

EPA Environmental Justice Webinar Series for  
Tribes and Indigenous Peoples

# National Environmental Policy Act (NEPA) Overview and Tribes as Cooperating Agencies



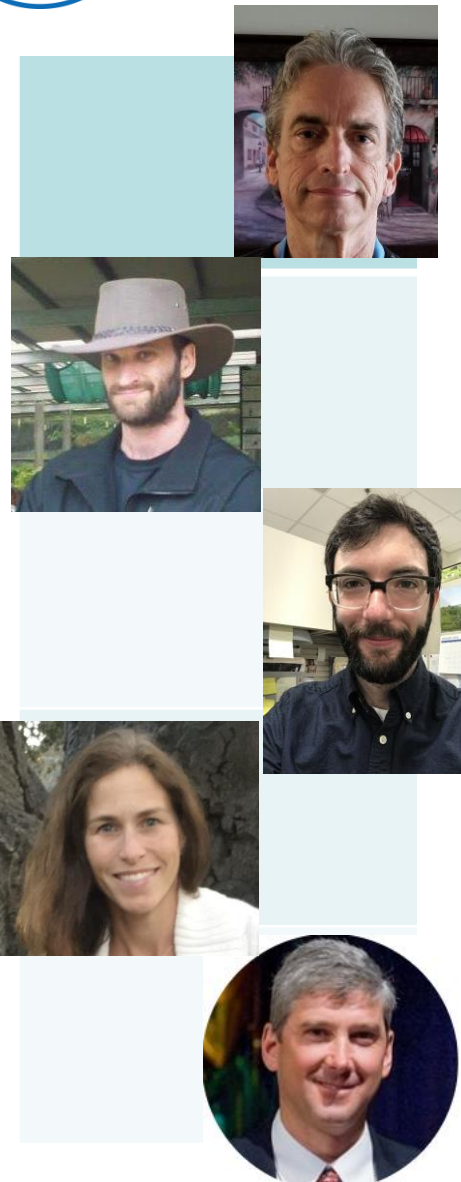
July 21, 2021



# Presenters



- Stacy D. Myers III, Tribe's Senior Scientist and Governmental Liaison, Seminole Tribe of Florida
- Jake Widner, NEPA Compliance Division, OFA, U.S. EPA
- Chris Yesmant, NEPA Compliance Division, OFA, U.S. EPA
- (Assist with Q & A) Connell Dunning, Environmental Review Branch, Tribal, Intergovernmental & Policy Division, Region 9, U.S. EPA
- (Facilitator) Danny Gogal, Tribal and Indigenous Peoples Program Manager, Office of Environmental Justice, U.S. EPA





# Learning Objectives

- Provide a General Overview of the National Environmental Policy Act (NEPA) Process
- Describe the Three Levels of NEPA Review
- Discuss Public Involvement in the NEPA Reviews
- Sharing of a Tribe's Experiences as a Cooperating Agencies



# Webinar Mini-Series on NEPA

- NEPA Overview and Tribes as Cooperating Agencies – July 21, 2021
- Environmental Justice and NEPA – August 26, 2021
- Tribes, Indigenous Peoples and NEPA – Date TBD



# NEPA OVERVIEW



## **What is NEPA?**

- Signed into law on Jan. 1, 1970.
- National charter for environmental responsibility.
- Procedural, not substantive requirements – establishes a process by which federal agencies must study the environmental effects of their actions.
- Established the Council on Environmental Quality (CEQ).

42 U.S.C. 4321 et seq.



# Council on Environmental Quality (CEQ)

- Primary responsibility over NEPA.
- Located in the Executive Office of the President.
- The duties of CEQ include:
  - Oversee the NEPA implementation of federal agencies.
  - Issue regulations (40 CFR parts 1500 – 1508) and other guidance to federal agencies regarding NEPA compliance.
  - Mediate interagency disputes over environmental policy & project impacts.



# NEPA Laws and Regulations

NEPA Statute

CEQ NEPA Regulations

Agency NEPA  
Implementing Procedures





# Application of NEPA



- Applies to major federal actions that may have a significant impact on the environment.
- Federal actions include:
  - Actions on Federal Land (mines, forestry, National Parks).
  - Federal Permits (gas pipelines, offshore oil and gas).
  - Federal Grants (water treatment, infrastructure).



# Lead Agency and Cooperating Agencies

- Lead Agency
  - Agency carrying out the federal action and is responsible for complying with the requirements of NEPA.
  - If there are multiple agencies involved in the action, one is designated as “lead agency.”
  - Federal agencies, together with state, tribal or local agencies, may act as joint lead agencies.
- Cooperating Agency
  - Federal, state, tribal or local agency having special expertise with respect to an environmental issue or jurisdiction, by law, may be a cooperating agency.



# What is the Role of a Cooperating Agency?

- Assist the lead agency by participating in the NEPA process at the earliest possible time
- Participate in the scoping process
- Develop information and prepare environmental analysis that the agency has special expertise in
- Make staff support available



# The Three Levels of NEPA Review



# Three Levels of NEPA

Three levels of NEPA review for a proposed action:

- Normally does not have significant effects and is **categorically excluded**.
- Is not likely to have significant effects or the significance of the effects is not known and therefore is appropriate for an **environmental assessment (EA)**.
- Is likely to have significant effects and is therefore appropriate for an **environmental impact statement (EIS)**.

40 CFR 1501.3

# Defining "Effects"

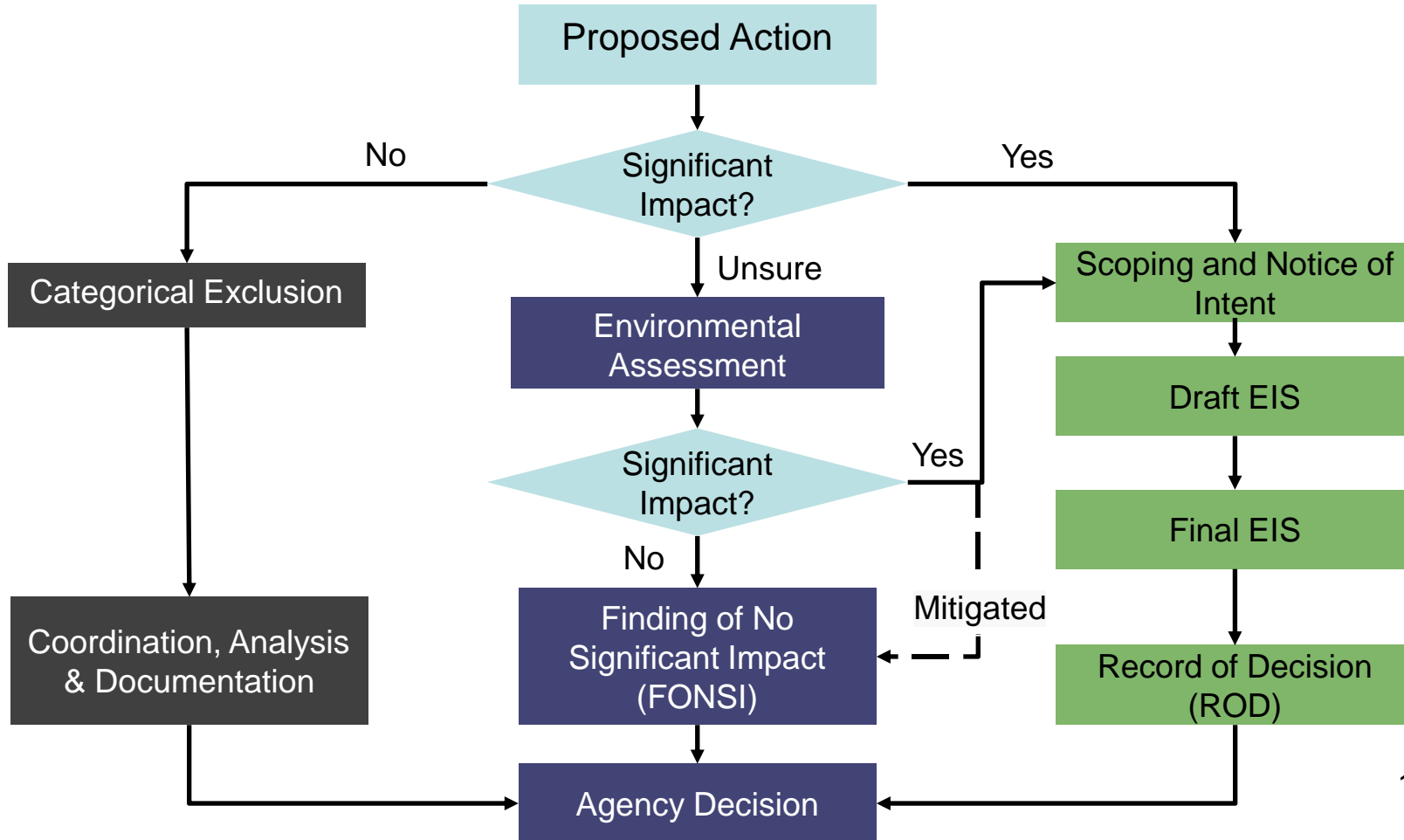
Effects or impacts means **changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives**, including those effects that occur at the same time and place as the proposed action or alternatives and may include effects that are later in time or farther removed in distance from the proposed action or alternatives.....

40 CFR 1508.1 (g)



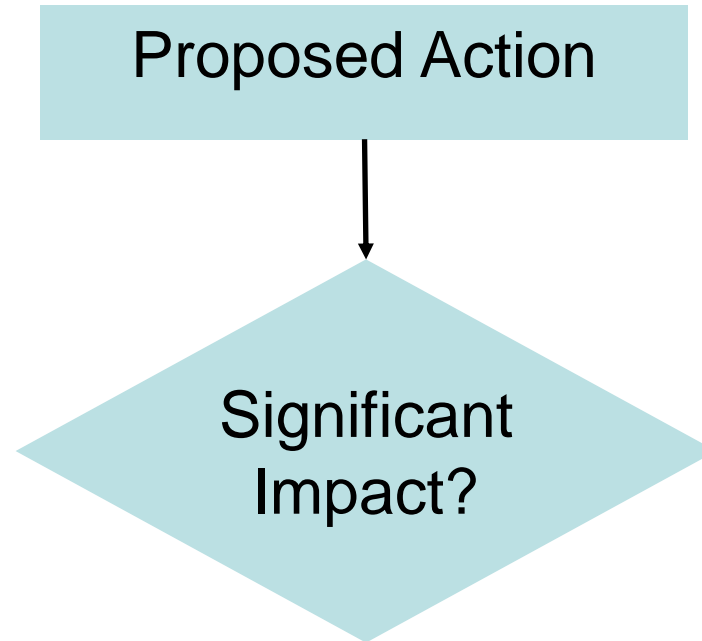


# NEPA Process





# NEPA Process



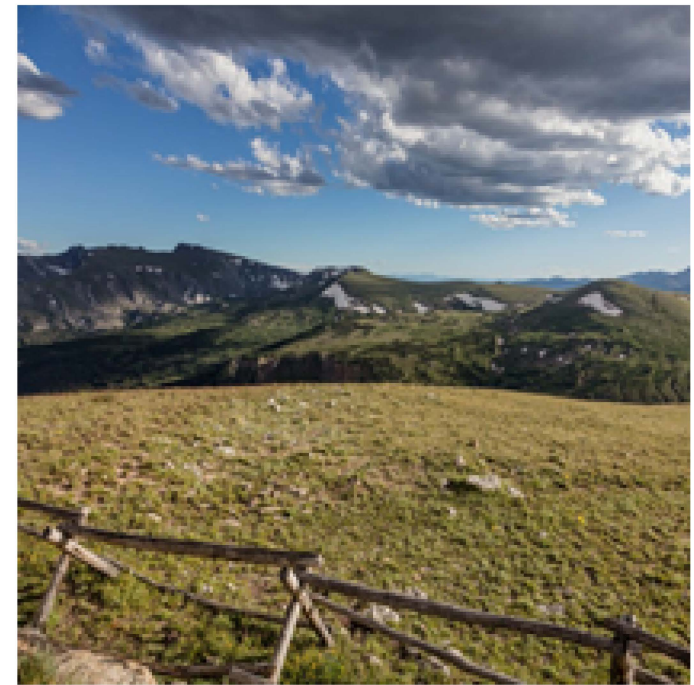




# Significance

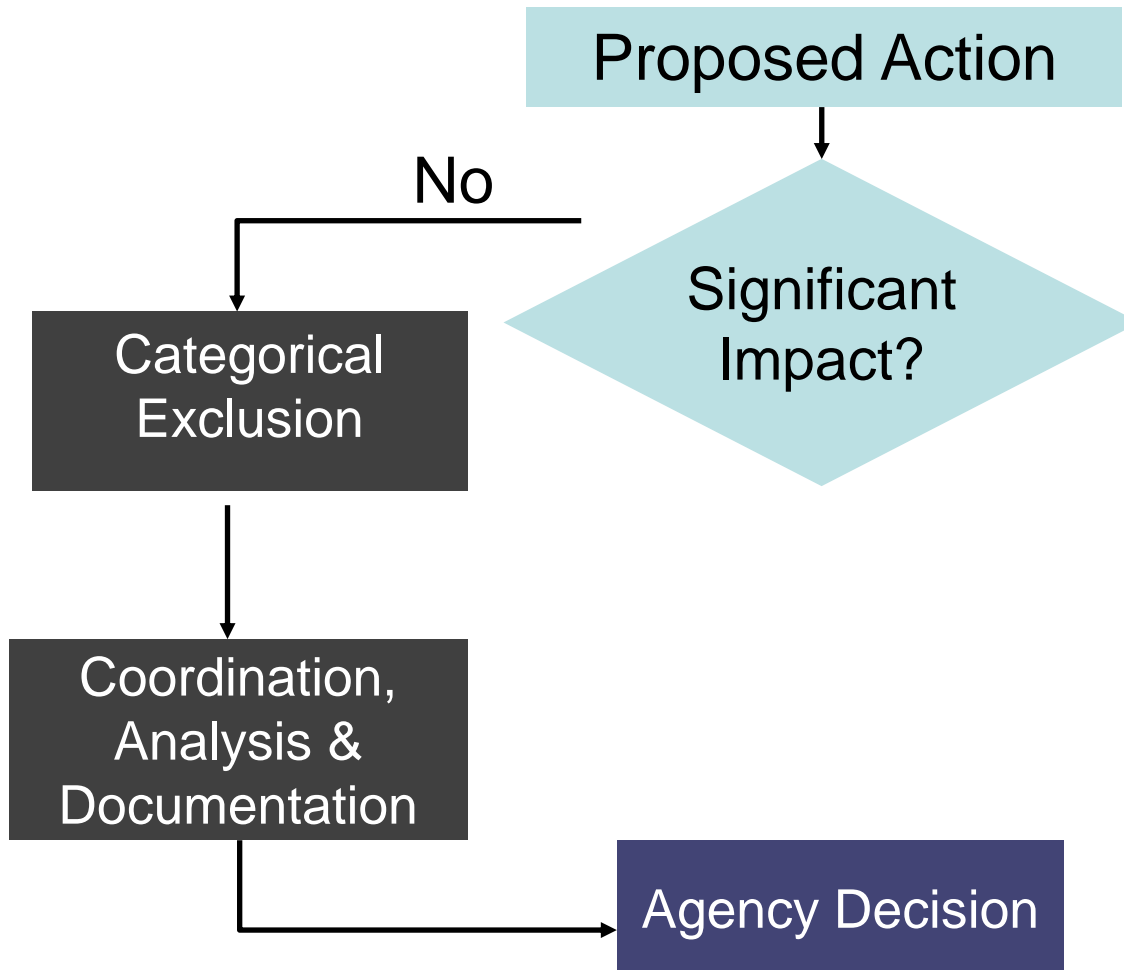
In considering whether the effects of the proposed action are significant, agencies shall analyze the **potentially affected environment** and degree of the effects of the action as well as reasonably foreseeable environmental trends and planned actions. 40 CFR 1501.3(b)

- Two Factors to Consider:
  - Setting of the potentially affected environment
    - The affected area (national, regional, or local)
    - The resources in the area
  - Degree of effects of the action, considering
    - Both short- and long-term **effects**.
    - Both beneficial **and** adverse effects.
    - Effects on public health and safety.
    - Effects that would violate federal, state, tribal, or local law protecting the environment.





# NEPA Process





# Categorical Exclusions (CE or CATEX)

CE is a category of actions established by federal agencies that normally do not have significant effects on the environment.

- Defined in the agency's NEPA implementing procedures.
  - May adopt another agency's CE in procedures or case-by-case.
- Some examples of activities that could have Categorical Exclusions in place include:
  - Wildland Fire management.
  - Minor road and highway improvements that would not increase the existing width of the road.
  - Minor improvements to single-family homesites that do not adversely affect tribal or cultural resources.





# NEPA Process

Proposed Action



Significant  
Impact?



Unsure

Environmental  
Assessment



# Environmental Assessment (EA)

Assess Major Federal Actions that are **not likely to have significant effects** or when the significance of the effects is **unknown**. (1501.5)

- **EAs briefly** provide **sufficient** evidence and analysis for determining whether to **prepare an EIS** or finding of no significant impact (**FONSI**).





# EA Content and Requirements

Assess Major Federal Actions that are **not likely to have significant effects** or when the significance of the effects is **unknown. (1501.5)**

EAs include:

- Purpose and need for the action.
- Alternatives (No action or action).
- Environmental impacts of the proposed action and the alternatives.
- Agencies and persons consulted.
- Involves the public, state, tribal, and local governments, relevant agencies, and any applicants to the extent practicable.



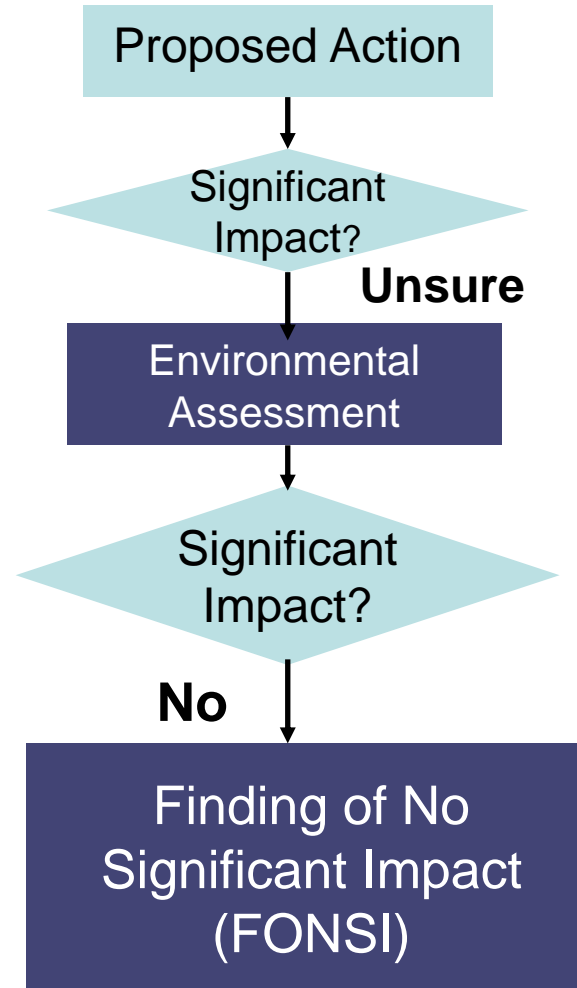


## Reasonably foreseeable effects

Effects that are later in time or farther removed in distance from the proposed action or alternatives are also known as **reasonably foreseeable effects** or secondary effects.



# NEPA Process







# Finding of No Significant Impact (FONSI)

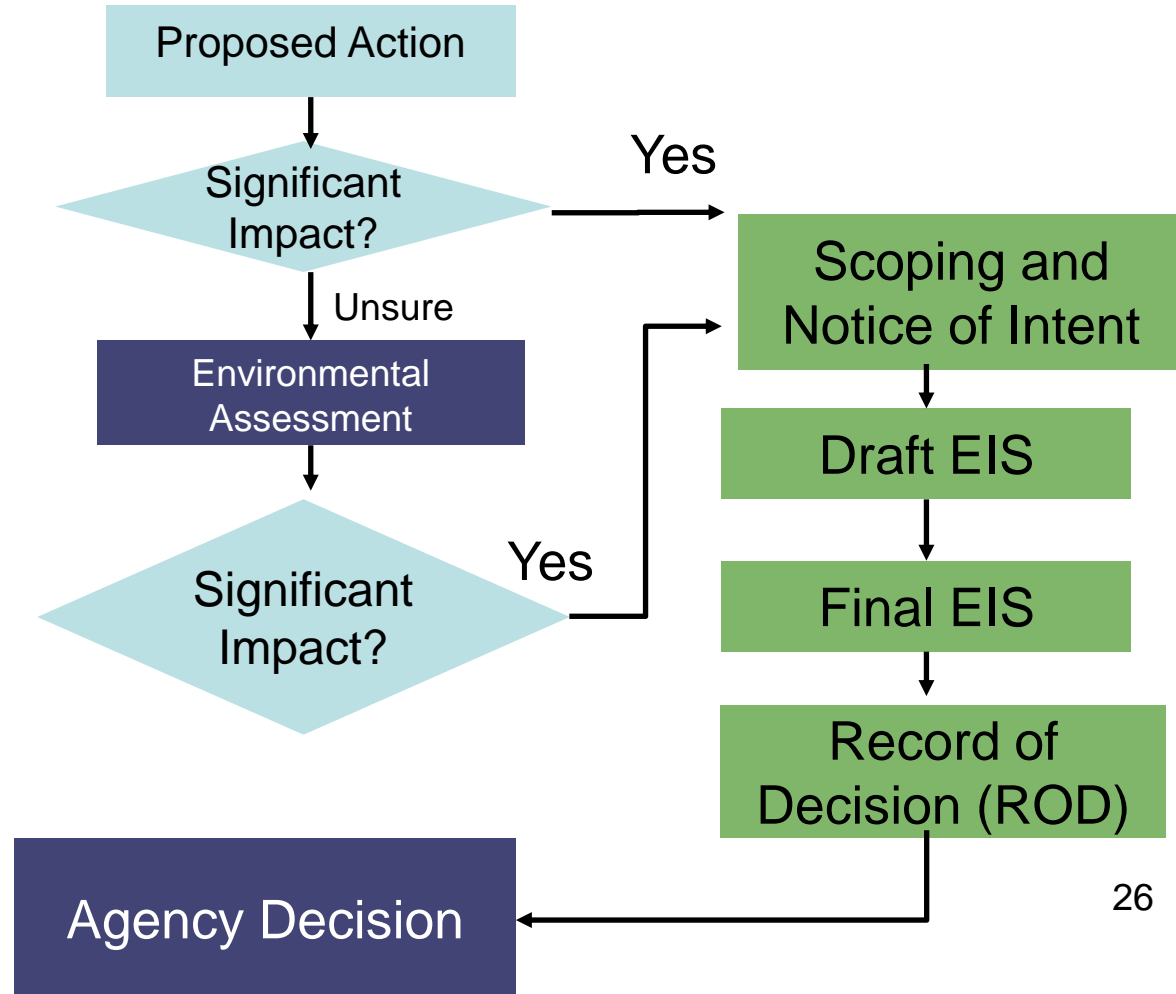
A decision document supporting a determination that an action will not have significant effects.

- A FONSI must:
  - Include the EA or incorporate it by reference and commit **to mitigation measures needed to avoid significant impacts**.
  - Be available to the **affected public** or made available for review for **30 days** prior to making decision when:
    - Action usually requires an EIS, or
    - Action is without precedent.

40 CFR 1501.6



# NEPA Process





# Scoping and Notice of Intent

- An **early and open process** to determine the scope of issues for analysis in an EIS.
- **Identifies** the significant issues and **eliminates** from further study non-significant issues.
- May begin **as soon as practicable** after the proposed action is sufficiently developed for agency consideration.
- **Invite the participation** of cooperating and participating agencies (this includes tribes).
- Conduct **scoping outreach** to interested or affected persons, agencies or tribal organizations (or agencies).



# Environmental Impact Statement (EIS)

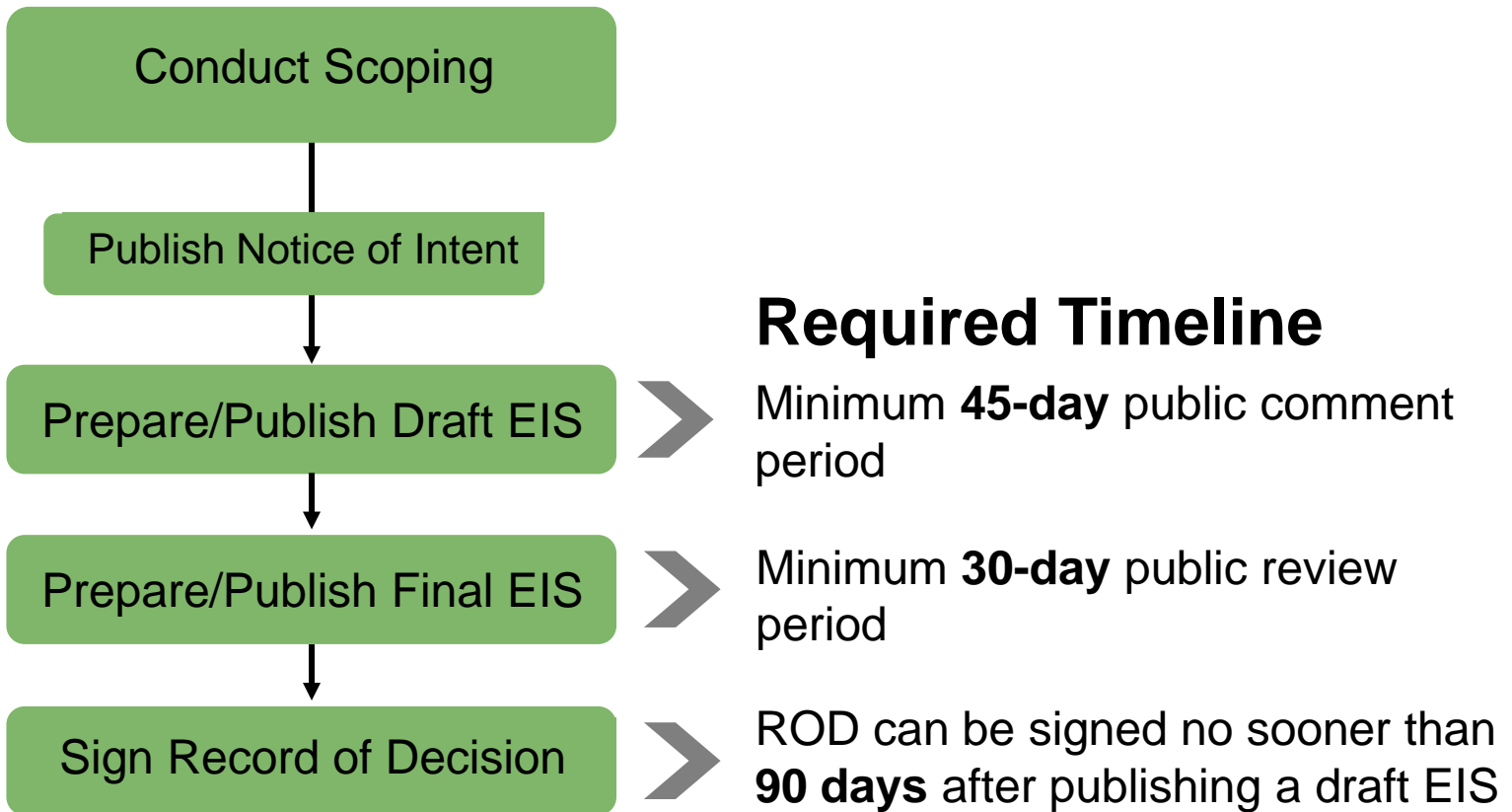
A document that informs Federal agency decisions making and the public for major federal actions likely to have significant effects.

- Primary purpose:
  - Ensures **the environmental impacts are considered** in decision-making.
  - Informs decision makers and public of **reasonable alternatives** that avoid or minimize **adverse** impacts or **enhance** environment.
  - Focuses on **significant** environmental issues and alternatives.





# Steps in the EIS Preparation Process





# Record of Decision (ROD)

- States the **decision and the selected alternative**.
- Identifies **alternatives considered**.
- Specifies the **environmentally preferable** alternative(s).
- States whether all practicable means to **avoid and minimize** harm from the selected alternative were adopted
  - If not, explains why.





## Record of Decision (ROD) cont'd

- Adopts and summarizes a monitoring and enforcement program for **any enforceable mitigation requirements or commitments.**
- **Certifies that the agency considered all of the alternatives, information, analyses, and objections submitted by state, tribal, and local governments and public commenters for consideration by the lead and cooperating agencies in developing the EIS.**



# Public Awareness and Involvement



# Public Involvement Requirements

**Categorical  
Exclusion  
Statement**



**Public involvement is  
not required for  
individual projects**

**Environmental  
Assessment  
(EA)**



**Public involvement  
to the extent  
practicable  
(40 CFR 1501.5 (e))**

**Environmental  
Impact  
Statement  
(EIS)**



**CEQ regulations set  
forth numerous  
requirements for  
public involvement  
and disclosure  
(with timelines)**



## Public Involvement

- Agencies must make **diligent efforts to involve the public** in preparing and implementing their NEPA procedures.
- Provide **public notices** of NEPA-related hearings, public meetings, and other opportunities for public involvement, and the availability of environmental documents.



## Public Comments

- Objective - to promote informed decision making.
- Comments should be as **specific as possible**.
  - Address adequacy of the EIS, and/or
  - Address the merits of the alternatives discussed.
  - Provide as much detail as necessary to **meaningfully participate and fully inform** the agency of the commenter's position.



## Public Comments (Continued)

- Explain why the issues raised are **important** to potential environmental **impacts**
  - **alternatives** to the proposed action,
  - **economic and employment** impacts,
  - **cultural or sacred sites** impacts,
  - **other** human environmental impacts, etc.
- **Reference** the appropriate section/page of Draft EIS with **recommended specific changes**, where possible.
- Include or describe the **data sources and methodologies** supporting the proposed changes.

# How to Make Effective Public Comments



There are two main components to keep in mind while preparing to comment: **what you will say** and **how you will organize it**.

- Make the strongest possible points (use law, facts, process).
- Suggest specific language when possible and appropriate.
- Use specific examples to illustrate concerns.
- State what you support as well as what you disagree with.
- Provide supplemental information, if needed.
- Offer helpful solutions.



# Helpful Resources and Tools

- Federal Register: <https://www.federalregister.gov/>
- CEQ's NEPA.gov: <https://ceq.doe.gov/index.html>
- CEQ's Citizens guide: [https://ceq.doe.gov/get-involved/citizens\\_guide\\_to\\_nepa.html](https://ceq.doe.gov/get-involved/citizens_guide_to_nepa.html)
- EPA NEPA program: <https://www.epa.gov/nepa>
- List of current EISs open for comment:  
<https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search>
- NEPAassist: <https://www.epa.gov/nepa/nepassist>



# Seminole Tribe of Florida

## Experience as a Cooperating Agency

Stacy Myers, Tribe's Senior Scientist  
and Governmental Liaison

July 21, 2021



# H.E.R.O.

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## Seminole Tribe of Florida as a Cooperating Agency for Federal Projects – Is it important?

- In recent years, the Seminole Tribe has participated as a Cooperating Agency for a number of Corps of Engineers projects.
  - Has allowed for early review and input into the public review.
- Without Tribal involvement, lead agencies may have a narrow scope/limited impact assessment, and not identify potential negative impacts to Tribes.



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# Seminole Tribe of Florida as a Cooperative Agency to Federal Projects – Is it important? *(Continued)*

- As Cooperating Agencies, Tribes can help direct project alternatives and selection
  - However, Tribes as Cooperating Agencies need to have commensurate technical capabilities as the lead agency's staff
  - Tribes must commit considerable resources and staff time to effort.
  - Tribes must act to ensure lead agency properly conducts secondary and cumulative analysis.
- In light of 3x3x3 time constraints for Corps of Engineers projects, which requires limited time and funding for initial planning phases, cooperative agency status helps ensure effective, early involvement.



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# Other Tools that Affect “Meaningful Consultation” in Federal Actions

NEPA provides opportunities for Tribal Governments to participate effectively in federal actions.

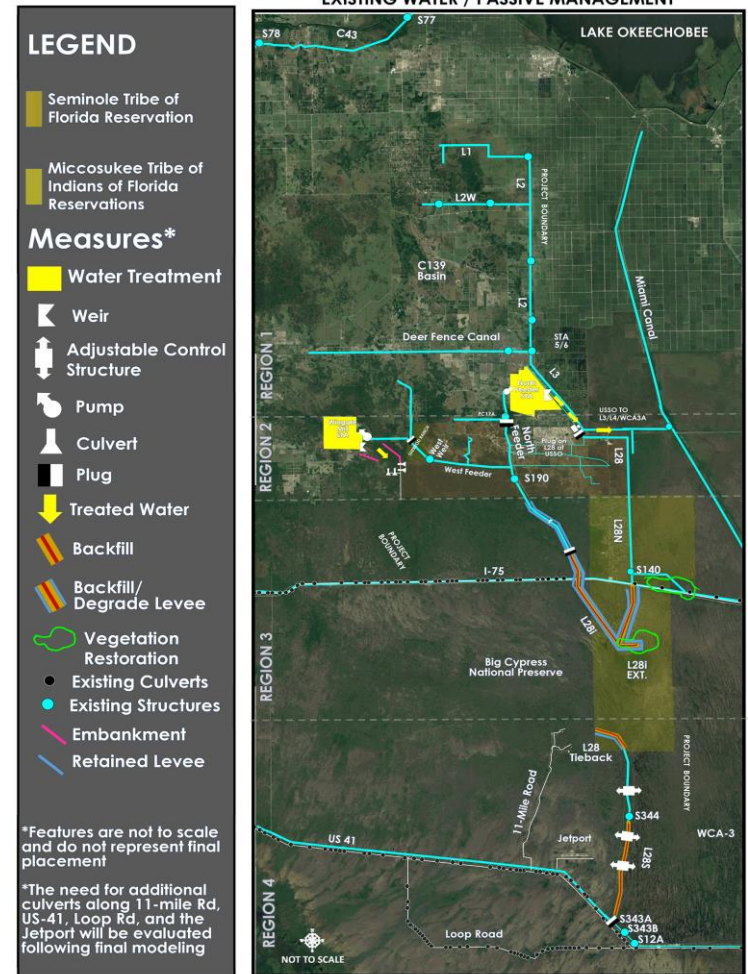
- Meaningful consultation is best achieved using an appropriate combination of laws and policies, for example:
  - Trust Responsibilities policies,
  - Environmental Justice policies,
  - Historic Preservation laws and consultation requirements,
  - Endangered Species Act consultation requirements, and
  - Federal agency planning requirements and processes.



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# Western Everglades Restoration Project (WERP)

- Example of benefits from being a Cooperating Agency and being actively engaged in the Corps PDT process.
  - up to 5 meetings per week (some as long as 4 hours), exercising consultation requirements under the Corps Trust Responsibility policy
- Allowed for the Tribe to expand the limits and scope of the project
- Allowed for Tribe's participation from the inception of the project



# Western Everglades Restoration Project *(Continued)*

- Allowed for incorporation of Tribal historical and traditional ecological knowledge
- Allowed for Tribe to redirect potential negative impacts away from Reservation
- Allowed for Tribe to maintain water supply and flood protection level of service
- Allowed for Tribe to maintain sovereignty of its land and water resources



**LEGEND**

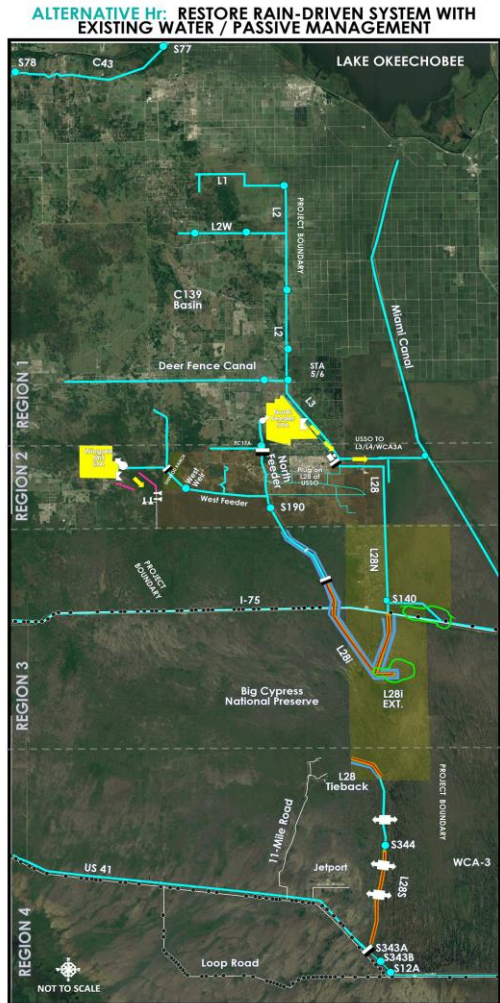
- Seminole Tribe of Florida Reservation
- Miccosukee Tribe of Indians of Florida Reservations

**Measures\***

- Water Treatment
- Weir
- Adjustable Control Structure
- Pump
- Culvert
- Plug
- Treated Water
- Backfill
- Backfill/Degrade Levee
- Vegetation Restoration
- Existing Culverts
- Existing Structures
- Embankment
- Retained Levee

\*Features are not to scale and do not represent final placement

\*The need for additional culverts along 11-mile Rd, US-41, Loop Rd, and the Jetport will be evaluated following final modeling

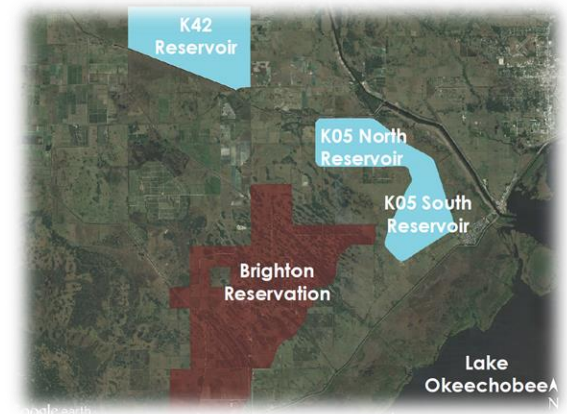
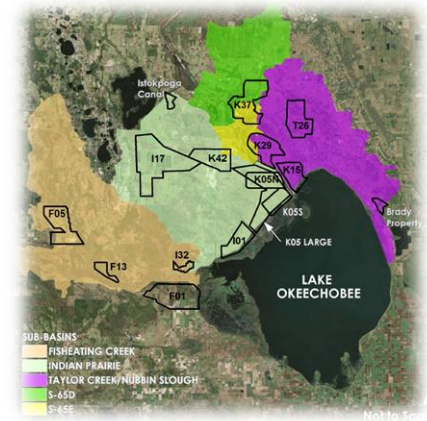


# Lake Okeechobee (LO) Watershed Restoration Project

Example of how being a cooperating agency does not guarantee a desired approach/outcome

- Tribe was invited to participate as a cooperating agency later in the process, when the PDT process began, not at inception.
  - Only two of originally evaluated alternatives were being considered at the time.
- As part of the Corps PDT process, Tribe presented an alternative K42 operational changes that would provide significant benefits over K05 (selected alternative)\*
  - However, afterwards, other improvements were added to only the K05 alternative

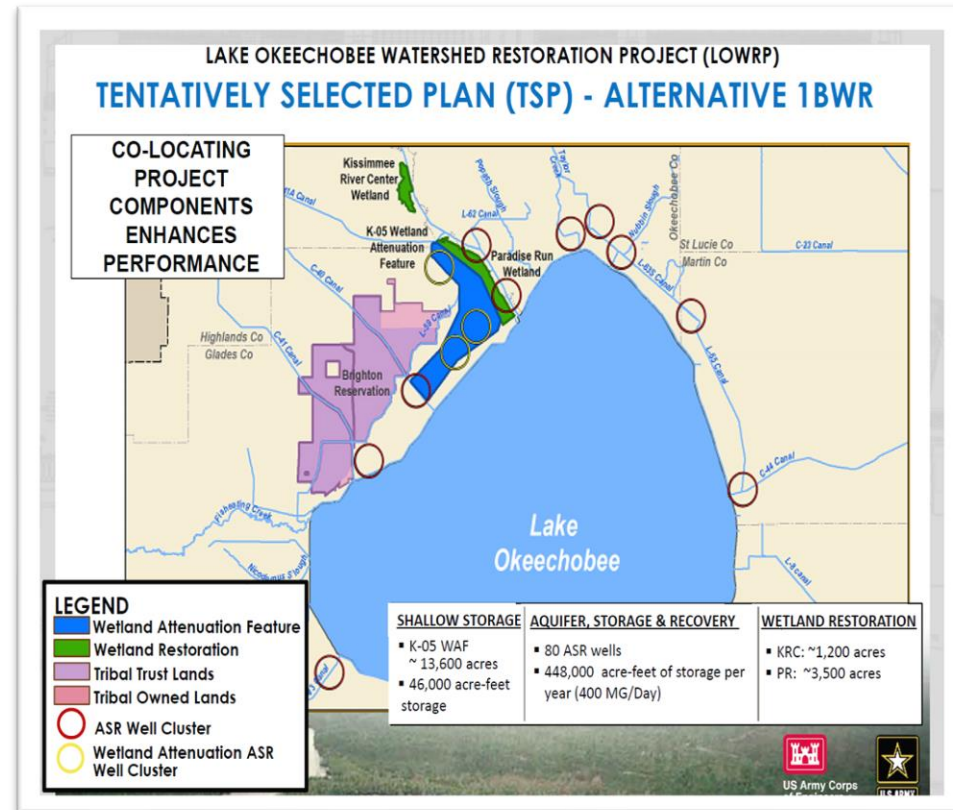
**\*Tragedy is that if K-42 was built and operated properly it could have resolved many of the water supply and water quality problems in LO basin**



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# Lake Okeechobee Watershed Restoration Project (Continued)

- Initially, the State's land interest took precedence over safety and security of Tribe's people and cultural interests.
- Final Draft TSP – incorporated the reservoir feature that presented high flood risk from potential breaching of levees, creating a clear EJ issue for Tribe.
- Tribe relied on trust responsibility and environmental justice policies to communicate effectively our concerns with the project.
- As a result of meaningful consultation, the Tribe's serious concerns were heard and are being evaluated.



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**QUESTIONS?**

**WEBINAR EVALUATION**

**[HTTPS://FORMS.GLE/YEP6CWQOAXJUEW7V6](https://forms.gle/YEP6CWQOAXJUEW7V6)**





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