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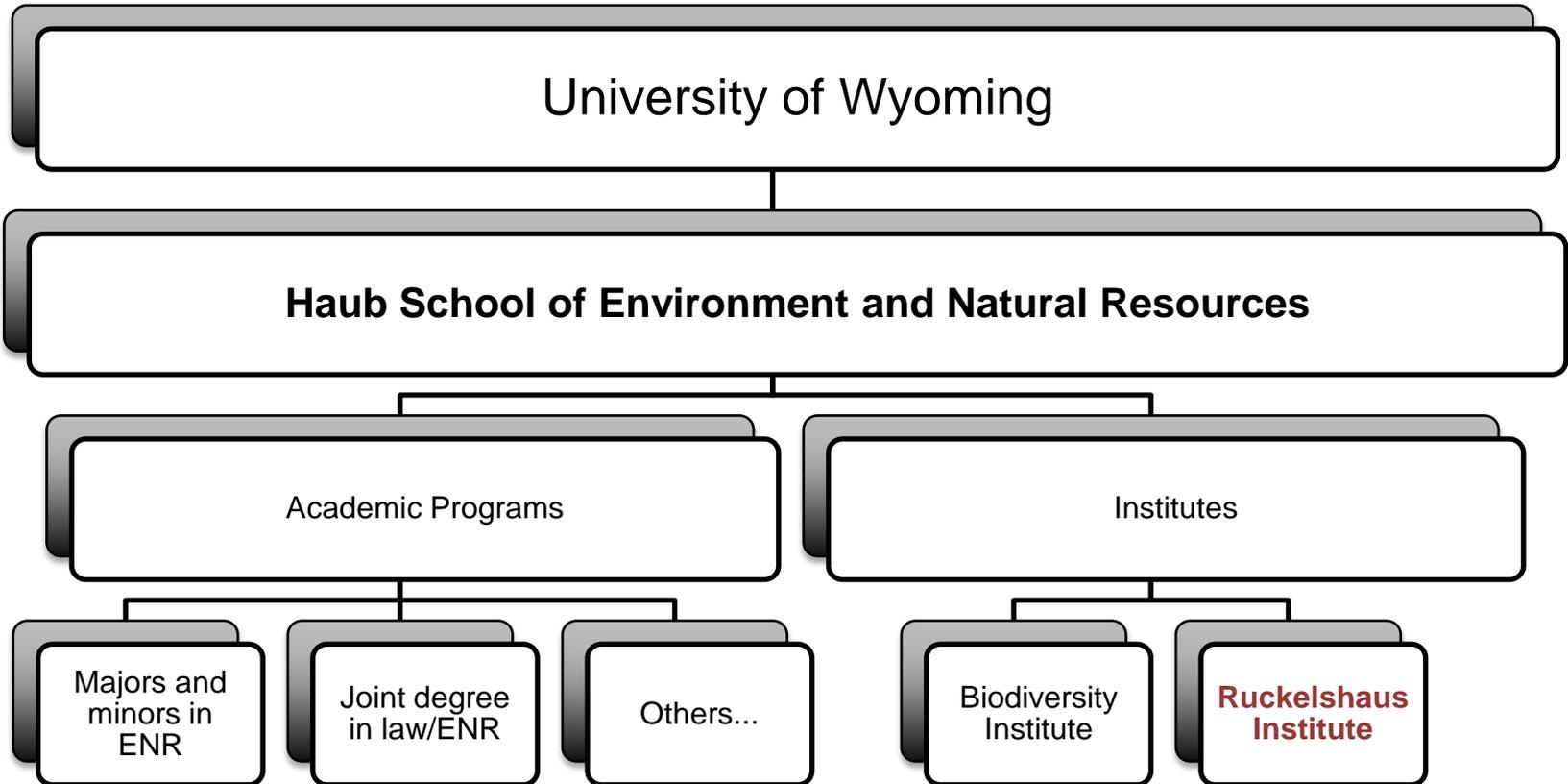
A DIVISION OF
HAUB SCHOOL OF ENVIRONMENT AND NATURAL RESOURCES

Collaboration and NEPA

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Who We Are



Ruckelshaus Institute of Environment and Natural Resources



MISSION

Supports stakeholder-driven solutions to environmental challenges

By:

- *Communicating relevant research, and*
- *Promoting collaborative decision making*

Research and Policy Analysis

Mitigation Initiative

Open Spaces Initiative

Collaborative Decision-Making

Facilitation/Decision Support

Workshops/Trainings



Collaboration

- Collaboration: To work together on a joint intellectual effort (Webster's). To “co-labor”
- International Association for Public Participation: “Lead agency works directly with other agencies and interested participants to work through issues and seek agreement on as many issues as possible. Agency agrees to implement any consensus-based recommendations.”



Collaboration

A process in which interdependent parties work together to affect the future of an issue of shared interests.

Five features are critical:

1. Stakeholders are interdependent.
2. Solutions emerge by dealing constructively with differences that otherwise would not.
3. Joint ownership of decisions is involved.
4. Stakeholders assume collective responsibility for the future direction of the situation.
5. Collaboration is an emergent property.



NEPA

The National Environmental Policy Act (NEPA) is a U.S. law that established a national policy promoting the enhancement of the environment through a set of procedural requirements that all federal government agencies must follow for major federal actions significantly affecting the quality of the human environment.



NEPA's Purpose

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.

Sec. 2 [42 USC 4321]



NEPA – Objectives

- Disclose, analyze, and consider environmental information when making decisions.
- Inform the public of potential impacts and alternatives and involve the public in decision making.



When does NEPA apply?

- Applies to “major federal actions significantly affecting the quality of the human environment”
- Federal decisions
- Policies, Plans, Programs, and Projects
 - Significantly: context and intensity
 - Affecting: “will or may have an effect”
 - Human Environment: the natural and physical environment and the relationship of people to that environment.



Role of CEQ

Responsible for the promulgation and interpretation of NEPA regulation

A) “Substantial deference” by the Supreme Court

A) Role set out in regulations:

1. Review of agency NEPA procedures
2. Designation of a lead agency
3. Alternative arrangements for supplemental EISs
4. Alternative arrangements for emergencies

C) Dispute Resolution



Role of EPA

Review and comment on EIS of proposed legislation, proposed regulations, authorized construction, and other major federal agency actions

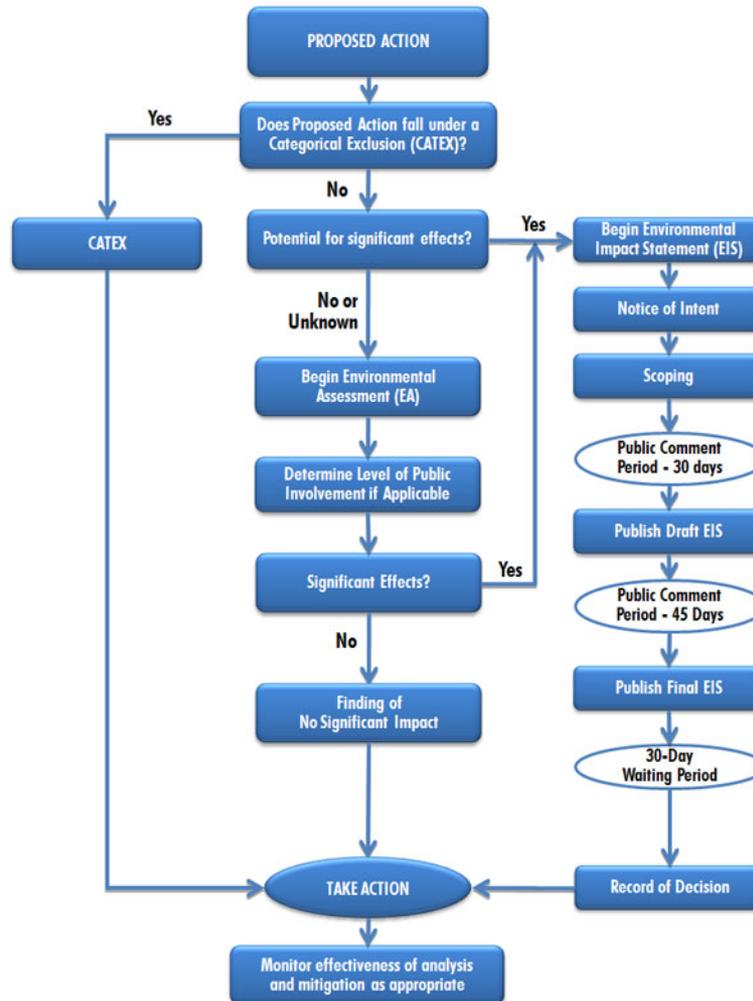


Enforcement

- Administrative Procedure Act
- “Arbitrary and capricious” standard versus “reasonableness” standard level of deference by courts toward agency actions
- Individual Agency rules and policies



NEPA – An Overview





NEPA Categories of Analysis

Categorical Exclusion (CE/CATEX)

Environmental Assessment (EA)

- Finding of No Significant Impact
- EIS needed

Environmental Impact Statement (EIS)



Categorical Exclusion

- Categories of actions
- Shown to not have significant effect
- Subject to Extraordinary Circumstances –
When a normally excluded action may have significant environmental effects



Environmental Assessment

- Short, concise document
- Provides evidence and analysis in determining if there is a FONSI or a need to prepare an EIS
- Aids in complying with NEPA when an EIS is not required
- Facilitates preparation of an EIS if one is necessary



Environmental Impact Statement

- Comprehensive action-forcing device for actions with significant environmental effects
- Includes:
 - impacts (direct, indirect, cumulative)
 - actions (connected, cumulative and similar)
 - reasonable alternatives (no-action)
- Procedural steps focus on issue identification and analysis



EIS: The Process Steps

- Notice of Intent in the Federal Register
- Scoping/Outreach to Public
- Draft EIS
- Final EIS
- Record of Decision
- Supplemental EIS

Collaboration within NEPA



- engage diverse interests and affected communities
- address key issues of concern to public welfare
- base choices and recommendations on the best available information
- analyze impacts and consequences
- weigh social, economic and environmental values
- work toward agreements with long term efficacy for future generations



Who Should Collaborate?

- Lead agencies
- Cooperating agencies (Federal and State)
- NGOs
- Interested stakeholders
- Public Citizens



Cooperating Agencies

Any agency which has jurisdiction by law, or which has special expertise with respect to the environmental issue.

40 CFR 1501.6

Responsibilities of Cooperating Agencies



- Participate in the NEPA process from the early stages on
- Participate in “Scoping”
- Develop information and prepare environmental analyses
- Provide staff support
- Normally uses its own funds



Benefits of Cooperating Agency Status

- Establish a mechanism for addressing intergovernmental issues
- Receive relevant information early in the process
- Apply available technical expertise and staff support
- Avoid duplication with other federal, state, tribal, and local procedures
- Foster intra and intergovernmental relationships and trust.



Why Collaborate?

- Better information
- Fairer Process
- Better Integration
- Conflict Prevention
- Improved Fact Finding
- Increased Social Capital
- Easier Implementation
- Enhanced Environmental Stewardship
- Reduced Litigation



How to Collaborate?

Increase the level of public engagement and learning through:

- Restructured Public Meetings
- Direct one-on-one consultation
- Task Forces
- Collaborative groups such as PVHP
- Other forms?



Spectrum of Engagement

- **Inform** – agency informs interested parties of its activities
- **Consult** – agency keeps interested parties informed, solicits their input, and considers their concerns and suggestions
- **Involve** – agency works more closely with interested parties and tries to address their concerns and suggestions
- **Collaborate** – parties exchange information and work together toward agreement on one or more issues at one or more steps in the NEPA process



When to Collaborate?

- Identifying Cooperating Agencies
- Developing the Proposed Action
- Establishing the Purpose and Need
- Issuing Notice of Intent
- Conducting Scoping



When to Collaborate?

- Developing Alternatives
- Assessing Affected Environment, Analyzing Impacts, and Addressing Mitigation
- Managing Draft and Final Reviews
- Implementing and Monitoring the Decision



When Collaboration Works Best

- Interested and affected parties *believe* they can achieve better outcomes by working together rather than independently
- Adequate staff and funding resources available
- Support from lead agency senior management
- Sufficient decision space between alternatives
- Parties are likely to have a continuing relationship



Challenges may arise...

- If a party believes it will have greater success through unilateral actions
- If there is strong internal resistance within the lead agency to using collaborative processes
- Disagreement on underlying factual information
- High levels of distrust
- Lack of resources and time
- Ambiguity in an agency's commitment



Federal Advisory Committee Act (FACA)

Governs the establishment, management, and termination of advisory committees within the executive branch of the federal government.

FACA applies to collaborative efforts when...



- A federal agency establishes or manages a group.
- The group includes one or more individuals who are not federal employees or elected officials of state, tribal, or local government.
- The product of the collaboration is group or collective advice to the Federal agency.

Applying all this to PVHP...



How can the work product that PVHP is producing apply to current and future NEPA processes?