



# NAVIGATING THE NEPA PROCESS IN NAVAJO COUNTRY

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# The National Environmental Policy Act (NEPA) of 1969

- ▣ NEPA is the basic national charter for protection of the environment
- ▣ Because the majority of activities on Navajo land include Federal funding or approval, nearly all developments require some aspect of the NEPA process to be applied
- ▣ And, since Tribes have retained Tribal sovereignty for environmental protection on lands within their jurisdiction, activities on tribal land often require the approval of both federal agencies and tribal governments

# OVERVIEW OF NEPA

- ▣ Passed in 1969 in response to a growing concern for the environment
- ▣ Sets forth a process for analyzing and disclosing significant impacts of a proposed action
- ▣ NEPA regulations are binding on all federal agencies (40 CFR Part 1500)
- ▣ Each agency has supplementing regulations and internal guidelines for implementing NEPA



# NEPA Process

- ▣ Identifies purpose and need for the project and mandates an investigation of a reasonable range of alternatives
- ▣ Analyzes significant impacts of a Proposed Action and alternatives on the quality of the human environment
- ▣ Ensures acceptable level of compliance with other relevant federal and tribal statutes and regulations
- ▣ Assists agencies in making decisions by having an understanding of environmental consequences
- ▣ Requires public participation and disclosure of federal actions

# Level of Analysis

Certain classes of action are excluded from detailed review, referred to as Categorical Exclusion (CE).

If the project is not CE, but may affect the quality of the human environment, it is subject to an Environmental Assessment (EA). An EA leads either to the decision of the agency to issue a Finding of No Significant Impact (FONSI) or to prepare an Environmental Impact Statement (EIS).

An EIS is a detailed statement of the environmental impacts of any major federal action significantly affecting the environment

# Examples of Federal Actions

## AGENCY

## FEDERAL ACTION

- |        |   |
|--------|---|
| ▣ BIA  | ▣ Approves mineral leases, homesite leases, utility and highway ROWs  |
| ▣ BLM  | ▣ Approves oil and gas developments                                   |
| ▣ HUD  | ▣ Approves housing funds  |
| ▣ USDA | ▣ Approves grants and loans for infrastructure and business financing |
| ▣ BOR  | ▣ Approves and constructs Tribal water settlement projects            |
| ▣ HHS  | ▣ Approves IHS-OEH water and wastewater projects                      |



# NEPA process must integrate other laws and requirements

Depending on the nature of the Proposed Action, other laws and requirements may be triggered. The NEPA process must integrate and sequence other environmental review procedures so that such procedures run concurrently rather than consecutively, including

- Other Federal Environmental Laws
- Executive Orders
- Navajo Laws and Policies
- Agency Regulations and Internal policies

# Integrating Relevant Federal Laws & Requirements

Examples:

- ▣ National Historic Preservation Act [16 U.S.C. § 470 et seq.]
- ▣ Floodplain Management [24 CFR 55, Executive Order 11988]
- ▣ Clean Water Act [33 U.S.C §1251 et seq.]
- ▣ Endangered Species Act [16 U.S.C. § 1531 et seq.]
- ▣ Clean Air Act [42 U.S.C. §7401 et. seq. and 40 CFR parts 6, 51,61, 93]
- ▣ Wild and Scenic Rivers [36 CFR 297]
- ▣ Sole Source Aquifers [40 CFR 149]
- ▣ Farmland Protection [7 CFR 658]
- ▣ Environmental Justice [Executive Order 12898]



# Integrating Navajo Laws and Requirements

- ▣ Navajo Nation Cultural Resource Protection Act (NNC § 1001)
- ▣ Navajo Endangered Species List (RCS-41-08)
- ▣ Navajo Nation Biological Resource Land Use Clearance Policies and Procedures (RCMA-44-038)
- ▣ Navajo Nation Clean Water Act (C.J.Y.-81-99)
- ▣ Navajo Nation Air Pollution Prevention and Control Act (4 NNC §§ 1101-1162)

# Integrating NEPA with Agency Requirements

Agencies often have additional and specific requirements. For example, HUD's guidelines require that man made hazards are safely avoided:

- Noise Control and Abatement
- Explosive and Flammable Operations
- Runway Clear Zones and Clear Zones/ Accident Potential Zones
- Contamination and Toxic Substances
- Floodplains

# Federal Agency Guidelines

INDIAN AFFAIRS  
NATIONAL ENVIRONMENTAL POLICY ACT  
(NEPA) GUIDEBOOK  
59 IAM 3-H



DIVISION OF  
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## Environmental Review Manual

for Indian Health Service Programs

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# Sequencing NEPA and Tribal Decision-Making Processes

Navajo Nation's decision-making process (i.e., 2 N.N.C. § 164) for construction projects requires acknowledgement of environmental compliance:

- Navajo Department of Fish and Wildlife
- Navajo Nation Historic Preservation Department,
- Navajo Nation Environmental Protection Agency.

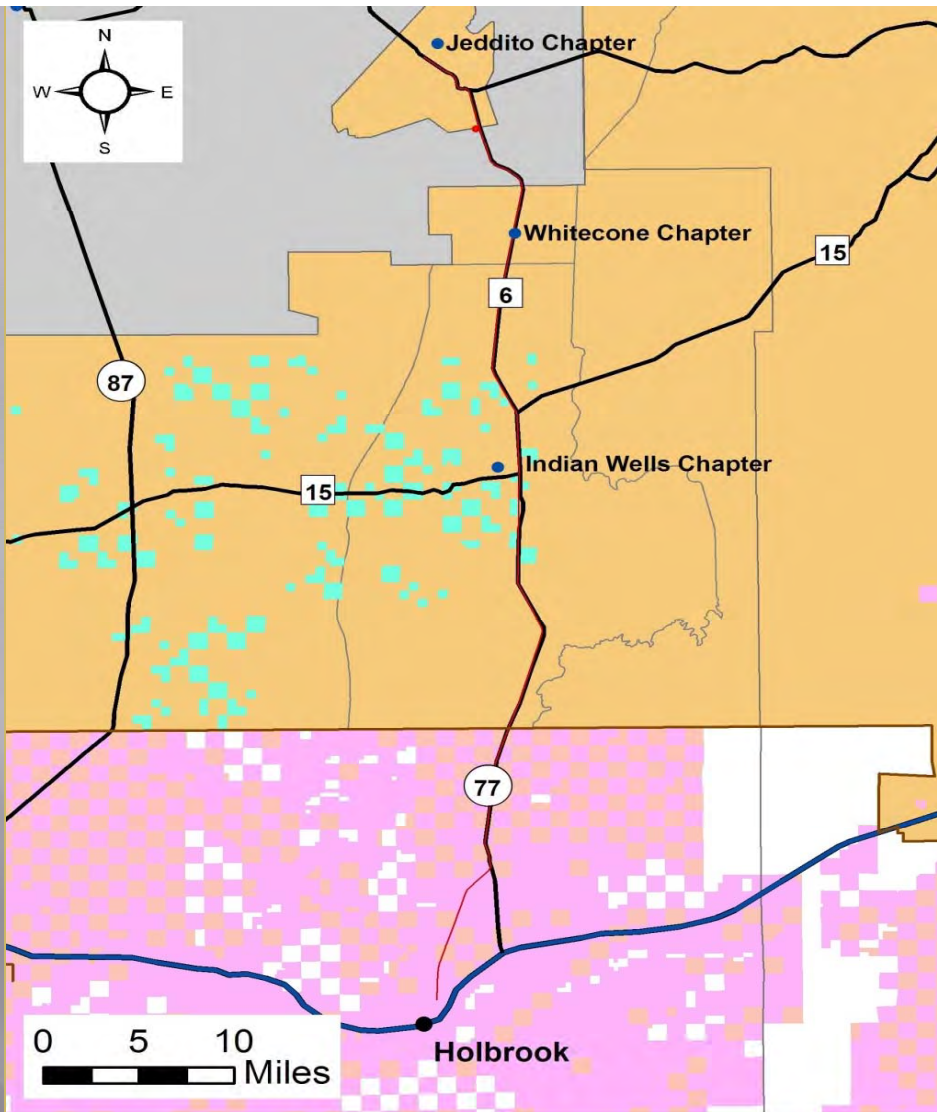
# Business Site Leasing on Navajo Nation is not necessarily a federal action

- ▣ The **Navajo Nation Land Leasing Act** of 2000 (25 U.S.C. § 415) authorizes the Secretary of Interior to delegate business site leases activities to the Navajo Nation and shall approve tribal regulations if such regulations are consistent with federal regulations.
- ▣ The Secretary approved the **Navajo Nation Business Site Lease Regulations** (5 N.N.C. §§ 2301-2306); Subchapter 800 sets forth the environmental review requirements.
- ▣ Business Site Leasing can become a federal action when a related action, such as utility line extensions requires BIA's approval.

# When does NEPA get complex?

- ▣ When more than one federal agency is involved
- ▣ When the project area covers more than one land type (e.g. Tribal trust, Indian allotment, Fee land, Private Land, State land)
- ▣ When there is no federal action yet there is potential for significant impact and Tribal law is silent





## Legend

- Spider Mound Tower
- Fiber-Optic Line
- Hopi Reservation
- Navajo Nation
- Indian Allotments
- Private Land
- State Trust Land
- Chapter Houses

Example of  
Project with  
Multiple  
Land Types

# SUMMARY

- ▣ Federal actions occur every day that affect Navajo Country.
- ▣ Federal agencies are charged with compliance with NEPA
- ▣ Sponsoring parties of economic development must ensure:
  - an appropriate level of analysis (i.e., Cat Ex, EA, EIS) is conducted
  - an appropriate level of compliance with other Federal and Tribal laws, regulations and policies occurs.
- ▣ Multiple land status and multiple federal actions increase the complexity of the NEPA process.
- ▣ The NEPA process must be integrated with the Tribe's decision-making process.