affect the quality of the human environment unless such action:

(1) Is justified independently of the program;

(2) Is itself accompanied by an adequate environmental impact statement; and

(3) Will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives.

(d) This section does not preclude development by applicants of plans or designs or performance of other work necessary to support an application for Federal, State or local permits or assistance. Nothing in this section shall preclude Rural Electrification Administration approval of minimal expenditures not affecting the environment (e.g. long leadtime equipment and purchase options) made by non-governmental entities seeking loan guarantees from the Administration.

Sec. 1506.2 Elimination of duplication with State and local procedures.

(a) Agencies authorized by law to cooperate with State agencies of statewide jurisdiction pursuant to section 102(2)(D) of the Act may do so.

(b) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include:

(1) Joint planning processes.

(2) Joint environmental research and studies.

(3) Joint public hearings (except where otherwise provided by statute).

(4) Joint environmental assessments.

(c) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and comparable State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include joint environmental impact statements. In such cases one or more Federal agencies and one or more State or local agencies shall be joint lead agencies. Where State laws or local ordinances have environmental impact statement requirements in addition to but not in conflict with those in NEPA, Federal agencies shall cooperate in fulfilling these requirements as well as those of Federal laws so that one document will comply with all applicable laws.

(d) To better integrate environmental impact statements into State or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law.

Sec. 1506.3 Adoption.

(a) An agency may adopt a Federal draft or final environmental impact statement or portion thereof provided that the statement or portion thereof meets the standards for an adequate statement under these regulations.

(b) If the actions covered by the original environmental impact statement and the proposed action are substantially the same, the agency adopting another agency's statement is not required to recirculate it except as a final statement. Otherwise the adopting agency shall treat the statement as a draft and recirculate it (except as provided in paragraph (c) of this section).

(c) A cooperating agency may adopt without recirculating the environmental impact statement of a lead agency when, after an independent review of the statement, the cooperating agency concludes that its comments and suggestions have been satisfied.

(d) When an agency adopts a statement which is not final within the agency that prepared it, or when the action it assesses is the subject of a referral under Part 1504, or when the statement's adequacy is the subject of a judicial action which is not final, the agency shall so specify.

Sec. 1506.4 Combining documents.

Any environmental document in compliance with NEPA may be combined with any other agency document to reduce duplication and paperwork.

Sec. 1506.5 Agency responsibility.

(a) Information. If an agency requires an applicant to submit environmental information for possible use by the agency in preparing an environmental impact statement, then the agency should assist the applicant by outlining the types of information required. The agency shall independently evaluate the information submitted and shall be responsible for its accuracy. If the agency chooses to use the information submitted by the applicant in the environmental impact statement, either directly or by reference, then the names of the persons responsible for the independent evaluation shall be included in the list of preparers (Sec. 1502.17). It is the intent of this paragraph that acceptable work not be redone, but that it be verified by the agency.

(b) Environmental assessments. If an agency permits an applicant to prepare an environmental assessment, the agency, besides fulfilling the requirements of paragraph (a) of this section, shall make its own evaluation of the environmental issues and take responsibility for the scope and content of the environmental assessment.

(c) Environmental impact statements. Except as provided in Secs. 1506.2 and 1506.3 any environmental impact statement prepared pursuant to the requirements of NEPA shall be prepared directly by or by a contractor selected by the lead agency or where appropriate under Sec. 1501.6(b), a cooperating agency. It is the intent of these regulations that the contractor be chosen solely by the lead agency, or by the lead agency in cooperation with cooperating agencies, or where appropriate by a cooperating agency to avoid any conflict of interest. Contractors shall execute a disclosure statement prepared by the lead agency, or where appropriate the cooperating agency, specifying that they have no financial or other interest in the outcome of the project. If the document is prepared by contract, the responsible Federal official shall furnish guidance and participate in the preparation and shall independently evaluate the statement prior to its approval and take responsibility for its scope and contents. Nothing in this section is intended to

prohibit any agency from requesting any person to submit information to it or to prohibit any person from submitting information to any agency.

Sec. 1506.6 Public involvement.

Agencies shall:

(a) Make diligent efforts to involve the public in preparing and implementing their NEPA procedures.

(b) Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected.

(1) In all cases the agency shall mail notice to those who have requested it on an individual action.

(2) In the case of an action with effects of national concern notice shall include publication in the Federal Register and notice by mail to national organizations reasonably expected to be interested in the matter and may include listing in the 102 Monitor. An agency engaged in rulemaking may provide notice by mail to national organizations who have requested that notice regularly be provided. Agencies shall maintain a list of such organizations.

(3) In the case of an action with effects primarily of local concern the notice may include:

(i) Notice to State and areawide clearinghouses pursuant to OMB Circular A- 95 (Revised).

(ii) Notice to Indian tribes when effects may occur on reservations.

(iii) Following the affected State's public notice procedures for comparable actions.

(iv) Publication in local newspapers (in papers of general circulation rather than legal papers).

(v) Notice through other local media.

(vi) Notice to potentially interested community organizations including small business associations.

(vii) Publication in newsletters that may be expected to reach potentially interested persons.

(viii) Direct mailing to owners and occupants of nearby or affected property.

(ix) Posting of notice on and off site in the area where the action is to be located.

(c) Hold or sponsor public hearings or public meetings whenever appropriate or in accordance with statutory requirements applicable to the agency. Criteria shall include whether there is:

(1) Substantial environmental controversy concerning the proposed action or substantial interest in holding the hearing.

(2) A request for a hearing by another agency with jurisdiction over the action supported by reasons why a hearing will be helpful. If a draft environmental impact statement is to be considered at a public hearing, the agency should make the statement available to the public at least 15 days in advance (unless the purpose of the hearing is to provide information for the draft environmental impact statement).

(d) Solicit appropriate information from the public.

(e) Explain in its procedures where interested persons can get information or status reports on environmental impact statements and other elements of the NEPA process.

(f) Make environmental impact statements, the comments received, and any underlying documents available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552), without regard to the exclusion for interagency memoranda where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action. Materials to be made available to the public shall be provided to the public without charge to the extent practicable, or at a fee which is not more than the actual costs of reproducing copies required to be sent to other Federal agencies, including the Council.

Sec. 1506.7 Further guidance.

The Council may provide further guidance concerning NEPA and its procedures including:

(a) A handbook which the Council may supplement from time to time, which shall in plain language provide guidance and instructions concerning the application of NEPA and these regulations.

(b) Publication of the Council's Memoranda to Heads of Agencies.

(c) In conjunction with the Environmental Protection Agency and the publication of the 102 Monitor, notice of:

(1) Research activities;

(2) Meetings and conferences related to NEPA; and

(3) Successful and innovative procedures used by agencies to implement NEPA.

Sec. 1506.8 Proposals for legislation.

(a) The NEPA process for proposals for legislation (Sec. 1508.17) significantly affecting the quality of the human environment shall be integrated with the legislative process of the Congress. A legislative environmental impact statement is the detailed statement required by law to be included in a recommendation or report on a legislative proposal to Congress. A legislative environmental impact statement shall be considered part of the formal transmittal of a legislative proposal to Congress; however, it may be transmitted to Congress up to 30 days later in order to allow time for completion of an accurate statement which can serve as the basis for public and Congressional debate. The statement must be available in time for Congressional hearings and deliberations.

(b) Preparation of a legislative environmental impact statement shall conform to the requirements of these regulations except as follows:

(1) There need not be a scoping process.

(2) The legislative statement shall be prepared in the same manner as a draft statement, but shall be considered the "detailed statement" required by statute; *Provided*, That when any of the following conditions exist both the draft and final environmental impact statement on the legislative proposal shall be prepared and circulated as provided by Secs. 1503.1 and 1506.10.

(i) A Congressional Committee with jurisdiction over the proposal has a rule requiring both draft and final environmental impact statements.

(ii) The proposal results from a study process required by statute (such as those required by the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.) and the Wilderness Act (16 U.S.C. 1131 et seq.)).

(iii) Legislative approval is sought for Federal or federally assisted construction or other projects which the agency recommends be located at specific geographic locations. For proposals requiring an environmental impact statement for the acquisition of space by the General Services Administration, a draft statement shall accompany the Prospectus or the 11(b) Report of Building Project Surveys to the Congress, and a final statement shall be completed before site acquisition.

(iv) The agency decides to prepare draft and final statements.

(c) Comments on the legislative statement shall be given to the lead agency which shall forward them along with its own responses to the Congressional committees with jurisdiction.

Sec. 1506.9 Filing requirements.

Environmental impact statements together with comments and responses shall be filed with the Environmental Protection Agency, attention Office of Federal Activities (A-104), 401 M Street SW., Washington, DC 20460. Statements shall be filed with EPA no earlier than they are also transmitted to commenting agencies and made available to the public. EPA shall deliver one copy of each statement to the Council, which shall satisfy the requirement of availability to the President. EPA may issue guidelines to agencies to implement its responsibilities under this section and Sec. 1506.10.

Sec. 1506.10 Timing of agency action.

(a) The Environmental Protection Agency shall publish a notice in the Federal Register each week of the environmental impact statements filed during the preceding week. The minimum time periods set forth in this section shall be calculated from the date of publication of this notice.

(b) No decision on the proposed action shall be made or recorded under Sec. 1505.2 by a Federal agency until the later of the following dates:

(1) Ninety (90) days after publication of the notice described above in paragraph (a) of this section for a draft environmental impact statement.

(2) Thirty (30) days after publication of the notice described above in paragraph (a) of this section for a final environmental impact statement.

An exception to the rules on timing may be made in the case of an agency decision which is subject to a formal internal appeal. Some agencies have a formally established appeal process which allows other agencies or the public to take appeals on a decision and make their views known, after publication of the final environmental impact statement. In such cases, where a real opportunity exists to alter the decision, the decision may be made and recorded at the same time the environmental impact statement is published. This means that the period for appeal of the decision and the 30-day period prescribed in paragraph (b)(2) of this section may run concurrently. In such cases the environmental impact statement shall explain the timing and the public's right of appeal. An agency engaged in rulemaking under the Administrative Procedure Act or other statute for the purpose of protecting the public health or safety, may waive the time period in paragraph (b)(2) of this section and publish a decision on the final rule simultaneously with

publication of the notice of the availability of the final environmental impact statement as described in paragraph (a) of this section.

(c) If the final environmental impact statement is filed within ninety (90) days after a draft environmental impact statement is filed with the Environmental Protection Agency, the minimum thirty (30) day period and the minimum ninety (90) day period may run concurrently. However, subject to paragraph (d) of this section agencies shall allow not less than 45 days for comments on draft statements.

(d) The lead agency may extend prescribed periods. The Environmental Protection Agency may upon a showing by the lead agency of compelling reasons of national policy reduce the prescribed periods and may upon a showing by any other Federal agency of compelling reasons of national policy also extend prescribed periods, but only after consultation with the lead agency. (Also see Sec. 1507.3(d).) Failure to file timely comments shall not be a sufficient reason for extending a period. If the lead agency does not concur with the extension of time, EPA may not extend it for more than 30 days. When the Environmental Protection Agency reduces or extends any period of time it shall notify the Council.

Sec. 1506.11 Emergencies.

Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of these regulations, the Federal agency taking the action should consult with the Council about alternative arrangements. Agencies and the Council will limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review.

Sec. 1506.12 Effective date.

The effective date of these regulations is July 30, 1979, except that for agencies that administer programs that qualify under section 102(2)(D) of the Act or under section 104(h) of the Housing and Community Development Act of 1974 an additional four months shall be allowed for the State or local agencies to adopt their implementing procedures.

(a) These regulations shall apply to the fullest extent practicable to ongoing activities and environmental documents begun before the effective date. These regulations do not apply to an environmental impact statement or supplement if the draft statement was filed before the effective date of these regulations. No completed environmental documents need be redone by reasons of these regulations. Until these regulations are applicable, the Council's guidelines published in the Federal Register of August 1, 1973, shall continue to be applicable. In cases where these regulations are applicable the guidelines are superseded. However, nothing shall prevent an agency from proceeding under these regulations at an earlier time.

(b) NEPA shall continue to be applicable to actions begun before January 1, 1970, to the fullest extent possible.

PART 1507--AGENCY COMPLIANCE

Sec. 1507.1 Compliance.

All agencies of the Federal Government shall comply with these regulations. It is the intent of these regulations to allow each agency flexibility in adapting its implementing procedures authorized by Sec. 1507.3 to the requirements of other applicable laws.

Sec. 1507.2 Agency capability to comply.

Each agency shall be capable (in terms of personnel and other resources) of complying with the requirements enumerated below. Such compliance may include use of other's resources, but the using agency shall itself have sufficient capability to evaluate what others do for it. Agencies shall:

(a) Fulfill the requirements of section 102(2)(A) of the Act to utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on the human environment. Agencies shall designate a person to be responsible for overall review of agency NEPA compliance.

(b) Identify methods and procedures required by section 102(2)(B) to insure that presently unquantified environmental amenities and values may be given appropriate consideration.

(c) Prepare adequate environmental impact statements pursuant to section 102(2)(C) and comment on statements in the areas where the agency has jurisdiction by law or special expertise or is authorized to develop and enforce environmental standards.

(d) Study, develop, and describe alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources. This requirement of section 102(2)(E) extends to all such proposals, not just the more limited scope of section 102(2)(C)(iii) where the discussion of alternatives is confined to impact statements.

(e) Comply with the requirements of section 102(2)(H) that the agency initiate and utilize ecological information in the planning and development of resource-oriented projects.

(f) Fulfill the requirements of sections 102(2)(F), 102(2)(G), and 102(2)(I), of the Act and of Executive Order 11514, Protection and Enhancement of Environmental Quality, Sec. 2.

Sec. 1507.3 Agency procedures.

(a) Not later than eight months after publication of these regulations as finally adopted in the Federal Register, or five months after the establishment of an agency, whichever shall come later, each agency shall as necessary adopt procedures to supplement these regulations. When the agency is a department, major subunits are encouraged (with the consent of the department) to adopt their own procedures. Such procedures shall not paraphrase these regulations. They shall confine themselves to implementing procedures. Each agency shall consult with the Council while developing its procedures and before publishing them in the Federal Register for comment. Agencies with similar programs should consult with each other and the Council to coordinate their procedures, especially for programs requesting similar information from applicants. The procedures shall be adopted only after an opportunity for public review and after review by the Council for conformity with the Act and these regulations. The Council shall complete its review within 30 days. Once in effect they shall be filed with the Council and made readily available to the public. Agencies are encouraged to publish explanatory guidance for these regulations and their own procedures. Agencies shall continue to review their policies and procedures and in consultation with the Council to revise them as necessary to ensure full compliance with the purposes and provisions of the Act.

(b) Agency procedures shall comply with these regulations except where compliance would be inconsistent with statutory requirements and shall include:

(1) Those procedures required by Secs. 1501.2(d), 1502.9(c)(3), 1505.1, 1506.6(e), and 1508.4.

(2) Specific criteria for and identification of those typical classes of action:

(i) Which normally do require environmental impact statements.

(ii) Which normally do not require either an environmental impact statement or an environmental assessment (categorical exclusions (Sec. 1508.4)).

(iii) Which normally require environmental assessments but not necessarily environmental impact statements.

(c) Agency procedures may include specific criteria for providing limited exceptions to the provisions of these regulations for classified proposals. They are proposed actions which are specifically authorized under criteria established by an Executive Order or statute to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order or statute. Environmental assessments and environmental impact statements which address classified proposals may be safeguarded and restricted from public dissemination in accordance with agencies' own regulations applicable to classified information. These documents may be organized so that classified portions can be included as annexes, in order that the unclassified portions can be made available to the public.

(d) Agency procedures may provide for periods of time other than those presented in Sec. 1506.10 when necessary to comply with other specific statutory requirements.

(e) Agency procedures may provide that where there is a lengthy period between the agency's decision to prepare an environmental impact statement and the time of actual preparation, the notice of intent required by Sec. 1501.7 may be published at a reasonable time in advance of preparation of the draft statement.

PART 1508--TERMINOLOGY AND INDEX

Sec. 1508.1 Terminology.

The terminology of this part shall be uniform throughout the Federal Government.

Sec. 1508.2 Act.

"Act" means the National Environmental Policy Act, as amended (42 U.S.C. 4321, et seq.) which is also referred to as "NEPA."

Sec. 1508.3 Affecting.

"Affecting" means will or may have an effect on.

Sec. 1508.4 Categorical exclusion.

"Categorical exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (Sec. 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. An agency may decide in its procedures or otherwise, to prepare environmental assessments for the reasons stated in Sec. 1508.9 even though it is not required to do so. Any procedures under this section

shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

Sec. 1508.5 Cooperating agency.

"Cooperating agency" means any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment. The selection and responsibilities of a cooperating agency are described in Sec. 1501.6. A State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency.

Sec. 1508.6 Council.

"Council" means the Council on Environmental Quality established by Title II of the Act.

Sec. 1508.7 Cumulative impact.

"Cumulative impact" is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

Sec. 1508.8 Effects.

"Effects" include:

(a) Direct effects, which are caused by the action and occur at the same time and place.

(b) Indirect effects, which 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.

Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

Sec. 1508.9 Environmental assessment.

"Environmental assessment":

(a) Means a concise public document for which a Federal agency is responsible that serves to:

(1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.

(2) Aid an agency's compliance with the Act when no environmental impact statement is necessary.

(3) Facilitate preparation of a statement when one is necessary.

(b) Shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

Sec. 1508.10 Environmental document.

"Environmental document" includes the documents specified in Sec. 1508.9 (environmental assessment), Sec. 1508.11 (environmental impact statement), Sec. 1508.13 (finding of no significant impact), and Sec. 1508.22 (notice of intent).

Sec. 1508.11 Environmental impact statement.

"Environmental impact statement" means a detailed written statement as required by section 102(2)(C) of the Act.

Sec. 1508.12 Federal agency.

"Federal agency" means all agencies of the Federal Government. It does not mean the Congress, the Judiciary, or the President, including the performance of staff functions for the President in his Executive Office. It also includes for purposes of these regulations States and units of general local government and Indian tribes assuming NEPA responsibilities under section 104(h) of the Housing and Community Development Act of 1974.

Sec. 1508.13 Finding of no significant impact.

"Finding of no significant impact" means a document by a Federal agency briefly presenting the reasons why an action, not otherwise excluded (Sec. 1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (Sec. 1501.7(a)(5)). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.

Sec. 1508.14 Human environment.

"Human environment" shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. (See the definition of "effects" (Sec. 1508.8).) This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.

Sec. 1508.15 Jurisdiction by law.

"Jurisdiction by law" means agency authority to approve, veto, or finance all or part of the proposal.

Sec. 1508.16 Lead agency.

"Lead agency" means the agency or agencies preparing or having taken primary responsibility for preparing the environmental impact statement.

Sec. 1508.17 Legislation.

"Legislation" includes a bill or legislative proposal to Congress developed by or with the significant cooperation and support of a Federal agency, but does not include requests for appropriations. The test for significant cooperation is whether the proposal is in fact predominantly that of the agency rather than another source. Drafting does not by itself constitute significant cooperation. Proposals for legislation include requests for ratification of treaties. Only the agency which has primary responsibility for the subject matter involved will prepare a legislative environmental impact statement.

Sec. 1508.18 Major Federal action.

"Major Federal action" includes actions with effects that may be major and which are potentially subject to Federal control and responsibility. Major reinforces but does not have a meaning independent of significantly (Sec. 1508.27). Actions include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action.

(a) Actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals (Secs. 1506.8, 1508.17). Actions do not include funding assistance solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221 et seq., with no Federal agency control over the subsequent use of such funds. Actions do not include bringing judicial or administrative civil or criminal enforcement actions.

(b) Federal actions tend to fall within one of the following categories:

(1) Adoption of official policy, such as rules, regulations, and interpretations adopted pursuant to the Administrative Procedure Act, 5 U.S.C. 551 et seq.; treaties and international conventions or agreements; formal documents establishing an agency's policies which will result in or substantially alter agency programs.

(2) Adoption of formal plans, such as official documents prepared or approved by federal agencies which guide or prescribe alternative uses of Federal resources, upon which future agency actions will be based.

(3) Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.

(4) Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as federal and federally assisted activities.

Sec. 1508.19 Matter.

"Matter" includes for purposes of Part 1504:

(a) With respect to the Environmental Protection Agency, any proposed legislation, project, action or regulation as those terms are used in section 309(a) of the Clean Air Act (42 U.S.C. 7609).

(b) With respect to all other agencies, any proposed major federal action to which section 102(2)(C) of NEPA applies.

Sec. 1508.20 Mitigation.

"Mitigation" includes:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action.

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(e) Compensating for the impact by replacing or providing substitute resources or environments.

Sec. 1508.21 NEPA process.

"NEPA process" means all measures necessary for compliance with the requirements of section 2 and Title I of NEPA.

Sec. 1508.22 Notice of intent.

"Notice of intent" means a notice that an environmental impact statement will be prepared and considered. The notice shall briefly:

(a) Describe the proposed action and possible alternatives.

(b) Describe the agency's proposed scoping process including whether, when, and where any scoping meeting will be held.

(c) State the name and address of a person within the agency who can answer questions about the proposed action and the environmental impact statement.

Sec. 1508.23 Proposal.

"Proposal" exists at that stage in the development of an action when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated. Preparation of an environmental impact statement on a proposal should be timed (Sec. 1502.5) so that the final statement may be completed in time for the statement to be included in any recommendation or report on the proposal. A proposal may exist in fact as well as by agency declaration that one exists.

Sec. 1508.24 Referring agency.

"Referring agency" means the federal agency which has referred any matter to the Council after a determination that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality.

Sec. 1508.25 Scope.

Scope consists of the range of actions, alternatives, and impacts to be considered in an environmental impact statement. The scope of an individual statement may depend on its relationships to other statements (Secs.1502.20 and 1508.28). To determine the scope of environmental impact statements, agencies shall consider 3 types of actions, 3 types of alternatives, and 3 types of impacts. They include:

(a) Actions (other than unconnected single actions) which may be:

(1) Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:

(i) Automatically trigger other actions which may require environmental impact statements.

(ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.

(iii) Are interdependent parts of a larger action and depend on the larger action for their justification.

(2) Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.

(3) Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.

(b) Alternatives, which include:

(1) No action alternative.

(2) Other reasonable courses of actions.

(3) Mitigation measures (not in the proposed action).

(c) Impacts, which may be: (1) Direct; (2) indirect; (3) cumulative.

Sec. 1508.26 Special expertise.

"Special expertise" means statutory responsibility, agency mission, or related program experience.

Sec. 1508.27 Significantly.

"Significantly" as used in NEPA requires considerations of both context and intensity:

(a) *Context.* This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

(b) *Intensity*. This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

(1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.

(2) The degree to which the proposed action affects public health or safety.

(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

(8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

(10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

Sec. 1508.28 Tiering.

"Tiering" refers to the coverage of general matters in broader environmental impact statements (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basinwide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared. Tiering is appropriate when the sequence of statements or analyses is:

(a) From a program, plan, or policy environmental impact statement to a program, plan, or policy statement or analysis of lesser scope or to a site- specific statement or analysis.

(b) From an environmental impact statement on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (such as environmental mitigation). Tiering in such cases is appropriate when it helps the lead agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe.

This page intentionally left blank.

Appendix D
CEQ Forty Most Asked Questions

This page intentionally left blank.

Council on Environmental Quality Questions and Answers on the National Environmental Policy Act Regulations

"FORTY MOST ASKED QUESTIONS"

Memorandum for Federal NEPA Liaisons, Federal, State, and Local Officials and Other Persons Involved in the NEPA Process

Subject: Questions and Answers About the NEPA Regulations

During June and July of 1980 the Council on Environmental Quality, with the assistance and cooperation of EPA's EIS Coordinators from the ten EPA regions, held one-day meetings with federal, state and local officials in the ten EPA regional offices around the country. In addition, on July 10, 1980, CEQ conducted a similar meeting for the Washington, D.C. NEPA liaisons and persons involved in the NEPA process. At these meetings CEQ discussed (a) the results of its 1980 review of Draft EISs issued since the July 30, 1979 effective date of the NEPA regulations, (b) agency compliance with the Record of Decision requirements in Section 1505 of the NEPA regulations, and (c) CEQ's preliminary findings on how the scoping process is working. Participants at these meetings received copies of materials prepared by CEQ summarizing its oversight and findings.

These meetings also provided NEPA liaisons and other participants with an opportunity to ask questions about NEPA and the practical application of the NEPA regulations. A number of these questions were answered by CEQ representatives at the regional meetings. In response to the many requests from the agencies and other participants, CEQ has compiled forty of the most important or most frequently asked questions and their answers and reduced them to writing. The answers were prepared by the General Counsel of CEQ in consultation with the Office of Federal Activities of EPA. These answers, of course, do not impose any additional requirements beyond those of the NEPA regulations. This document does not represent new guidance under the NEPA regulations, but rather makes generally available to concerned agencies and private individuals the answers which CEQ has already given at the 1980 regional meetings. The answers also reflect the advice which the Council has given over the past two years to aid agency staff and consultants in their day-to-day application of NEPA and the regulations.

CEQ has also received numerous inquiries regarding the scoping process. CEQ hopes to issue written guidance on scoping later this year on the basis of its special study of scoping, which is nearing completion.

/s/ Nicholas C. Yost,
General Counsel.

(Source: 46 FR 18026, Vol. 46, No. 55, 18026-38, March 23, 1981)

"FORTY MOST ASKED QUESTIONS"

INDEX

1. Range of Alternatives
2. Alternatives Outside the Capability of Applicant or Jurisdiction of Agency
3. No-Action Alternative
4. Agency's Preferred Alternative
5. Proposed Action v. Preferred Alternative
6. Environmentally Preferable Alternative
7. Difference Between Sections of EIS on Alternatives and Environmental Consequences
8. Early Application of NEPA
9. Applicant Who Needs Other Permits
10. Limitations on Action During 30-Day Review Period for Final EIS
11. Limitations on Actions by an Applicant During EIS Process
12. Effective Date and Enforceability of the Regulations
13. Use of Scoping Before Notice of Intent to Prepare EIS
14. Rights and Responsibilities of Lead and Cooperating Agencies
15. Commenting Responsibilities of EPA
16. Third Party Contracts
17. Disclosure Statement to Avoid Conflict of Interest
18. Uncertainties About Indirect Effects of A Proposal
19. Mitigation Measures
20. Worst Case Analysis
21. Combining Environmental and Planning Documents
22. State and Federal Agencies as Joint Lead Agencies
23. Conflicts of Federal Proposal With Land Use Plans, on Policies and Controls
24. Environmental Impact Statements on Policies, Plans or Programs
25. Appendices and Incorporation by Reference
26. Index and Keyword Index In EISs
27. List of Preparers
28. Advance or Xerox Copies of EIS
29. Responses to Comments
30. Adoption of EISs
31. Application of Regulations to Independent Regulatory Agencies
32. Supplements To Older EISs
33. Referrals
34. Records of Decision
35. Time Required for the NEPA Process
36. Environmental Assessments (EA)
37. Findings of No Significant Impact (FONSI)
38. Public Availability of EAs v. FONSIs
39. Mitigation Measures Imposed in EAs and FONSIs
40. Propriety of Issuing EA When Mitigation Reduces Impacts

"FORTY MOST ASKED QUESTIONS"

Questions and Answers About the NEPA Regulations (1981)

1a. What is meant by "range of alternatives" as referred to in Sec. 1505.1(e)?

Ans: The phrase "range of alternatives" refers to the alternatives discussed in environmental documents. It includes all reasonable alternatives, which must be rigorously explored and objectively evaluated, as well as those other alternatives, which are eliminated from detailed study with a brief discussion of the reasons for eliminating them. Section 1502.14. A decisionmaker must not consider alternatives beyond the range of alternatives discussed in the relevant environmental documents. Moreover, a decisionmaker must, in fact, consider all the alternatives discussed in an EIS. Section 1505.1(e).

1b. How many alternatives have to be discussed when there is an infinite number of possible alternatives?

Ans: For some proposals there may exist a very large or even an infinite number of possible reasonable alternatives. For example, a proposal to designate wilderness areas within a National Forest could be said to involve an infinite number of alternatives from 0 to 100 percent of the forest. When there are potentially a very large number of alternatives, only a reasonable number of examples, covering the full spectrum of alternatives, must be analyzed and compared in the EIS. An appropriate series of alternatives might include dedicating 0, 10, 30, 50, 70, 90, or 100 percent of the Forest to wilderness. What constitutes a reasonable range of alternatives depends on the nature of the proposal and the facts in each case.

2a. If an EIS is prepared in connection with an application for a permit or other federal approval, must the EIS rigorously analyze and discuss alternatives that are outside the capability of the applicant or can it be limited to reasonable alternatives that can be carried out by the applicant?

Ans: Section 1502.14 requires the EIS to examine all reasonable alternatives to the proposal. In determining the scope of alternatives to be considered, the emphasis is on what is "reasonable" rather than on whether the proponent or applicant likes or is itself capable of carrying out a particular alternative. Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant.

2b. Must the EIS analyze alternatives outside the jurisdiction or capability of the agency or beyond what Congress has authorized?

Ans: An alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the EIS if it is reasonable. A potential conflict with local or federal law does not necessarily render an alternative unreasonable, although such conflicts must be considered. Section 1506.2(d). Alternatives that are outside the scope of what Congress has approved or funded must still be evaluated in the EIS if they are reasonable, because the EIS may serve as the basis for modifying the Congressional approval or funding in light of NEPA's goals and policies. Section 1500.1(a).

3. What does the "no action" alternative include? If an agency is under a court order or legislative command to act, must the EIS address the "no action" alternative?

Ans: Section 1502.14(d) requires the alternatives analysis in the EIS to "include the alternative of no action." There are two distinct interpretations of "no action" that must be considered, depending on the nature of the proposal being evaluated. The first situation might involve an action such as updating a land management plan where ongoing programs initiated under existing legislation and regulations will

continue, even as new plans are developed. In these cases "no action" is "no change" from current management direction or level of management intensity. To construct an alternative that is based on no management at all would be a useless academic exercise. Therefore, the "no action" alternative may be thought of in terms of continuing with the present course of action until that action is changed. Consequently, projected impacts of alternative management schemes would be compared in the EIS to those impacts projected for the existing plan. In this case, alternatives would include management plans of both greater and lesser intensity, especially greater and lesser levels of resource development.

The second interpretation of "no action" is illustrated in instances involving federal decisions on proposals for projects. "No action" in such cases would mean the proposed activity would not take place, and the resulting environmental effects from taking no action would be compared with the effects of permitting the proposed activity or an alternative activity to go forward.

Where a choice of "no action" by the agency would result in predictable actions by others, this consequence of the "no action" alternative should be included in the analysis. For example, if denial of permission to build a railroad to a facility would lead to construction of a road and increased truck traffic, the EIS should analyze this consequence of the "no action" alternative.

In light of the above, it is difficult to think of a situation where it would <u>not</u> be appropriate to address a "no action" alternative. Accordingly, the regulations require the analysis of the no action alternative even if the agency is under a court order or legislative command to act. This analysis provides a benchmark, enabling decisionmakers to compare the magnitude of environmental effects of the action alternatives. It is also an example of a reasonable alternative outside the jurisdiction of the agency which must be analyzed. Section 1502.14(c). See Question 2 above. Inclusion of such an analysis in the EIS is necessary to inform the Congress, the public, and the President as intended by NEPA. Section 1500.1(a).

4a. What is the "agency's preferred alternative"?

Ans: The "agency's preferred alternative" is the alternative which the agency believes would fulfill its statutory mission and responsibilities, giving consideration to economic, environmental, technical and other factors. The concept of the "agency's preferred alternative" is different from the "environmentally preferable alternative," although in some cases one alternative may be both. See Question 6 below. It is identified so that agencies and the public can understand the lead agency's orientation.

4b. Does the "preferred alternative" have to be identified in the Draft EIS and the Final EIS or just in the Final EIS?

Ans: Section 1502.14(e) requires the section of the EIS on alternatives to "identify the agency's preferred alternative if one or more exists, in the draft statement, and identify such alternative in the final statement . . ." This means that if the agency has a preferred alternative at the Draft EIS stage, that alternative must be labeled or identified as such in the Draft EIS. If the responsible federal official in fact has no preferred alternative at the Draft EIS stage, a preferred alternative need not be identified there. By the time the Final EIS is filed, Section 1502.14(e) presumes the existence of a preferred alternative and requires its identification in the Final EIS "unless another law prohibits the expression of such a preference."

4c. Who recommends or determines the "preferred alternative?"

Ans: The lead agency's official with line responsibility for preparing the EIS and assuring its adequacy is responsible for identifying the agency's preferred alternative(s). The NEPA regulations do not dictate which official in an agency shall be responsible for preparation of EISs, but agencies can identify this official in their implementing procedures, pursuant to Section 1507.3.

Even though the agency's preferred alternative is identified by the EIS preparer in the EIS, the statement must be objectively prepared and not slanted to support the choice of the agency's preferred alternative over the other reasonable and feasible alternatives.

5a. Is the "proposed action" the same thing as the "preferred alternative"?

Ans: The "proposed action" may be, but is not necessarily, the agency's "preferred alternative." The proposed action may be a proposal in its initial form before undergoing analysis in the EIS process. If the proposed action is internally generated, such as preparing a land management plan, the proposed action might end up as the agency's preferred alternative. On the other hand the proposed action may be granting an application to a non-federal entity for a permit. The agency may or may not have a "preferred alternative" at the Draft EIS stage (see Question 4 above). In that case the agency may decide at the Final EIS stage, on the basis of the Draft EIS and the public and agency comments, that an alternative other than the proposed action is the agency's "preferred alternative."

5b. Is the analysis of the "proposed action" in an EIS to be treated differently from the analysis of alternatives?

Ans: The degree of analysis devoted to each alternative in the EIS is to be substantially similar to that devoted to the "proposed action." Section 1502.14 is titled "Alternatives including the proposed action" to reflect such comparable treatment. Section 1502.14(b) specifically requires "substantial treatment" in the EIS of each alternative including the proposed action. This regulation does not dictate an <u>amount</u> of information to be provided, but rather, prescribes a <u>level of treatment</u>, which may in turn require varying amounts of information, to enable a reviewer to evaluate and compare alternatives.

6a. What is the meaning of the term "environmentally preferable alternative" as used in the regulations with reference to Records of Decision? How is the term "environment" used in the phrase?

Ans: Section 1505.2(b) requires that, in cases where an EIS has been prepared, the Record of Decision (ROD) must identify all alternatives that were considered, ". . . specifying the alternative or alternatives which were considered to be environmentally preferable." The environmentally preferable alternative is the alternative that will promote the national environmental policy as expressed in NEPA's Section 101. Ordinarily, this means the alternative that causes the least damage to the biological and physical environment; it also means the alternative which best protects, preserves, and enhances historic, cultural, and natural resources.

The Council recognizes that the identification of the environmentally preferable alternative may involve difficult judgments, particularly when one environmental value must be balanced against another. The public and other agencies reviewing a Draft EIS can assist the lead agency to develop and determine environmentally preferable alternatives by providing their views in comments on the Draft EIS. Through the identification of the environmentally preferable alternative, the decisionmaker is clearly faced with a choice between that alternative and others, and must consider whether the decision accords with the Congressionally declared policies of the Act.

6b. Who recommends or determines what is environmentally preferable?

Ans: The agency EIS staff is encouraged to make recommendations of the environmentally preferable alternative(s) during EIS preparation. In any event the lead agency official responsible for the EIS is encouraged to identify the environmentally preferable alternative(s) in the EIS. In all cases, commentors from other agencies and the public are also encouraged to address this question. The agency must identify the environmentally preferable alternative in the ROD.

7. What is the difference between the sections in the EIS on "alternatives" and "environmental consequences"? How do you avoid duplicating the discussion of alternatives in preparing these two sections?

Ans: The "alternatives" section is the heart of the EIS. This section rigorously explores and objectively evaluates all reasonable alternatives including the proposed action. Section 1502.14. It should include relevant comparisons on environmental and other grounds. The "environmental consequences" section of the EIS discusses the specific environmental impacts or effects of each of the alternatives including the proposed action. Section 1502.16. In order to avoid duplication between these two sections, most of the "alternatives" section should be devoted to describing and comparing the alternatives. Discussion of the environmental impacts of these alternatives should be limited to a concise descriptive summary of such impacts in a comparative form, including charts or tables, thus sharply defining the issues and providing a clear basis for choice among options. Section 1502.14. The "environmental consequences" section should be devoted largely to a scientific analysis of the direct and indirect environmental effects of the proposed action and of each of the alternatives. It forms the analytic basis for the concise comparison in the "alternatives" section.

8. Section 1501.2(d) of the NEPA regulations requires agencies to provide for the early application of NEPA to cases where actions are planned by private applicants or non-Federal entities and are, at some stage, subject to federal approval of permits, loans, loan guarantees, insurance or other actions. What must and can agencies do to apply NEPA early in these cases?

Ans: Section 1501.2(d) requires federal agencies to take steps toward ensuring that private parties and state and local entities initiate environmental studies as soon as federal involvement in their proposals can be foreseen. This section is intended to ensure that environmental factors are considered at an early stage in the planning process and to avoid the situation where the applicant for a federal permit or approval has completed planning and eliminated all alternatives to the proposed action by the time the EIS process commences or before the EIS process has been completed.

Through early consultation, business applicants and approving agencies may gain better appreciation of each other's needs and foster a decisionmaking process which avoids later unexpected confrontations.

Federal agencies are required by Section 1507.3(b) to develop procedures to carry out Section 1501.2(d). The procedures should include an "outreach program", such as a means for prospective applicants to conduct pre-application consultations with the lead and cooperating agencies. Applicants need to find out, in advance of project planning, what environmental studies or other information will be required, and what mitigation requirements are likely, in connection with the later federal NEPA process. Agencies should designate staff to advise potential applicants of the agency's NEPA information requirements and should publicize their pre-application procedures and information requirements in newsletters or other media used by potential applicants.

Complementing Section 1501.2(d), Section 1506.5(a) requires agencies to assist applicants by outlining the types of information required in those cases where the agency requires the applicant to submit environmental data for possible use by the agency in preparing an EIS.

Section 1506.5(b) allows agencies to authorize preparation of environmental assessments by applicants. Thus, the procedures should also include a means for anticipating and utilizing applicants environmental studies or "early corporate environmental assessments" to fulfill some of the federal agency's NEPA obligations. However, in such cases the agency must still evaluate independently the environmental issues and take responsibility for the environmental assessment.

These provisions are intended to encourage and enable private and other non-federal entities to build environmental considerations into their own planning processes in a way that facilitates the application of NEPA and avoids delay.

9. To what extent must an agency inquire into whether an applicant for a federal permit, funding or other approval of a proposal will also need approval from another agency for the same proposal or some other related aspect of it?

Ans: Agencies must integrate the NEPA process into other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts. Specifically, the agency must "provide for cases where actions are planned by . . . applicants," so that designated staff are available to advise potential applicants of studies or other information that will foreseeably be required for the later federal action; the agency shall consult with the applicant if the agency foresees its own involvement in the proposal; and it shall insure that the NEPA process commences at the earliest possible time. Section 1501.2(d). (See Question 8.)

The regulations emphasize agency cooperation early in the NEPA process. Section 1501.6. Section 1501.7 on "scoping" also provides that all affected Federal agencies are to be invited to participate in scoping the environmental issues and to identify the various environmental review and consultation requirements that may apply to the proposed action. Further, Section 1502.25(b) requires that the draft EIS list all the federal permits, licenses and other entitlements that are needed to implement the proposal.

These provisions create an affirmative obligation on federal agencies to inquire early, and to the maximum degree possible, to ascertain whether an applicant is or will be seeking other federal assistance or approval, or whether the applicant is waiting until a proposal has been substantially developed before requesting federal aid or approval.

Thus, a federal agency receiving a request for approval or assistance should determine whether the applicant has filed separate requests for federal approval or assistance with other federal agencies. Other federal agencies that are likely to become involved should then be contacted, and the NEPA process coordinated, to insure an early and comprehensive analysis of the direct and indirect effects of the proposal and any related actions. The agency should inform the applicant that action on its application may be delayed unless it submits all other federal applications (where feasible to do so), so that all the relevant agencies can work together on the scoping process and preparation of the EIS.

10a. What actions by agencies and/or applicants are allowed during EIS preparation and during the 30-day review period after publication of a final EIS?

Ans: No federal decision on the proposed action shall be made or recorded until at least 30 days after the publication by EPA of notice that the particular EIS has been filed with EPA. Sections 1505.2 and 1506.10. Section 1505.2 requires this decision to be stated in a public Record of Decision.

Until the agency issues its Record of Decision, no action by an agency or an applicant concerning the proposal shall be taken which would have an adverse environmental impact or limit the choice of reasonable alternatives. Section 1506.1(a). But this does not preclude preliminary planning or design work which is needed <u>to support an application</u> for permits or assistance. Section 1506.1(d).

When the impact statement in question is a program EIS, no major action concerning the program may be taken which may significantly affect the quality of the human environment, unless the particular action is justified independently of the program, is accompanied by its own adequate environmental impact statement and will not prejudice the ultimate decision on the program. Section 1506.1(c).

10b. Do these limitations on action (described in Question 10a) apply to state or local agencies that have statutorily delegated responsibility for preparation of environmental documents required by NEPA, for example, under the HUD Block Grant program?

Ans: Yes, these limitations do apply, without any variation from their application to federal agencies.

11. What actions must a lead agency take during the NEPA process when it becomes aware that a non-federal applicant is about to take an action within the agency's jurisdiction that would either have an adverse environmental impact or limit the choice of reasonable alternatives (e.g., prematurely commit money or other resources towards the completion of the proposal)?

Ans: The federal agency must notify the applicant that the agency will take strong affirmative steps to insure that the objectives and procedures of NEPA are fulfilled. Section 1506.1(b). These steps could include seeking injunctive measures under NEPA, or the use of sanctions available under either the agency's permitting authority or statutes setting forth the agency's statutory mission. For example, the agency might advise an applicant that if it takes such action the agency will not process its application.

12a. What actions are subject to the Council's new regulations, and what actions are grandfathered under the old guidelines?

Ans: The effective date of the Council's regulations was July 30, 1979 (except for certain HUD programs under the Housing and Community Development Act, 42 USC 5304(h), and certain state highway programs that qualify under Section 102(2)(D) of NEPA for which the regulations became effective on November 30, 1979). All the provisions of the regulations are binding as of that date, including those covering decisionmaking, public participation, referrals, imitations on actions, EIS supplements, etc. For example, a Record of Decision would be prepared even for decisions where the draft EIS was filed before July 30, 1979.

But in determining whether or not the new regulations apply to the preparation of a <u>particular environmental document</u>, the relevant factor is the date of filing of the draft of that document. Thus, the new regulations do not require the redrafting of an EIS or supplement if the draft EIS or supplement was filed before July 30, 1979. However, a supplement prepared after the effective date of the regulations for an EIS issued in final before the effective date of the regulations would be controlled by the regulations.

Even though agencies are not required to apply the regulations to an EIS or other document for which the draft was filed prior to July 30, 1979, the regulations encourage agencies to follow the regulations "to the fullest extent practicable," i.e., if it is feasible to do so, in preparing the final document. Section 1506.12(a).

12b. Are projects authorized by Congress before the effective date of the Council's regulations grandfathered?

Ans: No. The date of Congressional authorization for a project is not determinative of whether the Council's regulations or former Guidelines apply to the particular proposal. No incomplete projects or proposals of any kind are grandfathered in whole or in part. Only certain environmental documents, for which the draft was issued before the effective date of the regulations, are grandfathered and subject to the Council's former Guidelines.

12c. Can a violation of the regulations give rise to a cause of action?

Ans: While a trivial violation of the regulations would not give rise to an independent cause of action, such a cause of action would arise from a substantial violation of the regulations. Section 1500.3.

13. Can the scoping process be used in connection with preparation of an environmental assessment, i.e., before both the decision to proceed with an EIS and publication of a notice of intent?

Ans: Yes. Scoping can be a useful tool for discovering alternatives to a proposal or significant impacts that may have been overlooked. In cases where an environmental assessment is being prepared to help an agency decide whether to prepare an EIS, useful information might result from early participation by other agencies and the public in a scoping process.

The regulations state that the scoping process is to be preceded by a Notice of Intent (NOI) to prepare an EIS. But that is only the minimum requirement. Scoping may be initiated earlier, as long as there is appropriate public notice and enough information available on the proposal so that the public and relevant agencies can participate effectively.

However, scoping that is done before the assessment, and in aid of its preparation, cannot substitute for the normal scoping process after publication of the NOI, unless the earlier public notice stated clearly that this possibility was under consideration, and the NOI expressly provides that written comments on the scope of alternatives and impacts will still be considered.

14a. What are the respective rights and responsibilities of lead and cooperating agencies? What letters and memoranda must be prepared?

Ans: After a lead agency has been designated (Sec. 1501.5), that agency has the responsibility to solicit cooperation from other federal agencies that have jurisdiction by law or special expertise on any environmental issue that should be addressed in the EIS being prepared. Where appropriate, the lead agency should seek the cooperation of state or local agencies of similar qualifications. When the proposal may affect an Indian reservation, the agency should consult with the Indian tribe. Section 1508.5. The request for cooperation should come at the earliest possible time in the NEPA process.

After discussions with the candidate cooperating agencies, the lead agency and the cooperating agencies are to determine by letter or by memorandum which agencies will undertake cooperating responsibilities. To the extent possible at this stage, responsibilities for specific issues should be assigned. The allocation of responsibilities will be completed during scoping. Section 1501.7(a)(4).

Cooperating agencies must assume responsibility for the development of information and the preparation of environmental analyses at the request of the lead agency, Section 1501.6(b)(3). Cooperating agencies are now required by Section 1501.6 to devote staff resources that were normally primarily used to critique or comment on the Draft EIS after its preparation, much earlier in the NEPA process – primarily at the scoping and Draft EIS preparation stages. If a cooperating agency determines that its resource limitations preclude any involvement, or the degree of involvement (amount of work) requested by the lead agency, it must so inform the lead agency in writing and submit a copy of this correspondence to the Council. Section 1501.6(c).

In other words, the potential cooperating agency must decide early if it is able to devote any of its resources to a particular proposal. For this reason the regulation states that an agency may reply to a request for cooperation that "other program commitments preclude any involvement or the degree of involvement requested in the action that is the subject of the environmental impact statement." (Emphasis added). The regulation refers to the "action," rather than to the EIS, to clarify that the agency is taking itself out of all phases of the federal action, not just draft EIS preparation. This means that the agency has

determined that it cannot be involved in the later stages of EIS review and comment, as well as decisionmaking on the proposed action. For this reason, cooperating agencies with jurisdiction by law (those which have permitting or other approval authority) cannot opt out entirely of the duty to cooperate on the EIS. See also Question 15, relating specifically to the responsibility of EPA.

14b. How are disputes resolved between lead and cooperating agencies concerning the scope and level of detail of analysis and the quality of data in impact statements?

Ans: Such disputes are resolved by the agencies themselves. A lead agency, of course, has the ultimate responsibility for the content of an EIS. But it is supposed to use the environmental analysis and recommendations of cooperating agencies with jurisdiction by law or special expertise to the maximum extent possible, consistent with its own responsibilities as lead agency. Section 1501.6(a)(2).

If the lead agency leaves out a significant issue or ignores the advice and expertise of the cooperating agency, the EIS may be found later to be inadequate. Similarly, where cooperating agencies have their own decisions to make and they intend to adopt the environmental impact statement and base their decisions on it, one document should include all of the information necessary for the decisions by the cooperating agencies. Otherwise they may be forced to duplicate the EIS process by issuing a new, more complete EIS or Supplemental EIS, even though the original EIS could have sufficed if it had been properly done at the outset. Thus, both lead and cooperating agencies have a stake in producing a document of good quality. Cooperating agencies also have a duty to participate fully in the scoping process to ensure that the appropriate range of issues is determined early in the EIS process.

Because the EIS is not the Record of Decision, but instead constitutes the <u>information</u> and <u>analysis</u> on which to base a decision, disagreements about conclusions to be drawn from the EIS need not inhibit agencies from issuing a joint document, or adopting another agency's EIS, if the analysis is adequate. Thus, if each agency has its own "preferred alternative," both can be identified in the EIS. Similarly, a cooperating agency with jurisdiction by law may determine in its own ROD that alternative A is the environmentally preferable action, even though the lead agency has decided in its separate ROD that Alternative B is environmentally preferable.

14c. What are the specific responsibilities of federal and state cooperating agencies to review draft EISs?

Ans: Cooperating agencies (i.e., agencies with jurisdiction by law or special expertise) and agencies that are authorized to develop or enforce environmental standards, must comment on environmental impact statements within their jurisdiction, expertise or authority. Sections 1503.2, 1508.5. If a cooperating agency is satisfied that its views are adequately reflected in the environmental impact statement, it should simply comment accordingly. Conversely, if the cooperating agency determines that a draft EIS is incomplete, inadequate or inaccurate, or it has other comments, it should promptly make such comments, conforming to the requirements of specificity in section 1503.3.

14d. How is the lead agency to treat the comments of another agency with jurisdiction by law or special expertise which has failed or refused to cooperate or participate in scoping or EIS preparation?

Ans: A lead agency has the responsibility to respond to all substantive comments raising significant issues regarding a draft EIS. Section 1503.4. However, cooperating agencies are generally under an obligation to raise issues or otherwise participate in the EIS process during scoping and EIS preparation if they reasonably can do so. In practical terms, if a cooperating agency fails to cooperate at the outset, such as during scoping, it will find that its comments at a later stage will not be as persuasive to the lead agency.

15. Are EPA's responsibilities to review and comment on the environmental effects of agency proposals under Section 309 of the Clean Air Act independent of its responsibility as a cooperating agency?

Ans: Yes. EPA has an obligation under Section 309 of the Clean Air Act to review and comment in writing on the environmental impact of any matter relating to the authority of the Administrator contained in proposed legislation, federal construction projects, other federal actions requiring EISs, and new regulations. 42 USC Sec. 7609. This obligation is independent of its role as a cooperating agency under the NEPA regulations.

16. What is meant by the term "third party contracts" in connection with the preparation of an EIS? See Section l506.5(c). When can "third party contracts" be used?

Ans: As used by EPA and other agencies, the term "third party contract" refers to the preparation of EISs by contractors paid by the applicant. In the case of an EIS for a National Pollution Discharge Elimination System (NPDES) permit, the applicant, aware in the early planning stages of the proposed project of the need for an EIS, contracts directly with a consulting firm for its preparation. See 40 C.F.R. 6.604(g). The "third party" is EPA which, under Section 1506.5(c), must select the consulting firm, even though the applicant pays for the cost of preparing the EIS. The consulting firm is responsible to EPA for Preparing an EIS that meets the requirements of the NEPA regulations and EPA's NEPA procedures. It is in the applicant's interest that the EIS comply with the law so that EPA can take prompt action on the NPDES permit application. The "third party contract" method under EPA's NEPA procedures is purely voluntary, though most applicants have found it helpful in expediting compliance with NEPA.

If a federal agency uses "third party contracting," the applicant may undertake the necessary paperwork for the solicitation of a field of candidates under the agency's direction, so long as the agency complies with Section 1506.5(c). Federal procurement requirements do not apply to the agency because it incurs no obligations or costs under the contract, nor does the agency procure anything under the contract.

17a. If an EIS is prepared with the assistance of a consulting firm, the firm must execute a disclosure statement. What criteria must the firm follow in determining whether it has any "financial or other interest in the outcome of the project" which would cause a conflict of interest?

Ans: Section 1506.5(c), which specifies that a consulting firm preparing an EIS must execute a disclosure statement, does not define "financial or other interest in the outcome of the project." The Council interprets this term broadly to cover any known benefits other than general enhancement of professional reputation. This includes any financial benefit such as a promise of future construction or design work on the project as well as indirect benefits the consultant is aware of (e.g., if the project would aid proposals sponsored by the firm's other clients). For example, completion of a highway project may encourage construction of a shopping center or industrial park from which the consultant stands to benefit. If a consulting firm is aware that it has such an interest in the decision on the proposal, it should be disqualified from preparing the EIS, to preserve the objectivity and integrity of the NEPA process.

When a consulting firm has been involved in developing initial data and plans for the project, but does not have any financial or other interest in the outcome of the decision, it need not be disqualified from preparing the EIS. However, a disclosure statement in the draft EIS should clearly state the scope and extent of the firm's prior involvement to expose any potential conflicts of interest that may exist.

17b. If the firm in fact has no promise of future work or other interest in the outcome of the proposal, may the firm later bid in competition with others for future work on the project if the proposed action is approved?

Ans: Yes.

18. How should uncertainties about indirect effects of a proposal be addressed, for example, in cases of disposal of federal lands, when the identity or plans of future landowners is unknown?

Ans: The EIS must identify all the indirect effects that are known, and make a good faith effort to explain the effect that are not known but are "reasonably foreseeable." Section 1508.8(b). In the example, if there is total uncertainty about the identity of future land owners or the nature of future land uses, then of course, the agency is not required to engage in speculation or contemplation about their future plans. But, in the ordinary course of business, people do make judgments based upon reasonably foreseeable occurrences. It will often be possible to consider the likely purchasers and the development trends in that area or similar areas in recent years; or the likelihood that the land will be used for an energy project, shopping center, subdivision, farm or factory. The agency has the responsibility to make an informed judgment, and to estimate future impacts on that basis, especially if trends are ascertainable or potential purchasers have made themselves known. The agency cannot ignore these uncertain, but probable, effects of its decisions.

19a. What is the scope of mitigation measures that must be discussed?

Ans: The mitigation measures discussed in an EIS must cover the range of impacts of the proposal. The measures must include such things as design alternatives that would decrease pollution emissions, construction impacts, esthetic intrusion, as well as relocation assistance, possible land use controls that could be enacted, and other possible efforts. Mitigation measures must be considered even for impacts that by themselves would not be considered "significant." Once that proposal itself is considered as a whole to have significant effects, all of its specific effects on the environment (whether or not "significant") must be considered, and mitigation measures must be developed where it is feasible to do so. Sections 1502.14(f), 1502.16(h), 1508.14.

19b. How should an EIS treat the subject of available mitigation measures that are (1) outside the jurisdiction of the lead or cooperating agencies, or (2) unlikely to be adopted or enforced by the responsible agency?

Ans: All relevant, reasonable mitigation measures that could improve the project are to be identified, even if they are outside the jurisdiction of the lead agency or the cooperating agencies, and thus would not be committed as part of the RODs of these agencies. Sections 1502.16(h), 1505.2(c). This will serve to alert agencies or officials who <u>can</u> implement these extra measures, and will encourage them to do so. Because the EIS is the most comprehensive environmental document, it is an ideal vehicle in which to lay out not only the full range of environmental impacts but also the full spectrum of appropriate mitigation.

However, to ensure that environmental effects of a proposed action are fairly assessed, the probability of the mitigation measures being implemented must also be discussed. Thus the EIS and the Record of Decision should indicate the likelihood that such measures will be adopted or enforced by the responsible agencies. Sections 1502.16(h), 1505.2. If there is a history of nonenforcement or opposition to such measures, the EIS and Record of Decision should acknowledge such opposition or nonenforcement. If the necessary mitigation measures will not be ready for a long period of time, this fact, of course, should also be recognized.

20 (parts a and b). Question 20, Worst Case Analysis, was withdrawn by final rule issued at 51 Fed. Reg. 15618 (Apr. 25. 1986); textual errors corrected 51 F.R. p. 16,846 (May 7, 1986). The preamble to this rule is published at ELR Admin. Mat. 35055.

21. Where an EIS or an EA is combined with another project planning document (sometimes called "piggybacking"), to what degree may the EIS or EA refer to and rely upon information in the project document to satisfy NEPA's requirements?

Ans: Section 1502.25 of the regulations requires that draft EISs be prepared concurrently and integrated with environmental analyses and related surveys and studies required by other federal statutes. In addition, Section 1506.4 allows any environmental document prepared in compliance with NEPA to be combined with any other agency document to reduce duplication and paperwork. However, these provisions were not intended to authorize the preparation of a short summary or outline EIS, attached to a detailed project report or land use plan containing the required environmental impact data. In such circumstances, the reader would have to refer constantly to the detailed report to understand the environmental impacts and alternatives which should have been found in the EIS itself.

The EIS must stand on its own as an analytical document which fully informs decisionmakers and the public of the environmental effects of the proposal and those of the reasonable alternatives. Section 1502.1. But, as long as the EIS is clearly identified and is self-supporting, it can be physically included or attached to the project report or land use plan, and may use attached report material as technical backup.

Forest Service environmental impact statements for forest management plans are handled in this manner. The EIS identifies the agency's preferred alternative, which is developed in detail as the proposed management plan. The detailed proposed plan accompanies the EIS through the review process, and the documents are appropriately cross-referenced. The proposed plan is useful for EIS readers as an example, to show how one choice of management options translates into effects on natural resources. This procedure permits initiation of the 90-day public review of proposed forest plans, which is required by the National Forest Management Act.

All the alternatives are discussed in the EIS, which can be read as an independent document. The details of management plan are not repeated in the EIS, and vice versa. This is a reasonable functional separation of the documents: the EIS contains information relevant to the choice among alternatives; the plan is a detailed description of proposed management activities suitable for use by the land managers. This procedure provides for concurrent compliance with the public review requirements of both NEPA and the National Forest Management Act.

Under some circumstances, a project report or management plan may be totally merged with the EIS, and the one document labeled as both "EIS" and "management plan" or "project report." This may be reasonable where the documents are short, or where the EIS format and the regulations for clear, analytical EISs also satisfy the requirements for a project report.

22. May state and federal agencies serve as joint lead agencies? If so, how do they resolve law, policy and resource conflicts under NEPA and the relevant state environmental policy act? How do they resolve differences in perspective where, for example, national and local needs may differ?

Ans: Under Section 1501.5(b), federal, state or local agencies, as long as they include at least one federal agency, may act as joint lead agencies to prepare an EIS. Section 1506.2 also strongly urges state and local agencies and the relevant federal agencies to cooperate fully with each other. This should cover joint research and studies, planning activities, public hearings, environmental assessments and the preparation of joint ElSs under NEPA and the relevant "little NEPA" state laws, so that one document will satisfy both laws.

The regulations also recognize that certain inconsistencies may exist between the proposed federal action and any approved state or local plan or law. The joint document should discuss the extent to which the federal agency would reconcile its proposed action with such plan or law. Section 1506.2(d). (See Question 23).

Because there may be differences in perspective as well as conflicts among federal, state and local goals for resources management, the Council has advised participating agencies to adopt a flexible, cooperative approach. The joint EIS should reflect all of their interests and missions, clearly identified as such. The final document would then indicate how state and local interests have been accommodated, or would identify conflicts in goals (e.g., how a hydroelectric project, which might induce second home development, would require new land use controls). The EIS must contain a complete discussion of scope and purpose of the proposal, alternatives, and impacts so that the discussion is adequate to meet the needs of local, state and federal decisionmakers.

23a. How should an agency handle potential conflicts between a proposal and the objectives of Federal, state or local land use plans, policies and controls for the area concerned? See Sec. 1502.16(c).

Ans: The agency should first inquire of other agencies whether there are any potential conflicts. If there would be immediate conflicts, or if conflicts could arise in the future when the plans are finished (see Question 23(b) below), the EIS must acknowledge and describe the extent of those conflicts. If there are any possibilities of resolving the conflicts, these should be explained as well. The EIS should also evaluate the seriousness of the impact of the proposal on the land use plans and policies, and whether, or how much, the proposal will impair the effectiveness of land use control mechanisms for the area. Comments from officials of the affected area should be solicited early and should be carefully acknowledged and answered in the EIS.
23b. What constitutes a "land use plan or policy" for purposes of this discussion?

Ans: The term "land use plans," includes all types of formally adopted documents for land use planning, zoning and related regulatory requirements. Local general plans are included, even though they are subject to future change. Proposed plans should also be addressed if they have been formally proposed by the appropriate government body in a written form, and are being actively pursued by officials of the jurisdiction. Staged plans, which must go through phases of development such as the Water Resources Council's Level A, B and C planning process should also be included even though they are incomplete.

The term "policies" includes formally adopted statements of land use policy as embodied in laws or regulations. It also includes proposals for action such as the initiation of a planning process, or a formally adopted policy statement of the local, regional or state executive branch, even if it has not yet been formally adopted by the local, regional or state legislative body.

23c. What options are available for the decisionmaker when conflicts with such plans or policies are identified?

Ans: After identifying any potential land use conflicts, the decisionmaker must weigh the significance of the conflicts, among all the other environmental and non-environmental factors that must be considered in reaching a rational and balanced decision. Unless precluded by other law from causing or contributing to any inconsistency with the land use plans, policies or controls, the decisionmaker retains the authority to go forward with the proposal, despite the potential conflict. In the Record of Decision, the decisionmaker must explain what the decision was, how it was made, and what mitigation measures are being imposed to lessen adverse environmental impacts of the proposal, among the other requirements of Section 1505.2. This provision would require the decisionmaker to explain any decision to override land use plans, policies or controls for the area.

24a. When are EISs required on policies, plans or programs?

Ans: An EIS must be prepared if an agency proposes to implement a specific policy, to adopt a plan for a group of related actions, or to implement a specific statutory program or executive directive. Section 1508.18. In addition, the adoption of official policy in the form of rules, regulations and interpretations pursuant to the Administrative Procedure Act, treaties, conventions, or other formal documents establishing governmental or agency policy which will substantially alter agency programs, could require an EIS, Section 1508.18. In all cases, the policy, plan, or program must have the potential for significantly affecting the quality of the human environment in order to require an EIS. It should be noted that a proposal "may exist in fact as well as by agency declaration that one exists." Section 1508.23.

24b. When is an area-wide or overview EIS appropriate?

Ans: The preparation of an area-wide or overview EIS may be particularly useful when similar actions, viewed with other reasonably foreseeable or proposed agency actions, share common timing or geography. For example, when a variety of energy protects may be located in a single watershed, or when a series of new energy technologies may be developed through federal funding, the overview or area-wide EIS would serve as a valuable and necessary analysis of the affected environment and the potential cumulative impacts of the reasonably foreseeable actions under that program or within that geographical area.

24c. What is the function of tiering in such cases?

Ans: Tiering is a procedure which allows an agency to avoid duplication of paperwork through the incorporation by reference of the general discussions and relevant specific discussions from an environmental impact statement of broader scope into one of lesser scope or vice versa. In the example given in Question 24b, this would mean that an overview EIS would be prepared for all of the energy activities reasonably foreseeable in a particular geographic area or resulting from a particular development program. This impact statement would be followed by site-specific or project-specific EISs. The tiering process would make each EIS of greater use and meaning to the public as the plan or program develops, without duplication of the analysis prepared for the previous impact statement.

25a. When is it appropriate to use appendices instead of including information in the body of an EIS?

Ans: The body of the EIS should be a succinct statement of all the information on environmental impacts and alternatives that the decisionmaker and the public need, in order to make the decision and to ascertain that every significant factor has been examined. The EIS must explain or summarize methodologies of research and modeling, and the results of research that may have been conducted to analyze impacts and alternatives.

Lengthy technical discussions of modeling methodology, baseline studies, or other work are best reserved for the appendix. In other words, if only technically trained individuals are likely to understand a particular discussion then it should go in the appendix, and a plain language summary of the analysis and conclusions of that technical discussion should go in the text of he EIS.

The final statement must also contain the agency's responses to comments on the draft EIS. These responses will be primarily in the form of changes in the document itself, but specific answers to each significant comment should also be included. These specific responses may be placed in an appendix. If the comments are especially voluminous, summaries of the comments and responses will suffice. (See Question 29 regarding the level of detail required for responses to comments.)

25b. How does an appendix differ from incorporation by reference?

Ans: First, if at all possible, the appendix accompanies the EIS, whereas the material which is incorporated by reference does not accompany the EIS. Thus the appendix should contain information that reviewers will be likely to want to examine. The appendix should include material that pertains to preparation of a particular EIS. Research papers directly relevant to the proposal, lists of affected species, discussion of the methodology of models used in the analysis of impacts, extremely detailed responses to comments, or other information would be placed in the appendix.

The appendix must be complete and available at the time the EIS is filed. Five copies of the appendix must be sent to EPA with five copies of the EIS for filing. If the appendix is too bulky to be circulated, it instead must be placed in conveniently accessible locations or furnished directly to commentors upon request. If it is not circulated with the EIS, the Notice of Availability published by EPA must so state, giving a telephone number to enable potential commentors to locate or request copies of the appendix promptly.

Material that is not directly related to preparation of the EIS should be incorporated by reference. This would include other EISs, research papers in the general literature, technical background papers or other material that someone with technical training could use to evaluate the analysis of the proposal. These must be made available, either by citing the literature, furnishing copies to central locations, or sending copies directly to commentors upon request.

Care must be taken in all cases to ensure that material incorporated by reference, and the occasional appendix that does not accompany the EIS, are in fact available for the full minimum public comment period.

26a. How detailed must an EIS index be?

Ans: The EIS index should have a level of detail sufficient to focus on areas of the EIS of reasonable interest to any reader. It cannot be restricted to the most important topics. On the other hand, it need not identify every conceivable term or phrase in the EIS. If an agency believes that the reader is reasonably likely to be interested in a topic, it should be included.

26b. Is a keyword index required?

Ans: No. A keyword index is a relatively short list of descriptive terms that identifies the key concepts or subject areas in a document. For example it could consist of 20 terms which describe the most significant aspects of an EIS that a future researcher would need: type of proposal, type of impacts, type of environment, geographical area, sampling or modeling methodologies used. This technique permits the compilation of EIS data banks, by facilitating quick and inexpensive access to stored materials. While a keyword index is not required by the regulations, it could be a useful addition for several reasons. First, it can be useful as a quick index for reviewers of the EIS, helping to focus on areas of interest. Second, if an agency keeps a listing of the keyword indexes of the EISs it produces, the EIS preparers themselves will have quick access to similar research data and methodologies to aid their future EIS work. Third, a keyword index will be needed to make an EIS available to future researchers using EIS data banks that are being developed. Preparation of such an index now when the document is produced will save a later effort when the data banks become operational.

27a. If a consultant is used in preparing an EIS, must the list of preparers identify members of the consulting firm as well as the agency NEPA staff who were primarily responsible?

Ans: Section 1502.17 requires identification of the names and qualifications of persons who were primarily responsible for preparing the EIS or significant background papers, including basic components of the statement. This means that members of a consulting firm preparing material that is to become part of the EIS must be identified. The EIS should identify these individuals even though the consultant's contribution may have been modified by the agency.

27b. Should agency staff involved in reviewing and editing the EIS also be included in the list of preparers?

Ans: Agency personnel who wrote basic components of the EIS or significant background papers must, of course, be identified. The EIS should also list the technical editors who reviewed or edited the statements.

27c. How much information should be included on each person listed?

Ans: The list of preparers should normally not exceed two pages. Therefore, agencies must determine which individuals had primary responsibility and need not identify individuals with minor involvement. The list of preparers should include a very brief identification of the individuals involved, their qualifications (expertise, professional disciplines) and the specific portion of the EIS for which they are responsible. This may be done in tabular form to cut down on length. A line or two for each person's qualifications should be sufficient.

28. May an agency file xerox copies of an EIS with EPA pending the completion of printing the document?

Ans: Xerox copies of an EIS may be filed with EPA prior to printing only if the xerox copies are simultaneously made available to other agencies and the public. Section 1506.9 of the regulations, which governs EIS filing, specifically requires Federal agencies to file EISs with EPA no earlier than the EIS is distributed to the public. However, this section does not prohibit xeroxing as a form of reproduction and distribution. When an agency chooses xeroxing as the reproduction method, the EIS must be clear and legible to permit ease of reading and ultimate microfiching of the EIS. Where color graphs are important to the EIS, they should be reproduced and circulated with the xeroxed copy.

29a. What response must an agency provide to a comment on a draft EIS which states that the EIS's methodology is inadequate or inadequately explained? For example, what level of detail must an agency include in its response to a simple postcard comment making such an allegation?

Ans: Appropriate responses to comments are described in Section 1503.4. Normally the responses should result in changes in the text of the EIS, not simply a separate answer at the back of the document. But, in addition, the agency must state what its response was, and if the agency decides that no substantive response to a comment is necessary, it must explain briefly why.

An agency is not under an obligation to issue a lengthy reiteration of its methodology for any portion of an EIS if the only comment addressing the methodology is a simple complaint that the EIS methodology is inadequate. But agencies must respond to comments, however brief, which are specific in their criticism of agency methodology. For example, if a commentor on an EIS said that an agency's air quality dispersion analysis or methodology was inadequate, and the agency had included a discussion of that analysis in the EIS, little if anything need be added in response to such a comment. However, if the commentor said that the dispersion analysis was inadequate because of its use of a certain computational technique, or that a dispersion analysis was inadequately explained because computational techniques

were not included or referenced, then the agency would have to respond in a substantive and meaningful way to such a comment.

If a number of comments are identical or very similar, agencies may group the comments and prepare a single answer for each group. Comments may be summarized if they are especially voluminous. The comments or summaries must be attached to the EIS regardless of whether the agency believes they merit individual discussion in the body of the final EIS.

29b. How must an agency respond to a comment on a draft EIS that raises a new alternative not previously considered in the draft EIS?

Ans: This question might arise in several possible situations. First, a commentor on a draft EIS may indicate that there is a possible alternative which, in the agency's view, is not a reasonable alternative. Section 1502.14(a). If that is the case, the agency must explain why the comment does not warrant further agency response, citing authorities or reasons that support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response. Section 1503.4(a). For example, a commentor on a draft EIS on a coal fired power plant may suggest the alternative of using synthetic fuel. The agency may reject the alternative with a brief discussion (with authorities) of the unavailability of synthetic fuel within the time frame necessary to meet the need and purpose of the proposed facility.

A second possibility is that an agency may receive a comment indicating that a particular alternative, while reasonable, should be modified somewhat, for example, to achieve certain mitigation benefits, or for other reasons. If the modification is reasonable, the agency should include a discussion of it in the final EIS. For example, a commentor on a draft EIS on a proposal for a pumped storage power facility might suggest that the applicant's proposed alternative should be enhanced by the addition of certain reasonable mitigation measures, including the purchase and set-aside of a wildlife preserve to substitute for the tract to be destroyed by the project. The modified alternative including the additional mitigation measures should be discussed by the agency in the final EIS.

A third slightly different possibility is that a comment on a draft EIS will raise an alternative which is a minor variation was not given any consideration by the agency. In such a case, the agency should develop and evaluate the new alternative, if it is reasonable, in the final EIS. If it is qualitatively within the spectrum of alternatives that were discussed in the draft, a supplemental draft will not be needed. For example, a commentor on a draft EIS to designate a wilderness area within a National Forest might reasonably identify a specific tract of the forest, and urge that it be considered for designation. If the draft EIS considered designation of a range of alternative tracts which encompassed forest are of similar quality and quantity, no supplemental EIS would have to be prepared. The agency could fulfill its obligation by addressing that specific alternative in the final EIS.

As another example, an EIS on an urban housing project may analyze the alternatives of constructing 2,000, 4,000, or 6,000 units. A commentor on the draft EIS might urge the consideration of constructing 5,000 units utilizing a different configuration of buildings. This alternative is within the spectrum of alternatives already considered, and, therefore, could be addressed in the final EIS.

A fourth possibility is that a commentor points out an alternative which is not a variation of the proposal or of any alternative discussed in the draft impact statement, and is a reasonable alternative that warrants serious agency response. In such a case, the agency must issue a supplement to the draft EIS that discusses this new alternative. For example, a commentor an a draft EIS on a nuclear power plant might suggest that a reasonable alternative for meeting the projected need for power would be through peal load management and energy conservation programs. If the permitting agency has failed to consider that

approach in the Draft EIS, and the approach cannot be dismissed, by the agency as unreasonable, a supplement to the Draft EIS, which discusses that alternative, must be prepared. (If necessary, the same supplement should also discuss substantial changes in the proposed action or significant new circumstances or information, as required by Section 1502.9(c)(1) of the Council's regulations.)

If the new alternative was not raised by the commentor during scoping, but could have been, commentors may find that they are unpersuasive in their efforts to have their suggested alternative analyzed in detail by the agency. However, if the new alternative is discovered or developed later, and it could not reasonably have been raised during the scoping process, then the agency must address it in a supplemental draft EIS. The agency is, in any case, ultimately responsible for preparing an adequate EIS that considers all alternatives.

30. When a cooperating agency with jurisdiction by law intends to adopt a lead agency's EIS and it is not satisfied with the adequacy of the document, may the cooperating agency adopt only the part of the EIS with which it is satisfied? If so, would a cooperating agency with jurisdiction by law have to prepare a separate EIS or EIS supplement covering the areas of disagreement with the lead agency?

Ans: Generally, a cooperating agency may adopt a lead agency's EIS without recirculating it if it concludes that its NEPA requirements and its comments and suggestions have been satisfied. Section 1506.3(a), (c). If necessary, a cooperating agency may adopt only a portion of the lead agency's EIS and may reject that part of the EIS with which it disagrees, stating publicly why it did so. Section 1506.3(a).

A cooperating agency with jurisdiction by law (e.g., an agency with independent legal responsibilities with respect to the proposal) has an independent legal obligation to comply with NEPA. Therefore, if the cooperating agency determines that the EIS is wrong or inadequate, it must prepare a supplement to the EIS, replacing or adding any needed information, and must circulate the supplement as draft for public and agency review and comment. A final supplemental EIS would be required before the agency should take action. The adopted portions of the lead agency EIS should be circulated with the supplement. Section 1506.3(b). A cooperating agency with jurisdiction by law will have to prepare its own Record of Decision for its action, in which it must explain how it reached its conclusions. Each agency should explain how and why its conclusions differ, if that is the case, from those of other agencies which issued their Records of Decision earlier.

An agency that did not cooperate in preparation of an EIS may also adopt an EIS or portion thereof. But this would arise only in rare instances, because an agency adopting an EIS for use in its own decision normally would have been a cooperating agency. If the proposed action of the adopting agency, the EIS may be adopted as long as it is recirculated as a final EIS and the agency announces what it is doing. This would be followed by the 30-day review period and issuance of a Record of Decision by the adopting agency. If the proposed action by the adopting agency is not substantially the same as that in the EIS (i.e., if an EIS on one action is being adapted for use in a decision on another action), the EIS would be treated as a draft and circulated for the normal public comment period and other procedures. Section 1506.3(b).

31a. Do the Council's NEPA regulations apply to independent regulatory agencies like the Federal Energy Regulatory Commission (FERC) and the Nuclear Regulatory Commission?

Ans: The statutory requirements of NEPA's Section 102 apply to "all agencies of the federal government." The NEPA regulations implement the procedural provisions of NEPA as set forth in NEPA's Section 102(2) for all agencies of the federal government. The NEPA regulations apply to independent regulatory agencies, however, they do not direct independent regulatory agencies or other agencies to make decisions in any particular way or in a way inconsistent with an agency's statutory charter. Sections 1500.3, 1500.6., 1507.1. and 1507.3.

31b. Can an Executive Branch agency like the Department of the Interior adopt an EIS prepared by an independent regulatory agency such as FERC?

Ans: If an independent regulatory agency such as FERC has prepared an EIS in connection with its approval of a proposed project, an Executive Branch agency (e.g., the Bureau of Land Management in the Department of the Interior) may, in accordance with Section 1506.3, adopt the EIS or a portion thereof for its use in considering the same proposal. In such a case the EIS must, to the satisfaction of the adopting agency, meet the standards for an adequate statement under the NEPA regulations (including scope and quality of analysis of alternatives) and must satisfy the adopting agency's comments and suggestions. If the independent regulatory agency fails to comply with the NEPA regulations, the cooperating or adopting agency may find that it is unable to adopt the EIS, thus forcing the preparation of a new EIS or EIS Supplement for the same action. The NEPA regulations were made applicable to all federal agencies in order to avoid this result, and to achieve uniform application and efficiency of the NEPA process.

32. Under what circumstances do old EISs have to be supplemented before taking action on a proposal?

Ans: As a rule of thumb, if the proposal has not yet been implemented, or if the EIS concerns an ongoing program, EISs that are more than 5 years old should be carefully reexamined to determine if the criteria in Section 1502.9 compel preparation of an EIS supplement.

If an agency has made a substantial change in a proposed action that is relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts, a supplemental EIS must be prepared for an old EIS so that the agency has the best possible information to make any necessary substantive changes in its decisions regarding the proposal. Section 1502.9(c).

33a. When must a referral of an interagency disagreement be made to the Council?

Ans: The Council's referral procedure is a <u>pre-decision</u> referral process for interagency disagreements. Hence, Section 1504.3 requires that a referring agency must deliver its referral to the Council not later than 25 days after publication by EPA of notice that the final EIS is available (unless the lead agency grants an extension of time under Section 1504.3(b)).

33b. May a referral be made after this issuance of a Record of Decision?

Ans: No, except for cases where agencies provide an internal appeal procedure which permits simultaneous filing of the final EIS and the record of decision (ROD). Section 1506.10(b)(2). Otherwise, as stated above, the process is a pre-decision referral process. Referrals must be made within 25 days after the notice of availability of the final EIS, whereas the final decision (ROD) may not be made or filed until after 30 days from the notice of availability of the EIS. Sections 1504.3(b), 1506.10(b). If a lead agency has granted an extension of time for another agency to take action on a referral, the ROD may not be issued until the extension has expired.

34a. Must Records of Decision (RODs) be made public? How should they be made available?

Ans: Under the regulations, agencies must prepare a "concise <u>public</u> record of decision," which contains the elements specified in Section 1505.2. This public record may be integrated into any other decision record prepared by the agency, or it may be separate if decision documents are not normally made public. The Record of Decision is intended by the Council to be an environmental document (even though it is not explicitly mentioned in the definition of "environmental document" in Section 1508.10). Therefore, it

must be made available to the public through appropriate public notice as required by Section 1506.6(b). However, there is no specific requirement for publication of the ROD itself, either in the Federal Register or elsewhere.

34b. May the summary section in the final Environmental Impact Statement substitute for or constitute an agency's Record of Decision?

Ans: No. An environmental impact statement is supposed to inform the decisionmaker before the decision is made. Sections 1502.1, 1505.2. The Council's regulations provide for a 30-day period after notice is published that the final EIS has been filed with EPA before the agency may take final action. During that period, in addition to the agency's own internal final review, the public and other agencies can comment on the final EIS prior to the agency's final action on the proposal. In addition, the Council's regulations make clear that the requirements for the summary in an EIS are not the same as the requirements for a ROD. Sections 1502.12 and 1505.2.

34c. What provisions should Records of Decision contain pertaining to mitigation and monitoring?

Ans: Lead agencies "shall include appropriate conditions (including mitigation measures and monitoring and enforcement programs) in grants, permits or other approvals" and shall "condition funding of actions on mitigation." Section 1505.3. Any such measures that are adopted must be explained and committed in the ROD.
The reasonable alternative mitigation measures and monitoring programs should have been addressed in the draft and final EIS. The discussion of mitigation and monitoring in a Record of Decision must be more detailed than a general statement that mitigation is being required, but not so detailed as to duplicate discussion of mitigation in the EIS. The Record of Decision should contain a concise summary identification of the mitigation measures which the agency has committed itself to adopt.

The Record of Decision must also state whether all practicable mitigation measures have been adopted, and if not, why not. Section 1505.2(c). The Record of Decision must identify the mitigation measures and monitoring and enforcement programs that have been selected and plainly indicate that they are adopted as part of the agency's decision. If the proposed action is the issuance of a permit or other approval, the specific details of the mitigation measures shall then be included as appropriate conditions in whatever grants, permits, funding or other approvals are being made by the federal agency. Section 1505.3(a), (b). If the proposal is to be carried out by the federal agency itself, the Record of Decision should delineate the mitigation and monitoring measures in sufficient detail to constitute an enforceable commitment, or incorporate by reference the portions of the EIS that do so.

34d. What is the enforceability of a Record of Decision?

Ans: Pursuant to generally recognized principles of federal administrative law, agencies will be held accountable for preparing Records of Decision that conform to the decisions actually made and for carrying out the actions set forth in the Records of Decision. This is based on the principle that an agency must comply with its own decisions and regulations once they are adopted. Thus, the terms of a Record of Decision are enforceable by agencies and private parties. A Record of Decision can be used to compel compliance with or execution of the mitigation measures identified therein.

35. How long should the NEPA process take to complete?

Ans: When an EIS is required, the process obviously will take longer than when an EA is the only document prepared. But the Council's NEPA regulations encourage streamlined review, adoption of deadlines, elimination of duplicative work, eliciting suggested alternatives and other comments early

through scoping, cooperation among agencies, and consultation with applicants during project planning. The Council has advised agencies that under the new NEPA regulations even large complex energy projects would require only about 12 months for the completion of the entire EIS process. For most major actions, this period is well within the planning time that is needed in any event, apart from NEPA.

The time required for the preparation of program EISs may be greater. The Council also recognizes that some projects will entail difficult long-term planning and/or the acquisition of certain data which of necessity will require more time for the preparation of the EIS. Indeed, some proposals should be given more time for the thoughtful preparation of an EIS and development of a decision which fulfills NEPA's substantive goals.

For cases in which only an environmental assessment will be prepared, the NEPA process should take no more than 3 months, and in many cases substantially less, as part of the normal analysis and approval process for the action.

36a. How long and detailed must an environmental assessment (EA) be?

Ans: The environmental assessment is a concise public document which has three defined functions. (1) it briefly provides sufficient evidence and analysis for determining whether to prepare an EIS; (2) it aids an agency's compliance with NEPA when no EIS is necessary, i.e., it helps to identify better alternatives and mitigation measures; and (3) it facilitates preparation of an EIS when one is necessary. Section 1508.9(a).

Since the EA is a concise document, it should not contain long descriptions or detailed data which the agency may have gathered. Rather, it should contain a brief discussion of the need for the proposal, alternatives to the proposal, the environmental impacts of the proposed action and alternatives, and a list of agencies and persons consulted. Section 1508.9(b).

While the regulations do not contain page limits for EAs, the Council has generally advised agencies to keep the length of EAs to not more than approximately 10-5 pages. Some agencies expressly provide page guidelines (e.g., 10-15 pages in the case of the Army Corps). To avoid undue length, the EA may incorporate by reference background data to support its concise discussion of the proposal and relevant issues.

36b. Under what circumstances is a lengthy EA appropriate?

Ans: Agencies should avoid preparing lengthy EAs except in unusual cases, where a proposal is so complex that a concise document cannot meet the goals of Section 1508.9 <u>and</u> where it is extremely difficult to determine whether the proposal could have significant environmental effects. In most cases, however, a lengthy EA indicates that an EIS is needed.

37a. What is the level of detail of information that must be included in a finding of no significant impact (FONSI)?

Ans: The FONSI is a document in which the agency briefly explains the reasons why an action will not have a significant effect on the human environment and, therefore, why an EIS will not be prepared. Section 1508.13. The finding itself need not be detailed, but must succinctly state the reasons for deciding that the action will have no significant environmental effects, and, if relevant, must show which factors were weighted most heavily in the determination. In addition to this statement, the FONSI must include, summarize, or attach and incorporate by reference, the environmental assessment.

37b. What are the criteria for deciding whether a FONSI should be made available for public review for 30 days before the agency's final determination whether to prepare an EIS?

Ans: Public review is necessary, for example, (a) if the proposal is a borderline case, i.e., when there is a reasonable argument for preparation of an EIS; (b) if it is an unusual case, a new kind of action, or a precedent setting case such as a first intrusion of even a minor development into a pristine area; (c) when there is either scientific or public controversy over the proposal; or (d) when it involves a proposal which is or is closely similar to one which normally requires preparation of an EIS. Sections 1501.4(e)(2), 1508.27. Agencies also must allow a period of public review of the FONSI if the proposed action would be located in a floodplain or wetland. E.O. 11988, Sec. 2(a)(4); E.O. 11990, Sec. 2(b).

38. Must (EAs) and FONSI be made public? If so, how should this be done?

Ans: Yes, they must be available to the public. Section 1506.6 requires agencies to involve the public in implementing their NEPA procedures, and this includes public involvement in the preparation of EAs and FONSIs. These are public "environmental documents" under Section 1506.6(b), and, therefore, agencies must give public notice of their availability. A combination of methods may be used to give notice, and the methods should be tailored to the needs of particular cases. Thus, a Federal Register notice of availability of the documents, coupled with notices in national publications and mailed to interested national groups might be appropriate for proposals that are national in scope. Local newspaper notices may be more appropriate for regional or site-specific proposals.

The objective, however, is to notify all interested or affected parties. If this is not being achieved, then the methods should be reevaluated and changed. Repeated failure to reach the interested or affected public would be interpreted as a violation of the regulations.

39. Can an EA and FONSI be used to impose enforceable mitigation measures, monitoring programs, or other requirements, even though there is no requirement in the regulations in such cases for a formal Record of Decision?

Ans: Yes. In cases where an environmental assessment is the appropriate environmental document, there still may be mitigation measures or alternatives that would be desirable to consider and adopt even though the impacts of the proposal will not be "significant." In such cases, the EA should include a discussion of these measures or alternatives to "assist agency planning and decisionmaking" and to "aid an agency's compliance with (NEPA) when no environmental impact statement is necessary." Section 1501.3(b), 1508.9(a)(2). The appropriate mitigation measures can be imposed as enforceable permit conditions, or adopted as part of the agency final decision in the same manner mitigation measures are adopted in the formal Record of Decision that is required in EIS cases.

40. If an environmental assessment indicates that the environmental effects of a proposal are significant but that, with mitigation, those effects may be reduced to less than significant levels, may the agency make a finding of no significant impact rather than prepare an EIS? Is that a legitimate function of an EA and scoping?

Ans: Mitigation measures may be relied upon to make a finding of no significant impact only if they are imposed by statute or regulation, or submitted by an applicant or agency as part of the original proposal. As a general rule, the regulations contemplate that agencies should use a broad approach in defining significance and should not rely on the possibility of mitigation as an excuse to avoid the EIS requirement. Sections 1508.8, 1508.27.

If a proposal appears to have adverse effects which would be significant, and certain mitigation measures are then developed during the scoping or EA stages, the existence of such possible mitigation does not obviate the need for an EIS. Therefore, if scoping or the EA identifies certain mitigation possibilities without altering the nature of the overall proposal itself, the agency should continue the EIS process and submit the proposal, and the potential mitigation, for public and agency review and comment. This is essential to ensure that the final decision is based on all the relevant factors and that the full NEPA process will result in enforceable mitigation measures through the Record of Decision.

In some instances, where the proposal itself so integrates mitigation from the beginning that it is impossible to define the proposal without including the mitigation, the agency may then rely on the mitigation measures in determining that the overall effects would not be significant (e.g., where an application for a permit for a small hydro dam is based on a binding commitment to build fish ladders, to permit adequate down stream flow, and to replace any lost wetlands, wildlife habitat and recreational potential). In those instances, agencies should make the FONSI and EA available for 30 days of public comment before taking action. Section 1501.4(e)(2).

Similarly, scoping may result in a redefinition of the entire project, as a result of mitigation proposals. In that case, the agency may alter its previous decision to do an EIS, as long as the agency or applicant resubmits the entire proposal and the EA and FONSI are available for 30 days of review and comment. One example of this would be where the size and location of a proposed industrial park are changed to avoid affecting a nearby wetland area.

Appendix E
Scoping Guidance

This page intentionally left blank.

Council on Environmental Quality

April 30, 1981

SCOPING GUIDANCE

I. Introduction.

A. Background of this document.

In 1978, with the publication of the proposed NEPA regulations (since adopted as formal rules, 40 CFR Parts 1500-1508), the Council on Environmental Quality gave formal recognition to an increasingly used term -- scoping. Scoping is an idea that has long been familiar to those involved in NEPA compliance: In order to manage effectively the preparation of an environmental impact statement (EIS), one must determine the scope of the document -- that is, what will be covered, and in what detail. Planning of this kind was a normal component of EIS preparation. But the consideration of issues and choice of alternatives to be examined was in too many cases completed outside of public view. The innovative approach to scoping in the regulations is that the process is open to the public and state and local governments, as well as to affected federal agencies. This open process gives rise to important new opportunities for better and more efficient NEPA analyses, and simultaneously places new responsibilities on public and agency participants alike to surface their concerns early. Scoping helps insure that real problems are identified early and properly studied; that issues that are of no concern do not consume time and effort; that the draft statement when first made public is balanced and thorough; and that the delays occasioned by re-doing an inadequate draft are avoided. Scoping does not create problems that did not already exist; it ensures that problems that would have been raised anyway are identified early in the process.

Many members of the public as well as agency staffs engaged in the NEPA process have told the Council that the open scoping requirement is one of the most far-reaching changes engendered by the NEPA regulations. They have predicted that scoping could have a profound positive effect on environmental analyses, on the impact statement process itself, and ultimately on decisionmaking.

Because the concept of open scoping was new, the Council decided to encourage agencies' innovation without unduly restrictive guidance. Thus the regulations relating to scoping are very simple. They state that "there shall be an early and open process for determining the scope of issues to be addressed" which "shall be termed scoping," but they lay down few specific requirements. (Section 1501.7[1]). They require an open process with public notice; identification of significant and insignificant issues; allocation of EIS preparation assignments; identification of related analysis requirements in order to avoid duplication of work; and the planning of a schedule for EIS preparation that meshes with the agency's decisionmaking schedule. (Section 1501.7(a)). The regulations encourage, but do not require, setting time limits and page limits for the EIS, and holding scoping meetings. (Section 1501.7(b)). Aside from these general outlines, the regulations left the agencies on their own. The Council did not believe, and still does not, that it is necessary or appropriate to dictate the specific manner in which over 100 federal agencies should deal with the public. However, the Council has received several requests for more guidance. In 1980 we decided to investigate the agency and public response to the scoping requirement, to find out what was working and what was not, and to share this with all agencies and the public.

[1] All citations are to the NEPA regulations, 40 CFR Parts 1500-1508 unless otherwise specified.

The Council first conducted its own survey, asking federal agencies to report some of their scoping experiences. The Council then contracted with the American Arbitration Association and Clark McGlennon Associates to survey the scoping techniques of major agencies and to study several innovative methods in detail.[2] Council staff conducted a two-day workshop in Atlanta in June 1980, to discuss with federal agency NEPA staff and several EIS contractors what seems to work best in scoping of different types of proposals, and discussed scoping with federal, state and local officials in meetings in all 10 federal regions.

This document is a distillation of all the work that has been done so far by many people to identify valuable scoping techniques. It is offered as a guide to encourage success and to help avoid pitfalls. Since scoping methods are still evolving, the Council welcomes any comments on this guide, and may add to it or revise it in coming years.

B. What scoping is and what it can do.

Scoping is often the first contact between proponents of a proposal and the public. This fact is the source of the power of scoping and of the trepidation that it sometimes evokes. If a scoping meeting is held, people on both sides of an issue will be in the same room and, if all goes well, will speak to each other. The possibilities that flow from this situation are vast. Therefore, a large portion of this document is devoted to the productive management of meetings and the de-fusing of possible heated disagreements.

Even if a meeting is not held, the scoping process leads EIS preparers to think about the proposal early on, in order to explain it to the public and affected agencies. The participants respond with their own concerns about significant issues and suggestions of alternatives. Thus as the draft EIS is prepared, it will include, from the beginning, a reflection or at least an acknowledgement of the cooperating agencies' and the public's concerns. This reduces the need for changes after the draft is finished, because it reduces the chances of overlooking a significant issue or reasonable alternative. It also in many cases increases public confidence in NEPA and the decisionmaking process, thereby reducing delays, such as from litigation, later on when implementing the decisions. As we will discuss further in this document, the public generally responds postively when its views are taken seriously, even if they cannot be wholly accommodated.

But scoping is not simply another "public relations" meeting requirement. It has specific and fairly limited objectives: (a) to identify the affected public and agency concerns; (b) to facilitate an efficient EIS preparation process, through assembling the cooperating agencies, assigning EIS writing tasks, ascertaining all the related permits and reviews that must be scheduled concurrently, and setting time or page limits; (c) to define the issues and alternatives that will be examined in detail in the EIS while simultaneously devoting less attention and time to issues which cause no concern; and (d) to save time in the overall process by helping to ensure that draft statements adequately address relevant issues, reducing the possibility that new comments will cause a statement to be rewritten or supplemented.

Sometimes the scoping process enables early identification of a few serious problems with a proposal, which can be changed or solved because the proposal is still being developed. In these cases, scoping the EIS can actually lead to the solution of a conflict over the proposed action itself. We have found that this extra benefit of scoping occurs fairly frequently. But it cannot be expected in most cases, and scoping can still be considered successful when conflicts are clarified but not solved. This guide does not presume that resolution of conflicts over proposals is a principal goal of scoping, because it is only possible in limited

[2] The results of this examination are reported in "Scoping the Content of EISs: An Evaluation of Agencies' Experiences," which is available from the Council or the Resource Planning Analysis Office of the U.S. Geological Survey, 750 National Center, Reston, VA 22092.

circumstances. Instead, the Council views the principal goal of scoping to be an adequate and efficiently prepared EIS. Our suggestions and recommendations are aimed at reducing the conflicts among affected interests that impede this limited objective. But we are aware of the possibilities of more general conflict resolution that are inherent in any productive discussions among interested parties. We urge all participants in scoping processes to be alert to this larger context, in which scoping could prove to be the first step in environmental problem-solving.

Scoping can lay a firm foundation for the rest of the decisionmaking process. If the EIS can be relied upon to include all the necessary information for formulating policies and making rational choices, the agency will be better able to make a sound and prompt decision. In addition, if it is clear that all reasonable alternatives are being seriously considered, the public will usually be more satisfied with the choice among them.

II. Advice for Government Agencies Conducting Scoping.

A. General context.

Scoping is a process, not an event or a meeting. It continues throughout the planning for an EIS, and may involve a series of meetings, telephone conversations, or written comments from different interested groups. Because it is a process, participants must remain flexible. The scope of an EIS occasionally may need to be modified later if a new issue surfaces, no matter how thorough the scoping was. But it makes sense to try to set the scope of the statement as early as possible.

Scoping may identify people who already have knowledge about a site or an alternative proposal or a relevant study, and induce them to make it available. This can save a lot of research time and money. But people will not come forward unless they believe their views and materials will receive serious consideration. Thus scoping is a crucial first step toward building public confidence in a fair environmental analysis and ultimately a fair decision-making process.

One further point to remember: the lead agency cannot shed its responsibility to assess each significant impact or alternative even if one is found after scoping. But anyone who hangs back and fails to raise something that reasonably could have been raised earlier on will have a hard time prevailing during later stages of the NEPA process or if litigation ensues. Thus a thorough scoping process does provide some protection against subsequent lawsuits.

B. Step-by-step through the process.

1. Start scoping after you have enough information. Scoping cannot be useful until the agency knows enough about the proposed action to identify most of the affected parties, and to present a coherent proposal and a suggested initial list of environmental issues and alternatives. Until that time there is no way to explain to the public or other agencies what you want them to get involved in. So the first stage is to gather preliminary information from the applicant, or to compose a clear picture of your proposal, if it is being developed by the agency.

2. Prepare an information packet. In many cases, scoping of the EIS has been preceded by preparation of an environmental assessment (EA) as the basis for the decision to proceed with an EIS. In such cases, the EA will, of course, include the preliminary information that is needed.

If you have not prepared an EA, you should put together a brief information packet consisting of a description of the proposal, an initial list of impacts and alternatives, maps, drawings, and any other material or references that can help the interested public to understand what is being proposed. The

proposed work plan of the EIS is not usually sufficient for this purpose. Such documents rarely contain a description of the goals of the proposal to enable readers to develop alternatives.

At this stage, the purpose of the information is to enable participants to make an intelligent contribution to scoping the EIS. Because they will be helping to plan what will be examined during the environmental review, they need to know where you are now in that planning process.

Include in the packet a brief explanation of what scoping is, and what procedure will be used, to give potential participants a context for their involvement. Be sure to point out that you want comments from participants on very specific matters. Also reiterate that no decision has yet been made on the contents of the EIS, much less on the proposal itself. Thus, explain that you do not yet have a preferred alternative, but that you may identify the preferred alternative in the draft EIS. (See Section 1502.14(e)). This should reduce the tendency of participants to perceive the proposal as already a definite plan. Encourage them to focus on recommendations for improvements to the various alternatives.

Some of the complaints alleging that scoping can be a waste of time stem from the fact that the participants may not know what the proposal is until they arrive at a meeting. Even the most intelligent among us can rarely make useful, substantive comments on the spur of the moment. Don't expect helpful suggestions to result if participants are put in such a position.

3. Design the scoping process for each project. There is no established or required procedure for scoping. The process can be carried out by meetings, telephone conversations, written comments, or a combination of all three. It is important to tailor the type, the timing and the location of public and agency comments to the proposal at hand.

For example, a proposal to adopt a land management plan for a National Forest in sparsely populated region may not lend itself to calling a single meeting in a central location. While people living in the area and elsewhere may be interested, any meeting place will be inconvenient for most of the potential participants. One solution is to distribute the information packet, solicit written comments, list a telephone number with the name of the scoping coordinator, and invite comments to be phoned in. Otherwise, small meetings in several locations may be necessary when face-to-face communication is important.

In another case, a site-specific construction project may be proposed. This would be a better candidate for a central scoping meeting. But you must first find out if anyone would be interested in attending such a meeting. If you simply assume that a meeting is necessary, you may hire a hall and a stenographer, assemble your staff for a meeting, and find that nobody shows up. There are many proposals that just do not generate sufficient public interest to cause people to attend another public meeting. So a wise early step is to contact known local citizens groups and civic leaders.

In addition, you may suggest in your initial scoping notice and information packet that all those who desire a meeting should call to request one. That way you will only hear from those who are seriously interested in attending.

The question of where to hold a meeting is a difficult one in many cases. Except for site specific construction projects, it may be unclear where the interested parties can be found. For example, an EIS on a major energy development program may involve policy issues and alternatives to the program that are of interest to public groups all over the nation, and to agencies headquartered in Washington, D.C., while the physical impacts might be expected to be felt most strongly in a particular region of the country. In such a case, if personal contact is desired, several meetings would be necessary, especially in the affected region and in Washington, to enable all interests to be heard.

As a general guide, unless a proposal has no site specific impacts, scoping meetings should not be confined to Washington. Agencies should try to elicit the views of people who are closer to the affected regions.

The key is to be flexible. It may not be possible to plan the whole scoping process at the outset, unless you know who all the potential players are. You can start with written comments, move on to an informal meeting, and hold further meetings if desired.

There are several reasons to hold a scoping meeting. First, some of the best effects of scoping stem from the fact that all parties have the opportunity to meet one another and to listen to the concerns of the others. There is no satisfactory substitute for personal contact to achieve this result. If there is any possibility that resolution of underlying conflicts over a proposal may be achieved, this is always enhanced by the development of personal and working relationships among the parties.

Second, even in a conflict situation people usually respond positively when they are treated as partners in the project review process. If they feel confident that their views were actually heard and taken seriously, they will be more likely to be satisfied that the decisionmaking process was fair even if they disagree with the outcome. It is much easier to show people that you are listening to them if you hold a face-to-face meeting where they can see you writing down their points, than if their only contact is through written comments.

If you suspect that a particular proposal could benefit from a meeting with the affected public at any time during its review, the best time to have the meeting is during this early scoping stage. The fact that you are willing to discuss openly a proposal before you have committed substantial resources to it will often enhance the chances for reaching an accord.

If you decide that a public meeting is appropriate, you still must decide what type of meeting, or how many meetings, to hold. We will discuss meetings in detail below in "Conducting a Public Meeting." But as part of designing the scoping process, you must decide between a single meeting and multiple ones for different interest groups, and whether to hold a separate meeting for government agency participants.

The single large public meeting brings together all the interested parties, which has both advantages and disadvantages. If the meeting is efficiently run, you can cover a lot of interests and issues in a short time. And a single meeting does reduce agency travel time and expense. In some cases it may be an advantage to have all interest groups hear each others' concerns, possibly promoting compromise. It is definitely important to have the staffs of the cooperating agencies, as well as the lead agency, hear the public views of what the significant issues are; and it will be difficult and expensive for the cooperating agencies to attend several meetings. But if there are opposing groups of citizens who feel strongly on both sides of an issue, the setting of the large meeting may needlessly create tension and an emotional confrontation between the groups. Moreover, some people may feel intimidated in such a setting, and won't express themselves at all.

The principal drawback of the large meeting, however, is that it is generally unwieldy. To keep order, discussion is limited, dialogue is difficult, and often all participants are frustrated, agency and public alike. Large meetings can serve to identify the interest groups for future discussion, but often little else is accomplished. Large meetings often become "events" where grandstanding substitutes for substantive comments. Many agencies resort to a formal hearing-type format to maintain control, and this can cause resentments among participants who come to the meeting expecting a responsive discussion.

For these reasons, we recommend that meetings be kept small and informal, and that you hold several, if necessary, to accommodate the different interest groups. The other solution is to break a large gathering

into small discussion groups, which is discussed below. Using either method increases the likelihood that participants will level with you and communicate their underlying concerns rather than make an emotional statement just for effect.

Moreover, in our experience, a separate meeting for cooperating agencies is quite productive. Working relationships can be forged for the effective participation of all involved in the preparation of the EIS. Work assignments are made by the lead agency, a schedule may be set for production of parts of the draft EIS, and information gaps can be identified early. But a productive meeting such as this is not possible at the very beginning of the process. It can only result from the same sort of planning and preparation that goes into the public meetings. We discuss below the special problems of cooperating agencies, and their information needs for effective participation in scoping.

4. Issuing the public notice. The preliminary look at the proposal, in which you develop the information packet discussed above, will enable you to tell what kind of public notice will be most appropriate and effective.

Section 1501.7 of the NEPA regulations requires that a notice of intent to prepare an EIS must be published in the Federal Register prior to initiating scoping.[3] This means that one of the appropriate means of giving public notice of the upcoming scoping process could be the same Federal Register notice. And because the notice of intent must be published anyway, the scoping notice would be essentially free. But use of the Federal Register is not an absolute requirement, and other means of public notice often are more effective, including local newspapers, radio and TV, posting notices in public places, etc. (See Section 1506.6 of the regulations.)

What is important is that the notice actually reach the affected public. If the proposal is an important new national policy in which national environmental groups can be expected to be interested, these groups can be contacted by form letter with ease. (See the Conservation Directory for a list of national groups.[4] Similarly, for proposals that may have major implications for the business community, trade associations can be helpful means of alerting affected groups. The Federal Register notice can be relied upon to notify others that you did not know about. But the Federal Register is of little use of reaching individuals or local groups interested in a site specific proposal. Therefore notices in local papers, letters to local government officials and personal contact with a few known interested individuals would be more appropriate. Land owners abutting any proposed project site should be notified individually.

Remember that issuing press releases to newspapers, and radio and TV stations is not enough, because they may not be used by the media unless the proposal is considered "newsworthy." If the proposal is controversial, you can try alerting reporters or editors to an upcoming scoping meeting for coverage in

[3] Several agencies have found it useful to conduct scoping for environmental assessments. EAs are prepared where answering the question of whether an EIS is necessary requires identification of significant environmental issues; and consideration of alternatives in an EA can often be useful event where an EIS is not necessary. In both situations scoping can be valuable. Thus the Council has stated that scoping may be used in connection with preparation of an EA, that is, before publishing any notice of intent to prepare an EIS. As in normal scoping, appropriate public notice is required, as well as adequate information on the proposal to make scoping worthwhile. But scoping at this early stage cannot substitute for the normal scoping process unless the earlier public notice stated clearly that this would be the case, and the notice of intent expressly provides that written comments suggesting impacts and alternatives for study will still be considered.

[4] The Conservation Directory is a publication of the National Wildlife Federation, 1421 16th St., N.W., Washington, DC 20036, $4.00.

special weekend sections used by many papers. But placing a notice in the legal notices section of the paper is the only guarantee that it will be published.

5. Conducting a public meeting. In our study of agency practice in conducting scoping, the most interesting information on what works and doesn't work involves the conduct of meetings. Innovative techniques have been developed, and experience shows that these can be successful.

One of the most important factors turns out to be the training and experience of the moderator. The U.S. Office of Personnel Management and others give training courses on how to run a meeting effectively. Specific techniques are taught to keep the meeting on course and to deal with confrontations. These techniques are sometimes called "meeting facilitation skills."

When holding a meeting, the principle thing to remember about scoping is that it is a process to initiate preparation of an EIS. It is not concerned with the ultimate decision on the proposal. A fruitful scoping process leads to an adequate environmental analysis, including all reasonable alternatives and mitigation measures. This limited goal is in the interest of all the participants, and thus offers the possibility of agreement by the parties on this much at least. To run a successful meeting you must keep the focus on this positive purpose.

At the point of scoping therefore, in one sense all the parties involved have a common goal, which is a thorough environmental review. If you emphasize this in the meeting you can stop any grandstanding speeches with out a heavy hand, by simply asking the speaker if he or she has any concrete suggestions for the group on issues to be covered in the EIS. By frequently drawing the meeting back to this central purpose of scoping, the opponents of a proposal will see that you have not already made a decision, and they will be forced to deal with the real issues. In addition, when people see that you are genuinely seeking their opinion, some will volunteer useful information about a particular subject or site that they may know better than anyone on your staff.

As we stated above, we found that informal meetings in small groups are the most satisfactory for eliciting useful issues and information. Small groups can be formed in two ways: you can invite different interest groups to different meetings, or you can break a large number into small groups for discussion.

One successful model is used by the Army Corps of Engineers, among others. In cases where a public meeting is desired, it is publicized and scheduled for a location that will be convenient for as many potential participants as possible. The information packet is made available in several ways, by sending it to those known to be interested, giving a telephone number in the public notices for use in requesting one, and providing more at the door of the meeting place as well. As participants enter the door, each is given a number. Participants are asked to register their name, address and/or telephone number for use in future contact during scoping and the rest of the NEPA process.

The first part of the meeting is devoted to a discussion of the proposal in general, covering its purposed location, design, and any other aspects that can be presented in a lecture format. A question and answer period concerning this information is often held at this time. Then if there are more than 15 or 20 attendees at the meeting, the next step is to break it into small groups for more intensive discussion. At this point, the numbers held by the participants are used to assign them to small groups by sequence, random drawing, or any other method. Each group should be no larger than 12, and 8-10 is better. The groups are informed that their task is to prepare a list of significant environmental issues and reasonable alternatives for analysis in the EIS. These lists will be presented to the main group and combined into a master list, after the discussion groups are finished. The rules for how priorities are to be assigned to the issues identified by each group should be made clear before the large group breaks up.

Some agencies ask each group member to vote for the 5 or 10 most important issues. After tallying the votes of individual members, each group would only report out those issues that received a certain number of votes. In this way only those items of most concern to the members would even make the list compiled by each group. Some agencies go further, and only let each group report out the top few issues identified. But you must be careful not to ignore issues that may be considered a medium priority by many people. They may still be important, even if not in the top rank. Thus instead of simply voting, the members of the groups should rank the listed issues in order of perceived importance. Points may be assigned to each item on the basis of the rankings by each member, so that the group can compile a list of its issues in priority order. Each group should then be asked to assign cut-off numbers to separate high, medium and low priority items. Each group should then report out to the main meeting all of its issues, but with priorities clearly assigned.

One member of the lead agency or cooperating agency staff should join each group to answer questions and to listen to the participants' expressions of concern. It has been the experience of many of those who have tried this method that it is better not to have the agency person lead the group discussions. There does need to be a leader, who should be chosen by the group members. In this way, the agency staff member will not be perceived as forcing his opinions on the others.

If the agency has a sufficient staff of formally trained "meeting facilitators," they may be able to achieve the same result even where agency staff people lead the discussion groups. But absent such training, the staff should not lead the discussion groups. A good technique is to have the agency person serve as the recording secretary for the group, writing down each impact and alternative that is suggested for study by the participants. This enhances the neutral status of the agency representative, and ensures that he is perceived as listening and reacting to the views of the group. Frequently, the recording of issues is done with a large pad mounted on the wall like a blackboard, which has been well received by agency and public alike, because all can see that the views expressed actually have been heard and understood.

When the issues are listed, each must be clarified or combined with others to eliminate duplication or fuzzy concepts. The agency staff person can actually lead in this effort because of his need to reflect on paper exactly what the issues are. After the group has listed all the environmental impacts and alternatives and any other issues that the members wish to have considered, they are asked to discuss the relative merits and importance of each listed item. The group should be reminded that one of its tasks is to eliminate insignificant issues. Following this, the members assign priorities or vote using one of the methods described above.

The discussion groups are then to return to the large meeting to report on the results of their ranking. At this point further discussion may be useful to seek a consensus on which issues are really insignificant. But the moderator must not appear to be ruthlessly eliminating issues that the participants ranked of high or medium importance. The best that can usually be achieved is to "deemphasize" some of them, by placing them in the low priority category.

6. What to do with the comments. After you have comments from the cooperating agencies and the interested public, you must evaluate them and make judgments about which issues are in fact significant and which ones are not. The decision of what the EIS should contain is ultimately made by the lead agency. But you will now know what the interested participants consider to be the principal areas for study and analysis. You should be guided by these concerns, or be prepared to briefly explain why you do not agree. Every issue that is raised as a priority matter during scoping should be addressed in some manner in the EIS, either by in-depth analysis, or at least a short explanation showing that the issue was examined, but not considered significant for one or more reasons.

Some agencies have complained that the time savings claimed for scoping have not been realized because after public groups raise numerous minor matters, they cannot focus the EIS on the significant issues. It is true that it is always easier to add issues than it is to subtract them during scoping. And you should realize that trying to eliminate a particular environmental impact or alternative from study may arouse the suspicions of some people. Cooperating agencies may be even more reluctant to eliminate issues in their areas of special expertise than the public participants. But the way to approach it is seek consensus on which issues are less important. These issues may then be deemphasized in the EIS by a brief discussion of why they were not examined in depth.

If no consensus can be reached, it is still your responsibility to select the significant issues. The lead agency cannot abdicate its role and simply defer to the public. Thus a group of participants at a scoping meeting should not be able to "vote" an insignificant matter into a big issue. If a certain issue is raised and in your professional judgment you believe it is not significant, explain clearly and briefly in the EIS why it is not significant. There is no need to devote time and pages to it in the EIS if you can show that it is not relevant or important to the proposed action. But you should address in some manner all matters that were raised in the scoping process, either by an extended analysis or a brief explanation showing that you acknowledge the concern.

Several agencies have made a practice of sending out a post-scoping document to make public the decisions that have been made on what issues to cover in the EIS. This is not a requirement, but in certain controversial cases it can be worthwhile. Especially when scoping has been conducted by written comments, and there has been no face-to-face contact, a post-scoping document is the only assurance to the participants that they were heard and understood until the draft EIS comes out. Agencies have acknowledged to us that "letters instead of meetings seem to get disregarded easier." Thus a reasonable quid pro quo for relying on comment letters would be to send out a post-scoping document as feedback to the commentors.

The post-scoping document may be as brief as a list of impacts and alternatives selected for analysis; it may consist of the "scope of work" produced by the lead and cooperating agencies for their own EIS work or for the contractor; or it may be a special document that describes all the issues and explains why they were selected.

7. Allocating work assignments and setting schedules. Following the public participation in whatever form, and the selection of issues to be covered, the lead agency must allocate the EIS preparation work among the available resources. If there are no cooperating agencies, the lead agency allocates work among its own personnel or contractors. If there are cooperating agencies involved, they may be assigned specific research or writing tasks. The NEPA regulations require that they normally devote their own resources to the issues in which they have special expertise or jurisdiction by law. (Sections 1501.6(b)(3), (5), and 1501.7(a)(4)).

In all cases, the lead agency should set a schedule for completion of the work, designate a project manager and assign the reviewers, and must set a time limit for the entire NEPA analysis if requested to do so by an applicant. (Section 1501.8).

8. A few ideas to try. (a) Route design workshop. As part of a scoping process, a successful innovation by one agency involved route selection for a railroad. The agency invited representatives of the interested groups (identified at a previous public meeting) to try their hand at designing alternative routes for a proposed rail segment. Agency staff explained design constraints and evaluation criteria such as the desire to minimize damage to prime agricultural land and valuable wildlife habitat. The participants were divided into small groups for a few hours of intensive work. After learning of the real constraints on alternative routes, the participants had a better understanding of the agency's and applicant's viewpoints.

Two of the participants actually supported alternative routes that affected their own land because the overall impacts of these routes appeared less adverse.

The participants were asked to rank the five alternatives they had devised and the top two were included in the EIS. But the agency did not permit the groups to apply the same evaluation criteria to the routes proposed by the applicant or the agency. Thus public confidence in the process was not as high as it could have been, and probably was reduced when the applicant's proposal was ultimately selected.

The Council recommends that when a hands-on design workshop is used, the assignment of the group be expanded to include evaluation of the reasonableness of all the suggested alternatives.

(b) Hotline. Several agencies have successfully used a special telephone number, essentially a hotline, to take public comments before, after, or instead of a public meeting. It helps to designate a named staff member to receive these calls so that some continuity and personal relationships can be developed.

(c) Videotape of sites. A videotape of proposed sites is an excellent tool for explaining site difference and limitations during the lecture-format part of a scoping meeting.

(d) Videotape meetings. One agency has videotaped whole scoping meetings. Staff found that the participants took their roles more seriously and the taping appeared not to precipitate grandstanding tactics.

(e) Review committee. Success has been reported from one agency which sets up review committees, representing all interested groups, to oversee the scoping process. The committees help to design the scoping process. In cooperation with the lead agency, the committee reviews the materials generated by the scoping meeting. Again, however, the final decision on EIS content is the responsibility of the lead agency.

(f) Consultant as meeting moderator. In some hotly contested cases, several agencies have used the EIS consultant to actually run the scoping meeting. This is permitted under the NEPA regulations and can be useful to de-fuse a tense atmosphere if the consultant is perceived as a neutral third party. But the responsible agency officials must attend the meetings. There is no substitute for developing a relationship between the agency officials and the affected parties. Moreover, if the responsible officials are not prominently present, the public may interpret that to mean that consultant is actually making the decisions about the EIS, and not the lead agency.

(g) Money saving tips. Remember that money can be saved by using conference calls instead of meetings, tape-recording the meetings instead of hiring a stenographer, and finding out whether people want a meeting before announcing it.

C. Pitfalls.

We list here some of the problems that have been experienced in certain scoping cases, in order to enable others to avoid the same difficulties.

1. Closed meetings. In response to informal advice from CEQ that holding separate meetings for agencies and the public would be permitted under the regulations and could be more productive, one agency scheduled a scoping meeting for the cooperating agencies some weeks in advance of the public meeting. Apparently, the lead agency felt that the views of the cooperating agencies would be more candidly expressed if the meeting were closed. In any event, several members of the public learned of the meeting and asked to be present. The lead agency acquiesced only after newspaper reporters were able to make a

story out of the closed session. At the meeting, the members of the public were informed that they would not be allowed to speak, nor to record the proceedings. The ill feeling aroused by this chain of events may not be repaired for a long time. Instead, we would suggest the following possibilities:

(a) Although separate meetings for agencies and public groups may be more efficient, there is no magic to them. By all means, if someone insists on attending the agency meeting, let him. There is nothing as secret going on there as he may think there is if you refuse him admittance. Better yet, have your meeting of cooperating agencies after the public meeting. That may be the most logical time anyway, since only then can the scope of the EIS be decided upon and assignments made among the agencies. If it is well done, the public meeting will satisfy most people and show them that you are listening to them.

(b) Always permit recording. In fact, you should suggest it for public meetings. All parties will feel better if there is a record of the proceeding. There is no need for a stenographer, and tape is inexpensive. It may even be better then a typed transcript, because staff and decision-makers who did not attend the meeting can listen to the exchange and may learn a lot about public perceptions of the proposal.

(c) When people are admitted to a meeting, it makes no sense to refuse their requests to speak. However, you can legitimately limit their statements to the subject at hand--scoping. You do not have to permit some participants to waste the others' time if they refuse to focus on the impacts and alternatives for inclusion in the EIS. Having a tape of the proceedings could be useful after the meeting if there is some question that speakers were improperly silenced. But it takes an experienced moderator to handle a situation like this.

(d) The scoping stage is the time for building confidence and trust on all sides of a proposal, because this is the only time when there is a common enterprise. The attitudes formed at this stage can carry through the project review process. Certainly it is difficult for things to get better. So foster the good will as long as you can by listening to what is being said during scoping. It is possible that out of that dialogue may appear recommendations for changes and mitigation measures that can turn a controversial fight into an acceptable proposal.

2. Contacting interested groups. Some problems have arisen in scoping where agencies failed to contact all the affected parties, such as industries or state and local governments. In one case, a panel was assembled to represent various interests in scoping an EIS on a wildlife-related program. The agency had an excellent format for the meeting, but the panel did not represent industries that would be affected by the program or interested state and local governments. As a result, the EIS may fail to reflect the issues of concern to these parties.

Another agency reported to us that it failed to contact parties directly because staff feared that if they missed someone they would be accused of favoritism. Thus they relied on the issuance of press releases which were not effective. Many people who did not learn about the meetings in time sought additional meeting opportunities, which cost extra money and delayed the process.

In our experience, the attempt to reach people is worth the effort. Even if you miss someone, it will be clear that you tried. You can enlist a few representatives of an interest group to help you identify and contact others. Trade associations, chambers of commerce, local civic groups, and local and national conservation groups can spread the word to members.

3. Tiering. Many people are not familiar with the way environmental impact statements can be "tiered" under the NEPA regulations, so that issues are examined in detail at the stage that decisions on them are being made. See Section 1508.28 of the regulations. For example, if a proposed program is under review, it is possible that site specific actions are not yet proposed. In such a case, these actions are not addressed

in the EIS on the program, but are reserved for a later tier of analysis. If tiering is being used, this concept must be made clear at the outset of any scoping meeting, so that participants do not concentrate on issues that are not going to be addressed at this time. If you can specify when these other issues will be addressed it will be easier to convince people to focus on the matters at hand.

4. Scoping for unusual programs. One interesting scoping case involved proposed changes in the Endangered Species Program. Among the impacts to be examined were the effects of this conservation program on user activities such as mining, hunting, and timber harvest, instead of the other way around. Because of this reverse twist in the impacts to be analyzed, some participants had difficulty focusing on useful issues. Apparently, if the subject of the EIS is unusual, it will be even harder than normal for scoping participants to grasp what is expected of them.

In the case of the Endangered Species Program EIS, the agency planned an intensive 3 day scoping session, successfully involved the participants, and reached accord on several issues that would be important for the future implementation of the program. But the participants were unable to focus on impacts and program alternatives for the EIS. We suggest that if the intensive session had been broken up into 2 or 3 meetings separated by days or weeks, the participants might have been able to get used to the new way of thinking required, and thereby to participate more productively. Programmatic proposals are often harder to deal with in a scoping context than site specific projects. Thus extra care should be taken in explaining the goals of the proposal and in making the information available well in advance of any meetings.

D. Lead and Cooperating Agencies.

Some problems with scoping revolve around the relationship between lead and cooperating agencies. Some agencies are still uncomfortable with these roles. The NEPA regulations, and the 40 Questions and Answers about the NEPA Regulations, 46 Fed. Reg. 18026, (March 23, 1981) describe in detail the way agencies are now asked to cooperate on environmental analyses. (See Questions 9, 14, and 30.) We will focus here on the early phase of that cooperation.

It is important for the lead agency to be as specific as possible with the cooperating agencies. Tell them what you want them to contribute during scoping: environmental impacts and alternatives. Some agencies still do not understand the purpose of scoping.

Be sure to contact and involve representatives of the cooperating agencies who are responsible for NEPA-related functions. The lead agency will need to contact staff of the cooperating agencies who can both help to identify issues and alternatives and commit resources to a study, agree to a schedule for EIS preparation, or approve a list of issues as sufficient. In some agencies that will be at the district or state office level (e.g., Corps of Engineers, Bureau of Land Management, and Soil Conservation Service) for all but exceptional cases. In other agencies you must go to regional offices for scoping comments and commitments (e.g., EPA, Fish and Wildlife Service, Water and Power Resources Service). In still others, the field offices do not have NEPA responsibilities or expertise and you will deal directly with headquarters (e.g., Federal Energy Regulatory Commission, Interstate Commerce Commission). In all cases you are looking for the office that can give you the answers you need. So keep trying until you find the organizational level of the cooperating agency that can give you useful information and that has the authority to make commitments.

As stated in 40 Questions and Answers about the NEPA Regulations, the lead agency has the ultimate responsibility for the content of the EIS, but if it leaves out a significant issue or ignores the advice and expertise of the cooperating agency, the EIS may be found later to be inadequate. (46 Fed. Reg. 18030, Question 14b.) At the same time, the cooperating agency will be concerned that the EIS contain material

sufficient to satisfy its decision-making needs. Thus, both agencies have a stake in producing a document of good quality. The cooperating agencies should be encouraged not only to participate in scoping but also to review the decisions made by the lead agency about what to include in the EIS. Lead agencies should allow any information needed by a cooperating agency to be included, and any issues of concern to the cooperating agency should be covered, but it usually will have to be at the expense of the cooperating agency.

Cooperating agencies have at least as great a need as the general public for advance information on a proposal before any scoping takes place. Agencies have reported to us that information from the lead agency is often too sketchy or comes too late for informed participation. Lead agencies must clearly explain to all cooperating agencies what the proposed action is conceived to be at this time, and what present alternatives and issues the lead agency sees, before expecting other agencies to devote time and money to a scoping session. Informal contacts among the agencies before scoping gets underway are valuable to establish what the cooperating agencies will need for productive scoping to take place.

Some agencies will be called upon to be cooperators more frequently than others, and they may lack the resources to respond to the numerous requests. The NEPA regulations permit agencies without jurisdiction by law (i.e., no approval authority over the proposal) to decline the cooperating agency role. (Section 1501.6(c)). But agencies that do have jurisdiction by law cannot opt out entirely and may have to reduce their cooperating effort devoted to each EIS. (See Section 1501.6(c) and 40 Questions and Answers about the NEPA Regulations, 46 Fed. Reg. 18030, Question 14a.) Thus, cooperators would be greatly aided by a priority list from the lead agency showing which proposals most need their help. This will lead to more efficient allocation of resources.

Some cooperating agencies are still holding back at the scoping stage in order to retain a critical position for later in the process. They either avoid the scoping sessions or fail to contribute, and then raise objections in comments on the draft EIS. We cannot emphasize enough that the whole point of scoping is to avoid this situation. As we stated in 40 Questions and Answers about the NEPA Regulations, "if the new alternative [or other issue] was not raised by the commentor during scoping, but could have been, commentors may find that they are unpersuasive in their efforts to have their suggested alternative analyzed in detail by the [lead] agency." (46 Fed. Reg. 18035, Question 29b.)

III. Advice for Public Participants.

Scoping is a new opportunity for you to enter the earliest phase of the decision-making process on proposals that affect you. Through this process you have access to public officials before decisions are made and the right to explain your objections and concerns. But this opportunity carries with it a new responsibility. No longer may individuals hang back until the process is almost complete and then spring forth with a significant issue or alternative that might have been raised earlier. You are now part of the review process, and your role is to inform the responsible agencies of the potential impacts that should be studied, the problems a proposal may cause that you foresee, and the alternatives and mitigating measures that offer promise.

As noted above, and in 40 Questions and Answers, no longer will a comment raised for the first time after the draft EIS is finished be accorded the same serious consideration it would otherwise have merited if the issue had been raised during scoping. Thus you have a responsibility to come forward early with known issues.

In return, you get the chance to meet the responsible officials and to make the case for your alternative before they are committed to a course of action. To a surprising degree this avenue has been found to

yield satisfactory results. There's no guarantee, of course, but when the alternative you suggest is really better, it is often hard for a decisionmaker to resist.

There are several problems that commonly arise that public participants should be aware of:

A. Public input is often only negative.

The optimal timing of scoping within the NEPA process is difficult to judge. On the one hand, as explained above (Section II.B.1.), if it is attempted too early, the agency cannot explain what it has in mind and informed participation will be impossible. On the other, if it is delayed, the public may find that significant decisions are already made, and their comments may be discounted or will be too late to change the project. Some agencies have found themselves in a tactical cross-fire when public criticism arises before they can even define their proposal sufficiently to see whether they have a worthwhile plan. Understandably, they would be reluctant after such an experience to invite public criticism early in the planning process through open scoping. But it is in your interest to encourage agencies to come out with proposals in the early stage because that enhances the possibility of your comments being used. Thus public participants in scoping should reduce the emotion level wherever possible and use the opportunity to make thoughtful, rational presentations on impacts and alternatives. Polarizing over issues too early hurts all parties. If agencies get positive and useful public responses from the scoping process, they will more frequently come forward with proposals early enough so that they can be materially improved by your suggestions.

B. Issues are too broad.

The issues that participants tend to identify during scoping are much too broad to be useful for analytical purposes. For example, "cultural impacts" -- what does this mean? What precisely are the impacts that should be examined? When the EIS preparers encounter a comment as vague as this they will have to make their own judgment about what you meant, and you may find that your issues are not covered. Thus, you should refine the broad general topics, and specify which issues need evaluation and analysis.

C. Impacts are not identified.

Similarly, people (including agency staff) frequently identify "causes" as issues but fail to identify the principal "effects" that the EIS should evaluate in depth. For example, oil and gas development is a cause of many impacts. Simply listing this generic category is of little help. You must go beyond the obvious causes to the specific effects that are of concern. If you want scoping to be seen as more than just another public meeting, you will need to put in extra work.

IV. Brief Points For Applicants.

Scoping can be an invaluable part of your early project planning. Your main interest is in getting a proposal through the review process. This interest is best advanced by finding out early where the problems with the proposal are, who the affected parties are, and where accomodations can be made. Scoping is an ideal meeting place for all the interest groups if you have not already contacted them. In several cases, we found that the compromises made at this stage allowed a project to move efficiently through the permitting process virtually unopposed.

The NEPA regulations place an affirmative obligation on agencies to "provide for cases where actions are planned by private applicants" so that designated staff are available to consult with the applicants, to advise applicants of information that will be required during review, and to insure that the NEPA process commences at the earliest possible time. (Section 1501.2(d)). This section of the regulations is intended to

ensure that environmental factors are considered at an early stage in the applicant's planning process. (See 40 Questions and Answers about the NEPA Regulations, 46 Fed. Reg. 18028, Questions 8 and 9.)

Applicants should take advantage of this requirement in the regulations by approaching the agencies early to consult on alternatives, mitigation requirements, and the agency's information needs. This early contact with the agency can facilitate a prompt initiation of the scoping process in cases where an EIS will be prepared. You will need to furnish sufficient information about your proposal to enable the lead agency to formulate a coherent presentation for cooperating agencies and the public. But don't wait until your choices are all made and the alternatives have been eliminated. (Section 1506).

During scoping, be sure to attend any of the public meetings unless the agency is dividing groups by interest affiliation. You will be able to answer any questions about the proposal, and even more important, you will be able to hear the objections raised, and find out what the real concerns of the public are. This is, of course, vital information for future negotiations with the affected parties.

This page intentionally left blank.

Appendix F
32 CFR Part 651 (Federal Register March 29, 2002)

This page intentionally left blank.

Appendix G
History of the BRAC Process

This page intentionally left blank.

APPENDIX G

HISTORY OF THE BRAC PROCESS

Introduction

In the early 1960s, then-Secretary of Defense Robert S. McNamara closed many bases to reduce military overhead. Secretary McNamara created the Office of Economic Adjustment (OEA) within DoD to ease the economic impacts of closures on affected communities and to facilitate the reuse of former bases.

In the 1960s and again in the 1970s, accusations were made that base closures were being used by the executive branch to punish uncooperative legislators. This sentiment prompted Congress in 1977 to pass Section 2687 of Title 10, United States Code, which required DoD to notify Congress if an installation became a closure candidate, and it also applied the National Environmental Policy Act to base closure recommendations. These stipulations, combined with Congress' reluctance to close military bases, effectively prevented DoD from closing any major military installation.

Grace Commission

In 1983, the President's Private Sector Survey of Cost Control (The Grace Commission) concluded that the national defense could be improved and made more cost-effective with a more efficient military base structure and recommended that a non-partisan, independent commission be appointed to study this issue.

Goldwater Initiative

In 1985, Senator Barry Goldwater recognized the need for DoD to rid itself of excess base capacity. He asked Secretary of Defense Casper Weinberger to submit an "illustrative" list of military bases for closure. A hearing was held to discuss the 22 bases on Secretary Weinberger's list, but no further action was taken.

BRAC I

By 1988, while the structure of the U.S. armed forces was changing, the base structure remained unaltered. Therefore, on May 3, 1988, Secretary of Defense Frank Carlucci chartered the Defense Secretary's Commission on Base Realignment and Closure, ordering it to conduct an independent study of the domestic military base structure and to recommend installations for realignment and closure. In October 1988, Congress passed and President Reagan signed Public Law 100-526, the Defense Authorization Amendments and Base Closure and Realignment Act.

The 1988 Commission, chaired by former Senator Abraham Ribicoff and former Congressman Jack Edwards, recommended that 86 bases be closed fully and 59 others be closed partially or realigned. These changes would, according to Commission estimates, generate an annual savings of $693.6 million.

The first round of base closure and realignment (BRAC I) involved 133 Army installations. As a result of this first round of closures and realignments, the Army initiated publication of 12 Environmental Impact Statements, 14 Environmental Assessments, and one Programmatic Environmental Assessment.

BRAC II

In an effort to reshape and reduce the military infrastructure, Secretary of Defense Cheney in January 1990 proposed closing 36 bases in the United States. This initiative became known as BRAC II. The congressional response was reminiscent of base closing rounds of the 1960s and 1970s. The list was not acted upon by Congress, but the groundwork was laid for a second base closing commission. The Army's BRAC II proposal reflected a reduction of the Army's force. It proposed the closure and lay away of twelve additional Army installations and realignments which could have affected up to 134 other Army activities. Subsequent legislation prevented DoD from implementing some of the BRAC II proposals.

BRAC III (BRAC 91)

In response to the reduced threat in Western Europe, the Secretary of Defense, in September of 1990, announced an initial list of overseas base closures. This list was supplemented in April and July of 1991. The Army's BRAC III proposals include 179 total sites at 48 locations in Germany, Greece, Korea, the United Kingdom, and the Netherlands.

The Defense Base Closure and Realignment Act of 1990, Public Law 101-510, intends, as the law says, "to provide a fair process that will result in the timely closure and realignment of military installations inside the United States."

The process was built around the following:

- The force-structure plan submitted to Congress with the DoD budget request for Fiscal Year 1991.
- Eight selection criteria finalized by DoD after public comment.

Of the eight criteria, the first four concerned military value and were to receive preference:

- Current and future mission requirements.
- Availability and condition of land, facilities, and air space
- Contingency and mobilization requirements.
- Cost and manpower implications.

The remaining criteria were:

- Return on investment.
- Local economic impact.
- Impact on community infrastructure.
- Environmental impact.

The Commission received DoD's proposed list of closures and realignments after the following process: First, the Army, Navy, and Air Force analyzed their own base structures, comparing them against the force-structure plan and the selection criteria. The services then submitted their proposals to Secretary Cheney, who on April 12, 1991 (hence BRAC 91), sent DoD's recommendations to the Commission. The Commission was required to send its recommendations to the President by July 1, 1991.

The statutory test to be applied by the Commission in justifying modifications to DoD's recommended list involved "substantial deviation" from the force-structure plan and selection criteria. The Commission could recommend changes for those bases where a substantial deviation was established.

BRAC 91 was required as a result of further troop reductions in the Army, and it established a number of basic principles which guide realignment and closure decisions to:

- Maximize readiness with installations capable of generating, projecting, and sustaining combat power in support of national military objectives.
- Consolidate into the best, most efficient facilities.
- Maximize quality of life and minimize hardships for our soldiers, their families and civilian employees.
- Provide for appropriate expendability and reversibility to ensure an installation base capable of responding to future force structure requirements.
- Provide for adequate mobilization capability to train and mobilize as called for by various military contingencies.
- Provide for adequate training land to sustain a trained and ready force.
- Consider the costs and savings o proposed realignments and closures.
- Consider the economic impact on communities.
- Consider environmental impacts, restorations, and costs of proposed realignments and closures.

Under the same process established by Public Law 101-510, if the President approves the list and transmits it to Congress, then Congress must reject the entire list by joint resolution or it becomes final and effective. When the list becomes effective, all closures and realignments must be initiated no later than two years after the President transmits the list to Congress.

BRAC 1993

The BRAC 1993 process is implemented using the same process that was initiated under the BRAC 91 statute, complete with the same Army criteria for base selection and the same review by the Commission.

The process for selecting closure and realignment actions under BRAC 93 also contains considerable opportunity for public and Congressional involvement. Congress created the BRAC Commission and required the Department of Defense (DoD) to develop a six-year force structure plan and publish its closure and realignment criteria which Congress may reject by joint resolution. Once the criteria became final, the Department submitted a list of closures and realignments to the eight-member Commission. The Commission held public hearings and subsequently made a number of changes to the DoD list.

BRAC 1995

BRAC 1995 closely followed the process established with BRAC 1991 and BRAC 1993. As a result of BRAC 1995 recommendations, the Army closed 29 installations and realigned 11 installations. The Army also closed two additional installations (defense distribution depots) that had been operated by the Defense Logistics Agency.

BRAC 2005

Title XXX of the National Defense Authorization Act for Fiscal Year 2002 amended the Defense Base Closure Act of 1990 (Public Law 101-510) to provide for an additional round of base closures and realignments in 2005. With only minor refinements, Commission actions will follow procedures employed in the preceding rounds under Public Law 101-510.

This page intentionally left blank.

Appendix H
Guidance on Compilation of an Administrative Record

This page intentionally left blank.

Guidance to Client Agencies on Compiling the Administrative Record

By Joan Goldfrank
former Senior Counsel for Professional Responsibility and Administration Policy,
Legislation and Special Litigation Section, Environment and Natural Resources Division

Published in the United States Attorneys' Bulletin (February 2000, Volume 48, Number 1)

Introduction

Under the Administrative Procedure Act (APA), a court reviews an agency's action to determine if it was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). In making this determination, a court evaluates the agency's entire administrative record. The administrative record is the paper trail that documents the agency's decisionmaking process and the basis for the agency's decision.

The APA governs judicial review of a challenged agency decision. However, several statutes specify what documents and materials constitute an administrative record *see* 42 U.S.C. § 7607(d)(7)(A) (provision states what materials will constitute the record for judicial review of certain enumerated types of rule making issued under the Clean Air Act); 42 U.S.C. § 9613(j), (k) (CERCLA). At the outset, make sure to determine whether a statute, (other than the APA), applies in the case. In addition, regulations may govern how to assemble a record. *See, e.g.*, 40 C.F.R. §§ 300.800 -.825 (CERCLA); 40 C.F.R. Part 24 (RCRA Corrective Action). *See also* Federal Rules of Appellate Procedure Rules 16 and 17 (record on review or enforcement and filing of the record).

The purpose of this article is to provide guidance to agencies in compiling the administrative record of agency decisions other than a formal rule making or an administrative adjudication. Optimally, an agency will compile the administrative record as documents and generation or receipt of materials occurs during the agency decisionmaking process. The record may be a contemporaneous record of the action. However, the agency may compile the administrative record after litigation has been initiated. An agency employee should be designated to be responsible for compiling the administrative record. That individual will be responsible for certifying the administrative record to the court. The individual should keep a record of where she or he searched for the documents and materials, and whom they consulted while compiling the administrative record.

Taking great care in compiling a complete administrative record is critical for the agency. If the agency fails to compile the whole administrative record, it may significantly impact both our ability to defend and the court's ability to review a challenged agency decision.

General Principles for Compiling the Administrative Record

The administrative record consists of all documents and materials directly or indirectly considered by the agency decision-maker in making the challenged decision. It is not limited to documents and materials relevant only to the merits of the agency's decision. It includes documents and materials relevant to the process of making the agency's decision. For example,

- Documents and materials whether or not they support the final agency decision;
- Documents and materials which were available to the decisionmaking office at the time the decision was made;
- Documents and materials considered by, or relied upon, by the agency;

- Documents and materials that were before the agency at the time of the challenged decision, even if the final agency decision-maker did not specifically consider them; and
- Privileged and non-privileged documents and materials.

Where to Find the Documents and Materials That Comprise the Administrative Record

The agency employee responsible for compiling the administrative record should be reliable, careful, and prepared to provide an affidavit. The person should keep a record of where he or she searched for documents and whom he or she consulted in the process. The identified person should conduct a thorough search for compiling the whole record. They should:

- Contact all agency people, including program personnel and attorneys, involved in the final agency action and ask them to search their files and agency files for documents and materials related to the final agency action and include agency people in field offices;
- Contact agency units other than program personnel, such as congressional and correspondence components;
- Where personnel involved in the final agency action are no longer employed by the agency, search the archives for documents and materials related to the final agency action. A former employee may be contacted for guidance about where to search;
- Determine whether there are agency files relating to the final agency action. If there are such files, search them;
- If more than one agency was involved in the decisionmaking process, the lead agency should contact the other agencies to be sure the record contains all the documents and materials considered or relied on by the lead agency;
- Search a public docket room to determine whether there are relevant documents or materials.

What Documents and Materials to Include in the Administrative Record

A. Types of materials:

Documents to include in the administrative record should not be limited to paper but should include other means of communication or ways of storing or presenting information, including E-mail, computer tapes and discs, microfilm, and microfiche. See 36 C.F.R. Chapter XII, subchapter B (electronic records). Data files, graphs, charts, and handwritten notes should also be included. Do not include personal notes, meaning an individual's notes taken at a meeting or journals maintained by an individual, unless they are included in an agency file. Agency control, possession, and maintenance determine an agency file.

B. Kinds of Information:

- Include all documents and materials prepared, reviewed, or received by agency personnel and used by or available to the decision maker, even though the final decision maker did not review or know about the documents and materials;
- Include policies, guidelines, directives, and manuals;
- Include articles and books. Be sensitive to copyright laws governing duplication;
- Include information or data;
- Include communications the agency received from other agencies and from the public, and any responses to those communications. Be aware that documents concerning meetings between an agency and Office of Management and Budget (OMB) should be included but may qualify, either partially or fully, for the deliberative process privilege;

- Include documents and materials that contain information that supports or opposes the challenged agency decision;
- Exclude documents and materials that were not in existence at the time of the agency decision;
- As a rule, do not include internal "working" drafts of documents, whether or not they were superseded by a complete, edited version of the same document. Generally, include all draft documents that were circulated for comment either outside the agency or outside the author's immediate office, if changes in these documents reflect significant input into the decisionmaking process. Drafts, excluding "working" drafts, should be flagged for advice from the Department of Justice attorney or the Assistant United States Attorney (AUSA) on whether: 1) the draft was not an internal "working" draft; and 2) the draft reflects significant input into the decisionmaking process;
- Include technical information, sampling results, survey information, engineering reports or studies;
- Include decision documents;
- Include minutes of meetings or transcripts thereof; and
- Include memorializations of telephone conversations and meetings, such as a memorandum or handwritten notes, unless they are personal notes.

How to Handle Privileged Documents and Materials

Generally, the administrative record includes documents and materials that are privileged and contain protected information. However, once the record is compiled, privileged or protected documents and materials are redacted or removed from the record.

The agency should consult with the agency counsel and the Department attorney or the AUSA as to the type and the extent of the privilege(s) asserted. Be sensitive to the relevant privileges and prohibitions against disclosure including, but not limited to, attorney-client, attorney work product, Privacy Act, deliberative or mental processes, executive, and confidential business information.

If documents and materials are determined to be privileged or protected, the index of record must identify the documents and materials, reflect that they are being withheld, and state on what basis they are being withheld.

How to Organize the Administrative Record

- Organize the documents and materials in a logical and accessible way;
- Organize the documents and materials in chronological order and/or by topic;
- Separate documents and materials that do not fit into a chronological order by category, e.g., internal policies, guidelines, or manuals;
- After a Department of Justice attorney or an AUSA has had the opportunity to review the administrative record for completeness and organization, date stamp or number each item. A Department of Justice attorney or an AUSA may review the documents and materials the agency excluded from the administrative record;
- Prepare an index to the administrative record;
- Make sure the index identifies each document and material by the date stamp number or document number and includes a brief description of the document or material, for example, "memorandum dated June 5, 1997 from Mary Smith to the EPA Administrator Jones regarding June 6, 1997 meeting agenda." If a document or material is being withheld based on a privilege or prohibition, state the privilege or prohibition.

- Make sure the agency certifies the administrative record. (If the agency fails to certify the record, the government may not be able to file a motion for summary judgment.) Certification language should reflect how the agency person who was responsible for compiling the record has personal knowledge of the assembly of the administrative record. Attached are sample certificates. [Omitted] Neither a Department of Justice attorney nor an AUSA should certify the record in order to avoid the possibility of being called as a witness in the case;
- Make sure the Department of Justice attorney or the AUSA consults the local rules of the court in which the matter is pending to determine how to file the administrative record with the court. If the local rules are silent on this issue, the Department of Justice attorney or the AUSA can address the issue with the parties and the court. For example, it may be appropriate to file the index with the court and to give the parties copies of the index and the opportunity to review the record, or to file the parts of the record that the parties will rely on as grounds for their motions for summary judgment. The United States Attorney's Office in the jurisdiction in which the matter is pending should be consulted.

Important for Court to Have the Whole Administrative Record

- A court reviews the agency action based on the administrative record before the agency at the time the decision was made.
- The whole administrative record allows the court to determine whether the agency's decision complied with the appropriate APA standard of review.
- All agency findings and conclusions and the basis for them must appear in the record.
- The administrative record is the agency's evidence that its decision and its decision making comply with relevant statutory and regulatory requirements.
- A court may remand the matter where the agency's reasoning for its decision is not contained in the administrative record.

Consequences of Incomplete Administrative Record

- If the record is incomplete, the government may be permitted to complete it, but, by doing so, you also may raise questions about the completeness of the entire record.
- If the court decides the record is not complete, it should remand the matter to the agency. It may, however, allow extra-record discovery, including depositions of agency personnel, and may allow court testimony of agency personnel.
- Generally, although it may vary from circuit to circuit, courts will allow discovery when a party has proffered sufficient evidence suggesting bad faith or improprieties that may have influenced the decision-maker, or that the agency relied on substantial materials not included in the record.
- A party must make a strong showing that one of these exceptions applies before a court will allow extra-record inquiry.

Supplementation of the record

- When the administrative record fails to explain the agency's action, effectively frustrating judicial review, the court may allow the agency to supplement the record with affidavits or testimony.
- Be aware that once the government supplements the record with affidavits or testimony, the opposing party may depose your witnesses and/or submit additional affidavits or testimony.
- Be aware that if agency counsel becomes a potential witness, it may be appropriate to screen the agency counsel from participation in the litigation. ABA Model Rule of Professional Responsibility 3.7.

Conclusion

When an agency must defend a final agency action before a court, it should take great care in preparing the administrative record for that decision. It is worth the effort and may avoid unnecessary and unfortunate litigation issues later.

This page intentionally left blank.

Appendix I
Sample Tables of Contents

This page intentionally left blank.

BRAC Realignment Environmental Analysis

Table of Contents

Executive Summary (*Inserted before Table of Contents*)

Section 1.0 Purpose, Need, and Scope
- 1.1 Introduction
- 1.2 Purpose and Need
- 1.3 Scope
- 1.4 Public Involvement
- 1.5 Impact Analyses Performed
- 1.6 Framework for Decisionmaking
  - 1.5.1 BRAC Procedural Requirements
  - 1.5.2 Relevant Statutes and Executive Orders

Section 2.0 Description of the Proposed Action
- 2.1 Introduction
- 2.2 Proposed Action

Section 3.0 Alternatives
- 3.1 Introduction
- 3.2 No Action Alternative
- 3.3 Realignment Alternative
- 3.4 Additional Alternatives (*if applicable*)

Section 4.0 Affected Environment and Environmental Consequences
- 4.1 Introduction
- 4.2 Land Use
  - 4.2.1 Affected Environment
  - 4.2.2 Environmental Consequences
    - 4.2.2.1 Realignment Alternative(s)
    - 4.2.2.2 No Action Alternative
- 4.3 Aesthetics and Visual Resources
  - 4.3.1 Affected Environment
  - 4.3.2 Environmental Consequences
    - 4.3.2.1 Realignment Alternative(s)
    - 4.3.2.2 No Action Alternative
- 4.4 Air Quality
  - 4.4.1 Affected Environment
  - 4.4.2 Environmental Consequences
    - 4.4.2.1 Realignment Alternative(s)
    - 4.4.2.2 No Action Alternative
- 4.5 Noise
  - 4.5.1 Affected Environment
  - 4.5.2 Environmental Consequences
    - 4.5.2.1 Realignment Alternative(s)
    - 4.5.2.2 No Action Alternative
- 4.6 Geology and Soils

4.6.1 Affected Environment
4.6.2 Environmental Consequences
4.6.2.1 Realignment Alternative(s)
4.6.2.2 No Action Alternative
4.7 Water Resources
4.7.1 Affected Environment
4.7.2 Environmental Consequences
4.7.2.1 Realignment Alternative(s)
4.7.2.2 No Action Alternative
4.8 Biological Resources
4.8.1 Affected Environment
4.8.2 Environmental Consequences
4.8.2.1 Realignment Alternative(s)
4.8.2.2 No Action Alternative
4.9 Cultural Resources
4.9.1 Affected Environment
4.9.2 Environmental Consequences
4.9.2.1 Realignment Alternative(s)
4.9.2.2 No Action Alternative
4.10 Socioeconomics
4.10.1 Affected Environment
4.10.2 Environmental Consequences
4.10.2.1 Realignment Alternative(s)
4.10.2.2 No Action Alternative
4.11 Transportation
4.11.1 Affected Environment
4.11.2 Environmental Consequences
4.11.2.1 Realignment Alternative(s)
4.11.2.2 No Action Alternative
4.12 Utilities
4.12.1 Affected Environment
4.12.2 Environmental Consequences
4.12.2.1 Realignment Alternative(s)
4.12.2.2 No Action Alternative
4.13 Hazardous and Toxic Substances
4.13.1 Affected Environment
4.13.2 Environmental Consequences
4.13.2.1 Realignment Alternative(s)
4.13.2.2 No Action Alternative
4.14 Cumulative Effects
4.15 Mitigation Summary

Section 5.0 Conclusions (*Note: This section omitted in an EIS*)
5.1 Summary of Consequences
5.2 Conclusions

Section 6.0 List of Preparers

Section 7.0 Distribution List

Section 8.0 References

Section 9.0 Persons Consulted

Section 10.0 Acronyms and Abbreviations

Appendices

List of Figures

List of Tables

BRAC Disposal and Reuse Environmental Analysis

Table of Contents

Executive Summary (*Inserted before Table of Contents*)

Section 1.0 Purpose, Need, and Scope
- 1.1 Purpose and Need
- 1.2 Scope
- 1.3 Public Involvement
- 1.4 Framework for Disposal
  - 1.4.1 BRAC Procedural Requirements
  - 1.4.2 Relevant Statutes and Executive Orders
  - 1.4.3 Other Reuse Regulations and Guidance

Section 2.0 Description of the Proposed Action
- 2.1 Introduction
- 2.2 Proposal Implementation
- 2.3 Disposal Process
  - 2.3.1 Caretaking of Property Until Disposal
  - 2.3.2 Cleanup of Contaminated Sites
  - 2.3.3 Interim Uses
  - 2.3.4 Real Estate Disposal Process

Section 3.0 Alternatives
- 3.1 Introduction
- 3.2 Disposal Alternatives
  - 3.2.1 Accelerated Disposal Alternative
  - 3.2.2 Traditional Disposal Alternative
  - 3.2.3 Encumbrances Applicable to Either Disposal Alternative
- 3.3 Caretaker Status Alternative
- 3.4 No Action Alternative
- 3.5 Reuse Alternatives
  - 3.5.1 Development of Reuse Alternatives
  - 3.5.2 Land Use Intensity Categories Described
  - 3.5.3 Baseline Land Use Intensity
  - 3.5.4 Local Reuse Plan
- 3.6 Alternatives Not To Be Evaluated in Detail
  - 3.6.1 Medium-High Intensity Reuse
  - 3.6.2 High Intensity Reuse

Section 4.0 Affected Environment and Environmental Consequences
- 4.1 Introduction
- 4.2 Land Use
  - 4.2.1 Affected Environment
  - 4.2.2 Environmental Consequences
    - 4.2.2.1 Accelerated Disposal
    - 4.2.2.2 Traditional Disposal
    - 4.2.2.3 Caretaker Status

4.2.2.4 No Action Alternative
4.2.2.5 Reuse Intensity 1
4.2.2.6 Reuse Intensity 2
4.2.2.7 Reuse Intensity 3
4.3 Aesthetics and Visual Resources
4.3.1 Affected Environment
4.3.2 Environmental Consequences
4.3.2.1 Accelerated Disposal
4.3.2.2 Traditional Disposal
4.3.2.3 Caretaker Status
4.3.2.4 No Action Alternative
4.3.2.5 Reuse Intensity 1
4.3.2.6 Reuse Intensity 2
4.3.2.7 Reuse Intensity 3
4.4 Air Quality
4.4.1 Affected Environment
4.4.2 Environmental Consequences
4.4.2.1 Accelerated Disposal
4.4.2.2 Traditional Disposal
4.4.2.3 Caretaker Status
4.4.2.4 No Action Alternative
4.4.2.5 Reuse Intensity 1
4.4.2.6 Reuse Intensity 2
4.4.2.7 Reuse Intensity 3
4.5 Noise
4.5.1 Affected Environment
4.5.2 Environmental Consequences
4.5.2.1 Accelerated Disposal
4.5.2.2 Traditional Disposal
4.5.2.3 Caretaker Status
4.5.2.4 No Action Alternative
4.5.2.5 Reuse Intensity 1
4.5.2.6 Reuse Intensity 2
4.5.2.7 Reuse Intensity 3
4.6 Geology and Soils
4.6.1 Affected Environment
4.6.2 Environmental Consequences
4.6.2.1 Accelerated Disposal
4.6.2.2 Traditional Disposal
4.6.2.3 Caretaker Status
4.6.2.4 No Action Alternative
4.6.2.5 Reuse Intensity 1
4.6.2.6 Reuse Intensity 2
4.6.2.7 Reuse Intensity 3
4.7 Water Resources
4.7.1 Affected Environment
4.7.2 Environmental Consequences
4.7.2.1 Accelerated Disposal
4.7.2.2 Traditional Disposal
4.7.2.3 Caretaker Status
4.7.2.4 No Action Alternative

4.7.2.5 Reuse Intensity 1
4.7.2.6 Reuse Intensity 2
4.7.2.7 Reuse Intensity 3
4.8 Biological Resources
4.8.1 Affected Environment
4.8.2 Environmental Consequences
4.8.2.1 Accelerated Disposal
4.8.2.2 Traditional Disposal
4.8.2.3 Caretaker Status
4.8.2.4 No Action Alternative
4.8.2.5 Reuse Intensity 1
4.8.2.6 Reuse Intensity 2
4.8.2.7 Reuse Intensity 3
4.9 Cultural Resources
4.9.1 Affected Environment
4.9.2 Environmental Consequences
4.9.2.1 Accelerated Disposal
4.9.2.2 Traditional Disposal
4.9.2.3 Caretaker Status
4.9.2.4 No Action Alternative
4.9.2.5 Reuse Intensity 1
4.9.2.6 Reuse Intensity 2
4.9.2.7 Reuse Intensity 3
4.10 Socioeconomics
4.10.1 Affected Environment
4.10.2 Environmental Consequences
4.10.2.1 Accelerated Disposal
4.10.2.2 Traditional Disposal
4.10.2.3 Caretaker Status
4.10.2.4 No Action Alternative
4.10.2.5 Reuse Intensity 1
4.10.2.6 Reuse Intensity 2
4.10.2.7 Reuse Intensity 3
4.11 Transportation
4.11.1 Affected Environment
4.11.2 Environmental Consequences
4.11.2.1 Accelerated Disposal
4.11.2.2 Traditional Disposal
4.11.2.3 Caretaker Status
4.11.2.4 No Action Alternative
4.11.2.5 Reuse Intensity 1
4.11.2.6 Reuse Intensity 2
4.11.2.7 Reuse Intensity 3
4.12 Utilities
4.12.1 Affected Environment
4.12.2 Environmental Consequences
4.12.2.1 Accelerated Disposal
4.12.2.2 Traditional Disposal
4.12.2.3 Caretaker Status
4.12.2.4 No Action Alternative
4.12.2.5 Reuse Intensity 1

4.12.2.6 Reuse Intensity 2
4.12.2.7 Reuse Intensity 3
4.13 Hazardous and Toxic Substances
4.13.1 Affected Environment
4.13.2 Environmental Consequences
4.13.2.1 Accelerated Disposal
4.13.2.2 Traditional Disposal
4.13.2.3 Caretaker Status
4.13.2.4 No Action Alternative
4.13.2.5 Reuse Intensity 1
4.13.2.6 Reuse Intensity 2
4.13.2.7 Reuse Intensity 3
4.14 Cumulative Effects
4.15 Mitigation Summary

Section 5.0 Conclusions (*Note: This section omitted in an EIS*)
5.1 Summary of Consequences
5.2 Conclusions

Section 6.0 List of Preparers

Section 7.0 Distribution List

Section 8.0 References

Section 9.0 Persons Consulted

Section 10.0 Acronyms and Abbreviations

Appendices

List of Figures

List of Tables

This page intentionally left blank.

Appendix J
Sample DOPAA

This page intentionally left blank.

Description of Proposed Action and Alternatives

Environmental Assessment for
Disposal and Reuse of Stratford Army Engine Plant, Connecticut

1.0 Purpose, Need, and Scope

1.1 Purpose and Need

The Department of the Army is realigning and closing installations to produce a more efficient and cost effective base structure for achieving national military objectives.

Recommendations of the Defense Base Closure and Realignment Commission made in conformance with the provisions of the Defense Base Closure and Realignment Act of 1990 (Base Closure Act), Public Law 101-510, as amended, require the closure of Stratford Army Engine Plant (SAEP), Connecticut. The installation is excess to Army needs and will be disposed of according to applicable laws, regulations, and national policy. Pursuant to the National Environmental Policy Act of 1969 (NEPA) and its implementing regulations, the Army has prepared this environmental assessment (EA) to evaluate the environmental and socioeconomic impacts of disposing of the property and reasonable, foreseeable reuse alternatives.

In accordance with the Base Closure and Realignment Act amendments contained in Title XXX of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107-107), the Secretary of Defense submitted a consolidated Department of Defense (DoD) list of recommended actions to an independent commission appointed by the President and confirmed by the Senate. The 2005 Defense Base Closure and Realignment Commission (Commission) evaluated the recommendations and sent its findings to the President, who forwarded the recommendations to Congress on September 23, 2005. The Base Closure Act provides that, unless disapproved by Congress within a specified period, the recommendations are to be implemented. In the absence of Congressional disapproval, the Commission's recommendations became binding on November 9, 2005. Action with respect to SAEP is being implemented as required by the Base Closure Act.

In its 2005 report to the President, the Commission recommended closure of SAEP. Pursuant to that recommendation, all Army missions at SAEP must cease or be relocated. Following closure, the property will be excess to Army needs. Accordingly, the Army proposes to dispose of its real property interests at SAEP. The proposed action of disposal is more fully described in Section 2.0. The purpose of the proposed action is to carry out the Commission's recommendations. The proposed action supports the Army's need to comply with the Base Closure Act and to transfer the excess property to new owners.

1.2 Scope

This EA has been developed in accordance with NEPA and implementing regulations issued by the Council on Environmental Quality (40 CFR 1500—1508) and the Army (32 CFR Part 651). Its purpose is to inform decision-makers and the public of the likely environmental consequences of the proposed action and alternatives. The EA identifies, documents, and evaluates the potential environmental effects of property disposal and future uses of SAEP.

The Base Closure Act specifies that NEPA does not apply to actions of the President, the Commission, or DoD except "(i) during the process of property disposal, and (ii) during the process of relocating

functions from a military installation being closed or realigned to another military installation after the receiving installation has been selected but before the functions are relocated."[5]

The Commission's deliberations and decision as well as the need for closing or realigning a military installation are also exempt from NEPA.[6] Accordingly, this EA does not address the need for closure or realignment. NEPA does, however, apply to disposal of excess property as a direct Army action and to reuse of such property as an indirect effect of disposal; therefore, those actions are addressed in this document.

Two disposal alternatives (accelerated and traditional) are identified in the EA, as well as a caretaker status alternative (which might arise prior to disposal) and the no action alternative. Three reuse scenarios, based on low, medium-low, and medium intensity uses, encompass the community's reuse plan and are evaluated as secondary actions. These alternatives and scenarios, and the rationale for their selection, are further described in Section 3.0.

An interdisciplinary team of environmental scientists, biologists, planners, economists, engineers, archeologists, historians, and military technicians performed the impact analysis. The team identified the affected resources and topical areas, analyzed the proposed action against the existing conditions, and determined the relevant beneficial and adverse affects associated with the action. Section 4.0, Environmental Conditions and Consequences, describes the baseline conditions of the affected resources and other areas of special interest at SAEP as of November 2005. The environmental consequences of disposal and reuse are also described in Section 4.0. Conclusions regarding potential environmental and socioeconomic effects of the proposed action are presented in Section 5.0.

1.3 Public Involvement

The Army invites full public participation in the NEPA process to promote open communication and better decisionmaking. All persons and organizations that have a potential interest in the proposed action, including minority, low-income, disadvantaged, and Native American groups are urged to participate in the NEPA environmental analysis process.

Public participation opportunities with respect to the proposed action and this EA are guided by the provisions of 32 Code of Federal Regulations (CFR) Part 651, *Environmental Analysis of Army Actions*. The final EA and a draft Finding of No Significant Impact, if appropriate, will be made available for a 30-day comment period. During this time, the Army will consider any comments submitted by agencies, organizations, or members of the public on the proposed action, the EA, or the draft Finding of No Significant Impact. At the conclusion of the comment period, the Army may, if appropriate, execute the Finding of No Significant Impact and proceed with the proposed action. If it is determined that implementation of the proposed action would result in significant impacts, the Army will publish in the *Federal Register* a notice of intent to prepare an environmental impact statement.

[5] Public Law 101-510, Sec. 2905(c)(2)(A). The Base Closure Act further specifies in Section 2905(c)(2)(B) that in applying the provisions of NEPA to the process, the Secretary of Defense and the secretaries of the military departments concerned do not have to consider (i) the need for closing or realigning the military installation which has been recommended for closure or realignment by the Commission, (ii) the need for transferring functions to any military installation, or (iii) military installations alternative to those recommended or selected.
[6] Public Law 101-510, Sec. 2905(c)(2).

1.4 Framework for Disposal

Numerous factors contribute to Army decisions relating to disposal of installation property. The Base Closure Act triggers action under several other federal statutes and regulations. In addition, the Army must adhere to specific rules and procedures pertaining to transfer of federal property as well as executive branch policies. There are also practical concerns such as identifying base assets to allow for disposal in a manner most consistent with statutory and regulatory guidance. These matters are further discussed below.

1.4.1 BRAC Procedural Requirements

Statutory Provisions. The two laws that govern real property disposal in BRAC are the Defense Base Closure and Realignment Act of 1990 (Public Law 101-510, as amended) and the Federal Property and Administrative Services Act of 1949 (Title 40 of the United States Code [U.S.C.], Sections 471 and following, as amended). The latter is implemented by the Federal Property Management Regulations at Title 41 of the Code of Federal Regulations (CFR), Subpart 101-47. The disposal process is also governed by 32 CFR Part 174 (*Revitalizing Base Closure Communities*) and 32 CFR Part 175 (*Revitalizing Base Closure Communities—Base Closure Community Assistance*), regulations issued by DoD to implement BRAC law and matters known as the Pryor Amendment and the President's Program to Revitalize Base Closure Communities (see below).

Screening Process. Having been recommended for closure, the SAEP property has been determined to be excess to Army needs and, therefore, subject to specific procedures to identify potential subsequent public sector users. That is, the property has been offered to a hierarchy of potential users through procedures called the screening process. This process and its results to date are discussed in Section 2.3.4.

The President's Program to Revitalize Base Closure Communities. On July 2, 1993, the President announced a major new program to speed the economic recovery of communities near closing military installations. The President pledged to give top priority to early use of each closing installation's most valuable assets. A principal goal of the initiative was to provide for rapid redevelopment and creation of new jobs. In announcing the program, the President outlined the five parts of his community revitalization plan:

- Job-centered property disposal that puts local economic redevelopment first
- Fast-track environmental cleanup that removes delays while protecting human health and the environment
- Appointment of transition coordinators at installations slated for closure
- Easy access to transition and redevelopment help for workers and communities
- Larger economic development planning grants to base closure communities

The Army is fully committed to the President's Program to Revitalize Base Closure Communities. A Base Transition Coordinator has been appointed for the SAEP property, and the Army has taken an active role in providing assistance to local officials in the community.

The Pryor Amendment. Congress endorsed the President's plan by enacting the Base Closure Communities Assistance Act (contained in Title XXIX, Public Law 103-160), popularly known as the "Pryor Amendment" in recognition of its principal legislative sponsor. This act, as amended, provides

legal authority to carry out the President's plan by granting conveyances of real and personal property at or below fair market value to local redevelopment authorities (LRAs). Specifically, the act created a new federal property conveyance mechanism, the economic development conveyance (EDC). An EDC can help induce a market for the property and thereby enhance economic recovery and generate jobs. Flexibility is given to the military departments and the communities to negotiate the terms and conditions of the EDC. A detailed application, including the approved community redevelopment plan, serves as the basis for determining an LRA's eligibility for an EDC. The DoD's regulations implementing the Pryor Amendment appear at 32 CFR Parts 174 and 175. The EDC is further described in Section 2.3.4.

1.4.2 Relevant Statutes and Executive Orders

A decision on whether to proceed with the proposed action rests on numerous factors such as mission requirements, schedule, availability of funding, and environmental considerations. In addressing environmental considerations, the Army is guided by several relevant statutes (and their implementing regulations) and Executive Orders that establish standards and provide guidance on environmental and natural resources management and planning. These include, but are not limited to, the Clean Air Act, Clean Water Act, Noise Control Act, Endangered Species Act, National Historic Preservation Act, Archaeological Resources Act, Resource Conservation and Recovery Act, Toxic Substances Control Act, Executive Order 11988 (*Floodplain Management*), Executive Order 11990 (*Protection of Wetlands*), Executive Order 12088 (*Federal Compliance with Pollution Control Standards*), Executive Order 12898 (*Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*), and Executive Order 13045 (*Protection of Children from Environmental Health Risks and Safety Risks*). Where useful to better understanding, key provisions of these statutes and Executive Orders are described in more detail in the text of the EA. Summaries of these authorities are provided in Appendix A [*omitted*].

1.4.3 Other Reuse Regulations and Guidance

DoD's Office of Economic Adjustment published its *Community Guide to Base Reuse* in May 1995. The guide describes the base closure and reuse processes that have been designed to help with local economic recovery and summarizes the many assistance programs administered by DoD and other agencies. DoD published its *DoD Base Reuse Implementation Manual* to serve as a handbook for the successful execution of reuse plans. DoD and the Department of Housing and Urban Development have published guidance (at 32 CFR Part 175) required by Title XXIX of the National Defense Authorization Act for Fiscal Year 1994. The guidance establishes policy and procedures, assigns responsibilities, and delegates authority to implement the President's Program to Revitalize Base Closure Communities (July 2, 1993), as endorsed through Congressional enactment of the Pryor Amendment (see above).

2.0 Description of the Proposed Action

2.1 Introduction

The proposed action (Army primary action) is to dispose of the excess property generated by the BRAC-mandated closure of SAEP, including interim leases and cleanup of contaminated sites. Redevelopment of SAEP by others is a secondary action resulting from disposal.

SAEP is in Stratford, Connecticut on the Stratford Point Peninsula in the northeast corner of Fairfield County (Figure 2-1 [*omitted*]). The installation consists of about 75 acres of improved land, with riparian rights extending over intertidal flats of the Housatonic River. SAEP is a government-owned, contractor-operated installation. It has 57 buildings (providing about 1.7 million square feet of space) and 25 acres of parking lots (Figure 2-2 [*omitted*]). In the past, the facility has been used to manufacture tank, aircraft,

and watercraft engines. Most recently, it has produced military and commercial turbine engines and spare parts for tanks, aircraft, and watercraft, with primary production being devoted to M1 Abrams tank engines and spare parts. For local zoning purposes, the SAEP property is identified as light industrial. Adjacent properties are zoned for light industrial, business, commercial, and residential uses.

2.2 Proposal Implementation

Army disposal action. The Army proposes to dispose of the 75 acres of improved lands and riparian rights adjacent to the installation. Identification of recipients of the property being disposed of at SAEP is governed by expressions of interest submitted by potential recipients in response to the Army's Declaration of Excess Property and Determination of Surplus Property. As a result of the screening process (see Section 2.3.4), the installation would be available for transfer or conveyance to and subsequent reuse by the SAEP Local Redevelopment Authority (LRA) or other entities.

Two aspects of disposal of SAEP are especially noteworthy.

- 1943 fill area. In 1943, the state of Connecticut granted the plant property owner permission to fill an estimated 8 to 10 acres of wetlands below the mean high water mark along the Housatonic River. In 1951, the Air Force brought an eminent domain action to obtain title to the plant property. The state of Connecticut claims title to the filled area because the 1943 permit specifically reserved title in the underlying land in the state. The Army and the state of Connecticut, agreeing there is a cloud on the title to the filled area, are working together to enable the Army to grant good title to the property at the time of transfer or conveyance.
- Transfer of riparian rights. The Army holds riparian rights along the Housatonic River. These riparian rights would be transferred to the same entity obtaining title to the upland, waterfront property.

Community reuse. The LRA for the town of Stratford has adopted a comprehensive reuse plan in its SAEP Master/Redevelopment Plan and Implementation Strategy, an extract of which is provided at Appendix B [*omitted*]. The reuse plan focuses on achieving three primary goals:

- The creation of new employment opportunities that will also contribute to the diversification of the community's employment base.
- The redevelopment of SAEP as a major component in the stabilization and diversification of the town's tax base.
- Redevelopment of SAEP in a fiscally responsible and prudent manner.

The community's adoption of a preferred land use plan for SAEP is based on consideration of four alternatives for redevelopment of the site, ranging from reuse of existing structures to comprehensive site redevelopment. Alternative 1 would be redevelopment through industrial reuse of existing structures. Alternative 2 would consist of industrial reuse and limited new development. Alternative 3 would entail major new office and research and development space with limited reuse of existing structures. Alternative 4 would be comprehensive site redevelopment. In this last alternative, most of the buildings at the site would be demolished to enable new construction on independent parcels supporting corporate office and research and development uses. The town of Stratford ultimately decided to proceed with Alternative 1 because adaptive reuse of existing structures could allow it to develop a more viable business plan, a necessary component of an economic development conveyance application.

Implementation. Under the Base Closure Act, closure is required no later than the end of the 6-year period beginning on September 23, 2006, the date on which the President transmitted his report to Congress containing the recommendations of the BRAC Commission.

The BRAC process of property disposal includes predisposal activities and real estate disposal, which in turn allow for subsequent reuse development. Predisposal activities include contaminated site cleanup, interim uses, and caretaking of vacated facilities until disposal. In transferring or conveying property at SAEP, the Army would identify encumbrances consistent with requirements of law, agency negotiation, and protection of environmental values. Section 3.2.3 provides details on the encumbrances expected to exist at the time of transfer.

2.3 Disposal Process

2.3.1 Caretaking of Property Until Disposal

Prior to disposal, the Army may find it necessary to place SAEP in caretaker status for an indefinite period. During such time, the Army would employ two levels of maintenance.

- *Initial Maintenance.* From the time of operational closure until conveyance of the property, the Army would provide for maintenance procedures to preserve and protect those facilities and items of equipment needed for reuse in an economical manner that facilitates redevelopment. In consultation with the LRA and consistent with available funding, the Army would determine required levels of maintenance of facilities and equipment for an initial period following operational closure. The levels of maintenance during this initial period would not exceed maintenance standards in effect before approval of the closure decision. Maintenance would not include any property improvements such as construction, alteration, or demolition. In an appropriate case, however, demolition could occur if required for health, safety, or environmental reasons or if it were economically justified in lieu of continued maintenance.

- *Long-term Maintenance.* If property were not transferred within an agreed-to period of time and the LRA were not actively seeking reuse opportunities for available facilities, the Army would reduce maintenance levels to the minimum level for surplus government property required by 41 CFR 101-47.402, 41 CFR 101-47-4913, and Army Regulation 420-70 (*Buildings and Structures*). Long-term maintenance would not be focused on keeping the facilities in a state of repair to permit rapid reuse. Rather, maintenance during this period would consist of minimal activities intended primarily to ensure security and to avoid deterioration. This reduced level of maintenance would continue indefinitely until disposal. Activities that would occur during this maintenance period are identified in Section 3.2.

2.3.2 Cleanup of Contaminated Sites

Past operations at SAEP have resulted in the release of various types of contaminants. The primary contaminants of concern at SAEP include petroleum hydrocarbons, solvents, and heavy metals. A Resource Conservation and Recovery Act (RCRA) Facilities Assessment identified 31 areas that require remediation or further investigation because hazardous waste or hazardous constituents might have been managed or are in the vicinity where releases might have occurred. These areas of concern are more fully described in Section 4.9.

In preparing to dispose of the SAEP property, the Army will follow the provisions of Section 120(h)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), which require a covenant warranting that all remedial action necessary to protect human health and the environment

with respect to any such substances remaining on the property has been taken before the date of transfer. All such remedial action is considered to have been taken if the construction and installation of an approved remedial design has been completed and the remedy has been demonstrated to the Administrator of EPA to be operating properly and successfully.[7]

Under the Community Environmental Response Facilitation Act (CERFA), federal agencies are required to identify expeditiously real property that offers the greatest opportunity for immediate reuse and redevelopment. CERFA does not mandate that the Army transfer real property identified as available; rather, it is the first step in satisfying the objective of identifying real property where no CERCLA-regulated hazardous substances or petroleum products were disposed of or released. To these ends, the Army's final Environmental Condition of Property (ECP) report identifies areas at SAEP where release or disposal of hazardous substances or petroleum products or their derivatives has occurred. The ECP report also identifies non-CERCLA-related environmental or safety issues (i.e., asbestos, lead-based paint [LBP], radon, polychlorinated biphenyls [PCBs], radionuclides, and unexploded ordnance [UXO]) that would limit or preclude the transfer of property for unrestricted use; completed or ongoing removal or remedial actions taken at the installation; and possible sources of contamination on adjacent properties that could migrate to the SAEP real property. The ECP report further serves as a database describing environmental conditions related to remediation issues and is a major source for information in developing a Finding of Suitability to Lease (FOSL) for interim leases and a Finding of Suitability for Transfer (FOST).

2.3.3 Interim Uses

Before disposal, the Army may execute interim leases to facilitate state and local economic adjustment efforts and to encourage economic redevelopment. Pending issuance of a Finding of No Significant Impact regarding the NEPA analysis for disposal and reuse of SAEP, the Army will not make commitments that would significantly affect the quality of the human environment or irreversibly alter the environment in a way that precludes any reasonable alternative for disposal of the property. Hence, leases in furtherance of conveyance before completion of the NEPA analysis of disposal and reuse and issuance of a ROD will not be considered. The Army may, however, enter into an interim lease having a duration beyond the expected completion date of the NEPA analysis of disposal and reuse of the installation. In such a case, the Army will consult with the SAEP LRA before entering into the lease. Such interim leases allow limited use of the property and facilities such that no reasonable reuse options would be foreclosed before the publication of the conclusions of the basewide disposal NEPA analysis.

2.3.4 Real Estate Disposal Process

Disposal as a Package or in Parcels. Army policy provides that, upon completion of all required hazardous substance cleanup activities and cleanup that may be required for other environmental conditions such as asbestos, fuel, or other substances, property subject to disposal under BRAC should generally be disposed of as a single entity. Alternatively, the Army may dispose of the SAEP property in

[7] Section 334 of the National Defense Authorization Act for Fiscal Year 1997 enlarges authority for transfer of property before completion of all remedial action. To make such an earlier transfer, a federal agency must give public notice and provide the public the opportunity to submit written comments. Moreover, an agency must provide assurances that the deed or other agreement used to govern property transfer will provide that restrictions will be placed on use necessary to ensure required remedial investigations, actions, or oversight activities will not be disrupted; provide that all remedial action will be taken and will identify schedules for investigation and completion; and provide that the federal agency responsible for the property subject to transfer will submit a budget request to the Director of the Office of Management and Budget that adequately addresses schedules, subject to congressional authorizations and appropriations.

parcels. After identification of parcels upon completion of cleanup, disposal may occur to meet objectives related to reuse goals, tax revenue generation, and job creation.

Disposal Process. Methods available to the Army for property disposal include public benefit discount conveyance, economic development conveyance, negotiated sale, and competitive sale.

- *Public benefit discount conveyance.* State or local government entities may obtain property at less than fair market value when sponsored by a federal agency for uses that would benefit the public such as education, parks and recreation, wildlife conservation, or public health.
- *Economic development conveyance.* The 1994 Defense Authorization Act provides for conveyance of property to an LRA at or below fair market value using flexible payment terms. The EDC is designed to promote economic development and job creation in the local community. An EDC is not intended to supplant other federal property disposal authorities and cannot be used if the proposed reuse can be accomplished through another authority. If certain criteria are met for a rural installation, an EDC may be made at no cost. To qualify for an EDC, the LRA must submit a request to the Department of the Army describing its proposed economic development and job creation program.
- *Negotiated sale.* The Army would negotiate the sale of the property to state or local governmental entities including tribal governments or private parties at fair market value.
- *Competitive sale.* Sale to the public would occur through either an invitation for bids or an auction.

DoD and Federal Agency Screening. The Army began the screening process by offering its excess property to other DoD agencies and federal agencies for their potential use. That screening process for the property resulted in no requests for its use by other agencies.

LRA Screening. Pursuant to the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, property that is surplus to the federal government's needs is to be screened through an LRA's soliciting notices of interest from state and local governments, representatives of the homeless, and other interested parties. An LRA's outreach efforts to potential users or recipients of the property include working with the Department of Housing and Urban Development and other federal agencies that sponsor public benefit transfers under the Federal Property and Administrative Services Act. The LRA's reuse plan incorporates the notices of interest submitted to the LRA and reflects an overall reuse strategy for the installation.

Public Agency Screening. Consistent with the Federal Property and Administrative Services Act, screening notices have been sent to federal agencies that approve or sponsor public benefit conveyances and appropriate state and local agencies in the vicinity of the property. The Army initiated this screening after coordination with the LRA. In response to this screening, the Army received six requests for transfer of property:

- Park use. On behalf of the town of Stratford, the Department of the Interior requested transfer of 15.7 acres for use as a park. This use, coordinated with the LRA, is addressed in the reuse plan.
- Educational museum. On behalf of the town of Stratford, the Department of Education requested transfer of 7.5 acres for use as an educational museum. This use, coordinated with the LRA, is addressed in the reuse plan.

- Historic monument. On behalf of the town of Stratford, the Department of the Interior requested transfer of 7.5 acres for use as a historic monument. This use, coordinated with the LRA, is addressed in the reuse plan. Like the preceding request for an educational museum, this request pertains to Building 6 and areas adjacent to it.
- Educational museum. On behalf of the Connecticut Aerospace Hall of Fame and Museum, Inc., the Department of Education requested transfer of 21.6 acres for use as an educational museum. This use is addressed in the reuse plan but only to the extent pertaining to 7.5 acres. Like the preceding requests, it concerns Building 6 and adjacent areas.
- Museum. On behalf of the Connecticut Aerospace Hall of Fame and Museum, Inc., the Department of the Interior requested 21.6 acres for use as a museum. This request is similar to the immediately preceding one.
- School, classroom, and educational purposes. On behalf of Connecticut Community Technical Colleges, the Department of Education requested transfer of 12,000 to 15,000 square feet of space in Building 2 for educational uses. This use is not addressed in the LRA's reuse plan.

Because certain of the foregoing requests are for use of the same property by different entities, the Army will consult with the LRA and, if found necessary, enter negotiations with various entities to determine appropriate courses of action for transfer or disposal of the SAEP property.

3.0 Alternatives

3.1 Introduction

This section addresses alternatives to the Army's primary action of property disposal and to the secondary action of property reuse by other entities.

The Army has identified two disposal alternatives (accelerated and traditional), a caretaker status alternative, and the no action alternative. Three reuse scenarios, based on low, medium-low, and medium intensity uses, encompass the community's reuse plan and are evaluated as secondary actions. Future reuse of surplus SAEP property is analyzed in the context of land use intensity categories, as described in Section 3.4.2. The land use intensity-based scenarios are used to inform Army decision makers and the public of environmental impacts expected to occur given the reasonable range of reuses future property owners might implement. The SAEP LRA's reuse plan is the primary factor in development of the proposed action, reuse alternatives, and effects analysis in the Army's NEPA process for the disposal action. Consideration of the reuse plan as part of the proposed federal action aids both the community and the Army in achieving informed decision making and consensus on redevelopment at SAEP.

The Army's preference is accelerated disposal alternative. The Army expresses no preference with respect to reuse scenarios because decisions implementing reuse will be made by other entities.

3.2 Disposal Alternatives

Pursuant to the Base Closure Act and the 2005 BRAC Commission's recommendation pertaining to SAEP, continuation of operations at SAEP is not feasible. There is no alternative to closure without further legislative action. As discussed in Section 2.0, the Army is acting to implement BRAC 2005 by disposing of surplus property. Interim actions include cleaning up hazardous substance contamination, caring for vacated facilities, and, as circumstances arise, making interim leasing arrangements. Disposal alternatives available for analysis in this EA are accelerated disposal and traditional disposal. This subsection describes these alternatives.

3.2.1 Accelerated Disposal Alternative

Under this alternative, the Army would take advantage of various property transfer and disposal methods that allow the reuse of the property to occur before environmental remedial action has been taken. One of these methods would be to lease the property to a non-Army entity. For this, a finding of suitability to lease would be prepared (see Section 2.3.3). Another method would be to transfer the property to another federal agency and arrange for it to be responsible for all environmental response. Another possibility would be to defer the requirement to complete environmental cleanup and allow an early transfer of the property. Such deferral would require the concurrence of environmental authorities and the governor of the affected state. The property must be suitable for the new owner's intended use, and that use must be consistent with protection of human health and the environment. Another method would be to transfer the property to a new owner who agrees to perform all environmental remediation, waste management, and environmental compliance activities that are required for the property under Federal and state requirements.

3.2.2 Traditional Disposal Alternative

Under the BRAC law, the Army is required to close all military installations recommended for closure by the BRAC Commission. The Army is also given broad authority to transfer the property to other government agencies or to dispose of it to non-government organizations. Under this alternative, the Army would transfer or dispose of property once environmental remediation and other environmental clearance is complete for individual parcels of the installation. The Army is required under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) to identify speedily uncontaminated property. Uncontaminated property is defined as property on which no hazardous substances and no petroleum products or their derivatives were known to have been released or disposed of. Such property would be available for transfer or disposal fairly quickly. For property on which hazardous substances were stored for one year or more, known to have been released, or disposed of, other provisions apply. The Army must be able to certify that all required environmental action necessary to protect human health or the environment has been taken before the transfer or disposal. Transfer of property is allowed if a long-term environmental remedy is shown to be operating properly and successfully. Some environmental remedial actions may take a long time to be selected, approved, and implemented. Because of that, there may be a prolonged period under this alternative during which parcels are not available for transfer or disposal.

3.2.3 Encumbrances Applicable to Either Disposal Alternative

The Army's methodology to ensure environmentally sustainable redevelopment of BRAC disposal property identifies natural and man-made resources that must be used wisely or protected after ownership transfers out of federal control. The Army develops this information from the environmental baseline information early in the NEPA process and provides it to the LRA with the recommendation that the reuse plan consider protecting these resources. This methodology describes these valuable resources plus any other conditions that might influence reuse. Using this methodology, the LRA develops a reuse plan that satisfies community redevelopment goals and objectives while achieving a high environmental standard.

Consistent with this methodology and as part of the disposal process, the Army might find it necessary to impose legal constraints, as part of disposal, to protect environmental values, to meet requirements of federal law, to carry out agreements reached in negotiations with regulatory agencies, or to address specific Army needs. Typical encumbrances that the Army might place on disposal include the protection and preservation of threatened and endangered species, jurisdictional wetlands, critical habitat, historic properties and sites, archeological sites, legacy resources, access to remediation sites, and retention of

easements and utility/infrastructure rights-of-way. Conditions of special hazardous materials, such as asbestos-containing material, lead-based paint, radon, polychlorinated biphenyls, and radiological material, require specific handling. Such conditions may result in encumbrances, but usually can be handled without limiting redevelopment. Other types of conditions that might be identified to the LRA as potentially limiting use but are not identified as legal encumbrances include such matters as excessive slope areas, poor construction soil conditions, a high water table, overflow easements, and heavy rock outcrops. Either of the preceding disposal alternatives would be accompanied by identification of encumbrances.

Types of Encumbrances. Five major categories of encumbrances can be identified:

- *Easements and rights-of-way*. Real estate may be burdened with utility system, other infrastructure-related, roadway, or access easements and rights-of-way.
- *Use restrictions*. Activities on property may be limited by existing conditions or in recognition of adjacent land uses. For example, use of a former landfill site would preclude ground disturbance of a clay cap but could otherwise permit passive uses such as recreation. The presence of unexploded ordnance would preclude many uses of a parcel because of the potential safety hazards. In other instances, restrictive covenants could impose or maintain buffer zones between incompatible uses. Use restrictions may also require that transferees of property take certain actions (e.g., remediate asbestos-containing materials or lead-based paint prior to use of buildings for residential purposes) or refrain from certain actions (e.g., prohibit use of on-site groundwater pending completion of cleanup activities).
- *Habitat and wetlands protection*. The presence of federally listed threatened or endangered species of wildlife, plants, or wetlands may constrain unlimited use of property.
- *Historic building or archeological site protection.* Negotiated terms of transfer or conveyance may result in requirements for new owners to maintain the status quo of historic buildings or archeological sites or may impose a requirement for consultation with the State Historic Preservation Office prior to any actions affecting such resources.
- *Water rights*. Protective covenants may be required to protect existing well fields or aquifers.

The Army's identification and imposition of encumbrances takes into consideration opportunities for the protection and preservation of environmental values, as well as the requirements of federal law and specific Army requirements. Consistent with the stewardship principles by which it operates its installations, the Army has a vital interest in perpetuating important resource protections, which in some cases the Army is able to do by use of encumbrances. Identification of encumbrances reflects the Army's objective of returning property to public and private sector use as soon as possible in a manner that will result in continued stewardship of environmental resources, protection of public health and safety, and promotion of Army and reuse interests.

Encumbrances Identified at SAEP. The following specific encumbrances would be expected to apply at the time of transfer or conveyance of the SAEP property:

- *Asbestos-containing material*. Ongoing surveys at SAEP reveal the presence of asbestos-containing material (ACM) in pipe wrap insulation, pipe gaskets, wiring insulation, transite wallboard, and floor tile. Before transfer or conveyance, the Army would remove or encapsulate all friable asbestos posing a risk to human health. Transfer or conveyance documents would notify new owners or lessees of the property that they would be responsible for any future

remediation of asbestos found to be necessary. Appendix C [*omitted*] shows the notification the Army would typically provide.

- *Easement for air navigation.* Improvements at the Sikorsky Memorial Airport would relocate Runway 6-24 and create a runway safety area at the northeast end of Runway 6-24. These actions would lead to consideration of FAA regulations at 14 CFR Part 77, which prescribe standards for determining obstructions to air navigation. Structures that exceed specified heights at specified distances from runways and other designated areas are deemed obstructions to air navigation. At the time of property transfer, the Army could include in the conveyance documents limitations on future construction of buildings or other structures in the vicinity of the airport. Also, in consultation with the FAA, the Army's conveyance document could prohibit emissions of electromagnetic radiation, installation of nonshielded lighting devices, or other activities that could interfere with air navigation.
- *Easement for public access.* The Army's disposal action would be undertaken in a manner that would ensure consistency with the Connecticut Coastal Management Program. An important aspect of that program is the assurance of water-dependent uses of waterfront properties, and a principal means of achieving water-dependent use is through the provision of public access. The Army recognizes that the community's reuse plan envisions a waterfront park along SAEP's frontage on the Housatonic River. To meet the Army's obligation for consistency with the state's program, however, the Army would include in conveyance documents, as a condition of acceptance of title, an affirmative obligation on the part of the transferee to provide public access to the Housatonic River. The Army would further require that the public access granted by the property recipient would have to meet regulatory standards established by the state of Connecticut for public use of waterfront property.
- *Easement for public park.* In the event the town of Stratford withdraws its request for a public benefit conveyance of 15.7 acres for a park, or other federal agencies fail or decline to sponsor a public benefit conveyance enabling establishment of a park, the Army would include in its conveyance document a requirement for establishment of a public park of not less than 15 acres along the Housatonic River. The Army has no reason to expect that the town of Stratford's request for a public benefit conveyance would not be approved and executed. The Army recognizes its independent obligation to ensure consistency with the Connecticut Coastal Management Program and therefore would resort to this encumbrance as a reserve mechanism to ensure compliance.
- *Easements and rights-of-way.* Existing easements and rights-of-way benefiting or burdening SAEP property would continue after transfer or conveyance. An example of such easements is one held by the town of Stratford for sewer piping serving private-sector customers as well as SAEP.
- *Floodplains.* The SAEP property lies within the 100-year floodplain of the Housatonic River. In consideration of Executive Order 11988, Army property conveyance documents will notify property transferees of their obligations to adhere to applicable restrictions on the property imposed by federal, state, or local floodplain regulations.
- *Groundwater use prohibition.* The ECP Report indicates that groundwater contamination has been found below many of the 33 parcels composing SAEP. There is currently no on-base use of groundwater. Transfer or conveyance of the SAEP property would include a prohibition on any use of the site's groundwater. This encumbrance on the property would extend until such time as appropriate regulatory agencies certified the completion of remedial action pertaining to the groundwater.

- *Historic resources.* Buildings 2 and 16 have been found eligible for the National Register of Historic Places (NRHP). The Army has entered into a Memorandum of Agreement with the Connecticut SHPO and the ACHP concerning these buildings' eligibility for the NRHP to provide that deed restrictions requiring protection of the historic properties would be passed on to the new owners as a condition of the sale or transfer of installation property. If the new owners desire to lessen or remove the deed restrictions requiring preservation, the deed will delineate a process for the new owners to consult with the SHPO to arrive at mutually agreeable and appropriate measures for mitigating the adverse effects of their proposed undertaking. Sample provisions that would typically be included in deeds to protect historic structures are shown in Appendix D [*omitted*].
- *Land use restrictions.* As noted at Section 2.3.2, the Army's environmental restoration efforts for SAEP will attempt to facilitate the land use and redevelopment needs stated by the community's reuse plan. The Army has not yet selected a remedy for cleanup of SAEP property. As a component of remedy selection, the Army may restrict certain types of future land use (e.g., residential use), impose institutional controls, or take other actions affecting land use to protect human health and the environment. Such restrictions would be included in conveyance documents as restrictions on future land use.
- *Lead-based paint.* Paints used at SAEP between 1930 and 1970 contained lead. Lead-based paint (LBP) is assumed to be present in buildings constructed before 1978, the vast majority of the buildings at the site. Consistent with the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Public Law 102-550), the Army would provide notice in transfer and conveyance documents that buildings containing LBP would be restricted from residential use unless the recipient of the property abated any LBP hazards. Appendix C [*omitted*] shows LBP provisions the Army would typically use for BRAC leases and deeds.
- *Remedial activities.* Operations at SAEP over several decades have resulted in localized hazardous waste contamination. The contaminants of concern primarily include petroleum hydrocarbons, solvents, and heavy metals. As indicated in Section 4.9, several buildings and areas at SAEP may be subject to some level of cleanup activity. In many instances, details of specific remedial actions remain to be determined. In conjunction with remedial activities that might be required during an interim lease or upon conveyance, the Army would retain a right to conduct investigations and surveys; to have government personnel and contractors conduct field activities; and to construct, operate, maintain, or undertake any other response or remedial action as required.
- *Wetlands.* The intertidal flats adjacent to SAEP are considered special aquatic sites and are regulated, along with wetlands, under Section 404(b)(1) of the Clean Water Act. To assist future transferees in understanding their obligations under Section 404 of the Clean Water Act with respect to activities that might affect wetlands, the Army would notify prospective transferees of their requirement to adhere to Section 404 permitting requirements for activities in or related to wetlands. Section 4 of Executive Order 11990 authorizes the Army to impose other appropriate restrictions on the uses of property to protect wetland areas.

3.3 Caretaker Status Alternative

The caretaker status alternative would arise in the event the Army is unable to dispose of all or portions of the available BRAC property within the period of time defined for initial caretaking of the property (refer to Section 2.3.1). Once the time period for the initial level of maintenance elapses, and if the Army had not yet disposed of the property, the Army would reduce maintenance to levels consistent with federal government standards for excess and surplus properties (i.e., 41 CFR 101–47.402 and 101–47.4913) and

with Army Regulation 420–70 (*Buildings and Structures*). This latter stage of caretaker status would not be focused on keeping the facilities in a state of repair to facilitate rapid reuse. Rather, maintenance during this period would consist of minimal activities intended primarily to ensure security, health, and safety and to avoid physical deterioration. Maintenance activities would occur on those portions of the BRAC property not yet transferred or conveyed, and they would include the following:

- Inspection, maintenance, and use of utility systems, telecommunications, and roads to the extent necessary to avoid their irreparable deterioration.
- Periodic maintenance of landscaping around unoccupied structures, as necessary, to protect them from fires or nuisance conditions.
- Allowance of access to permit servicing of publicly owned or privately owned utility or infrastructure systems.
- Maintenance of security patrols, security systems, fire prevention, and protection services.
- Reduction in the level of natural resources management programs including land management, pest control, and erosion control.

3.4 No Action Alternative

Under the no action alternative, the Army would continue operations at SAEP at levels similar to those occurring prior to the BRAC Commission's recommendation for closure. Implementation of this alternative is not possible, however, in light of the BRAC closure recommendation's having the force of law. Inclusion of the no action alternative is prescribed by the Council on Environmental Quality regulations and serves as a benchmark against which federal actions can be evaluated. Accordingly, the no action alternative is evaluated in detail in this EA.

3.5 Reuse Alternatives

Consistent with Congress's mandate, the Army must cease performance of its active missions at SAEP no later than November 9, 2011. Depending on numerous factors, including information presented in this EA, disposal might occur as a single event involving transfer of the entire facility to one or more subsequent owners, or it might occur over time with multiple transactions involving the same or several new owners. Regardless of the method of disposal, timing, or identity of new owners, reuse of SAEP is reasonably foreseeable. Consistent with statutory requirements, this EA treats the LRA's reuse plan as the primary factor in developing the proposed action and alternatives.

This EA analyzes reuse of SAEP, which is expected to occur. CEQ regulations require evaluation of reasonably foreseeable actions, without limitation on the party conducting them, and evaluation of consequent environmental impacts. Accordingly, reuse of the property is evaluated as an action secondary in time, following the Army's primary action of disposal. The following subsections discuss the methodology used to define the reuse scenarios to be considered. Because of the speculative and changeable nature of reuse planning, specific activities cannot be precisely identified at this time. The Army considers the SAEP LRA's redevelopment plan the primary factor in defining the reuse scenarios to be considered and evaluates that reuse plan for potential environmental effects.

3.5.1 Development of Reuse Alternatives

Reuse planning for SAEP consists of establishing reuse objectives, planning for compatible land uses that support environmentally sustainable reuse and the community's needs, and marketing among potential

public and private sector entities to obtain interest in use of the property. The reuse planning process is dynamic and often dependent on market and general economic conditions beyond the control of the reuse planning authority.

In recognition of the dynamics attending reuse planning, the Army uses intensity-based probable reuse scenarios to identify the range of reasonable reuse alternatives required by NEPA and by DoD implementing directives. That is, instead of speculatively predicting exactly what will occur at a site, the Army establishes ranges or levels of activity that reasonably might occur. These levels of activity, referred to as intensities, provide a flexible framework capable of reflecting the different kinds of uses that could result at a location. Reuse intensity levels also take into account the effects that encumbrances exert on reuse.

3.5.2 Land Use Intensity Categories Described

Five intensity-based levels of redevelopment can be evaluated for their potential environmental and socioeconomic impacts. These are low intensity reuse (LIR), medium-low intensity reuse (MLIR), medium intensity reuse (MIR), medium-high intensity reuse (MHIR), and high intensity reuse (HIR). At any given installation, however, analysis of all five levels of intensity might not be appropriate due to historical usage, physical limitations, or other cogent reasons.

Levels of reuse intensity can be viewed as a continuum. At SAEP, LIR could represent a level of activity that might be found in uses requiring only minimal numbers of buildings, with park or recreation functions occurring over substantial portions of the installation. An MLIR in the context of SAEP would represent the next greater level of use intensity. For example, decreased use of existing facilities from present levels could represent a medium-low intensity use. An MIR represents the approximate midpoint of reuse intensity that could occur at a site. In the context of SAEP, an MIR would be represented by use of existing facilities in the same way as they have been used in the recent past. At a site such as SAEP, an MHIR and HIR might be achievable by increases in facilities and population and reduction in the amount of lands used for passive purposes (e.g., parking). At SAEP, these levels of intensity might involve conversion or replacement of existing structures and construction of additional buildings for housing, commercial, institutional, or industrial uses on greater amounts of acreage at the installation. However, MHIR and HIR would be impractical because such intensity of use would be essentially incompatible with the character of the adjoining areas.

Indicators of levels of intensity can be quantified by counting the number of people at a location (employees or residents), the potential number of vehicle trips generated as a result of the nature of the activity, or the number of dwelling units. Other indicators of the intensity of use are the rates of resource consumption (electricity, natural gas, water) and the amount of building floor space per acre (identified as the floor area ratio [FAR], expressed as the amount of square feet of built space per acre).

Development of intensity parameters is based on several sources, including existing land use plans for various types of projects and planning jurisdictions, land use planning reference materials, and prior Army BRAC land use planning experience. Private sector redevelopment of property subject to BRAC action, on the other hand, seeks different objectives and uses somewhat different planning concepts in that it focuses on creation of jobs and capital investment costs, and it typically uses traditional community zoning categories (e.g., residential, industrial).[8] Upon evaluation of various types of indicators in light of

[8] Under AR 210-20 *(Real Property Master Planning for Army Installations)*, land use planning for Army installations is based on development of facilities and physical plants that support an overall environment of quality for the force and that provide the basis for projecting power assets (trained personnel, equipment, and supplies) necessary for national security. In contrast to the wide variety of zoning classifications used by local jurisdictions, Army planning relies on 12 land use classifications—airfields,

their applicability to Army lands subject to BRAC action, the Army has selected four representative, illustrative intensity parameters. These are residential density, employee density (general spaces), employee density (warehouse spaces), and floor area ratio. These intensity parameters aid in evaluation of environmental effects at various levels of redevelopment (see Table 3-1). The following discusses these parameters.

- *Residential density.* This parameter identifies the number of dwelling units per acre. It indicates the number of people who might reside or work in an area.
- *Square feet per employee (general space).* This parameter indicates the number of square feet available per employee in all types of facilities at an installation except family housing and warehouses or storage structures.
- *Square feet per employee (warehouse and storage space).* This parameter indicates the number of square feet available per employee engaged in warehouse or storage activities at an installation. Only built, fully enclosed and covered storage space is calculated; sheds or open storage areas are excluded from computation. In describing Army uses of facilities, estimates of the number of employees engaged in warehouse or storage operations are used to determine the portion of the installation workforce in this employee density category.
- *Floor area ratio.* This ratio reflects how much building development occurs at a site or across an area. For example, a 3-story building having a 7,500-square foot footprint on a 4-acre site would represent an FAR of 0.13 (22,500 square feet of floor space over 4 acres [174,240 square feet]).

Employee density, FAR, and development ratio considerations shown in Table 3-1 are appropriate to describe intensity levels for reuse planning at SAEP. The intensity parameters shown in Table 3-1 reflect generalized values or ranges appropriate to describe the variety of installations subject to Army management, as well as the variety of redevelopment situations. The intensity parameters should be considered together in evaluating the intensity of reuse of a site so as to provide full context. Use of any single parameter in isolation might unduly emphasize certain aspects of a site or preclude broader consideration. As applied to any particular parcel or area, or the whole of the installation, the values given might require some adjustment to account for the context in which an activity is located. For example, the size of a redevelopment project might result in distorting effects on the generalized values for the parameters provided.

Table 3-1
Land Use Intensity Parameters

Intensity Level	Residential Intensity[1]	Square Feet per Employee (General Space)	Square Feet per Employee (Warehouse Space)	Floor Area Ratio
Low	< 2	> 800	> 15,000	< 0.05
Medium-low	2-6	601 – 800	8,001 – 15,000	0.05 – 0.10
Medium	6-12	401 – 600	4,000 – 8,000	0.10 – 0.30
Medium-high	12-20	200 – 400	1,000 – 4,000	0.30 – 0.70
High	> 20	< 200	< 1,000	> 0.70

[1] Dwelling units per acre

maintenance, industrial, supply/storage, administration, training/ranges, unaccompanied personnel housing, family housing, community facilities, medical, outdoor recreation, and open space.

3.5.3 Baseline Land Use Intensity

Present use of SAEP is characterized as medium intensity. The total floor area of all buildings is 1,712,068 square feet over 75 acres, resulting in an FAR of 0.50, representative of a medium-high intensity use. The employee density in general space (815 square feet per employee) is a low intensity value. The presence of about 2,000 employees at the time of the BRAC Commission closure recommendation reflects a workforce somewhat lower than historical numbers of personnel employed at the site. (There are more than 3,000 parking places available for employees.) The employee density in warehouse and storage space (9,066 square feet per employee) is a medium-low intensity value. Taken together, these factors indicate a medium intensity level of use at the time of the BRAC closure announcement.

3.5.4 Local Reuse Plan

The community selected its preferred alternative from those presented in the SAEP LRA's reuse plan. Alternative 1, the alternative selected to guide redevelopment, envisions use of most existing buildings for office and research and development purposes. These purposes advance the economic redevelopment goals set by the community. The preferred alternative also allows waterfront park and museum uses, functions that are not focused on economic goals.

Intensity-based probable reuse scenarios based on the SAEP LRA's reuse plan can be described. Realization of these scenarios might require several years because of impediments such as encumbrances, fluctuation in the availability of capital and general market conditions, and competition among regional development authorities to attract businesses and jobs to their locations. The community's recognition of the need for adaptive reuse, vice rapid demolition of the site to make way for new construction, further indicates the likelihood of a lengthy redevelopment transition. Because of ongoing hazardous substance remedial actions, the time required to demolish facilities and provide for new construction, and the phased improvements to infrastructure (e.g., extension of Access Road), it is assumed that redevelopment would occur over a 20-year period. Upon phasing out of existing structures and reconfiguration of the site, ultimately construction of up to 800,000 square feet of new office and research and development facilities would occur over the nine parcels identified as the 52-acre economic development zone.

Achievement of the SAEP LRA's reuse plan would, at build-out, most closely resemble an MIR scenario. The SAEP LRA's reuse plan projects that Alternative 1 would involve use of 860,000 square feet of space, resulting in 1,700 to 3,400 jobs (using a range of 250 to 500 square feet per employee occupying office space). Using a higher average of 400 to 1,000 square feet per employee (appropriate to other kinds of uses), the SAEP LRA's reuse plan projects an employee population of 860 to 2,150. The midpoints of the two reuse plan estimates (2,550 and 1,505 employees, respectively) fairly bracket the Army's estimate that 1,986 employees would be present at the site under an MIR scenario.

Table 3-2 identifies major indicators associated with reuse of SAEP at the LIR, MLIR, and MIR levels that could occur as a result of implementation of the SAEP LRA's reuse plan. Depending on the types and numbers of activities that might occupy the site during reuse and the growth patterns associated with redevelopment, it is probable that reuse would reflect each of the LIR, MLIR, and MIR intensities as the SAEP LRA progressed from initialization of reuse (adaptive reuse) to achievement of complete redevelopment objectives (demolition and new construction) at the site.

Table 3-2
Reuse Attributes

Reuse Intensity	Residential Population	Square Feet per Employee (General Space)	Square Feet per Employee (Warehouse Space)	Floor Area Ratio	Square Feet in Use	Employee Population
LIR	NA[1]	>800	>15,000	0.05	165,528	207
MLIR	NA[1]	601-800	8,001 – 15,000	0.10	331,056	473
MIR	NA[1]	401-600	4,001 – 8,000	0.30	993,169	1,986

[1] Not applicable. There are no residential units, present or proposed, at SAEP.

3.6 Alternatives Not To Be Evaluated in Detail

3.6.1 Medium-High Intensity Reuse

Assuming a midpoint FAR of 0.5, redevelopment of the SAEP site to a medium-high intensity level would involve the use of 1,655,280 square feet of space. If all the space were used for office and research and development purposes, with each employee having an average of 300 square feet available, the site would have an employee population of 5,518 persons. Judging by the number of employee parking places adjacent to the facilities, a workforce of this size would be nearly twice that of most previous periods. Especially in light of the park and recreation values addressed by the reuse plan, this magnitude of redevelopment would represent an unrealistic outcome of reuse and would place a disproportionate number of employees at a single location. Such an outcome would be unreasonable and, therefore, is not further evaluated.

3.6.2 High Intensity Reuse

High intensity reuse of the SAEP site at an FAR of at least 0.7 would involve use of 2,317,400 square feet of space and support an employee population of more than 11,500 persons. For reasons similar to those regarding medium-high intensity reuse, this scenario represents an unrealistic outcome of reuse and is not further evaluated.

Appendix K

Helpful Hints for Developing Data for Baseline Documentation and Impact Assessment

This page intentionally left blank.

APPENDIX K

HELPFUL HINTS FOR DEVELOPING DATA FOR BASELINE DOCUMENTATION AND IMPACT ASSESSMENT

CONTENTS

The following is a list of resources that may be used to develop background data for baseline documentation and impact analysis for BRAC actions:

- Mission Documents
- Planning/Activity Documents
- Points of Contact and Memberships
- Permits and Compliance Documents
- Environmental Baseline Data
- Land Use
- Terrestrial Vegetation/Forestry
- Wildlife
- Aquatic Ecosystems and Surface Waters
- Groundwater, Soils and Geology
- Air Quality
- Public Health and Safety
- Socioeconomics
- Noise
- Cultural Resources

MISSION DOCUMENTS

Mission Statement

Installation master training and master activity plan showing units scheduled to rotate through the installation and other activities scheduled, planned, or routinely conducted

Mobilization Plan

Command Operating Budget (Extracts)

PLANNING/ACTIVITY DOCUMENTS

Master Plan

Environmental Management Plan

HAZMIN Plan

Installation Spill Prevention Control and Countermeasures (SPCC) Plan

Installation Compatible Use Zone (ICUZ) Plan, map and documents

Environment, Health and Safety Plan

Natural Resource Management Plan

Waste Management, Resource Recovery, Recycling Plan

UST Compliance Plan

Pest Management Plan

Installation Asbestos Management Plan

Range Regulations

Training Regulations

POINTS OF CONTACT AND MEMBERSHIPS

Points of Contact (POCs) and phone numbers at the installation

EPA Region, Federal Facilities Office

United States Fish and Wildlife Service and state equivalent

Advisory Council on Historic Preservation/State Historic Preservation Office

National Marine Fisheries Service

Coastal Zone Management Agency

Members of Installation Environmental Quality Control Board, and Installation Environmental Management Team

Representative to Local Emergency Planning Committee

Representative to regional/local Planning Commission

United States and Commonwealth Senators, Representatives, and Delegates

Names of local civilian, and nearby military, police, fire, safety, medical facilities that are utilized by each installation and installation personnel

PERMITS AND COMPLIANCE DOCUMENTS

National Pollutant Discharge Elimination System (NPDES) Permits

Hazardous Waste Treatment, Storage, Disposal (TSD) Facilities (RCRA Part A and Part B permits)

Non-Hazardous Waste Disposal Permits

Air Permits

State/County Water Well Permits

PCB Fluid Exchange Program (TSCA Compliance)

Federal Facilities Docket Listings for each installation

Installation Restoration Program Documents (PA/SI, RI/FS, RD/RA)

ICUZ Study (including Noise Complaint Procedure)

Waste Minimization (HAZMIN) Program

Radon Program (Annual Progress Reports to MACOM)

Installation supplements to AR 200-1, AR 200-2, AR 200-3, AR 200-4

All construction, operation, effluent, emission, disposal, storage permits

NOVs, compliance orders, and agreements

1383 Report file

1485 Report file

Environmental audit file

Land use leases, permits, easement, rights of way

ENVIRONMENTAL BASELINE DATA

U.S. Fish and Wildlife Service's NWI Wetland Maps for post and surrounding area (USGS Quadrangles for each installation) (any wetland mapping/inventory of post, performed by Army/contractors)

Aerial photography - mosaic and stereo pairs

Post topographic map, post soil map/survey

LAND USE

Land use plans and maps for pertinent municipalities and counties

Land use plans and maps for remainder of project study area

Zoning maps/ordinance for counties, FEMA floodplain maps or digital flood insurance rate map (DFIRM) data/study for on-site/adjacent off-site (as may be affected by alternatives)

List/maps of State/Federal park/recreation lands in project study area

Installation Master Plan/map(s) and/or GIS nthat show existing/proposed land uses

QDs, safety plan data for impact areas, ammo storage, ranges, any other areas

Copies of leases/outgrants in/near the project study area

TERRESTRIAL VEGETATION/FORESTRY

Vegetation community mapping, forest cover type mapping of installation

Vegetation surveys of post; species list

Timber inventories

Forest Management Plans (e.g., Woodland Management Plan)

Information and mapping of rare, unique species or communities; threatened or endangered plan species, and protection/management plans for such species

Contact person at installation for vegetation/forestry

WILDLIFE

Species lists for game and non-game species

Rare, unique, threatened, or endangered species - information on location, population, and protection/management plan; mapping of nests/habitat area (including management of protection of bald eagle nests).

Hunting and trapping plans and harvest records

Pest and nuisance species control plans

Information on ecological education programs at post (e.g., nature centers, bird watching)

Christmas bird counts on- and off-post

Communication (e.g., correspondence) with FWS, DGIF about post resources and the effects of on-going operations on these resources

Integrated Natural Resources Management Plan (INRMP)

Stocking, banding records

Identification of individuals/groups who may have performed research projects at the post

Contact person at post for wildlife management

AQUATIC ECOSYSTEMS AND SURFACE WATERS

Inventory of surface water systems (lentic and lotic)

- physical characteristics, drainage areas, watershed boundaries, average flows, existing water quality conditions

Floodplain maps and flood records; stormwater management plans/policies; flood protection procedures

Identification of "special aquatic habitats" (e.g., coldwater fisheries, anadromous fish spawning areas)

Aquatic survey reports for surface water systems, including species lists, community descriptions

Maps showing existing (and planned) diversions, obstructions, in-stream activities (e.g., tank crossings), bombing areas. Schedule of in-stream activities (i.e., during what time of the year are these activities being conducted. Are any areas closed during spawning seasons?)

Maps and inventories of existing (and planned) discharges into surface water systems; information on discharges including: materials, quantity and duration of discharge, observed biological impact

Maps and inventories of existing (and planned) water withdrawals from surface-water systems; information on use of surface waters (potable, process, industrial, fire)

Recorded pollution episodes/fish kills in past 5 years

EPA water-quality citations

Mechanisms in place (or planned) for control of surface water contamination, wastewater treatment, spill prevention and control methods

Species list/inventories of fish on the installation; creel surveys

Aquatic management programs (e.g., fish stocking and harvesting, nuisance species controls, aquatic weed control)

Water-quality testing results for past 5 years

Identification of rare or unique aquatic communities or threatened or endangered species and plans for protection/management. Mapping of habitat for such species.

GROUNDWATER, SOILS, AND GEOLOGY

Soils mapping/SSURGO GIS data for identification of stability hazards; identification of poor drainage areas

Erosion control plan/storm water pollution prevention plan (SWPPP)

Subsurface and surface geology descriptions

Description of groundwater system (including units, depth to shallow groundwater, rate and direction of flow, potential for contamination of deeper aquifer)

Existing and proposed groundwater uses on the installation and down gradient of the project study area

Information on injection disposal at the installation

Location of groundwater/aquifer recharge and discharge areas

Information on known groundwater contamination

Mechanisms, existing and planned, to protect groundwater

Location and characteristics of UXO

Installation Restoration Program (IRP) documents

AIR QUALITY

Inventory of all permitted and non-permitted point sources (e.g., power plant, incinerators, process exhausts, vents, etc.)

Emission inventories (from on-site monitoring)

Status of permits, violations

Ambient air quality (from on-site and off-site monitoring for past 5 years)

Traffic data - number of vehicles, vehicle mix, speed. Schedule and duration during peak traffic periods

Training - activity-generated emissions

Fugitive emissions and mechanisms (existing and planned) for control

PUBLIC HEALTH AND SAFETY

Public health and safety plan

Health and safety SOPs (e.g., escorts for hazardous areas, radar surveillance for aircraft training)

Explosive safety quantity distances for those activity areas that require QDRs

Flight patterns for training - (ICUZ may have data)

SOCIOECONOMICS

Updated data on installation (on- and off-post) medical and fire/safety facilities and public schools

Number of current and projected permanent and seasonal temporary personnel/trainees assigned to the installation and their average income; yearly totals since 1990 would also be helpful

Information on where military/civilian personnel assigned to the installation reside (listed by city or county) – totals

Number of military residing on-post and number of dependents; number of military residing off-post and number of dependents

Coordination/liaison with local emergency response plan

NOISE

Any existing installation noise studies

Any recent ICUZ studies on ongoing operations (conducted by CERL or AEC)

Complete list of all noise producing activities, current and projected, including ISSAs and hours of operation, annual days of operation, and other specific details of the operation

List of any noise complaints - past or present

List of any existing SOPs that are enforced that serve to minimize noise impacts from ongoing operations

Any OB/OD undertaken

CULTURAL RESOURCES

Determination of and consultation with the installation Cultural Resources POC (Archaeologist and/or Historian).

- Identification of Integrated Cultural Resources Management Plan (ICRMP), Integrated Natural Resources Management Plan if they exist.

- In lieu of an ICRMP, or to supplement the ICRMP post its publication date, locate any files that document historical/chronological consultation that installation personnel have undertaken for known cultural resources in compliance with Section 110 or 106 of the NHPA.

- Collect copies of any historic or archaeological surveys/studies on the installation (HABS/HAER, Phase I, II, and III Investigations, previous EAs and EISs, etc.). Where copies of documents are not available, be prepared to request them from the SHPO/THPO.

Consult with the State and/or Tribal Historic Preservation Office (SHPO/THPO) and other concerned parties.

- Request a list of all known archaeological sites within a certain distance of the APE from the SHPO/THPO.

- Request a list of all known Historic properties within a certain distance of the APE from the SHPO/THPO.

- Request a list of all known cemeteries or other known graves and/or cultural items within a certain distance of the APE.

- Request a list of all known issues within a certain distance of the APE to be of concern to local Tribes.

- Request a list of all known resources on the National Register of Historic Places within a certain distance of the APE from the SHPO/THPO.

- Request a list of any historic or archaeological surveys/studies on and within a certain distance of the installation (HABS/HAER, Phase I, II, and III Investigations, previous EAs and EISs, etc.); request copies of any of these studies that were not provided by the installation.

Consult with local Tribes regarding Traditional Cultural Properties (TCPs) within or near the APE.

Consult with contacts for local history (i.e. the local Historical Society).

Appendix L

Technical Guidance for Compliance with the General Conformity Rule

This page intentionally left blank.

TECHNICAL GUIDE FOR COMPLIANCE WITH THE GENERAL CONFORMITY RULE

PREPARED BY:

LISA M. POLYAK
U.S. ARMY CENTER FOR HEALTH PROMOTION AND PREVENTIVE MEDICINE
DIRECTORATE OF ENVIRONMENTAL HEALTH ENGINEERING
AIR QUALITY SURVEILLANCE PROGRAM

AND

LAWRENCE L. WEBBER
U.S. ARMY ENVIRONMENTAL CENTER
ENVIRONMENTAL QUALITY DIVISION
COMPLIANCE BRANCH

PUBLISHED MARCH 2001
UPDATED AUGUST 2002

TABLE OF CONTENTS

1.0 OVERVIEW OF THE GENERAL CONFORMITY RULE
1.1 REGULATORY BACKGROUND
1.2 PURPOSE OF THIS DOCUMENT
1.3 WHAT IS THE GENERAL CONFORMITY RULE ?
1.4 WHAT IS A CONFORMITY REVIEW ?
1.5 WHEN IS A CONFORMITY REVIEW REQUIRED ?
1.6 HOW IS A CONFORMITY REVIEW ACCOMPLISHED ?
1.7 WHAT KIND OF MILITARY ACTIONS TRIGGER A CONFORMITY REVIEW ?
2.0 ROLE OF THE RECORD OF NON-APPLICABILITY (RONA)
2.1 WHAT IS A RONA ?
2.2 ARMY POLICY ON RONAS
2.3 AN EXAMPLE RONA
3.0 INTERFACE WITH OTHER REGULATORY REQUIREMENTS
3.1 NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)
3.2 BASE REALIGNMENT AND CLOSURE (BRAC)
3.3 TITLE V OPERATING PERMIT
4.0 REFERENCES AND RESOURCES FOR GENERAL CONFORMITY REVIEWS
4.1 POLICY AND TECHNICAL SUPPORT
4.2 GUIDANCE DOCUMENTS IN THE MILITARY COMMUNITY
4.3 EMISSION ESTIMATING SOFTWARE

1.0 OVERVIEW OF THE GENERAL CONFORMITY RULE

1.1 Regulatory Background.
Section 176(c)(1) of the Clean Air Act (CAA) contains the legislation that mandates the general conformity rule[1]. This legislation prohibits the Federal Government from conducting, supporting or approving any actions that do not conform to an U.S. Environmental Protection Agency (EPA)-approved State Implementation Plan (SIP). A SIP is a State's self-authored blueprint for achieving and maintaining compliance with the goals of the CAA. Although the conformity requirement was present in the CAA prior to the Clean Air Act Amendments of 1990 (CArmy Ammunition Activity-90), it had not been enforced through any formal rulemaking or program at either the State or Federal level. The 1990 Amendments revised Section 176(c) to expand and clarify Congress' expectations of the conformity rule, and added a mandate for the EPA to establish a Federal conformity program[2]. The EPA fulfilled this mandate by promulgating the general conformity rule on 30 November 1993[3] . This rule and all subsequent amendments may be found in the Code of Federal Regulations (CFR) at 40 CFR 51 Subpart W and 40 CFR 93 Subpart B. The texts of 40 CFR 51 Subpart W and 40 CFR 93 Subpart B are essentially identical. The main difference is that 40 CFR 51 is designed to inform State authorities about their responsibilities for creating and administering a general conformity program. The 40 CFR 93 is the Federal rule intended for source owners in the absence of an EPA-approved State program. In this document, we will cite the general conformity rule as it appears in 40 CFR 93 Subpart B.

1.2 Purpose of this Document.
Since the promulgation of the general conformity rule, the Army has issued several policy memos and guidance documents to help interpret the rule. An earlier Army publication reviewed and interpreted each text element of the general conformity rule as it appeared in the CFR[4]. Unlike the earlier publication, this new technical guide is intended as an overview of policies and tools for managing general conformity at the installation level. The policy overview will clarify current Army guidance, as well as guidance offered by the EPA and other affected Federal agencies. The tools overview will include a review of calculation software, how to prepare a Record of Nonapplicability (RONA), and a list of National Ambient Air Quality Standard (NAAQS) attainment status for Army installations affected by the general conformity rule. The goal of this document is to educate the reader sufficiently so that he or she can perform most of the general conformity regulatory tasks at the installation level.

1.3 What is the General Conformity Rule ?
The general conformity rule was designed to ensure that Federal actions do not impede local efforts to control air pollution. It is called a conformity rule because Federal agencies are required to demonstrate that their actions "conform with" (i.e., do not undermine) the approved SIP for their geographic area. Federal agencies make this demonstration by performing a conformity review. The conformity review is the process used to evaluate and document project-related air pollutant emissions, local air quality impacts and the potential need for emission mitigation.

In Title I of the CArmy Ammunition Activity-90, Congress established two types of conformity: transportation conformity and general conformity. The transportation conformity rule pertains to Federal transportation projects, and requires them to conform with transportation aspects of an approved SIP[5] . The general conformity rule covers all other Federal actions not addressed by the Transportation Conformity rule. This document will address only those requirements associated with the general conformity rule.

The general conformity rule was promulgated on 30 November 1993 with an effective date of 31 January 1994. The up-to-date regulatory text (including subsequent amendments) appears in 40 CFR 51 Subpart W and 40 CFR 93 Subpart B. This regulation applies to all Federal actions (including Department of Defense (DOD) actions) occurring in NAAQS nonattainment areas or maintenance areas. It is a Federally enforceable requirement and must be included in a Title V permit as an applicable requirement[6] . State regulatory agencies are required to administer the general conformity rule by revising their SIPs to include a general conformity regulation. These State provisions must be at least as stringent as the Federal

regulation, but are prohibited from being more stringent unless the provisions apply equally to non-Federal entities.

1.4 What is a Conformity Review ?
A conformity review is a multi-step process used to determine whether a Federal action meets the requirements of general conformity rule and the associated SIP. It requires the affected Federal agency to do one or more of the following:

- evaluate the nature of the proposed action and associated air pollutant emissions
- determine whether the action is exempt by rule
- calculate air pollutant emissions and air quality impacts associated with the proposed action
- mitigate emissions if regulatory thresholds are exceeded
- prepare formal documentation of findings
- publish findings to the public and regulatory community

1.5 When is a Conformity Review Required ?
A conformity review must be performed when a Federal action generates air pollutants in a region that has been designated a nonattainment or maintenance area for one or more NAAQS. Nonattainment areas are geographic regions where the air quality fails to meet the NAAQS. Maintenance areas are regions where NAAQS were exceeded in the past, and are subject to restrictions specified in a SIP-approved maintenance plan to preserve and maintain the newly regained attainment status. The NAAQS pollutants include ozone (O_3), carbon monoxide (CO), sulfur dioxide (SO_2), nitrogen dioxide (NO_2), lead, particulate matter with diameter less than or equal to 10 microns (PM_{10}) and particulate matter with diameter less than or equal to 2.5 microns ($PM_{2.5}$). Table 1 shows the air pollutants that are subject to a general conformity review based upon the NAAQS nonattainment or maintenance status. Note that both NAAQS pollutants and their precursors are subject to a conformity review[7]. Precursors are chemical compounds that participate in a chemical reaction to form the NAAQS air pollutant of concern.

Table 1. Air Pollutants Subject to a General Conformity Review

If the region where the installation is located has been designated a Nonattainment or Maintenance area for…	Then a general conformity review must be performed for…
O_3	nitrogen oxides (NO_{10}) and volatile organic compounds (VOCs)
CO	CO
PM_{10}	$PM_{10}$and PM_{10} precursors such as acid gases or metals
$PM_{2.5}$	$PM_{2.5}$ and $PM_{2.5}$ precursors such as acid gases or metals*
SO_2	SO_2
NO_2	NO_2
Lead	Lead

*Although $PM_{2.5}$ is an NAAQS pollutant, $PM_{2.5}$ nonattainment designations will not be announced by EPA until 2002 or later.[8]

The general conformity rule does not specify a deadline for completing the conformity review and associated tasks. However, the rule states clearly that these tasks must be accomplished in a timely manner prior to initiating the proposed action.

"A Federal Agency must make a determination that a Federal action conforms to the applicable implementation plan in accordance with the requirements of this subpart *before the action is taken* (emphasis added)."[9]
In addition, EPA has issued interpretive guidance regarding when a conformity review is required:
"Before any approval is given for an action to go forward, an agency must apply the applicability requirements to a proposed Federal action to determine if a conformity determination is required. The applicability analysis can be completed concurrently with the National Environmental Policy Act (NEPA) analysis. It would probably occur during the environmental assessment." [10]
This means that all information retrieval, regulatory review, computations, emission mitigation and documentation must be completed before the proposed action is initiated. If the state where the action will occur has promulgated an EPA-approved conformity program, then the deadlines for completing the conformity review will be governed by the local requirement. Appendix C provides a list of State-administered general conformity regulations and their associated citations.

1.6 How is a Conformity Review Accomplished ?
There are two paths that a conformity review can take. The first path is for actions that must be evaluated, but ultimately are not subject to the general conformity rule. The second path is for actions subject to the full regulatory analysis of the general conformity rule because their air pollutant emissions are expected to have a negative effect on the State's ability to comply with its SIP. A recent canvassing of Army assets revealed that most Army actions requiring a conformity review ended up on the first path (i.e., The actions were not subject to the full analysis of the general conformity rule.). Therefore, the focus of this document will be on the screening and documentation procedures for actions that require consideration under the rule, but ultimately demonstrate their emissions do not interfere with SIP compliance. Further guidance on how to conduct a full conformity analysis may be found in the CFR[11] or from the governing State or local regulatory authority.

The screening procedure shown below can be used to determine whether the general conformity rule applies to a proposed action. In some cases, additional research or computation may be necessary to evaluate rule applicability. In all cases, the research and computations supporting the final determination must be documented in writing and retained for the purpose of demonstrating that an appropriate review was conducted. Documentation procedures for actions that are not subject to the full analysis of the general conformity rule will be discussed in Section 2.0.

Step 1. *Will the action take place in an air quality nonattainment or maintenance area ?*
Only those Federal actions that take place in a region designated as an NAAQS nonattainment area or maintenance area must be evaluated for general conformity. The NAAQS attainment status for a region may be determined from several sources:

- 40 CFR 81 Subpart C contains the NAAQS attainment status for all regions in EPA jurisdiction. However, the CFR does not identify maintenance areas.
- The EPA maintains several Internet databases that list current NAAQS nonattainment and maintenance areas. The website we have found most useful for attainment and maintenance status is the *Green Book* website at http://www.epa.gov/oar/oaqps/greenbk/
- Local air quality authorities should know the attainment and maintenance status of their jurisdictions.
- Appendix D of this document contains a list of the NAAQS attainment and maintenance status for most major Army installations. Although this list is current at the time of publication, attainment and maintenance status can change and should be verified at the time of the conformity review.

If the location where the action is to occur has not been designated an NAAQS nonattainment area or maintenance area, then no further scrutiny is required and no documentation is required. If the proposed action will occur in a nonattainment or maintenance area, go to **Step 2**.

Step 2. *Will the proposed action result in the emission of an air pollutant that is regulated due to the nonattainment or maintenance status of the region ?*
The proposed action must be evaluated to determine if it will generate air pollutant emissions that aggravate a nonattainment problem or jeopardize the maintenance status of the area. Specific air pollutants that must be evaluated in nonattainment and maintenance areas, and their associated threshold levels are shown in Tables 2 and 3.

Table 2. NAAQS Nonattainment Area Pollutants & General Conformity Thresholds

Nonattainment Pollutant	Nonattainment Area Classification	Pollutant to be controlled	Emission rate threshold (tons/year)
Ozone	Extreme	VOC or NO_X	10
Ozone	Severe	VOC or NO_X	25
Ozone	Serious	VOC or NO_X	50
Ozone	Moderate or Marginal	VOC or NO_X	100
Ozone	Ozone Transport Region	VOC	50
Ozone	Ozone Transport Region	NO_X	100
Carbon monoxide	Nonattainment	CO	100
Sulfur dioxide	Nonattainment	SO_2	100
Nitrogen dioxide	Nonattainment	NO_2	100
PM_{10}	Serious	PM_{10}	70
PM_{10}	Moderate	PM_{10}	100
Lead	Nonattainment	lead	25

Table 3. NAAQS Maintenance Area Pollutants & General Conformity Thresholds

Maintenance Pollutant	Maintenance Area Classification	Pollutant to be controlled	Emission rate threshold (tons/year)
Ozone	Ozone Transport Region	VOC	50
Ozone	Non-Ozone Transport Region	VOC	100
Ozone	Maintenance	NO_X	100
Carbon monoxide	Maintenance	CO	100
Sulfur dioxide	Maintenance	SO_2	100
Nitrogen dioxide	Maintenance	NO_2	100
PM_{10}	Maintenance	PM_{10}	100
Lead	Maintenance	lead	25

Both *direct* and *indirect* air emissions associated with the proposed action must be evaluated. Direct emissions are those that occur as a direct result of the action, and occur at the same time and place as the action. Sources that may contribute to direct emissions include demolition or construction activities associated with the proposed action; equipment used to facilitate the action (e.g., construction vehicles,

temporary power generation) and new equipment that is a permanent component of the completed action (e.g., boilers, generators). *Indirect emissions* are those that occur at a later time or distance from the place where the action takes place, but may be reasonably anticipated as a consequence of the proposed action. To be counted as an indirect emission, the Federal proponent for the action must have continuing control over the source of the indirect emissions. Sources of indirect emissions include commuter activity to/from the site of the action (e.g., employee vehicle emissions); and support services to the action (e.g., increased heating, cooling, potable water or wastewater treatment needs where those services are provided by the Federal agency sponsoring the action). Both stationary and mobile sources must be included when calculating the total of direct and indirect emissions.

If the proposed action will not result in the direct or indirect emission of NAAQS nonattainment pollutants or precursors, then no further scrutiny is required and no documentation is required. If the proposed action is expected to produce NAAQS air pollutants or precursors that are regulated due to the area's nonattainment or maintenance status, go to **Step 3**.

Step 3. *Does the proposed action qualify as an exempt action under the conformity rule?*
The EPA has allowed that certain actions are exempt from the general conformity rule because the expected air emissions are not likely to impact the SIP. The list of exempt actions appears in 40 CFR 93.153(c) and (d), and includes a number of scenarios that could occur at a military installation. Some important exemptions include:

- continuing and recurring activities at an existing facility where the scope of such activities does not vary significantly from the current activity
- routine maintenance and repair
- transfer of ownership or titles of land, facilities, real or personal property;
- actions in response to emergencies or natural disasters
- actions that require a new or modified permit under the major New Source Review (NSR) or Prevention of Significant Deterioration (PSD) programs
- modification to existing equipment undertaken as a requirement of environmental regulation
- remedial activities carried out under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)
- routine and recurring transportation of materiel and personnel

The complete list of exemptions (as it appears in the CFR) should be reviewed to determine whether an exemption is available, and to ensure that the exemption is appropriate for the proposed action. Conformity reviews resulting in a determination that the proposed action is exempt must be documented in a RONA. Supporting data for the RONA includes a brief description of the project and the specific exemption citation from the CFR. If the action is not eligible for an exemption, go to **Step 4**.

Step 4. *Are the anticipated air pollutant emissions resulting from the proposed action below threshold levels ?*
Air pollutant emissions generated by the proposed action must be calculated and compared to the appropriate threshold level(s) as shown in Tables 2 and 3. Some specific requirements associated with the calculation include:

- An annual emission rate (in tons/year) reflecting *actual emissions*[12] must be calculated for the proposed action
- The annual emission rate must include both direct and indirect emissions
- The annual emission rate must include emissions from both mobile and stationary sources associated with the proposed action
- For multi-year actions, the annual emission rate must reflect the year for which air emissions are expected to be highest [13]

- If emission rates are estimated, calculations must be performed using EPA-preferred emission factors such as AP-42[14] for stationary and area sources, and the EPA motor vehicle emission model used for the preparation of SIPs. [15]

If the total of direct and indirect emissions for any individual pollutant will equal or exceed the associated threshold shown in Table 2 or 3, a full general conformity determination is required. If projected emissions will be below threshold levels, the action may be exempt from further conformity analysis if the emissions are not considered *regionally significant* (see **Step 5**). Calculations for proposed actions that do not exceed threshold levels must be documented in a RONA (See Section 2.0). Supporting data for the RONA includes a brief description of the proposed action, a list of NAAQS nonattainment or precursor pollutants resulting from the proposed action, their associated general conformity thresholds, projected annual emissions of each pollutant and a brief description of the emissions calculation method.

Step 5. *Is the action regionally significant ?*
An action is regionally significant if the total direct and indirect emissions of an individual pollutant (as calculated for the threshold determination in **Step 4**) amount to 10% or more of a nonattainment or maintenance area's emissions of that pollutant.[16] Emission inventories for nonattainment and maintenance area pollutants are published in the SIP.[17] (The contents of the SIP should be available from a State or local regulatory authority.) If the proposed action is regionally significant, it must undergo a full general conformity determination. If it is not regionally significant, then the action is exempt from further analysis under the conformity rule. The screening for regional significance must be documented in the RONA along with the information described in previous steps.

1.7 What Kind Of Military Actions Trigger a Conformity Review ?

Military actions that might require a conformity review and the air emissions of concern include the following:

- Construction or modification of any air emission source that is not covered under a NSR or PSD permit, or a CERCLA action *(evaluate pollutants emitted directly from the source)*
- Construction, renovation or demolition of buildings or facilities *(evaluate dust or other pollutants from land clearing activities, air emissions from stationary construction equipment, motor vehicle emissions from construction vehicles)*
- Increase or relocation of government personnel who did not previously work at the base *(evaluate motor vehicle emissions for new traffic on the base and emissions associated with support services to accommodate increased population [i.e., potable/wastewater treatment, heating/cooling demands])*

An example conformity evaluation of a proposed military action is shown below.

Fort Alpha is located in an area that has been designated as a moderate non-attainment area for ozone. Pollutants of concern for an ozone nonattainment area are NO_x and VOCs. The Fort has a training facility that will be increasing its student population by 1,200 new soldiers. This action will require 2 additional barracks for enlisted trainees. The new barracks will be built on 4 acres of partially wooded land in Area 56. Heat and hot water will be provided by the central heating plant. The new facilities require 3,000 square feet of paved parking, and 300 feet of paved roadway. A local contractor will perform the work.

Direct Emissions. For this project, there is no concern for dust emissions since the nonattainment pollutants of concern are NO_x and VOCs.

Land Clearing - Debris generated during land clearing for the new barracks plot and associated roads and parking pad will probably be trucked to a licensed landfill, although some might be burned on-site.

Evaluate emissions from: bulldozers, excavators, and site clearing equipment; trucks and other construction passenger vehicles; open burning of land clearing debris.

Building Construction - The barracks will have a brick exterior surface with drywall interior walls. Cement is used for the foundation. Evaluate emissions from: cement trucks; painting interior walls; contractor vehicles

Parking and Road Construction Evaluate emissions from: paving (mixing and application of asphalt); traffic striping

Training Facility - Air emissions associated with school curriculum or training activities must be calculated. Evaluate emissions from: industrial shops (welding, painting, solvent applications); field exercises (portable generators, troop transport vehicles, weapons firing)

Indirect Emissions.

Municipal Services. Providing heat and hot water for the new buildings could increase the load on the central heat plant which will lead to higher emissions of NOx and VOCs. Evaluate emissions from fuel combustion at the heating plant.

Vehicular Traffic. It is likely that some soldiers attending the school will have their own vehicles used for local travel. Evaluate emissions from soldiers privately owned vehicles (POVs).

---

[1]42 USC 7506(c), Activities not Conforming to approved or promulgated plans
[2]PL 101-549, CArmy Ammunition Activity-90, Title I, Section 101(f), Conformity Requirements
[3]58 FR 63214 (November 30, 1993), Final Rule, Determining Conformity of General Federal Actions to State or Federal Implementation Plans
[4]Webber, L. L., and Peters, L. L., Department of the Army Guide for Compliance with the General Conformity Rule under the Clean Air Act (June 15, 1995).
[5]40 CFR 93, Subpart A, Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 USC or the Federal Transit Act
[6]The general conformity rule does not require a military installation to obtain a Title V Operating Permit. However, if an installation has a Title V permit and undertakes actions covered by the general conformity rule, the general conformity rule must be included in the Title V permit as an applicable requirement.
[7]At this time, a general conformity review is not required for Federal actions that emit hazardous air pollutants, ozone depleting chemicals, or greenhouse gases.
[8]Fact Sheet, Summary of EPA's Strategy for Implementing New Ozone and Particulate Matter Air Quality Standards, Office of Air Quality and Planning Standards, U.S. EPA, July 17, 1997
[9]40 CFR 93.150(b)
[10]General Conformity Guidance:Questions and Answers (Applicability: Question #1), Office of Air Quality and Planning Standards, U.S. EPA, July 13, 1994
[11] 40 CFR 93.154 through 160
[12] Actual emissions are those emissions produced as a direct result of the proposed action. They do not include any theoretical maximums, permit limits or the potential-to-emit associated with the activity.
[13]40 CFR 93.159(d)(2)
[14]Compilation of Air Pollutant Emission Factors, Volume I: Stationary Point and Area Sources, 5th edition, U.S. EPA, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, January 1995 (with Supplements)
[15]40 CFR 93.159(b)(1) & (2)
[16]40 CFR 93.153(i)
[17]All nonattainment areas SIPs are required to have a current inventory of actual emission rates for

emission sources in their jurisdiction. PL 101-549, CArmy Ammunition Activity-90, Title I, Section 172(c)(3), Nonattainment Plan Provisions

2.0 ROLE OF THE RECORD OF NON-APPLICABILITY (RONA)

2.1 What is a RONA ?

A RONA is a short, written document used to declare that the requirements of the general conformity rule do not apply to a specific action. The RONA verifies that a proposed action has been reviewed properly, and provides written evidence of that review in the form of a project description, emission rate calculation (if necessary), citation of exemption category (if applicable) and any other information necessary to support the declaration of non-applicability.

2.2 Army Policy on RONAs.

Recent information suggests that many Army conformity reviews result in a declaration of non-applicability either because the action is exempt, or because projected emission rates do not exceed conformity thresholds. Federal regulations do not require any documentation of the conformity review process under these circumstances. However, it is Army policy that these reviews will be documented formally to ensure that a proper review takes place, and to tangibly demonstrate the Army's compliance with the general conformity rule.[18] The RONA must contain a description of the proposed action, and adequate documentation to support the determination of non-applicability. It must be signed by the installation's environmental coordinator, and retained at the installation for a period of 6 years after completion of the project. Failure to prepare and retain this documentation may result in a Class III Finding under an Environmental Compliance Assessment System (ECAS) review, and could jeopardize the affirmative demonstration of compliance needed for a Title V operating permit (See Section 3.3).

2.3 An Example RONA.

In order to improve understanding of the RONA, the AEC issued a guidance memo in September 1995 illustrating the suggested form and content for a RONA.[19] Their example is reproduced in Figure 1. Note that the suggested RONA is a one-page declaration summarizing why the project is not subject to a full conformity determination. If emissions calculations are used to justify the RONA, they must be attached to the RONA as supporting documentation.

GENERAL CONFORMITY - RECORD OF NON-APPLICABILITY

Project/Action Name:	*Construction of New Housing*
Project/Action Identification Number:	*12-345-67-890*
Project/Action Point of Contact:	*Jane Doe, Directorate of Public Works,*
phone: 410-555-1212	
Begin Date: *MM-DD-YY*	End Date: *MM-DD-YY*

General Conformity under the Clean Air Act, Section 176 has been evaluated for the project described above according to the requirements of 40 CFR 93, Subpart B. The requirements of this rule are not applicable to this project/action because:

_____ The project/action is an exempt action under 40 CFR 93.153(c) or (d), (SPECIFY APPLICABLE EXEMPTION CATEGORY AND REGULATORY CITATION)

OR
_____ Total direct and indirect emission from this project/action have been estimated at (SPECIFY NAME AND ANNUAL EMISSION RATE FOR EACH POLLUTANT UNDER CONSIDERATION), and are below the conformity threshold value established at 40 CFR 93.153(b) of (SPECIFY NAME AND ASSOCIATED THRESHOLD RATE FOR EACH POLLUTANT UNDER CONSIDERATION) ;
AND
The project/action is not considered regionally significant under 40 CFR 93.153(i).

Supporting documentation and emissions estimates are

( ) ATTACHED
( ) APPEAR IN THE NEPA DOCUMENTATION (PROVIDE REFERENCE)
( ) OTHER

SIGNED_____
(Name and Title of Environmental Coordinator)

Figure 1. Example Text for a RONA

---

[18]Memorandum from HQDA, ACSIM (DAIM-ED-C) dated 27 June 1995, subject: General Conformity Under the Clean Air Act - Policy and Guidance
[19]Memorandum from USAEC (SFIM-AEC-ECC) dated 26 September 1995, subject: Record of Non-Applicability for the Clean Air Act General Conformity Review

3.0 INTERFACE WITH OTHER REGULATORY REQUIREMENTS

3.1 National Environmental Policy Act (NEPA).
. There has been considerable discussion in the military community about whether proposed actions subject to a NEPA review must also receive a general conformity review. The short answer to this question is yes. If a proposed action is subject to a NEPA review, and will take place in a nonattainment or maintenance area, then air pollutant emissions associated with the action must receive a general conformity review. Although the conformity regulation promulgated by EPA is silent on the specific issue of overlap between general conformity and NEPA, there have been numerous instances of interpretive guidance from EPA, as well as some judicial proceedings that address this issue. The Federal District Court for New Hampshire (addressing reuse of the former Pease Air Force Base and associated NEPA analyses) concluded that general conformity analysis was one of the essential components of a proper air quality analysis required under NEPA. The court further indicated that the air quality analysis required under NEPA would likely be much more comprehensive than a conformity analysis since NEPA was required to look at more than just the nonattainment and maintenance area air pollutants affected under general conformity.[20]

There are three levels of NEPA analysis. Each level is progressively more complex depending on whether or not the proposed action may significantly affect the environment. The three analysis levels are: 1) categorical exclusion (CATEX) for actions that are exempt from NEPA; 2) environmental assessment/finding of no significant impact (EA/FONSI) for actions with minimal potential for adversely affecting the environment; and 3) environmental impact statement (EIS) for actions with a potential to adversely affect the environment. The EPA has stated that a proposed action may be reviewed concurrently for NEPA and general conformity, but that neither review may take the place of the other. In addition, separate documentation (including computations and final determination) must be retained for each analysis. Useful aspects of EPA and other related guidance, as it pertains to the overlap between NEPA and general conformity, is summarized below:

CATEX - The EPA was asked whether NEPA actions that receive a CATEX determination (i.e., the action would be exempt from NEPA analysis) could be exempt from a general conformity review. The EPA concluded that a CATEX does not exempt an action from conformity review. [21]
EA/FONSI - As cited earlier in Section 1.5, EPA has stated its expectation that a general conformity review would occur at the same time that a proponent is preparing documentation for an EA. This implies that EPA expects proposed actions subject to an EA to also receive a conformity review.
EA/FONSI - A 1996 guidance memorandum from the Army Environmental Law Division (ELD) stated that general conformity emission rate thresholds could be useful in determining what constitutes a "significant" action under NEPA. The ELD suggested that proposed actions with projected air emissions below the general conformity nonattainment and maintenance area thresholds (identified in Tables 2 and 3) might be a supporting argument when justifying a FONSI.[22]
EIS - The EPA was asked whether each alternative evaluated under an EIS would have to receive a conformity review. The EPA responded that only the alternative ultimately approved (i.e., the preferred alternative) would require a conformity review.[23]
EIS - An additional finding from the Pease Air Force Base (AFB) case noted above was that all general conformity analyses prepared for a proposed action must be included in the Final EIS. Failure to do so might violate NEPA public disclosure requirements and require the preparation of a Supplemental EIS specifically for the purpose of identifying general conformity findings.[24]

3.2 Base Realignment and Closure (BRAC).
The BRAC process involves the relocation and liquidation of mission and property for the purpose of streamlining Army functions. Most BRAC actions fall into four categories:

- Disposing of real estate and real property
- Receiving new mission at an existing military installation
- Reducing mission at a military installation that will remain open

- Liquidating mission at a military installation that will be closed

Congress specifically exempted closure actions from NEPA, although Army policies implementing BRAC make it clear that a NEPA analysis must be performed for any other type of BRAC action. The NEPA obligations stipulated by Congress and Army have no bearing on whether a general conformity review must be conducted for a BRAC action. Only the criteria discussed in Section 1.0 should be used when determining whether a BRAC action is subject to a general conformity review. If a BRAC action is subject to NEPA review, a general conformity review may be conducted concurrently using the guidance stated previously in Section 3.1.

Some BRAC-related actions are exempt from general conformity, and these actions have been specifically identified within the rule. Exempt BRAC-related actions include[25] :

- Actions involving the use of land and facilities, such as leasing, where future activities will be similar in scope and operation to activities currently being conducted. [26]
- Actions associated with transfers of real properties through an enforceable contract or lease agreement where the delivery of the deed is required to occur promptly after a specific condition is met, such as promptly after the land is certified as meeting the requirements of CERCLA, and where the Federal agency does not retain continuing authority to control emission associated with the property.[27] This exemption would be applicable to reuse activities conducted under a lease in furtherance of conveyance that provides for the transfer of fee title upon completion of environmental remediation. The exemption would not apply in the case of standard short-term or interim leases.
- Transfers of real property from a Federal entity to another Federal entity and assignments of real property, including real property from a Federal entity to another Federal entity for subsequent deeding to eligible applicants.[28]

The Army BRAC Office, located within the Office of the Army Assistant Chief of Staff for Installation Management (ACSIM), is responsible for oversight and management of Army BRAC actions. This office has published a guidance manual for negotiating environmental compliance responsibilities associated with BRAC actions that may be useful for further guidance on this topic[29] .

3.3 Title V Operating Permit

Title V of the CArmy Ammunition Activity-90 established an operating permit program for all major sources of air pollution. The purpose of the Title V permit is to consolidate all federally enforceable air quality requirements for a particular facility into a single document. Since the general conformity regulation is a federally enforceable requirement, it must be included in the Title V permit of any Army installation located in an NAAQS nonattainment or maintenance area. Failure to include the general conformity requirement in the Title V permit could expose the installation to enforcement action for failure to maintain a complete and accurate permit.

Since the Title V permit requires an annual compliance certification, the installation must keep records or other affirmative proof demonstrating continuous compliance with all of the federally enforceable requirements in the permit. If an installation is subject to the general conformity rule, this means two things: 1) there must be a mechanism to capture proposed actions and screen them to determine if a general conformity review is necessary; and 2) for proposed actions needing a general conformity review, records must be kept to show how the actions were evaluated and the results of the evaluation. As discussed earlier in Section 2.0, the RONA is the appropriate record for demonstrating that a proposed action has been reviewed but that no general conformity determination is required. Failure to keep records showing that appropriate reviews were conducted could expose the installation to enforcement action for failure to comply with the general conformity rule.

[20]Information Paper from DAJA-EL dated 12 September 1994, subject: Federal District Court Decision in the Pease AFB Case
[21]General Conformity Guidance:Questions and Answers (Conformity Determination and NEPA: Question #5), Office of Air Quality and Planning Standards, U.S. EPA, July 13, 1994
[22]Memorandum from DAJA-EL dated 22 July 1996, subject: NEPA - Significant Action
[23]General Conformity Guidance: Questions and Answers (Conformity Determination and NEPA: Question #4), Office of Air Quality and Planning Standards, U.S. EPA, July 13, 1994
[24]Information Paper from DAJA-EL dated 12 September 1994, subject: Federal District Court Decision in the Pease Air Force Base Case
[25]Memorandum from DAJA-EL dated 27 October 1995, subject: Meeting General Conformity Requirements in the BRAC Context
[26]40 CFR 93.153(c)(2)(x) and (xi)
[27]40 CFR 93.153(c)(2)(xix)
[28]40 CFR 93.153(c)(2)(xx)
[29]Base Realignment and Closure Manual for Compliance With the National Environmental Policy Act, Assistant Chief of Staff for Installation Management, Base Realignment and Closure Office, Attn: DAIM-BO, September 1995

4.0 REFERENCES AND RESOURCES FOR GENERAL CONFORMITY REVIEWS

4.1 Policy and Technical Support

Army policy on general conformity:	U.S. Army Environmental Center 5179 Hoadley Road Aberdeen Proving Ground, MD 21010-5401 Phone: 410-436-1214, DSN 584-1214; FAX: x1675
Legal issues, resolution of NOVs:	Environmental Law Division U.S. Army Legal Services Agency, ATTN: DAJA-EL 901 N. Stuart St., Arlington, VA 22203 Phone: 703-696-1569, DSN 426-1569, FAX x2940
Technical questions, regulatory	U.S. Army Center for Health Promotion and Preventive Medicine (Air Quality Surveillance) 5158 Blackhawk Road Aberdeen Proving Ground, MD 21010-5403 Phone: 410-436-2509, DSN 584-2509, FAX x3656

4.2 Guidance Documents in the Military Community

The table below contains the title, points of contact and/or website for general conformity guidance documents that are in circulation in the military community.

Proponent	Document Title
Army	Department of the Army Guide for Compliance with the General Conformity Rule under the Clean Air Act ***Website:*** www.denix.osd.mil/denix/DOD/Working/CAASSC/Conform/doa1.html
Army Base Realignment and Closure Office	Base Realignment and Closure Manual for Compliance With the National Environmental Policy Act ***POC:*** Barbara Anderson: 703-693-3501
Air Force	U.S. Air Force Conformity Guide ***Website:*** www.denix.osd.mil/denix/DOD/Working/policy/AF/uscfg/uscfg.html
Air Force and Federal Aviation Administration	Air Quality Procedures for Civilian Airports and Air Force Bases ***POC:*** Julie Draper: 202-267-3494 ***Website:*** www.aee.faa.gov/aee-100/aee-120/aqp/aqp1.htm
Navy	Draft, Chief of Naval Operations Interim Guidance on Compliance With the Clean Air Act General Conformity Rule ***Website:*** www.denix.osd.mil/denix/DOD/Working/CAASSC/Conform/cleanair.html
Environmental Protection Agency	General Conformity Guidance: Questions and Answers New General Conformity Q's & A's ***Website:*** www.epa.gov/ttn/oarpg/t1fs.html

4.3 Emission Estimating Software

We are aware of several computer models that can assist with general conformity emission rate calculations. These models estimate air pollutant emissions associated with a proposed action so that the

user can determine whether any of the general conformity emission rate thresholds might be exceeded. If model results indicate that a threshold is exceeded, then a full-scale general conformity determination may be necessary. Most conformity models have been developed by Federal agencies directly affected by the general conformity rule, although some models have been developed commercially. Models with Federal proponents are reviewed below. Recall that the conformity rule requires emission rate calculations to be accomplished using EPA-preferred emission factors. Users should ensure that model-based calculations meet this criteria, where applicable.

4.3.1 Air Conformity Application Model (ACAM)

Proponent: Air Force Center for Environmental Excellence (AFCEE)
Model Summary: ACAM is a screening model that can calculate rough estimates of conformity-related emissions and potential conformity determination requirements for a proposed action. The program calculates emissions increases resulting from assignment of new equipment and personnel to an existing Air Force base, and then compares these results to general conformity thresholds. The proposed action is rated red, yellow or green depending on the calculated potential for approaching or exceeding conformity thresholds. The model allows the user to create scenarios by selecting from a pre-established list of air emissions sources. These sources include: various fixed and rotary-winged aircraft, fire fighter training, paint booths, solvent degreasers, construction-related emissions and vehicular emissions due to workforce commuters. The model uses EPA's ***Mobile5a***, to calculate vehicle emissions, and ***Air Force's Aircraft Generation Equipment Emissions Estimator*** (AGEEE) for aircraft emissions. The AFCEE has recently received funding to update and upgrade ACAM. The new version is expected to be available in December 2000. *Neat Features:* Imbedded database contains all Air Force bases with associated NAAQS attainment status, base emission rates, county emission rates, regional significance levels and regulatory point of contact for area where the base is located. *Concerns:* The model is designed as a screening tool only, emission estimates need to be verified by more detailed calculation if proposed action is close to conformity threshold levels. The NAAQS attainment status data is from 1994 and emission factors need to be updated.
Latest Version/Last Update: ACAM v2.0 Pro/1996
POC: Frank Castaneda, Air Force Center for Environmental Excellence
Phone: 210-536-4202; FAX: 210-536-3890; Email: frank.castaneda@hqafcee.brooks.af.mil

4.3.2 NAVFAC Conformity Applicability Analysis Program (NAVCAP)

Proponent: Naval Facilities Engineering Command
Model Summary: The NAVCAP is a Microsoft Windows-based program that calculates air emissions for conformity-related actions. The program performs calculations in two main worksheets: construction-related emissions and operation-related emissions. Each worksheet contains an imbedded selection of emission sources that are likely to be associated with various phases of the project. The construction worksheet includes emission sources associated with demolition, initial site preparation, construction, and start-up/acceptance/move-in phases. The operation worksheet includes building heating, employee commuting, equipment (aircraft, ships, motor vehicles) and services (fuel storage, solvent/coating usage, fire training). The model uses a combination of EPA emission factors and Navy emission data to calculate pollutant emission rates. *Neat Features:* Windows-based program is easy to navigate. *Concerns:* Current version of the model is out-of-date; EPA emission factors need to be updated.
Latest Version/Last Update: NAVCAP Version 1.0/1997
POC: Felix Mestey P.E., Naval Facilities Engineering Command
Phone: 202-685-9313; FAX: 202-685-1670; Email: mesteyf@navfac.navy.mil

4.3.3 Emissions and Dispersion Modeling System (EDMS)

Proponent: Federal Aviation Administration (FAA)
Model Summary: The EDMS is a Microsoft Windows-based program designed to assess the air quality impacts of airport emission sources. It has a dual capability to compute air pollutant emission rates and to predict the ambient air pollution levels resulting from those emissions. The EDMS can calculate emissions

from aviation sources such as aircraft, auxiliary power units and ground support equipment; as well as non-aviation sources such as boilers, generators, incinerators, fire training facilities, coating operations, deicing operations, solvent degreasers, fuel storage tanks and ground access vehicles. Emission factors for stationary sources are taken from EPA's AP-42, vehicle emission factors are from EPA's Mobile5a, aircraft emission factors are from the International Civil Aviation Organization Engine Exhaust Emissions Data Bank. In 1993, the EPA accepted EDMS as a "Preferred Guideline" dispersion model for evaluating air quality impacts from civil airports and military bases. The FAA has designated EDMS as the required model for performing air quality analyses for aviation sources. *Neat Features:* Extremely clear and comprehensive documentation; emission factors and algorithms are up-to-date and reflect EPA's preferences. *Concerns:* Model is designed for airports and may not be generally applicable to some Army conformity projects. The EDMS must be purchased from FAA at a cost of $200.
Latest Version/Last Update: EDMS Version 3.2/February 25, 2000
Model POC: Julie Draper, Federal Aviation Administration
Phone: 202-267-3493; FAX: 202-267-5594; Email: julie.draper@faa

This page intentionally left blank.

Appendix M
Cultural Resources Content for NEPA Documents

This page intentionally left blank.

APPENDIX M

CULTURAL RESOURCES CONTENT FOR NEPA DOCUMENTS

Affected Environment Section

To conduct an adequate analysis of the subject matter, the "Affected Environment" chapter of the EA/EIS, should minimally present the following types of information in the order noted below. When appropriate this data can be presented in chart or tabular form.

1. Present a brief history of the study area (much of this information can be gathered from an installation Integrated Cultural Resource Management Plan (ICRMP), if one has been prepared. Include, at a minimum, the following information:

    A. Precontact
    B. Civilian History (prior to military acquisition)
    C. Military History

2. Include reference to previous cultural resource inventories, investigations, standard operating procedures, agreements, and historic preservation plans. This section should include:

    A. Archeological surveys and investigations
    B. Building, structure, and landscape inventories and investigations
    C. Records of past National Historic Preservation Act compliance activities, to include: Programmatic Agreements, Memoranda of Agreement and compliance letters from the State Historic Preservation Officer (SHPO)
    D. Integrated Cultural Resource Management Plans (ICRMPs)
    E. Standard Operating Procedures

3. List and give general locations of all National Historic Landmarks or National Register properties and districts located on the subject installation. Site locations of these properties should not be displayed on maps.

4. If applicable, list and give locations of National Historic Landmarks or National Register properties located off of Army property that might be affected physically, visually, or audibly by BRAC activities. Site locations of these properties should not be displayed on maps. Incorporate site location by reference (a reference not for release to the general public in accordance with the National Historic Preservation Act (cite Section 800)).

5. Give the number and general locations of archeological sites and historic buildings, structures, and landscapes on the subject facility that are on or considered to be eligible for the National Register. Site locations of these properties should not be displayed on maps. Incorporate site location by reference (a reference not for release to the general public in accordance with the National Historic Preservation Act (cite Section 800)).

6. State whether the buildings, structures, or lands to be affected by BRAC actions have been evaluated for significance under the National Register criteria. Identify any historic property that will be affected by BRAC actions. If previous inventory surveys have determined that the areas

to be affected by the BRAC activities possess no historic properties, append the SHPO correspondence that concurs with the recommendations of that survey.

7. If historic properties are located within the area of potential effect, determine the potential effects of a project on these properties. Effects may include but not be limited to:

    A. Destruction of historic buildings, structures, or landscapes
    B. Construction in historic districts
    C. Repair or alteration of historic buildings and structures
    D. Construction in areas with archeological sites
    E. Transfer of ownership to non-federal entities
    F. Decreased maintenance resulting in deterioration of historic buildings and structures
    G. Change of mission training in range areas (that could result in damage to surface or buried archeological sites)

8. Describe and state the findings of any cultural resource investigations undertaken for BRAC actions.

9. If additional cultural resource investigations will be necessary before the BRAC action can proceed, the scope of these actions should be identified at this juncture. Identify any memoranda of agreements (MOAs) or programmatic agreements (PAs) concluded as part of the BRAC process that require additional cultural resource investigations, surveys, or evaluations. Include copies of these agreements as appendices to the NEPA document.

Environmental and Socioeconomic Consequences Section

The "Environmental and Socioeconomic Consequences" section of the NEPA document should minimally present the following types of information in the order noted below. Document preparers should refer to the chapter of this manual entitled "Treatment of Cultural Resources in BRAC NEPA Analyses" before writing this section. As noted in this section, the content and recommendations contained within the cultural resource portion of the "Environmental and Socioeconomic Consequences" section will be determined, in part, by whether it was possible to complete the Section 106 process prior to finalization of the NEPA document.

1. State whether any archeological sites or historic structures that are on or potentially eligible for the National Register will be affected by the BRAC action.

2. Determinations of effect for BRAC actions should be made in consultation with the lead Army organization historic preservation officer, relevant FRIT, and the SHPO. BRAC actions will have the following effects on cultural resources:

    A. No effect
    B. No adverse effect
    C. Adverse effect

3. Describe the actions that were completed or will be necessary to bring the facility into compliance with the National Historic Preservation Act. When NHPA compliance cannot be finalized prior to completion of the NEPA documentation, reference, any MOA or PA that specify the cultural resource actions the Army will carry out to meet their NHPA obligations prior to initiating the BRAC action. Cultural resources studies undertaken as a consequence of BRAC actions can include (but are not limited to):

    A. Historic overviews to provide contexts for statements of significance
    B. Archeological surveys
    C. Archeological site excavations to determine National Register eligibility
    D. Archeological mitigation excavations for National Register eligible sites (final data recovery)
    E. Building, structure, and landscape inventories
    F. Building, structure, and landscape recordation (HABS/HAER recordings/drawings)
    G. Cold War property inventories
    H. Selection of curation facilities for installation artifact and record collections

Appendices should include:

- Copies of BRAC cultural resource MOAs or PAs for the affected installation
- List of references, persons, and agencies consulted to make cultural resource recommendations (include correspondence from the Advisory Council, State Historic Preservation Officers, Native American groups, and other interested parties).
- Sections of the installation Integrated Cultural Resource Management Plan (ICRMP), building maintenance plans, and standard operating procedures, as appropriate.

Appendix N
Socioeconomics and Community Facilities

This page intentionally left blank.

APPENDIX N

SOCIOECONOMICS AND COMMUNITY FACILITIES

THE NEED FOR SOCIOECONOMIC IMPACT ASSESSMENT

The assessment of socioeconomic impacts resulting from Army actions can be one of the more controversial issues related to the realignment or closure of an installation. The economic and social well-being of a local community can be dependent upon the activities of the installation, and disruptions to the status quo become politically charged and emotion-laden. The objectives of the BRAC/NEPA analyst assigned the task of analyzing and documenting the socioeconomic effects become twofold. First, an open and realistic assessment of the potential effects must be performed, evaluated, and documented. Second, this process must be communicated to the general public in a manner that removes or reduces the emotion and politics and focuses on actual impacts and mitigation actions.

The requirement to assess socioeconomic impacts in an environmental assessment (EA) or environmental impact statement (EIS) has been a source of legal discussion since the passage of National Environmental Policy Act (NEPA). While NEPA is predominately oriented toward the biophysical environment, court decisions have supported the need for analysis of socioeconomic impacts when they are accompanied by biophysical impacts. In this regard, socioeconomic impact alone cannot "trigger" the need for an EIS. It is advisable to assess the socioeconomic impacts as part of the NEPA process and to document this analysis on a par with evaluations in areas such as air and water quality, and the natural environment.

THE ECONOMIC IMPACT FORECAST SYSTEM

While a number of economic models exist throughout the Federal government to address different economic issues, the U.S. Army has an on-line databases, series of models, and tools which are specifically designed to address regional economic impacts pursuant to NEPA and to measure the significance of the impacts.

The U.S. Army developed the Economic Impact Forecast System (EIFS) with the assistance of many academic and professional economists and regional scientists to address the economic impacts pursuant to NEPA and to measure their significance (Huppertz, Bloomquist, and Barbehenn 1994). As a result of its designed applicability, and in the interest of uniformity, EIFS is mandated by ASA(IL&E) for use in NEPA assessment for BRAC. The algorithms in EIFS are simple and easy to understand, but still have firm, defensible bases in regional economic theory.

EIFS is implemented as an on-line system supported by USACERL through the University of Illinois. The system is available to anyone with an approved login and password, and is available at all times through toll-free numbers, Telenet, and other commonly-used communications.

The databases in EIFS are national in scope and cover the approximately 3,700 counties, parishes, and independent cities which are recognized as reporting units by the Department of Commerce. EIFS allows the user to "define" an economic region of influence by simply identifying the counties which are to be analyzed. Once the ROI is defined, the system aggregates the data, calculates "multipliers" and other variables used in the various models in EIFS, and prompts the user for input data.

THE REGION OF INFLUENCE DEFINITION

Of the many factors in constructing an economic impact model and in performing an economic impact analysis, probably one of the most controversial is the definition of the geographic region of influence (ROI). For people not accustomed to carrying out regional analysis, justifying a particular study area may not be easy and the decision is often surrounded by many thorny and uncomfortable issues. As a result, careful thought and judgement should always be exercised when delineating ROIs.

Most regional and urban analysts performing socioeconomic impact analysis prefer to use a functional area concept for defining study regions (Fox and Kuman 1965). Regions defined in this way explicitly consider the economic linkages and spatial dimensions between the residential population and the businesses in the geographic area. In other words, commuting and trading patterns are of prime concern.

An important note should be made of the relationship between the size of the study region and the subsequently estimated impacts (Chalmers and Anderson 1977). A larger area usually implies larger populations, greater factor endowments, richer resource deposits, and more readily available productive supplies. All these attributes make for more integrated and more diverse economic structures that, in turn, lead to larger socioeconomic impacts. On the other hand, larger regions also tend to dilute the significance of socioeconomic impacts, which means that the relative significance of impacts tends to become smaller as the region gets larger.

Beyond the general guidelines for defining regions (described above), there are few universally accepted "rules," which are somewhat subjective. The definition of the affected region must include all of the ingredients of a self-sustaining region--local businesses, local government, and local population (Chalmers and Anderson 1977). The region must reflect the limits of the economic activity associated with the affected population. This is not an easy definition to satisfy and numerous "simplistic" attempts at a standard methodology have failed. Through experience, however, it has become obvious that the following considerations should be included in the definition of a ROI:

1. The **residence patterns of the affected personnel** determine where they are likely to spend their salaries. Records of addresses of personnel can serve as a means to document this consideration. However, there is often an established perception among the affected facility's residents regarding where the personnel live, and that the perception is generally correct.

2. The **availability of local shopping opportunities** is also a factor in the ROI definition. The location of new malls or other popular shopping opportunities can dictate an expansion in the ROI if no comparable opportunities exist in the immediate vicinity.

3. The **"journey-to-work" time for employees** often dictates part of the regional definition. On average, a journey-to-time of one hour or so is considered a maximum criteria: however, some regions in the country are characterized by longer travel times. The perception of travel time is affected significantly by the quality of the transportation network, the availability of mass transit, and what impacts are felt during "rush hour" peaks.

4. **Local customs and culture** often dictate the boundaries of the ROI. Long versus short commute patterns, willingness to approach the "inner city," the sense of local community, and other factors often lead to seeming inconsistencies in the region definitions. Although difficult to address, nonetheless, they must enter into the impact analysis process and into the definition of the ROI

None of the above considerations can be used exclusively to define ROIs for all socioeconomic impact studies. It is necessary that all these considerations enter into the ROI definition process. This often requires input from local personnel in addition to the analysis of secondary data sources (maps, data, etc.).

SOCIOECONOMIC SETTING

Once the geographic area for a proposed action has been defined, the socioeconomic setting should be evaluated. The purpose of describing the socioeconomic environment of the region in which the installation exists is to provide an understanding of the socioeconomic forces that have shaped the area. In addition, the socioeconomic setting provides the "frame-of-reference" necessary to determine the significance for the estimated socioeconomic impacts. It is important to know (for example) if the region has experienced growth or decline in the recent past. In addition, this information is useful in determining the economic and demographic relationships within the region and in connecting the study area with the nation at large. Demographic and economic trends for the region also give a regional perspective to an impact analysis. If particular counties diverge significantly from the regional averages then it is important to show the individual differences. Comparative data is ordinarily presented for the ROI, for the state, and frequently for the nation as a whole.

Detailed population data are available generally for decennial census years, while more aggregate data are available for years between census years. Data for special populations (such as native Americans or under-utilized human resources) that may be impacted by the proposed actions can also be shown. Employment and population data are often presented for past decennial censuses and for more recent annual observations to provide some descriptions of overall trends. The principal source for this kind of data are the U.S. Bureau of the Census (Census), the U.S. Bureau of Economic Analysis (BEA), and the U.S. Bureau of Labor Statistics (BLS). Due to consistency issues between EISs/EAs, these "standard" federal sources should be used for describing the socioeconomic setting rather than locally available data. These data are available in a convenient format and in an easily-retrievable form within the EIFS system.

CONDUCTING SOCIOECONOMIC IMPACT ANALYSES

After the ROI is defined and the socioeconomic setting has been described, the system aggregates the data, calculates "multipliers" and other variables used in the actual models, and is ready for user input data. From the EIFS menu, users select the model to be executed; then users are required to input those data elements which describe the Army action: civilians and military to be moved and their salaries, and the local procurement associated with the activity being relocated. Once these data are entered into the system and a model is executed, projections of changes in the local economy are provided. These projections include the four "indicator" variables: potential changes in sales volume, employment, income, and population. These four "indicator" variables are used to measure and evaluate the significance socioeconomic impacts.

<u>EIFS IMPACT MODELS:</u> Economic models are an invaluable technique for conducting an important component of socioeconomic impact analysis.[9] These tools are especially useful in determining the order and magnitude that a federal action will have on a local or regional economy. The suite of economic models can vary from the simplistic to the complex, each offering their interpretation of a project's effects. As a rule, economic models are sets of mathematical equations that represent the interactions among the integral components of the regional economy. The relationships that are modeled are based

[9]Richardson (1985) reviews many of the "state-of-the-art" techniques in regional economic modeling. Treyz (1993) provides an excellent discussion of the characteristics and uses of regional economic models (especially chapters 2 through 7).

upon economic principals that have a long history of relative accuracy and use. Economic models can be used to compare the impacts of a project using varying scenarios. EIFS currently contains five basic impact models:

Standard EIFS Forecast Model: The Standard EIFS Forecast Model evaluates the socioeconomic effects due to the usual operations and maintenance activities at a military installation or civilian facility or due to a change in its mission. The operations and maintenance or the subject mission change may affect the entire installation (such as a closure) or just part of it (such as the Post Finance Office).

Construction EIFS Forecast Model: The Construction EIFS Forecast Model evaluates the socioeconomic effects due to a construction project on-post. The construction project is assumed to be carried out by a construction firm, so that neither the civilian nor the military personnel on-post are involved in the construction activity. The socioeconomic effects of many types of construction projects may be estimated using the Construction EIFS Forecast Model: e.g., the construction of housing, streets and highways, water and sewerage facilities, office buildings, and the maintenance and repair of these facilities.

Training EIFS Forecast Model: The Training EIFS Forecast Model evaluates the socioeconomic effects due to training activities at an installation.

Automated Input-Output Multiplier System: The Automated Input-Output Multiplier System generates input-output multipliers for impact analysis situations that reflect the unique character of specific industrial sectors. For example, the closing of the manufacturing activities at munitions plant or a reuse alternative involves the opening of a metal rolling plant.

Small Area Assessment Model: The Small Area Assessment Model assesses the disaggregated local area income and employment impacts associated with military actions.

The basis of the EIFS analytical capabilities is the calculation of multipliers which are used to estimate the impacts resulting from Army-related changes in local expenditures and/or employment. In calculating the multipliers, EIFS uses the economic base model approach which relies on the ratio of total economic activity to "basic" economic activity. Basic, in this context, is defined as the production or employment engaged to supply goods and services outside the ROI or by Federal activities (such as military installations and their employees). According to economic base theory, the ratio of total income to basic income is measurable and sufficiently stable so that future changes in economic activity can be forecast. This technique is especially appropriate for estimating "aggregate" impacts and makes the economic base model ideal for the EA/EIS (or NEPA) process.

Different impact scenarios create uniquely different economic and social effects in the communities surrounding a military installation. The differences in these socioeconomic effects are primarily due to the differences in the expenditure patterns of procurement and consumption of locally produced goods and services. EIFS contains several models corresponding to the type of military action or special impact scenario that is being analyzed. The user selects a model to be used from a menu of options:

SOCIOECONOMIC IMPACT SCENARIO	USE EIFS FORECAST MODEL
Mission Change and Operations	Standard EIFS Forecast Model
Construction	Construction EIFS Forecast Model
Training	Training EIFS Forecast Model
Industrial-Type Activities	Standard EIFS Forecast Model with Specific Automated Input-Output Multipliers
General Reuse Alternatives	Standard EIFS Forecast Model with Average Automated Input-Output Multipliers
Specific Reuse Alternatives	Standard EIFS Forecast Model with Specific Automated Input-Output Multipliers

DATA REQUIREMENTS: The information required from EIFS users include those data necessary to describe the Army action. The user inputs those data elements into the selected model which describe the Army action. Specifically, users of EIFS must provide:

1. number of civilians affected and their average annual salary,
2. number of military affected and their average annual salary,
3. percentage of military living on-post, and
4. total local procurement made by the affected Army activity.

The salary data is necessary to describe the total salary inputs to the local region which are affected. Salary is defined as gross income (which is pay before deductions for income taxes, withholding, and social security tax, but does not include retirement and other benefits that are not received directly by the employee). Special pay categories (such as "jump" pay) and housing allowances should be included. The dollar value of local procurement is the total annual change in action-related expenditures for two categories: 1) goods and services and 2) construction labor plus construction materials and supplies. Goods and services expenditures are used in the Standard and Trainee EIFS Forecast Models and construction expenditures, of course, are used in the Construction EIFS Forecast Model.

These data, necessary for the description of the proposed BRAC action and for a full and proper socioeconomic impact analysis, must come from those sources who can identify (1) the distributions of military and civilian personnel grades in affected units, and (2) local procurement made by the affected units. These data are usually available through personnel and procurement channels at the installation at which the units reside.

IMPACT RESULTS: Once these are entered into the system, a projection of the changes in the local economy is provided. Realignments and closures of military installations lead to changes in the demand for goods and services either from military and civilian personnel spending their incomes to support their families or from purchases to carry out installation activities. Changes in salaries and procurement are converted into an initial change in local sales (called direct project effects). In turn, direct project effects lead to further changes in local sales through a process of spending and respending (called indirect project effects). This process in total is called the "multiplier process" and is summarized in the form of an "impact multiplier." The multiplier is interpreted as the total impact on the economy of the region resulting from a unit change in its basic sector, for example, a dollar increase in local expenditures due to an expansion of a military installation.[10] Local economic and demographic changes (such as employment, income, and population) occur during the multiplier process. The EIFS model estimates and produces the following output:

1. change in total local business volume,
2. change in total local employment,
3. change in total local income,
4. change in total local population, and
5. Rational Threshold Values (RTVs).

REUSE IMPACT ANALYSIS

The are a multitude of potential private-sector uses for excessed military installations. Sometimes a community is fortunate enough to have a large single employer replace the activities that previously occurred at the excessed installation. This single use could be a large micro-electronic processing plant, a branch of the state university system, or an international commercial air facility. However, a single replacement activity is likely, in most situations, to be "the exception rather than the rule." More often the reuse plan for an excessed installation will reflect the character and nature of the local economy and the plan will probably consist of a "mixed use" scenario (e.g., a combination of acreages by agricultural, industrial, commercial, service, and residential uses).

For either of these situations, the use of the Standard EIFS Forecast Model in conjunction with both the employment densities (such as those listed below) and the information and multipliers in the Automated Input-Output Multiplier System (AIMS) is sufficient to analyze the socioeconomic impacts of specific and general reuse scenarios.

[10] EIFS estimates its multipliers using a "4-digit SIC location quotient" approach based on the concentration of industries within the region relative to the industrial concentrations for the nation (see Isserman, 1977).

Employment Density by Sector

Sector	Square Feet per Employee
Light-Industrial	624
Warehouse	2,746
Retail	197
Restaurant	388
Industrial Service	724
Commercial Service	1,643
Office	347
Research & Development	485
Health Club	920
Training Facilities/Schools/Health Care	699

SOURCE: Breyard, Michael D. 1988. Business and Industrial Park Development Handbook. Washington, DC: Urban Land Institute, p. 53.

EIFS, like other socioeconomic impact models, is a model that estimates annual socioeconomic impact estimates. An important aspect of the socioeconomic impact analysis of reuse will be the absorption of the available developable property. In other words, there may be enough property available with suitable characteristics for significant local socioeconomic development. However, this potential development (as large and as attractive as it may be) will not likely occur overnight. Consideration of acquiring initial "seed" tenants and the appropriate marketing of the available property will have important effects on the length of the absorption phase of an installation's reuse strategy and on the subsequent socioeconomic effects that are likely to occur.

TIMING OF PROPOSED ACTIONS

Many proposed military realignment actions occur over extended periods or their socioeconomic effects have unique temporal patterns corresponding to the various phases of the actions. For example, an armor training division is to leave an Army post and will be "back-filled" by an infantry division. Suppose, further, that the training division leaves during the first year of the action, that existing facilities are altered during the second and third years of the action to accommodate the new mission, and that the infantry division is phased-in during the third, fourth, and fifth years of the action.

The indirect project effects that will occur as a consequence of this realignment action will have a temporal pattern similar to an action's "life cycle." That is, the indirect effect of realignment actions impact local economies by different magnitudes over time, just as do the direct project effects. Consequently, the socioeconomic impacts of this action should be estimated by evaluating the socioeconomic impacts of the annual components of the proposed action. That is, there are socioeconomic impacts associated with the out-going armor training division during the first year of the action, with the construction activity during the second and third years of the action, and with the incoming infantry unit during the last three years of action.

THE SIGNIFICANCE OF SOCIOECONOMIC IMPACTS

Once model projections are obtained, further use of EIFS tools, the Rational Threshold Value (RTV) and Forecast Significance of Impacts (FSI) profiles, allows the user to evaluate the "significance" of the impacts. These analytical tools review the historical trends for the defined region and develop measures of local historical fluctuations in sales volume, employment, income, and population. These evaluations identify the positive and negative changes within which a project can affect the local economy without creating a significant impact.

These techniques have two major strengths: (1) they are specific to the region under analysis and (2) they are based on actual historical time series data for the defined region. The use of the EIFS impact models in combination with the RTV and/or FSI have proven very successful in addressing perceived socioeconomic impacts. The EIFS models and these significance measurement techniques are theoretically sound and have been reviewed on numerous occasions (Bloomquist, Olson, Webster, and Shannon 1988 and Webster and Shannon 1978).

If the socioeconomic impact analysis of the proposed action indicates "significance," the EIFS model results should then be supplemented with a more detailed analysis. While such instances are rare, the greater detail and accuracy will be valuable in further mitigation planning. With EIFS, a higher-level input-output model is available for use. Called the Automated Input-Output Multiplier System (AIMS), the model adheres to the EIFS philosophy in ease of use, but can provide sector-specific data for further analysis of significant impacts resulting from Army actions. In addition, more detailed, geographically specific impact analysis may be required. EIFS also contains the Small Area Assessment Model (SAAM) that provides county-by-county impacts within the ROI.[11] This overall approach; is referred to as the "two tier" approach-depending upon a simple (using EIFS and the RTV to screen; and more detailed models to address significant impacts), defensible model until such time that a significance threshold triggers a more detailed, resource-consumptive analysis of the socioeconomic impacts (Webster, Hamilton, and Robinson 1982).

It is rare that the significance threshold is actually crossed and the documentation of this fact can usually lead to the dissipation of the issue. All data is locally-specific and therefore applicable. While the age of the data (dependent upon the Census source) can be a criticism, it is the only uniform source available. The model itself is theoretically sound and has been reviewed on numerous occasions. In short, the model can be effectively used to define and document "insignificant" impacts.

SOCIOECONOMIC IMPACT MITIGATION

The mitigation of socioeconomic impacts is most often accomplished through time-phasing of the action. Spreading the action over a few years is often a good mechanism to lessen the "jolt" or severity of the economic impact and is often a pragmatic result of the logistics associated with realignment. The impact is often spread over a number of years to account for the need for facilities at gaining installations and, a smooth transition and other factors.

[11]More geographically specific impact analysis is possible, but requires greater participation from users to supply local area economic and demographic data.

Once the actual "staging" of an action is completed, some detailed mitigation can proceed, often under the auspices and assistance of the DoD Office of Economic Adjustment (OEA). This office is familiar with the programs designed to assist communities impacted by DoD actions and is very effective in assisting these regions during such periods of turmoil. In severe cases of impact, more detailed, sector-specific models are often used by OEA. These are often necessary for the type of detailed mitigation planning often required for significantly-affected regions.

CUMULATIVE SOCIOECONOMIC IMPACT ANALYSIS

It is not required that the socioeconomic impacts due to the closure of installations be analyzed or presented in disposal and reuse environmental assessments or environmental impact statements. However, if the closure of an installation precedes its disposal due to a previous or current BRAC action, recent non-BRAC military closure or realignment decision, or other federal, state, and local actions that will affect the economies of the local communities nearby the subject installation, then the cumulative effects of these actions will have to be considered, analyzed, and presented in a cumulative socioeconomic impact section of the subject NEPA document. At a minimum, the negative socioeconomic effects of closing the installation will have to be compared with the positive socioeconomic effects of the civilian reuse of the installation.

REFERENCES

Bloomquist, K.M.; Olson, M.J.; Webster, R.D.; and Shannon, E. 1988. *Methods of Evaluating the Significance of Impacts: The RTV and FSI Profiles*. Champaign, IL: U.S. Army Construction Engineering Research Laboratory.

Breyard, Michael D. 1988. Business and Industrial Park Development Handbook. Washington, DC: Urban Land Institute.

Chalmers, J.A. and Anderson, E.J. 1977. *Economic/Demographic Assessment Manual: Current Practices, Procedural Recommendations, and a Test Case*. Denver, CO: U.S. Bureau of Reclamation.

Fox, K.A. and Kuman, T.K. 1965. "The Functional Economic Area: Delineation and Implications for Economic Analysis and Policy." *Papers and Proceedings, Regional Science Association*, 15, 57-85.

Huppertz, C.E.; Bloomquist, K.M.; and Barbehenn, J. 1994. *EIFS 5.0: Economic Impact Forecast System User Manual*. Champaign, IL: U.S. Army Construction Engineering Research Laboratory.

Isserman, A.M. 1977. "The Location Quotient Approach to Estimating Regional Economic Impact." *Journal of American Institute of Planners*, January, 33-41.

Richardson, H.W. 1985. "Input-Output and Economic Base Multipliers: Looking Backward and Forward." *Journal of Regional Science*, 25, 607-661.

Treyz, G.I. 1993. *Regional Economic Modeling: A Systematic Approach to Economic Forecasting and Policy Analysis*. Boston: Kluwer Academic Publishers.

Webster, R.D.; Hamilton, J.W.; and Robinson, D.P. 1982. *The Two-Tier Concept for Economic Impact Analysis: Introduction and User Instructions, Technical Report N-127*. Champaign, IL: U.S. Army Construction Engineering Research Laboratory.

Webster, R.D. and Shannon, E. 1978. *The Rational Threshold Value (RTV) Technique for the Evaluation of Regional Economic Impacts, Technical Report N-49*. Champaign, IL: U.S. Army Construction Engineering Research Laboratory.

Appendix O
Checklist for NEPA Document Review

This page intentionally left blank.

APPENDIX O

CHECKLIST FOR NEPA DOCUMENT REVIEW

Reviewer_____

Environmental Impact Statement

Review Sheet

Title:_____

_____

Dated:_____ FEIS_____ DEIS_____ FR Date_____

Lead
Agency: _____

1.0 Required Sections/Format (40 CFR 1502.10 & 1500.4)
2.0 Additional Sections
3.0 Nonstandard Format - Why?
4.0 Documentation Length (40 CFR 1502.7)
5.0 Cover Sheet (40 CFR 1502.11)
6.0 Summary (40 CFR 1502.12)
7.0 Table of Contents
8.0 Purpose and Need (40 CFR 1502.13)
9.0 Alternatives including the proposed action (40 CFR 1502.14)
10.0 Affected Environment (40 CFR 1502.15)
11.0 Environmental Consequences (40 CFR 1502.16)
12.0 Public Involvement (40 CFR 1506.6)
13.0 Integration of environmental laws, regulations, and executive orders (40 CFR 1500.4, 1500.5, 1502.15, 1502.16, 1508.27)
14.0 Mitigation and Monitoring (40 CFR 1502.14, 1502.16, 1505.2, 1505.3)
15.0 Cumulative Effects (40 CFR 1508.7)
16.0 Record of Decision - ROD (40 CFR 1505.2)
17.0 Special Issues
18.0 Subjective Evaluations

Document Format - Quick Check

1.0 Document Format (40 CFR 1502.10 & 1500.4) Comments/Page Number
(All present and in correct order?)

1.1 Cover Sheet ..... _____
1.2 Summary ..... _____
1.3 Table of Contents ..... _____
1.4 Purpose and Need ..... _____
1.5 Alternatives ..... _____
1.6 Affected Environment ..... _____
1.7 Environmental and Socioeconomic Consequences ..... _____
1.8 List of Preparers ..... _____
1.9 Distribution List ..... _____
1.10 Index ..... _____
1.11 Appendix ..... _____
1.12 Total number of pages (>150 pages) ..... _____
1.13 Inside Cover/Recycle ..... _____
1.14 Acronym Pull-out Sheet (at back) ..... _____
1.15 Abstract ..... _____
1.16 Signature Sheet ..... _____

Document - Detailed Check

2.0 **Additional Sections (not required by CEQ)**

2.1 Does the statement contain an index?

2.2 Does the statement contain an appendix? If YES, does the index contain only information related to the EIS?

2.3 Others?

3.0 **Nonstandard Format - Why?**

3.1 Why was the CEQ format not used?

3.2 Does the nonstandard format contain all the CEQ required sections?

3.3 Is the presentation clear, understandable, and meet the intent of the CEQ regulations?

4.0 **Documentation Length** (40 CFR 1502.7)

4.1 How long is the text of the EIS (not including enclosures and appendices)?

4.2 If the text exceeds 150 pages, is there an explanation of unusual scope or complexity?

4.3 Is the EIS of adequate length to treat the subject matter (e.g., Is it concise, but of sufficient length to adequately address the action)?

4.4 Are there documents included by reference? YES/NO If YES, are these documents commonly available or have copies been made available on request or at a specific site(s)?

5.0 **Cover Sheet** (40 CFR 1502.11)

5.1 Does the cover page exceed the one page limit?

5.2 Does the cover sheet contain the name(s) of the lead agency(ies) and any cooperating agencies?

5.3 Does the cover sheet identify the State(s) and county(ies) where the action will occur?

5.4 Are any related cooperating agency actions identified by title?

5.5 Is there a one paragraph abstract of the proposed action?

6.0 **Summary** (40 CFR 1502.12)

6.1 Does the summary adequately and accurately summarize the proposed action?

6.2 Are the major conclusions identified and adequately explained?

6.3 What are the major conclusions?

6.4 Are the areas of controversy identified and adequately explained?

6.5 What are the major areas of controversy?

6.6 Are there any "Issues to be Resolved" identified?

6.7 Is the summary 15 pages or less?

7.0 **Table of Contents**

7.1 Is the table of contents accurate?

7.2 Does it contain at least the CEQ required sections?

8.0 **Purpose and Need** (40 CFR 1502.13)

8.1 Does the statement briefly specify the underlying purpose and need for the proposed action?

8.2 Does the statement justify a reasonable need?

8.3 Is the need or justification documented in a regulation or guidance as a requirement for all actions of a similar nature?

9.0 **Alternatives including the proposed action** (40 CFR 1502.14)

9.1a Is the proposed action defined sufficiently for analysis, including all activities associated with the proposed action such as:

Mission, personnel, equipment

Troop movement/deployment

Training activities

Construction/sites

Renovation

Temporary housing/administrative space

Interim uses/leases

Caretaker

9.1b Does the statement contain a reasonable set of alternatives that are distinct, not just minor variations of the preferred alternative?

9.2 Is the "no action" alternative discussed?

9.3 Is the agency's preferred alternative indicated?

9.4 Were the environmental impacts of the alternatives presented in comparative form?

9.5 Are specific reasons given for eliminating alternatives?

9.6 Does the proposed action involve the use of unproven technology or have unknown risks?

9.7 Is the action precedent setting for future actions?

9.8 Was the process to establish reasonable alternatives explained and based on objective criteria?

9.9 Are the alternatives:

Realistic alternatives to the proposed action?

Alternatives to construction itself?

Alternative construction sites?

Reuse alternatives/generic/intensity described?

Alternatives have to be approved by DA. Have they?

10.0 **Affected environment** (40 CFR 1502.15)

10.1 Does the statement succinctly describe the environment of the area(s) to be affected or created by the alternatives?

10.2 Are all appropriate aspects of the environment potentially affected by the proposed action adequately described?

10.3 Is the affected environment analyzed in several contexts (i.e., local, regional, and ecosystems as a whole)?

10.4 Is biodiversity defined and addressed as an element of the affected environment?

10.5 Is the baseline appropriate?

10.6 Has the baseline established been the one that was actually used in the analysis? Was it used consistently throughout the document?

10.7 Does the Affected Environment Section do a thorough, but concise, job of documenting relative baseline conditions?

10.8 Does the Affected Environment Section support the findings in the Environmental Consequences Section?

10.9 Are all relevant issues/identified, documented and analyzed?

10.10 Has the Affected Environment been used as an encyclopedic approach, a dumping ground for data, or has it been designed to support the Environmental Consequences analysis?

10.11 Does the Environmental Consequences Section include justification, rather than analysis? Are conclusionary statements used instead of an analysis? (The preparer, at times, realizes that an adequate analysis has not been made, and simply makes conclusionary statements. This is not acceptable.)

10.12 No data. Have these areas been identified and properly treated?

11.0 **Environmental Consequences** (40 CFR 1502.16)

11.1 Are the unavoidable adverse impacts of the proposed alternatives addressed?

11.2 Is the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity discussed?

11.3 For each resource, have the direct, indirect, and cumulative effects for the proposed action and each of the alternatives been adequately addressed?

11.4 Are appropriate mitigation and monitoring measures indicated for the proposed action and each of the alternatives, by resource?

11.5 Is the no action alternative properly considered?

11.6 Are socioeconomics properly considered?

11.7 Are significant criteria discussed where appropriate?

11.8 Are there any irretrievable or irreversible commitment of resources involved if the proposal is implemented?

11.9 Are the alternatives analyzed in several contexts (i.e., society as a whole, the affected region, and the affected locality)?

11.10 Does the statement address both short-term and long-term effects?

11.11 Are the alternatives analyzed for intensity of impacts (through space and time)?

11.12 Are both beneficial, and adverse impacts discussed?

11.13 Have the alternatives been analyzed for public safety issues?

11.14 Are specific habitats analyzed for habitat destruction, simplification, degradation, and/or fragmentation?

11.15 Was the data adequate to justify the conclusions?

12.0 **Public involvement** (40 CFR 1506.6)

12.1 Was the public solicited for appropriate information?

12.2 How many and where were the scoping meetings held?

12.3 Are the scoping meeting transcripts, public hearing transcripts, and letters of comment included in the appendices?

12.4 For FEISs, how were the questions from the DEIS addressed?

12.5 Did the agency use direct mailings, newspaper notices, and newsletters to reach potentially interested persons?

12.6 How and where was the EIS made available to the public for comment?

12.7 Does the statement list the agencies and individuals to whom copies were sent?

12.8 Were State and Federal agencies with juridical oversight provided copies for review?

13.0 **Integration of environmental laws, regulations, and executive orders** (40 CFR 1500.4, 1500.5, 1502.15, 1502.16, 1508.27)

13.1 Does the statement address how the action may:

a. affect a listed (State and/or Federal) endangered or threatened species?
b. adversely modify a critical habitat?
c. adversely modify access to religious sites of Native Americans?
d. effect a property listed on the National Register?
e. effect any archaeological resource on public and private lands and include SHPO coordination letters, DI coordination letters, and supporting data (as appendices)
f. be located in full or in part in a wetlands or floodplain?
g. remove prime agricultural lands from use?
h. impact on the "Wild and Scenic Rivers System"?
i. impact on designated wilderness areas?
j. affect State or Federal park use?
k. affect drink water or sole source aquifers?
l. affect coastal zones?

13.2 Does the proposed action require:

a. discharge permits (CWA & CAA)?
b. fill permits (CWA)?
c. hazardous waste or materials permits?
d. other State or local permits?

14.0 **Mitigation and Monitoring** (40 CFR 1502.14, 1502.16, 1505.2, 1505.3)

14.1 Were measures designed to reduce or prevent undesirable effects included in the statement?

14.2 Were any mitigation actions listed in the ROD?

14.3 Was a monitoring and enforcement program developed in the statement or ROD?

14.4 Was there a commitment of resources, funding, or manpower to accomplish any aspect of the proposed action?

15.0 **Cumulative effects** (40 CFR 1508.7)

15.1 Have other reasonable foreseeable future actions been discussed?

15.2 Has information from other State and Federal agencies about their actions been included and analyzed for similar and connected actions?

16.0 **Record of Decision - ROD** (40 CFR 1505.2)

16.1 Does the ROD contain:

a. a heading?
b. a description of the decision being made?
c. a description of how public involvement was accomplished?

16.2 Does the ROD have a summary of the alternatives considered and the reasons for the decision?

16.3 Does the ROD indicate the implementation date and a contact person for comments?

17.0 Special Issues?

17.1 Are the following areas adequately addressed in the statement:

a. Socioeconomic impacts using EIFS?

b. Introduction to EIFS (in an appendix)?

c. Reuse-OEA, Local Redevelopment Authority?

d. Noise-AEAA?

e. Hazardous materials?

f. Air space?

g. Cultural resources?

18.0 Subjective Evaluations

18.1 Was the EIS written concisely (appropriate use of summaries and information included by reference), but with a level of detail commensurate with the impact (40 CFR 1502.1, 1502.2, and 1500.2)?

18.2 Was the statement "Analytic rather than encyclopedic" (40 CFR 1500.4 and 1502.2)?

18.3 Was the EIS prepared by an interdisciplinary team with appropriate disciplines for the issues addressed (40 CFR 1502.6)?

18.4 Did the agency adequately justify the need and purpose for the proposed action?

18.5 Were the alternatives reasonable and adequately analyzed in the Affected Environment section and Environmental Consequences section (40 CFR 1502.14)?

18.6 Were all reasonable alternatives considered and objectively evaluated?

18.7 Were any obvious issues or impacts totally ignored?

18.8 Did the agency make the necessary environmental analyses (40 CFR 1500.2, and 1502.1)?

18.9 Did the agency make a diligent effort to involve the public?

18.10 Was the statement written in plain language that the public could understand?

18.11 Overall did the EIS meet the intent of NEPA?

Appendix P
Sample Release Package

This page intentionally left blank.

RELEASE PACKAGE

Environmental Impact Statement for Disposal and Reuse of Fort Bragg, North Carolina

Contents

- Notice of Intent
- Memorandum for Correspondents
- Information for Members of Congress
- Questions and Answers

Preparation Guidance

This Release Package is intended to provide a generic example of matters that should be addressed in compiling and presenting information related to issuance of an NOI to prepare an EIS.

Release Packages must be tailored to (1) the nature of the action (i.e., realignment or disposal and reuse) and (2) the stage of the environmental analysis (i.e., issuance of the Notice of Intent or publication of a draft or final FEIS).

Any of dozens of installations could have been selected as the representative site. In the following representative materials, Fort Bragg, North Carolina, is used in order to provide a better sense of realism. In adapting the NOI, MFC, IMC, and Q&A for a particular case, care must be taken to ensure that all references to Fort Bragg are removed.

3710-08-M

DEPARTMENT OF DEFENSE

Department of the Army

Intent to Prepare an Environmental Impact Statement for Disposal and Reuse of Fort Bragg, North Carolina

AGENCY: Department of the Army, DOD

ACTION: Notice of Intent

SUMMARY: The Department of the Army intends to prepare an Environmental Impact Statement (EIS) pursuant to Section 102(2)(C) of the National Environmental Policy Act and regulations of the Council on Environmental Quality (40 CFR 1500-1508). The EIS will evaluate potential effects associated with disposal and reuse of Fort Bragg, North Carolina. The Army invites the general public, local governments, other Federal agencies, and state agencies to submit written comments or suggestions concerning the scope of analysis and issues and alternatives to be addressed in the EIS. The public is invited to participate in scoping activities including a scoping meeting where oral and written comments and suggestions will be received.

DATES: Comments concerning the scope of the EIS must be received by 30 days from the date of this Notice to be considered in the preparation of the draft EIS. The date, time, and location of the scoping meeting to be conducted near Fort Bragg will be announced in local media at least 15 days beforehand.

ADDRESSES: Please send written comments to: Mr. Dan Foglebee at XVIII Airborne Corps and Fort Bragg, Public Affairs Office (AFZA-PAO), Building 1-1326, Macomb & Armistead Street, Fort Bragg, North Carolina 28310 or e-mail at Dan.Foglebee@bragg.army.mil.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Foglebee at XVIII Airborne Corps and Fort Bragg, Public Affairs Office (AFZA-PAO), Building 1-1326, Macomb & Armistead Street, Fort Bragg, North Carolina 28310; telephone (910) 396-5600 during normal business hours, Monday through Friday 7:30 a.m. to 4:00 p.m., or via e-mail to Dan.Foglebee@bragg.army.mil.

SUPPLEMENTARY INFORMATION: The Defense Base Closure and Realignment Act of 1990 (Public Law 101-510, as amended) provided for a 2005 Defense Base Closure and Realignment Commission to recommend military installations for realignment and closure. The 2005 Commission submitted a report of its recommendations to the President on September 8, 2005. The President approved and forwarded the report to Congress on September 23, 2005. In the absence of a joint resolution or other action disapproving the recommendations, the recommendations of the Commission have become law and must be implemented consistent with the requirements of the Defense Base Closure and Realignment Act of 1990.

Public Law 101-510 exempts the decisionmaking process of the Commission from the provisions of the National Environmental Policy Act of 1969 (NEPA). The law also relieves the Department of Defense from the NEPA requirement to consider the need for closing, realigning, or transferring functions and from looking at alternative installations to close or realign. Nonetheless, the Department of the Army must still prepare environmental impact analyses during the process of property disposal and during the process of relocating functions from a military installation being closed or realigned to another military installation after the receiving installation has been selected but before the functions are relocated. These

analyses will include consideration of the direct and indirect environmental and socioeconomic effects of these actions and the cumulative impacts of other reasonably foreseeable actions affecting the installations. In addition, the Army considers reuse of an installation to be a secondary action to closure. Facility reuse by new owners results from the Army's primary action of disposal. The local community is responsible for establishing a Local Redevelopment Authority, which is expected to produce a plan for reuse of the property. Impacts associated with the reuse plan will be evaluated in the Army's EIS.

The Army recognizes numerous resource areas and issues that will require consideration in the EIS. These include, but are not limited to: air quality; surface water quality; cultural resources; transportation system; environmentally sensitive areas such as wildlife corridors, wetlands, and floodplains; biological resources, to include, in particular, protected fauna and flora species; site topography and soils; socioeconomic conditions; land use; and community facilities and services. Additional resources and conditions may be identified as a result of the scoping process initiated by this Notice.

The Army invites the general public, local governments, other Federal agencies, and state agencies to submit written comments or suggestions concerning the scope of the analysis and issues and alternatives to be analyzed. The Army will host a scoping meeting to enable the submission of oral or written comments by interested parties. Comments, whether provided orally or in writing, will be considered in determining the scope of the EIS. The scoping meeting will be held near Fort Bragg. The Army will announce the time and place of the scoping meeting in local media, not less than 15 days before the event. In addition, the Army will provide direct notification of the time and location of the scoping meeting to individuals, community organizations, local government personnel, state agencies, Federally recognized Indian tribes, and other Federal agencies that so request it as a result of this Notice. Requests must be addressed to the individual and office shown in the "Addresses" section, above.

DATED: *TO BE DETERMINED*

Addison D. Davis IV
Deputy Assistant Secretary of the Army
(Environment, Safety and Occupational Health)
OASA (I&E)

DEPARTMENT OF THE ARMY
OFFICE OF THE SECRETARY OF THE ARMY
WASHINGTON, D. C. 20310

INFORMATION FOR MEMBERS OF CONGRESS

Subject: Environmental Impact Statement – Closure of Fort Bragg, North Carolina

The Department of the Army intends to prepare an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act and implementing regulations. The EIS will evaluate potential environmental and socioeconomic effects associated with implementation of the recommendation of the 2005 Defense Base Closure and Realignment Commission to close Fort Bragg, North Carolina. The EIS will also evaluate potential impacts associated with reuse of the installation, as contemplated by the Local Redevelopment Authority's reuse plan.

The Defense Base Closure and Realignment Act of 1990 (Public Law 101-510, as amended) provided for a 2005 Defense Base Closure and Realignment Commission to recommend military installations for realignment and closure. Consistent with the provisions of the Defense Base Closure and Realignment of 1990, the 2005 Commission's recommendations have become law and must be implemented.

Public Law 101-510 exempts the decisionmaking process of the 2005 Defense Base Closure and Realignment Commission from the provisions of the National Environmental Policy Act of 1969 (NEPA). The law also relieves the Department of Defense from the NEPA requirement to consider the need for closing, realigning, or transferring functions and from looking at alternative installations to close or realign. Nonetheless, the Department of the Army must still prepare environmental impact analyses during the process of property disposal and during the process of relocating functions from a military installation being closed or realigned to another military installation after the receiving installation has been selected but before the functions are relocated. These analyses will include consideration of the direct, indirect, and cumulative environmental and socioeconomic effects of these actions.

The Army considers reuse of an installation to be a secondary action to closure. Facility reuse by new owners results from the Army's primary action of disposal. The local community is responsible for establishing a Local Redevelopment Authority, which is expected to produce a plan for reuse of the property. Impacts associated with the reuse plan will be evaluated in the Army's EIS.

The Army recognizes numerous resource areas and issues that will require consideration in the EIS. These include, but are not limited to: air quality; surface water quality; cultural resources; transportation system; environmentally sensitive areas such as wildlife corridors, wetlands, and floodplains; biological resources, to include, in particular, protected fauna and flora species; site topography and soils; socioeconomic conditions; land use; and community facilities and services. Additional resources and conditions may be identified as a result of a scoping process initiated by the Army.

The Army invites the general public, local governments, other Federal agencies, and state agencies to submit written comments or suggestions concerning the scope of the analysis and issues and alternatives to be analyzed. The Army will host a scoping meeting to enable the submission of oral or written comments by interested parties.

Point of contact for this notification is _____, Office of the Chief Legislative Liaison, at (703) 697-9134.

FURNISHED BY:
Office, Chief of Legislative Liaison

DEPARTMENT OF THE ARMY
OFFICE OF THE SECRETARY OF THE ARMY
WASHINGTON, D. C. 20310

MEMORANDUM FOR CORRESPONDENTS

The Department of the Army intends to prepare an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act and implementing regulations. The EIS will evaluate potential environmental and socioeconomic effects associated with implementation of the recommendation of the 2005 Defense Base Closure and Realignment Commission to close Fort Bragg, North Carolina. The EIS will also evaluate potential impacts associated with reuse of the installation, as contemplated by the Local Redevelopment Authority's reuse plan.

The Defense Base Closure and Realignment Act of 1990 (Public Law 101-510, as amended) provided for a 2005 Defense Base Closure and Realignment Commission to recommend military installations for realignment and closure. Consistent with the provisions of the Defense Base Closure and Realignment of 1990, the 2005 Commission's recommendations have now become law and must be implemented.

Public Law 101-510 exempts the decisionmaking process of the 2005 Defense Base Closure and Realignment Commission from the provisions of the National Environmental Policy Act of 1969 (NEPA). The law also relieves the Department of Defense from the NEPA requirement to consider the need for closing, realigning, or transferring functions and from looking at alternative installations to close or realign. Nonetheless, the Department of the Army must still prepare environmental impact analyses during the process of property disposal and during the process of relocating functions from a military installation being closed or realigned to another military installation after the receiving installation has been selected but before the functions are relocated. These analyses will include consideration of the direct, indirect, and cumulative environmental and socioeconomic effects of these actions. The Army considers reuse of an installation to be a secondary action to closure. Facility reuse by new owners results from the Army's primary action of disposal. The local community is responsible for establishing a Local Redevelopment Authority, which is expected to produce a plan for reuse of the property. Impacts associated with the reuse plan will be evaluated in the Army's EIS.

The Army recognizes numerous resource areas and issues that will require consideration in the EIS. These include, but are not limited to: air quality; surface water quality; cultural resources; transportation system; environmentally sensitive areas such as wildlife corridors, wetlands, and floodplains; biological resources, to include, in particular, protected fauna and flora species; site topography and soils; socioeconomic conditions; land use; and community facilities and services. Additional resources and conditions may be identified as a result of a scoping process initiated by the Army.

The Army invites the general public, local governments, other Federal agencies, and state agencies to submit written comments or suggestions concerning the scope of the analysis and issues and alternatives to be analyzed. The Army will host a scoping meeting to enable the submission of oral or written comments by interested parties.

Comments or inquiries may be submitted to Mr. Dan Foglebee at XVIII Airborne Corps and Fort Bragg, Public Affairs Office (AFZA-PAO), Building 1-1326, Macomb & Armistead Street, Fort Bragg, North Carolina 28310; telephone (910) 396-5600 during normal business hours, Monday through Friday 7:30 a.m. to 4:00 p.m., or via e-mail to Dan.Foglebee@bragg.army.mil.

- END -

QUESTIONS AND ANSWERS

Subject: Environmental Impact Statement – Closure of Fort Bragg, North Carolina

Q-1. What is the purpose of an Environmental Impact Statement (EIS)?

A-l. The purpose of an EIS is to provide a full and fair assessment of environmental impacts of a proposed action and to inform decision makers and the public of reasonable alternatives. An EIS ensures that government agencies, non-governmental organizations, and members of the public have an opportunity to provide input on federal actions which may have the potential for significant impact to the environment. It is required under the provisions of the National Environmental Policy Act of 1969 (NEPA).

Q-2. What proposed action and alternatives will be assessed in the EIS?

A-2. The EIS will evaluate the Army's proposal to dispose of Fort Bragg and the impacts associated with implementation of the Local Redevelopment Authority's reuse plan for the installation. Alternatives for the Army's primary action of disposal will include accelerated disposal, traditional disposal, caretaker status, and no action. Reuse will be evaluated in terms of the intensity of redevelopment sought by the Local Reuse Authority in its reuse plan.

Q-3. What is the basis for the Army's action?

A-3. The Defense Base Closure and Realignment Act of 1990 (Public Law 101-510, as amended) provided for a 2005 Defense Base Closure and Realignment Commission to recommend military installations for realignment and closure. The 2005 Commission submitted a report of its recommendations to the President on September 8, 2005. The President approved and forwarded the report to Congress on September 23, 2005. In the absence of a joint resolution or other action disapproving the recommendations, the recommendations of the Commission have become law and must be implemented consistent with the requirements of the Defense Base Closure and Realignment Act of 1990. The 2005 Commission's recommendation was that Fort Bragg be closed.

Q-4. What aspects of the decisionmaking process apply to this EIS?

A-4. Public Law 101-510 exempts the decisionmaking process of the Commission from the provisions of the National Environmental Policy Act of 1969 (NEPA). The law also relieves the Department of Defense from the NEPA requirement to consider the need for closing, realigning, or transferring functions and from looking at alternative installations to close or realign. Nonetheless, the Department of the Army must still prepare environmental impact analyses during the process of property disposal and during the process of relocating functions from a military installation being closed or realigned to another military installation after the receiving installation has been selected but before the functions are relocated. These analyses will include consideration of the direct and indirect environmental and socioeconomic effects of these actions and the cumulative impacts of other reasonably foreseeable actions affecting the installations. In addition, the Army considers reuse of an installation to be a secondary action to closure. Facility reuse by new owners results from the Army's primary action of disposal. The local community is responsible for establishing a Local Redevelopment Authority, which is expected to produce a plan for reuse of the property. Impacts associated with the reuse plan will be evaluated in the Army's EIS.

Q-5. What specific environmental concerns will be addressed in the EIS?

A-5. Fort Bragg, home of the XVIII Airborne Corps and the U.S. Army Special Operations Command, covers 161,597 acres. Established in 1918 and named after Confederate General Braxton Bragg, the installation provides facilities for some 45,000 military personnel and approximately 8,000 civilian jobs. The Army recognizes numerous resource areas and issues that will require consideration in the EIS. These include, but are not limited to: air quality; surface water quality; cultural resources; transportation system; environmentally sensitive areas such as wildlife corridors, wetlands, and floodplains; biological resources, to include, in particular, protected fauna and flora species; site topography and soils; socioeconomic conditions; land use; and community facilities and services. Additional resources and conditions may be identified as a result of the scoping process initiated by this Notice.

Q-6. Is there public involvement in the EIS process?

A-6. Yes. The public will be notified of the intent to develop an EIS through a Notice of Intent published in the *Federal Register*. Scoping letters requesting input to the process will be sent to state and federal agencies. A public scoping meeting will be held in an easily accessible location near Fort Bragg at a time that will be convenient to as many community members as possible. The objective is to maximize public participation. Public notices will be placed in local newspapers to announce the location and time for the public scoping meeting and, later, to announce the availability of the draft EIS and methods available for submitting comments on the draft EIS..

Appendix Q
Sample FNSI

This page intentionally left blank.

FINDING OF NO SIGNIFICANT IMPACT
BRAC 95 DISPOSAL AND REUSE OF EXCESS PROPERTY
AT FORT DIX, NEW JERSEY

Recommendations of the 1995 Defense Base Closure and Realignment Commission, made in conformance with the provisions of the Base Closure and Realignment Act of 1990 (Public Law 101-510, as amended), require the realignment of Fort Dix by replacing the Active Component Garrison with a U.S. Army Reserve Garrison and retaining minimal essential ranges, facilities, and training areas required for Reserve Component training as an enclave.

Pursuant to the Council on Environmental Quality Regulations (40 CFR Parts 1500-1508) for implementing the procedural provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and Army Regulation 200-2 (*Environmental Effects of Army Actions*), the U.S. Army Corps of Engineers, Mobile District has prepared an Environmental Assessment (EA) of the potential environmental and socioeconomic effects associated with disposal of surplus property at Fort Dix, New Jersey for the U.S. Army.

Proposed Action

The proposed action is the disposal of surplus property made available by the realignment of Fort Dix. Redevelopment and reuse of the surplus Fort Dix property would occur as a secondary action resulting from disposal. The Army proposes to convey the surplus property to the state of New Jersey, acting as the New Jersey Local Reutilization Authority (LRA). The surplus property is divided into two parcels; Parcel 1 (Midstate Correctional Facility), which is comprised of approximately 12 acres and 110,000 square feet of facilities, and Parcel 2 (Walson Hospital Complex), which is comprised of approximately 23 acres and 392,000 square feet of facilities. It is expected that the Midstate Correctional Facility (Parcel 1) would continue to be used for the same purposes and at the same intensity level as the current use. Several reuse alternatives have been identified for the Walson Hospital Complex property (Parcel 2). Concurrently with the disposal of the 35 acres to the state of New Jersey, the Army will transfer approximately 269 acres of excess real property (from a total of 31,000 acres of real property) and approximately 1,668,000 square feet of excess facilities (from a total of 8,634,000 square feet of facilities) to other Department of Defense and federal agencies that they already occupy as tenants on Fort Dix. These recipients are the U.S. Air Force; U.S. Navy; Department of Justice, Federal Bureau of Prisons; and Department of Transportation, U.S. Coast Guard. The remainder of the facility property will be retained as an enclave for Reserve Component training.

Alternatives Considered

Under the no action alternative, the Army would not dispose of the surplus property but would maintain it indefinitely in accordance with current leases and permits. Because, by BRAC mandate, surplus property not essential for Reserve Component training must be disposed of, it is not possible to implement the no action alternative. However, inclusion of the no action alternative is prescribed by the President's Council on Environmental Quality (CEQ) regulations to provide a baseline against which the effects of federal actions can be evaluated.

The Army has identified two alternatives for its disposal action, encumbered and unencumbered disposal. Under encumbered disposal, the Army would impose legal constraints to protect environmental values, to meet requirements of federal law, to implement results from Army negotiations with regulatory agencies, or to address specific Army needs. Such provisions would be incorporated in the title transfer documents as a condition of transfer or conveyance. Encumbrances relevant to disposal of surplus property at Fort Dix include use restrictions, asbestos-containing material, lead-based paint, and utility dependencies. Unencumbered disposal would involve the transfer or conveyance of the property without creation of any new encumbrances and the removal of any existing encumbrances. Because encumbrances must be imposed, the unencumbered disposal alternative was not evaluated in the EA.

Redevelopment and reuse by others is a secondary action resulting from disposal. Redevelopment and reuse of the surplus Fort Dix property will be under the auspices of the state of New Jersey, acting as the New Jersey LRA. Because the Midstate Correctional Facility (Parcel 1) is already occupied by the state of New Jersey, it is assumed that the state of New Jersey LRA plan would likely be for the current (high intensity) or similar use. Reuse planning has been initiated on the Walson Hospital Complex property (Parcel 2) on the basis of its declaration of surplus in October 1999. Intensity-based probable reuse scenarios for the hospital complex have been developed and include alternatives such as institutional (e.g., medical facility), commercial (e.g., hotel and conference center), and residential (e.g., retirement residence) reuse. Each of the three alternatives is evaluated at a level or a range of levels of reuse intensity. For the institutional and commercial alternatives, medium and medium-low intensity reuse scenarios are evaluated. For the residential alternative, only a medium-low intensity reuse is evaluated. The Army expresses no preference with respect to reuse scenarios becuase decisions concerning reuse will be made by others.

Factors Considered In Determining That No Environmental Impact Statement is Required

The EA, which is incorporated by reference into this Finding of No Significant Impact, examined potential effects of the proposed action and no action alternative on 13 resource areas and areas of environmental and socioeconomic concern: land use, air quality, noise, water resources, geology, infrastructure, hazardous and toxic substances, permits and regulatory authorizations, biological resources, cultural resources, economic development, sociological environment (including environmental justice and protection of children), and quality of life.

Implementation of the proposed action, encumbered disposal, would result in both long-term minor adverse and beneficial effects to land use, long-term minor beneficial effects to geology, and short-term minor beneficial effects to economic development. At Fort Dix, access easements for remediation activities, the potential for asbestos and lead-based paint in some of the buildings, and the possibility of sharing utilities and infrastructure were identified as encumbrances. Reuse of the Midstate Correctional Facility by the state of New Jersey would result in no new effects to resource areas because there would be no change in the current use or intensity of use of the facility. Reuse of the Walson Hospital Complex property by the state of New Jersey would result in a variety of short- and long-term minor adverse and beneficial effects on resource areas. The results of the Army's analysis indicate that the physical and socioeconomic environments at Fort Dix and in the region of influence would not be significantly affected by disposal and reuse.

No significant adverse effects are expected to occur with respect to air quality, noise, water resources, or biological resources. Known and potential effects resulting from implementing the proposed action on the physical and natural environment will not be significant. Therefore, implementation of the proposed action will not require the preparation of an Environmental Impact Statement. Preparation of a Finding of No Significant Impact is appropriate.

Conclusion

Based on the Environmental Assessment, it has been determined that implementation of the proposed action will have no significant direct, indirect, or cumulative impacts on the quality of the natural or human environment. Because no significant environmental impacts will result from implementation of the proposed action, an Environmental Impact Statement is not required and will not be prepared.

Public Comment

Interested parties are invited to review and comment on this FNSI within 30 days of publication. Comments and requests for copies of the EA should be addressed to Mr. Carl Burgamy at the Corps of Engineers, Mobile District (ATTN: CESAM-PD-ER), 109 St. Joseph Street, Mobile, Alabama 36628-0001. The EA is available for review at the following locations:

Burlington County Library
5 Pioneer Boulevard
Westhampton, NJ 08060

Fort Dix General Library
Building No. 5403, Delaware Avenue
Fort Dix, NJ 08640-5501

Ocean County Library
101 Washington Street
Toms River, NJ 08753

Date: _____ _____

DOUGLAS S. BAKER
COL, GS
Chief, Base Realignment and Closure Office
Headquarters, Department of the Army

This page intentionally left blank.

Appendix R
Sample ROD

This page intentionally left blank.