

NEPA: Decision Basis, Not Yes/No (Newsletter)*

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When Congress passed the National Environmental Policy Act (NEPA), Section 101 stated that federal government policy is to create conditions under which man and nature coexist in productive harmony and fulfill the social, economic, and other requirements of citizens. This means that the social and economic environments are equal in importance to the natural environment.

The CEQ writes in its Citizens' Guide, "NEPA requires agency decision-makers to make informed decisions. Good NEPA analyses should ensure that NEPA's policy goals (Section 101) are considered and incorporated into the decision to the extent they are consistent with other considerations of national policy. NEPA does not require the decision-maker to select the environmentally preferable alternative or prohibit adverse environmental effects. Indeed, decision-makers in federal agencies often have other policy considerations, whether social, economic, national security interest or other concerns to weigh in the decision-making process. But NEPA does require that decision-makers be informed of the environmental consequences of what they decide to do."

If the federally managed land is not explicitly closed to logging, grazing, mining, geothermal, oil and gas development, or other industrial activities then those activities are allowed. The NEPA process is used to include stakeholders and the public in structuring (scoping) the assessment, contributing to potential reasonable alternatives, and commenting on the draft document. The lead agency selects a preferred alternative for accomplishing the project goals described in the document's chapter on purpose and need. The decision-maker does not determine if the project can proceed, but which is the most appropriate reasonable project alternative based on objective, equal, and full consideration of all economic, natural, and societal environmental components.

It helps to remind ourselves of this difference when projects are complex and contentious and we have other demands on our attention. It can be easy to become caught up in emotional arguments and lose the objective, dispassionate perspective needed to make a technically sound and legally defensible decision.

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The factors of transparency and informed are critical. Transparency requires communication with stakeholders, special interest groups, and the general public early and often. They should all be urged to participate by sharing their values and beliefs on the components to be assessed and offering their knowledge and insights about the location. Effective communications results from clear and simple language that avoids jargon and accepts that the audience is not as technically astute as the preparers and lead agency.

Informed decision-making is much easier and more defensible when existing conditions and alternative future conditions are presented objectively and equally. Then direct and equal comparisons of the choices can be made.

Following Congress's explicit intent in Section 101 of NEPA, the detailed CEQ regulations in 43 CFR 1500-1509, and lead agency requirements reduces or eliminates successful administrative appeals or legal challenges. When the decision is based on objective comparisons developed using values and beliefs from all agencies, stakeholders, and other participants in the scoping process then it is easy to demonstrate that the decision was neither arbitrary nor capricious. This results in savings of time and money for everyone.