

COMMUNITY GUIDE TO ENVIRONMENTAL JUSTICE AND NEPA METHODS

*PRODUCT OF THE FEDERAL INTERAGENCY
WORKING GROUP ON ENVIRONMENTAL
JUSTICE & NEPA COMMITTEE*

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*WORKING
TOGETHER TOWARDS
COLLABORATIVE
AND INNOVATIVE
SOLUTIONS*



The EJ IWG NEPA Committee recognizes the Environmental Protection Agency Office of Environmental Justice's and the Environmental Law Institute's efforts related to the preparation of the *Community Guide*.

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Purpose of the Guide

The *Community Guide to Environmental Justice and NEPA Methods* provides information for communities who want to assure that their environmental justice (EJ) issues are adequately considered when there is a Federal agency action that may involve environmental impacts on minority populations, low-income populations, and/or Indian tribes and indigenous communities. Such Federal actions include:

- Federal construction projects,
- Adoption of Federal programs,
- Plans to manage Federal lands and resources,
- Federal funding of State, local, or private projects,
- Federal approval of grants, licenses, leases, and permits.



The [National Environmental Policy Act \(NEPA\)](#), 42 U.S.C. §§ 4321-4347, was enacted in 1970 and establishes the broad national framework for protecting the environment. NEPA's basic policy defines the obligation of Federal agencies to give proper consideration to the environment and requires them to assess the environmental effects of their proposed actions prior to making decisions. NEPA and its implementing regulations provide the public with opportunities to interact with agencies in a meaningful way by participating in the identification and evaluation of a proposed action's impacts, alternatives, and ways to avoid, reduce, or offset impacts.

In 1994, the Federal [Interagency Working Group on Environmental Justice](#) (EJ IWG) was created by presidential [Executive Order \(E.O.\) 12898](#) ("Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations"). In 2011, a *Memorandum of Understanding on Environmental Justice and Executive Order 12898* identified NEPA as one of four areas of focus. The EJ IWG established the NEPA Committee in 2012. The goal of the EJ IWG NEPA Committee is to improve the effective, efficient, and consistent consideration of EJ issues in the NEPA process through the sharing of best practices, lessons learned, research, analysis, training, consultation, and other experiences of Federal agencies' NEPA practitioners. To advance this goal, the EJ IWG NEPA Committee produced [Promising Practices for EJ Methodologies in NEPA Reviews](#) (the *Promising Practices* report). In this 2016 report, Federal agencies identified opportunities in the NEPA environmental review process for agencies to learn from communities about impacts on, and ways to provide protections for, minority populations, low-income populations, Indian tribes, and indigenous communities. *Promising Practices* compiles methodologies gleaned from current agency practices. It does not establish new requirements for NEPA analysis and is not intended to be legally binding or create rights and benefits for any person.



This *Community Guide* lays out a framework for how Federal agencies generally consider EJ in the NEPA process, and summarizes opportunities that you may use to work with these agencies to advance environmental justice. If you know what practices Federal agencies use to evaluate environmental impacts to minority populations and low-income populations, you can be a more effective advocate for your community with these agencies as they make decisions.

Background

NEPA and EJ in Federal Agency Practice

NEPA provides you with opportunities to address concerns your community may have with potential impacts of a proposed Federal action on minority populations, low-income populations, or Indian tribes and indigenous communities. This section provides background on NEPA and on EJ principles in Federal agency practice, where these come from, and what they are intended to do.



What is NEPA?

NEPA is a Federal statute. It declares a national policy, recognizing 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.” 42 U.S.C. § 4331(c). It includes key goals that support environmental justice, including the responsibility of the Federal Government to use all practicable means to create and maintain conditions under which humans and nature can exist in “productive harmony,” 42 U.S.C. § 4331(a), and to “improve and coordinate Federal plans, functions, programs, and resources so that the nation may–

- Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
- Assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;
- Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
- Preserve important historic, cultural, and natural aspects of our natural heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice; and
- Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life’s amenities.” 42 U.S.C. § 4331(b).

These goals are implemented in requirements that Federal agencies shall, for all major Federal actions significantly affecting the quality of the human environment, prepare a detailed statement identifying:

- the environmental impacts of the proposed action,
- adverse effects that cannot be avoided should the proposal be implemented,
- alternatives to the proposed action,
- the relationship between local, short-term uses of the environment and long-term productivity, and
- any irreversible or irretrievable commitments of resources involved in the proposed action itself. 42 U.S.C. § 4332(2)(C).

NEPA is intended to produce informed decision-making. Federal agencies must identify and explain the effects of their proposed actions. They must look before they leap. NEPA does not require that an agency ultimately select the outcome with the least environmental impacts. But it does require that an agency fully explain to the public the impacts, tradeoffs, and commitments of resources resulting from its final

decision, as well as its reasons for selecting the alternative it chose.

At its best, NEPA supports a participatory process engaging community wisdom, knowledge, and ideas to improve Federal decision making.

NEPA does not assume that Federal agencies begin with all the information they will need to make a good decision. The Council on Environmental Quality's (CEQ) [NEPA regulations](#) guide all Federal agencies. 40 CFR Parts 1500-1508. They require agencies to engage in active consultation and meaningful engagement with communities and individuals throughout the environmental review process, including: identification of meaningful alternatives to the proposed action; evaluation of potential impacts; identification of how to offset or reduce undesirable impacts; and plans for monitoring. Most federal agencies have also issued separate regulations to implement NEPA that apply in addition to the CEQ NEPA regulations.

How can NEPA advance Environmental Justice?

[E.O. 12898](#) directs each Federal agency to make environmental justice a part of its mission. It calls on Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their programs, policies, and activities on “minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Marianas Islands,” Indian tribes, and indigenous communities.

Executive Order 12898

E.O. 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations* (1994), instructs each Federal agency to “make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low income populations” throughout the United States and US territories. The Executive Order also created the Federal Interagency Working Group on Environmental Justice (EJ IWG), instructed all Federal agencies to develop agency-wide strategies for addressing environmental justice, and outlined strategies for Federal agencies to employ in data collection and analysis in carrying out human health and environmental research. The Presidential Memorandum accompanying E.O.12898 calls on agencies to apply EJ analysis and community participation to processes required by NEPA.

A [Presidential Memorandum](#) accompanying E.O. 12898 states that “each Federal agency shall analyze the environmental effects, including human health, economic, and social effects, of Federal actions, including effects on minority communities and low-income communities, when such analysis is required by NEPA.” E.O. 12898 called on Federal agencies to develop their own EJ strategies; to collect and use information on multiple and cumulative exposures of persons and communities to environmental hazards, and on patterns of subsistence consumption of fish, vegetation, or wildlife; and to ensure effective public participation and access to information, including making public notices, documents, and hearings “concise, understandable, and readily accessible to the public.” Many minority and low-income communities have been subject to multiple environmental and social impacts. Because these

impacts in combination with potential new impacts can produce adverse and disproportionate effects on minority populations and low-income populations, NEPA review of a proposed action should address the history or circumstances of a particular community or population, the particular type of environmental or human health impact, and the nature of the proposed action.

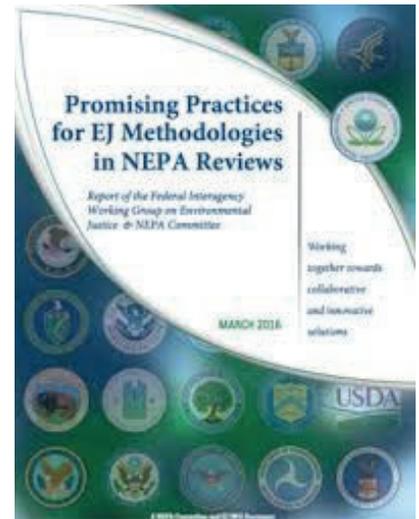
The importance of NEPA in identifying EJ issues was highlighted in CEQ's 1997 [Environmental Justice Guidance under the National Environmental Policy Act](#) (CEQ EJ Guidance), issued in response to E.O. 12898 and the *Presidential Memorandum*. It offered six general principles for incorporating EJ into NEPA reviews of proposed actions:

- Consider the composition of the affected area, to determine whether minority populations, low-income populations, or Indian tribes are present and if so whether they may incur disproportionately high and adverse human health or environmental effects;
- Consider relevant public health and industry data concerning the potential for multiple or cumulative exposures in the affected populations to human health or environmental hazards, and historical patterns of exposure;
- Recognize interrelated cultural, social, occupational, historical, or economic factors that may amplify the natural and physical environmental effects of the proposed action;
- Develop public participation strategies to overcome linguistic, cultural, institutional, geographic, and other barriers to meaningful participation;
- Assure meaningful community representation in the process, recognizing diverse constituencies within any particular community, and be aware that community participation must occur as early as possible if it is to be meaningful; and
- Seek tribal representation in a manner consistent with government-to-government relationships; the Federal trust responsibility to Federally-recognized Indian tribes, and any treaty rights.

Federal Interagency Working Group on Environmental Justice (EJ IWG)

The Federal Interagency Working Group on Environmental Justice (EJ IWG) helps Federal agencies comply with the environmental justice mandate set out in E.O. 12898. Chaired by the EPA Administrator, the EJ IWG brings together 17 Federal agencies and White House offices to address environmental justice issues. Specifically, the [EJ IWG works with Federal agencies](#): to better integrate considerations of environmental justice into their programs, policies, and activities; to advance the use of relevant Federal legislation (like NEPA and Title VI of the Civil Rights Act of 1964); to facilitate interagency partnerships that promote healthy and sustainable communities, and; to reduce the barriers of communication between communities and Federal programs. See [EJ IWG Factsheets \(Chinese, English, Portuguese, Spanish, Vietnamese\)](#)

Federal agencies have developed expertise in these and other areas of EJ in NEPA reviews. The EJ IWG’s NEPA Committee prepared [*Promising Practices*](#) to make this expertise widely available. The EJ IWG’s [*Framework for Collaboration, FY 2016-2018*](#), emphasizes the importance of continuing to promote the “effective, efficient, and consistent consideration of environmental justice issues in the NEPA process.” This work continues in fiscal year 2019.



NEPA Procedures

People seeking environmental justice can use the informed decision-making processes under NEPA to make sure that their issues and information are considered by agencies proposing Federal actions. Key NEPA concepts are summarized here for your convenience.

The CEQ's [A Citizen's Guide to the NEPA](#) (*Citizen's Guide*) (2007) is a useful background document that outlines NEPA processes. It includes citations to the NEPA regulations, a chronology of when each element of a NEPA review process takes place, and suggestions for citizens' interactions with Federal agencies conducting NEPA review of a proposed action.

Who carries out analysis of proposed Federal activities?

NEPA analysis requirements apply to all Federal agencies in the Executive Branch. NEPA reviews are carried out by the agency or agencies proposing the action. The agency conducts the analysis and issues the required documentation, described below. (A Federal, state or local agency or a Tribe may participate in a NEPA review either as the "lead agency" if it is the primary decision maker, or as a "cooperating agency" where another agency is the primary decision maker) The NEPA process is overseen in general by the White House Council on Environmental Quality (CEQ) in the Office of the President. CEQ is responsible for its NEPA regulations and for reviewing Federal agency NEPA procedures adopted by each agency. The Environmental Protection Agency's (EPA's) Office of Federal Activities is responsible by law for reviewing and commenting on Environmental Impact Statements (EISs) and some Environmental Assessments (EAs) prepared by other agencies; [regional EPA offices](#) may review NEPA documents issued by Federal agencies in their regions. EPA review includes coverage of [environmental justice issues](#).

Your community can participate in the NEPA process by bringing your concerns, information, and ideas directly to the Federal agency that is proposing to conduct the activity. You can also raise issues with cooperating Federal, State, local or tribal agencies that are interacting with the lead agency. If there is a continuing dispute or concern, you can bring those issues to the CEQ or EPA. Finally, affected persons can seek further review of a *final* Federal decision through agency administrative tribunals (where these exist, such as the Department of Interior) and in Federal court.

What government actions does NEPA cover?

All Federal agencies in the executive branch have to comply with NEPA before they make final decisions about federal actions that could have environmental effects. "Human environment" includes "the natural and physical environment and the relationship of people with that environment." 40 CFR 1508.14. *CEQ's Citizen's Guide* notes that NEPA applies to actions like issuing regulations, launching new programs, granting or denying applications for permits or licenses, making Federal land management decisions, constructing publicly-owned facilities, "financing, assisting, conducting, or approving projects or programs," and issuing agency rules, regulations, plans, policies or procedures. It also applies to legislative proposals that originate in a Federal agency.¹

¹ Even though NEPA environmental impact review requirements do not apply in a limited number of cases where there is the "functional equivalent" of a NEPA analysis – such as where the EPA develops a regulatory pollution control standard based on its review of science and technology and risks – environmental justice requirements under E.O. 12898 continue to apply.

NEPA does not apply to government actions taken by State or local governments, unless there is also a Federal action connected with the State or local actions – such as Federal funding of the action or the issuance of Federal permits. For example, if a company seeks approval to construct a new recycling facility in a low-income neighborhood, but the only government approvals needed are zoning approvals issued by the city government, and pollution control permits issued by the State, there is no Federal action and NEPA does not apply.

What NEPA processes do Federal agencies use?

If you are interested in a proposed Federal agency action, it is very helpful to know what kind of NEPA review a Federal agency is conducting. NEPA regulations require a more detailed level of analysis for actions that may have a significant impact. The processes are summarized very briefly here. There are three types of NEPA analysis that an agency may use:

1. Categorical Exclusion (CATEX). Each agency has a list of types of actions that it has determined do not individually or cumulatively have a significant effect on the quality of the human environment. Examples include issuing administrative procedures, conducting routine maintenance activities, or engaging in non-intrusive data collection activities. A CATEX (pronounced like “Cat-X”) is based on the agency’s previous experience with the kinds of activities involved, and can only be adopted after publication in the Federal Register, notice and opportunity for public comment.

If an action you are concerned about is subject to a CATEX, then generally no further NEPA review of that action is required. However, before applying a CATEX to any specific action, the agency must determine that the proposed action does not present any “extraordinary circumstances” that may cause it to have significant impacts. Such circumstances may include effects of an otherwise routine activity on environmentally sensitive areas or resources, and scientific controversy over effects of the proposed action; often agencies will need to examine cultural resources or endangered species, or actions affecting particularly fragile or unique resources or communities. Some agencies have adopted environmental review checklists or other documents to check for extraordinary circumstances, providing some opportunity for further environmental evaluation.

2. Environmental Assessment (EA). EAs are used frequently by Federal agencies to review programs, plans, permits, construction, and other actions. The EA is a concise document that analyzes the significance of the environmental effects of the proposed action and its alternatives. It provides evidence and analysis of whether an Environmental Impact Statement (EIS) is needed. And it assists the agency in complying with NEPA when no EIS is necessary.

Typically, agencies prepare an EA when they expect the study to result in finding that the proposed Federal action will have no significant impact on the quality of the human environment (Finding of No Significant Impact – FONSI). A FONSI (pronounced “fonzee”) is based either on the characteristics of the action itself or on planned mitigation activities that will reduce or offset the impacts below the level of significance. For the proposed action, the EA typically includes a statement of the need, identification of alternatives to the proposed action, assessment of the environmental impacts of the proposed action and alternatives, relevant mitigation measures, and a list of agencies and persons consulted. The agency can decide how much public involvement to offer, but the CEQ regulations require agencies to make the EA/FONSI available for review for 30 days if the proposed action has not been done before by the agency, or if the action is one that would normally require an EIS. A Federal agency may decide to prepare a draft EA and ask for public comment on the draft before preparing a final EA/FONSI.

3. **Environmental Impact Statement (EIS).** An EIS is a detailed document that is prepared if any agency proposes a major Federal action that may significantly affect the quality of the human environment. The entire Federal government prepares only several hundred EISs each year. They tend to occur for large-scale construction or Federal land development projects and programs, or for Federal permit decisions involving major impacts. The EIS process starts with publication of a Notice of Intent providing a brief description of the proposed action and its possible alternatives. It describes the process the agency will use to conduct “scoping” of the proposed action. This is an opportunity for members of the public to suggest issues for study and additional alternatives, as well as an opportunity to outline the proposed scheduling of the project analysis. As part of the scoping process, Federal agencies are required to identify and invite the participation of the public and interested persons. Following scoping, the agency will prepare a draft EIS, solicit public comment for 45 days or more, and prepare a final EIS responding to issues and concerns raised in the public comment process. The EPA’s Office of Federal Activities also provides an evaluation analysis contained in the Draft and Final EIS, which will include consideration of environmental justice issues where relevant. The EPA’s Office of Environmental Justice also addresses EJ issues during the NEPA review process, as appropriate. The agency responsible for the EIS then issues a Record of Decision (ROD) based on the analysis in the Final EIS.

Importantly, if there is no CATEX available in the agency’s adopted procedures, the agency must prepare either an EA or EIS. In the EA or EIS, the agency typically considers and evaluates the “no action” alternative – what would be the impacts of not taking the proposed action? This is in addition to any other alternatives that are reasonably responsive to the “purpose and need” for the government’s proposal. If the agency has a preferred alternative when it publishes a draft EIS, it generally will identify it. All final EISs must identify a preferred alternative unless another Federal law prevents an agency from doing so.

Each Federal agency has adopted its own NEPA procedures that define its approach to conducting these analyses. These apply in addition to the [CEQ NEPA regulations](#) that apply to all Federal agencies. You can find the individual Federal agency NEPA procedures at [NEPA.gov](#).

How can I find EAs, EISs, and other notifications for proposed Federal actions?

Agencies are required to publish notices of intent to prepare an EIS in the *Federal Register*, and are required to conduct outreach to potentially affected communities. In contrast, information about EAs varies among agencies. Many agencies list pending EAs and EISs on their websites; but some do not.

Agencies are not required to provide notice of their intention to use a CATEX on particular actions, but the list of CATEXs adopted by each agency is found in the agency’s NEPA procedures. (Remember that a CATEX is a type of action that an agency has already determined does not, absent extraordinary circumstances, individually or cumulatively have a significant effect on the quality of the human environment).

Most Federal agencies have [NEPA offices](#) where information can be obtained.

You can always inquire of the local Federal agency proposing an action or where you first learned of a proposed action, and ask what NEPA processes will be used and how best to be placed on a distribution list for information about the action.

EPA lists draft EISs that are currently open for public comment and final EISs on its [website](#).



Other EJ Opportunities

What if the action I am interested in does not trigger NEPA requirements but there may still be EJ effects?

Even if a Federal government action is not a “major Federal action” that triggers an EIS, agency EJ strategies and E.O. 12898 may still require the Federal agency to determine impacts of its actions on minority populations or low-income populations. For example, if an action is part of a “functionally equivalent” process to NEPA, or is covered by a CATEX, an agency may still need to assess EJ effects.

If the action in question is one undertaken by a State or local government, NEPA will apply only if there is Federal funding (such as highway or housing funds) or the State or local action requires a Federal permit. About a third of the States apply their own State environmental impact assessment requirements to some State actions; a few – including California -- apply State environmental impact assessment requirements to local government actions. But these may not include EJ considerations in all cases.

Other laws such as Title VI of the Civil Rights Act of 1964 may apply to State or local activities that raise EJ issues.

Title VI of the Civil Rights Act

Title VI requires that no person on the ground of race, color, or national origin, be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving Federal financial assistance. Title VI applies to State and local programs that receive Federal financial assistance. Federal agencies ensure that recipients of Federal financial assistance comply with Title VI, separate and apart from the procedures of NEPA. Individuals or communities may file a complaint with Federal agencies or, in some circumstances, federal court if they believe the law was violated. For additional information, see www.justice.gov/crt/fcs.

Promising Practices and Opportunities for Community Engagement

This section of the guide explains how you can use [Promising Practices for EJ Methodologies in NEPA Review](#) to advance community goals for environmental justice when interacting with Federal agencies. *Promising Practices* is intended to support “a renewed and dynamic process to advance environmental justice principles through NEPA implementation and thereby promote a more effective, efficient, and consistent consideration of environmental justice” in Federal environmental reviews. The EJ IWG’s NEPA Committee assembled the “forward-looking” methodologies in *Promising Practices* by drawing on the experiences of the Federal agencies. These compiled agency practices build on decades of experience and offer methods that agencies can use to advance the understanding of EJ in the context of NEPA environmental reviews.

Promising Practices discusses agency NEPA and EJ practices in the following categories, which are explained in the pages below:

1. Meaningful Engagement (page 12)
2. The Scoping Process (page 18)
3. Defining the Affected Environment (page 25)
4. Developing and Selecting Alternatives (page 28)
5. Identifying Minority Populations (page 30)
6. Identifying Low-Income Populations (page 34)
7. Impacts Analysis (page 36)
8. Disproportionately High and Adverse Impacts (page 41)
9. Mitigation and Monitoring (page 46)

While *Promising Practices* is aimed at informing Federal officials on how they can better serve the public and meet the requirements of NEPA and E.O. 12898, you can use your knowledge of these practices to help your community interact with Federal agencies more effectively. You can, for example, encourage Federal agencies to:

- Use varied and targeted forms of communication with affected communities;
- Expand the scope of the NEPA analysis including the understanding of environment(s) and communities that might be affected by a proposed action;
- Identify minority populations and low-income populations that might be otherwise overlooked;
- Take into account community concerns about particular impacts that could affect residents and workers in these communities, considering distribution of adverse and beneficial impacts;
- Identify possible adverse impacts on minority populations and low-income populations that might be disproportionately high in comparison with other populations; and
- Consider additional alternatives or actions that the agency could take to reduce or offset impacts on community members entirely.



You can bring the *Promising Practices* report to meetings with Federal officials and refer to it if you believe that opportunities for better decision-making that includes EJ concerns can be addressed.

For each of the nine subject categories, *Promising Practices* provides “Guiding Principles” and “Specific Steps” for agency consideration and use. As we discuss NEPA and EJ methodologies on the following pages, reference to these will be made using a simple code that identifies the subject category (using initials), then whether the relevant statement is a guiding principle (GP) or a specific step (SS), and the number of the principle or step. For example, as used in this *Community Guide*, ME-GP3 refers to Meaningful Engagement’s Guiding Principle #3, while AE-SS2 refers to the Affected Environment’s Specific Step #2.

Promising Practices is not formal guidance and does not establish any binding requirements. It provides agencies with “recommendations for conducting environmental justice analyses for NEPA reviews” (ME-GP2). Because it summarizes useful agency practices, you can use it when dealing with Federal agencies to suggest approaches that are helpful to your community.

MEANINGFUL ENGAGEMENT

1. What is meaningful engagement?
2. Are Federal agencies required to seek community input when considering EJ issues in the NEPA process?
3. What steps can Federal agencies take towards meaningful engagement?
4. How can my community use meaningful engagement to affect Federal decision-making?
5. Can my community use meaningful engagement to change the proposed action?
6. How can I request a public hearing or meeting? What can I do if I am dissatisfied with the response to my request?

1. What is meaningful engagement?

Meaningful engagement is described in multiple Federal government documents as community participation in agency decision-making that is inclusive, effective, and accessible to all.

Promising Practices (ME-GP3) recognizes that meaningful engagement runs in two directions:

- Adaptive and innovative approaches to public outreach (disseminating relevant information to the community), and
- Adaptive and innovative approaches to public participation (receiving the information and views of the community).

Both concepts build on decades of experience with NEPA and E.O. 12898, as well as upon agency practices. Agencies can tailor their approaches to the needs of specific populations or communities.

Characteristics of Meaningful Engagement

- **Opportunity to participate** in agency decision-making
- **Ability to influence** agency decision-making
- **Concerns of community members** are taken seriously
- **Public is educated** about potential impacts of agency decisions
- **Early engagement** with affected communities
- **Consistent engagement** with affected communities
- **Language accessibility**
- **Varied meeting styles**
- **Accessible facilities**
- **Both electronic and non-electronic** communication
- **Consider forming committees** composed of members of affected communities

For example, [EPA's Guidance on Considering Environmental Justice During the Development of Regulatory Action](#) advocates processes that ensure "(1) potentially affected populations have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment and/or health; (2) the population's contribution can influence...[agency] decisions; (3) the concerns of all participants involved will be considered in the decision-making process; and (4) the agency will seek out and facilitate the involvement of... potentially affected" populations.

Promising Practices observes that "meaningful engagement" efforts with minority populations and low-income populations and related communities are most effective and beneficial when started early and carried through *each step* of the NEPA process (ME-GP4).

2. Will Federal agencies seek community input when considering EJ issues in the NEPA process?

Yes. Federal agencies generally will provide opportunities for communities to participate in the NEPA process. Agencies may gather information from the affected public, including minority populations, low-income populations, Indian tribes and indigenous persons (ME-GP5). The input may include

information about how proposed actions could affect those populations, as well as ways to reduce or offset adverse effects. As stated in the *Presidential Memorandum*, agencies are expected to improve the accessibility of their public meetings, crucial documents, and notices so that they reach potentially affected minority populations and low-income populations. Specific opportunities for input vary based on the type of NEPA review (EIS, EA, or CATEX) and specific agency procedures.



3. What steps can Federal agencies take toward meaningful engagement?

Because minority populations and low-income populations often face different and greater barriers to engagement, *Promising Practices* suggests that agencies focus their efforts on developing flexible and creative forms of (1) public outreach, and (2) community participation (ME-GP3). *Promising Practices* emphasizes that it is important to use meaningful engagement to leverage agencies' ability to collect data that informs agency understanding of impacts on minority populations and low-income populations, Indian tribes, and indigenous persons (ME-GP5).

Promising Practices recommends that Federal agencies engage affected communities and populations early in the NEPA process, and discuss with them the "purpose and need statement" drafted by the agency (ME-GP8). The purpose and need statement outlines the agency's reason for proposing the action, and it determines the boundaries of the NEPA analysis and the range of reasonable alternatives that may be considered. (More information about purpose and need statements can be found on page 21.)

Maintaining this level of meaningful engagement can be supported by:

- Maintaining relationships with affected communities through an agency-designated point of contact (ME-GP6); and
- Convening project-specific advisory committees and other established groups of community members to identify potential impacts and mitigation measures to offset impacts (ME-GP7).

Early and Diligent Efforts for Meaningful Engagement

Promising Practices (ME-SS1) suggests that Federal agencies make early and diligent efforts to ask for the views of potentially affected minority populations, low-income populations, and other interested individuals, organizations, and communities when:

- Defining the affected environment (the geographic areas that the proposed action will affect),
- Defining potentially affected populations,
- Assessing potential impacts to minority populations and low-income populations,
- Evaluating potential alternatives to the proposed action,
- Determining whether potential impacts on minority populations and/or low-income populations are disproportionately high and adverse, and
- Developing mitigation and monitoring measures.

Specific steps in the NEPA process can be tailored to address concerns with cultural, geographic, economic, and other barriers that might prevent meaningful engagement with minority populations and low-income populations. *Promising Practices* (ME-SS2 to SS7) advises that:

- Public meetings can be held in different sizes and formats to accommodate varied needs of communities.
- Specialized materials can be created to address issues of particular concern to, or that affect, particular populations.
- Translation of relevant documents provides opportunities for speakers with limited English to receive information and to comment throughout the decision-making process. Translators can make public meetings more accessible to participants.
- Agencies can provide opportunities for verbal communication, and documents can include pictures and photos, to help communities and individuals more accustomed to these forms of communication.
- Agencies should consider using electronic and interactive communication methods such as virtual meetings, webinars, social media, or listservs to overcome barriers of time and distance. Agencies should also be expected to provide alternatives for communities and population groups that do not have, or have limited access to, electronic communication.
- Agencies should choose meeting locations, meeting times, and facilities that are “local, convenient, and accessible” to potentially affected minority populations and low-income populations. Community members may not be able to attend meetings in person because of distance or transportation issues, or may not be able to participate at all during certain times of the day or week. Consider holding meetings “outside of traditional work hours and locations.” In keeping with NEPA and EJ practice, facilities should be accessible and include as needed, assistance for hearing-impaired and sight-impaired individuals.
- Consistent with applicable requirements, agencies should use meaningful engagement efforts and government-to-government consultation (as appropriate) to reach indigenous tribal populations and organizations.

Agencies may want to consider input from “each segment” of potentially affected minority populations and low-income populations in order to make sure important issues or concerns are not overlooked or lumped together in a way that masks real impacts on specific populations or communities. *Promising Practices* notes that effects on different segments of populations may be different (minority business owners, low-income transit riders, subsistence fishers, etc.). The techniques described above can be directed toward specific segments of the community (ME-SS3).

4. How can my community use meaningful engagement to affect Federal decision-making?

The NEPA process offers specific *formal opportunities* to provide information, ideas, and recommendations to Federal agencies.

- One early opportunity occurs during the scoping process (described in the next section). During scoping you have an opportunity to suggest issues and alternatives the agency should consider, and to identify impacts that are of concern to the community;
- The CEQ NEPA regulations provide an opportunity to submit comments to the agency after the release of a draft EIS. Many agencies also offer opportunities for comments on draft EAs, particularly where these involve planning documents, permit decisions, or construction activities; and
- The regulations also recognize that you can communicate with agencies after release of a final EA/FONSI or final EIS and before the decision is made.

As an advocate for your community, you can take advantage of all formal meeting, commenting, and informational opportunities. But you are not limited to these.

A key initial step is to request from the agency all information about a proposed project or action and the relevant schedules for public input and agency actions (ME-SS7, SS8). This information will enable you to plan your interactions with the agency. It will help you and your community to decide when to assemble data that you have. It will help you plan for meaningful engagement by community members who may have limitations on their time or availability for meetings or discussions.

You can ask for an early informal meeting to discuss the agency's view of the "purpose and need" for the proposed action. *Promising Practices* suggests that agencies agree to such meetings to help focus meaningful engagement on EJ issues. This will help you identify information you can gather for the formal process (ME-GP8).

Facts matter to agencies in the NEPA process, even more than community preferences. When you provide information to agencies, be certain to support your comments with facts when you can supply them. Communities can also identify issues or ask questions about which agencies can gather facts.

For Example: A community that has environmental health concerns relating to a proposed Federal permit decision could ask an agency to gather information to answer questions such as:

- *How great is the incidence of cancer in former uranium miners in the area?*
- *What percentage of the population is served by water wells?*

The agency can include these issues in its design of the NEPA review, and the answers will help both the agency and the community work toward a better-informed decision.

There are many ways for communities to use meaningful engagement to affect Federal decision-making. Actions include:

- Requesting that the agency provide informational material to the community about the proposed action in formats that are useful and accessible to the community (ME-SS6);
- Talking with agencies early in the decision-making process to discuss why an agency views an action as necessary and what purpose the action serves (ME-SS1); and
- Keeping track of and taking advantage of all formal meeting, commenting, and informational opportunities (ME-SS1).

Promising Practices emphasizes that agencies have great flexibility in designing meaningful engagement (ME-SS5). If an agency’s initial approach does not work well for your community, consider moving early to ask for a different approach. You can request that the agency consider using more than one method of public input, or suggest additional meeting times and locations, particularly if an agency has proposed only one way of communicating or receiving public input.

5. Can my community use meaningful engagement to change the proposed action?

By identifying alternatives, issues, and the need for data, the community may encourage the agency to change or reconsider the proposal. The NEPA analysis can result in an agency choosing the “no action” alternative, or changing its “preferred alternative” to an alternative proposed by the community. The agency may also decide that it needs to engage in a longer fact-finding process before completing its NEPA analysis. Communities can take the following steps to encourage agencies to change or reconsider a proposed action:

- Identify alternatives;
- Identify problems or issues with the proposed action based on facts;
- Point out the need for more data; and/or
- Advocate for the “no action” alternative based on facts.

The facts generated by the NEPA analysis may also be useful over the long term to persuade others to change or reconsider the decision. Facts may influence the original project proponent, a funder, or others with authority to affect the ultimate performance of the action.

6. How can I request a public hearing or meeting? What can I do if I am dissatisfied with the response to my request?

If you or community members feel that that the public, or some part of the public, is not being given sufficient opportunity to be involved, or if the agency is not using meaningful engagement techniques effectively, there are steps you can take. CEQ’s *Citizen Guide* notes that each case is situation-specific, but that some courses of action include:

- raise the concerns as soon as practicable;
- ask for a meeting with the designated point person at the agency or other coordinating agencies to discuss these concerns;
- propose an alternative or collaborative process (which now may include some of the processes identified in *Promising Practices*);
- reach out to CEQ or others for assistance in interpreting and using legal procedure;
- seeking conflict resolution; and
- use administrative or judicial remedies (available only at the end of the process).

**Schedule
the meeting
as soon as
possible.**

Begin with the agency office or official responsible for coordinating the NEPA review of the action. If the agency has appointed a designated point of contact for relationships with affected minority populations and low-income populations for the specific proposed action, as suggested in *Promising Practices*, you can begin there. (ME-GP6) You can also follow up with other agency officials as needed. You can contact the agency’s environmental justice coordinator and seek greater involvement by their office to broaden the discussion.

Because Federal agencies need to carry out their NEPA reviews in a way that they can explain and justify (ME-SS7), in many cases they will try to accommodate additional opportunities to provide information and to receive information from communities.

THE SCOPING PROCESS

1. What is scoping?
2. How can you use scoping as a community engagement tool?
3. Can there be more than one meeting for scoping?
4. What should you consider when participating in a scoping process?
5. Is the scoping process an opportunity for communities to express support for or opposition to a project or agency action?
6. What can communities expect agencies to do for scoping?

1. What is scoping?

Scoping is defined by regulation as an “early and open” process that Federal agencies use to determine what issues to study and what to leave out. During scoping the agency explains what Federal action it is proposing to take and it seeks feedback on what issues it should analyze. Scoping also helps Federal agencies determine what alternatives to a proposed action should be studied, and it helps agencies understand who is interested in the action that has been proposed. 40 CFR 1501.7

Scoping is the first official part of the meaningful engagement process in any NEPA review, and is frequently the first opportunity for communities to have significant input in agency decision-making about a proposed action.

NEPA regulations require agencies to conduct scoping after they publish in the *Federal Register* their intent to prepare an EIS for a proposed action. Federal agencies must identify and invite interested persons (including governmental entities and tribal governments) to participate in this process. In practice, agencies can also choose to use scoping in the initial stages of preparing an EA.

Scoping consists of:

- One or more public meetings organized by the agency;
- Opportunity for members of the public to offer ideas and information about what issues and impacts the environmental review process should include, including EJ issues and impacts;
- Opportunity for members of the public to offer additional alternatives that the agency should evaluate along with the alternatives it has initially identified; and
- Informing the public of project schedules, additional commenting opportunities and deadlines, and points of contact.

There is significant opportunity for community engagement during this phase of Federal decision-making. Community members can affect:

1. What impacts and alternatives the agency evaluates during its NEPA review, and
2. How the agency works with your community moving forward in the process.

Another benefit of getting involved early in the scoping process is that you can learn about agency methodologies and intended approaches. This includes learning about the agency’s EJ methodology and its approach to outreach to minority populations and low-income populations, which will help your community to engage throughout the NEPA process.

Promising Practices emphasizes the guiding principle that taking a broad perspective across all affected resource topics (e.g., water resources, land use, air quality) during scoping can let Federal agencies understand that minority populations and low-income populations may have increased or unique vulnerabilities from multiple impacts occurring to one or more environmental resources. (SP-GP1)

2. How can you use scoping as a community engagement tool?

Because scoping may include public meeting(s) and/or invitation(s) for public input (SP-SS3), these events can be a ready-made focal point for community engagement.

Working ahead of the date of the scoping meeting, you can:

1. Determine any issues and concerns your community may want to have addressed.
2. Identify other individuals, groups, and communities that may be interested in the proposed action.
3. Identify which community members can present community concerns effectively.
4. Plan for their participation in the meeting process by getting the word out about all meetings and public documents related to the proposed action.
5. Determine what letters and comments you may want to enlist people to write and submit.

Promising Practices emphasizes that a proposed action may have increased impact on minority populations and low-income populations because these populations often face multiple impacts from separate or related actions occurring one after another or in the same place and time (SP-GP1). In response, *Promising Practices* suggests that agencies consider writing a strategy before beginning the scoping process to “identify, notify, and solicit input from potentially affected minority populations and low-income populations” in determining the scope for review (SP-GP3). If you become aware that an agency is considering a Federal action, you can use this suggestion to ask the agency if you can help it develop a strategy for conducting scoping within your community.

Promising Practices says that Federal agencies should consider conducting a preliminary analysis before scoping to determine whether minority populations or low-income populations may be present and could be affected by the proposed action (SP-SS1). One tool that agencies can use for that preliminary analysis is [EJSCREEN](#) (see sidebar), a publicly-available environmental justice screening and mapping tool. Because it is publicly available online, you can also use EJSCREEN to see what information the government has about affected populations, communities, and at least some resources and impacts important to these populations and communities in a specific geographic area.

In turn, this information may help you plan ahead of scoping to make sure that issues important to your community are not overlooked. It also may help you identify other communities of potentially affected people that may share your interests in participating



in the scoping process. Proposed actions can cover a very large geographic area and may affect many different communities and populations that you don't know very well. Identifying potential community allies can help you to expand public engagement in the scoping process, which in turn can further inform agency decision-making.

EJSCREEN

(Environmental Justice Screening & Mapping Tool)

A mapping tool for combining environmental & demographic indicators

Community Uses of EJSCREEN:

- Identify areas with minority and/or low-income populations
- Highlight neighborhoods and/or areas with high concentration of environmental risk and pollution
- Create maps that compare environmental risks of low-income and minority populations to US average risk
- Raise community awareness about environmental harms in specific areas and among minority/low-income populations

EJSCREEN Demographics Available:

- Minority Populations
- Low-Income
- Less than High School Education
- Linguistic Isolation
- Over 64 Years Old
- Under Five Years Old
- Demographic Index (Combination of Low-Income & Minority)

EJSCREEN Environmental Risk Indicators Available:

- Lifetime Cancer Risk from Air Toxics
- Breathing Hazard from Air Toxics
- Brain Hazard Index from Air Toxics
- Amount of Diesel Particulate Matter in Air
- Particulate Matter (air pollution)
- Ozone Concentration in the Air
- Lead Paint
- Pollution Exposure from Traffic
- Distance from Risk Management Plan
- Distance from Hazardous Waste Management Facilities
- Distance from National Priorities List (Hazardous Waste) Sites
- Distance from Major Direct Water Discharges

Web Tools:

[EJSCREEN Tool](#)

[EJSCREEN User Guide](#)

[EJSCREEN Fact Sheet \(English\) \(Spanish\)](#)

[EJSCREEN FAQs](#)

3. Can there be more than one meeting for scoping?

NEPA regulations allow for more than one meeting or opportunity for scoping if the agency chooses to do so. But scoping always occurs very close to the beginning of the NEPA process. *Promising Practices* suggests that agencies “may wish to consider several small scoping meetings for minority populations and low-income populations” to promote “more participation and substantive discussions” (SP-GP2).

In some communities, some members may feel intimidated by large public meetings or formal processes. You can encourage agencies to break meetings into small groups so that more voices can be heard in a discussion. You can also ask agencies to hold multiple meetings in varied settings to create accessibility and accommodate a range of community needs.

4. What should you consider when preparing to participate in a scoping process?

Promising Practices notes the critical importance of scoping, and suggests that if preliminary screening identifies a potentially affected minority population or low-income population, the agency may benefit from focusing its attention in scoping on the potential unique characteristics and vulnerabilities of the these populations (SP-SS2). You should consider:

- The agency’s purpose and need statement;
- Developing alternatives to the proposed action;
- Issues with and impacts that could result from the proposed action; and
- A plan for communication between the agency and the community throughout the NEPA process.

Purpose and Need Statement. A statement of purpose and need defines the scope of the analysis, and therefore the information that will be available to the agency when it makes its decision. 40 CFR 1502.13. That statement should answer the question: what is the government trying to accomplish by proposing this action at this time and place? Or, “why here and why now?” This means that you should try to make sure that the purpose and need is defined in a way that allows consideration of the issues and alternatives that you and your community are interested in. The agency writes its own statement of purpose and need, but your attention to this statement at scoping or ahead of scoping can make a large difference in the range of alternatives that will be considered.

For Example: If the agency’s proposed “purpose and need statement” is “to provide new electric generating capacity,” this may not allow consideration of an alternative such as retrofitting local homes to make them more energy efficient. But if communities want the agency to evaluate this alternative, they could advocate that the agency adopt a revised “purpose and need” statement that includes “effectively meeting needs for energy.”

Alternatives. Always consider whether there are alternatives that the Federal agency should study, but that it has not already identified. The scoping process is the key time to identify alternatives, because if an alternative is not identified during scoping, it is very unlikely that the Federal agency will consider it later. If the proposed action is complex, there may be many potential alternatives. Scoping is the key opportunity to introduce additional alternatives. More information about alternatives can be found on page 28.

Identify other alternatives if responsive to their purpose and need.

If your community can identify an alternative to the proposed action that provides more benefits and fewer impacts to your community, or that offsets or mitigates most or all adverse impacts, scoping is the right time to request that an agency study that alternative. You can also request that the agency consider combinations of alternatives (*i.e.*, if you think that part of one alternative proposed by the agency could be more helpful if added to parts of another).

For Example: A proposed action to build a transit center for bus passengers might contemplate demolition of a large area which might lead to impacts on nearby existing businesses and homes. Your community could propose that the agency consider alternative designs that require less demolition and more features to connect the transit center to existing neighborhoods.

Issues and Impacts. You can use the scoping process to call the agency’s attention to previous activities that affected human health and the environment in the area of the proposed action. You can identify specific concerns about impacts of the proposed action on natural resources, cultural resources, and to human health and the environment that the agency may not otherwise have known about. Scoping provides the opportunity for you to educate the agency about relevant facts about your community or portions of the affected population that it needs to address when evaluating impacts of the proposed action.

For Example: A community may have a prevailing practice of catching and eating fish from a river. A proposal to construct a new bridge over the river and access ramps along its banks could adversely affect this use. Preserving the community’s river access and developing a construction plan that considers the community’s fishing habits might not be an issue that the agency thinks about unless it is brought up during the scoping process by the community that depends on these food supplies or that values these traditional or cultural practices.

Promising Practices suggests that Federal agencies have conversations with minority populations, low-income populations, and other interested persons during the scoping process to gather “any relevant data on the current and past conditions” in the community that might disproportionately affect those persons and communities (SP-SS7). The community is more likely to be aware of these conditions and concerns, particularly if they are not obvious or occurred many years in the past.

For Example: A community, many of whose residents formerly worked in a now-closed industrial plant, may be affected by longstanding health challenges from that exposure. Workers' underlying health problems from past industrial pollutants could make the impact of a newly proposed relatively small source of air pollution worse for these residents than for people who never had previous exposures. This would be an important impact to identify for the Federal agency during the scoping process to ensure that it is addressed during the environmental review.

Plan for Communication. Scoping provides an opportunity for you to recommend a plan for continuing communication between the Federal agency and your community. Prior to scoping meetings, community members can meet together to decide how they will communicate with Federal agencies throughout the NEPA process, and what forms of communication they prefer coming from the agency. The scoping process is an opportunity to recommend a plan for frequent and consistent communication between your community and the Federal agency. CEQ and Agency NEPA regulations define minimum requirements for communication. *Promising Practices* suggests that agencies seek out local community leaders to help the agency determine how to make public participation effective in reaching minority populations, low-income populations, and Indian tribes (SP-SS3).

Cooperating Agency:

If your EJ community includes a tribal or local government, discuss becoming a cooperating agency

Indian tribes and local governments also have an additional opportunity that goes beyond communication. With approval from the lead Federal agency, they can become "cooperating agencies." 40 CFR 1508.5. Cooperating agencies provide expertise and advice throughout the analysis. *Promising Practices* specifically invites agencies to consider designating Federally-recognized Indian tribes as a cooperating agency, or asking them to act in a consultative role (SP-SS4). If a governmental entity, such as a tribe or local government is designated a cooperating agency, this allows them to participate on a continuous basis throughout the NEPA process and to see research results as they are developed rather than waiting for publication of a draft EA or EIS.

5. Is the scoping process an opportunity for communities to express a position regarding a proposed agency action?

Yes, scoping processes can be used to highlight community fact-based support or opposition to a proposed action. But scoping is not designed to operate like a legislative meeting or local government hearing where people are primarily there to advocate for a result. Federal agencies are not counting votes or recording the intensity of people's feelings.

Rather, Federal agencies use scoping to make technical and policy choices about which alternatives to the proposed action should be considered, as well as which impacts to the affected communities require in-depth evaluation. If hundreds of people show up and oppose or support an action or alternative, it may influence the agency analysis or even affect decisions made later on in the process. But the primary purpose of the scoping process is to identify alternatives, issues, and information that the agency may have overlooked and will need to evaluate seriously.

The community can be most effective by providing fact-based information about the proposed action so that the agency can evaluate alternatives or address concerns.

6. What can communities expect agencies to do for scoping?

The NEPA regulations and the [CEQ's Scoping Guidance](#) document direct agencies to “invite participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons.” 40 CFR 1501.7(b).

Promising Practices explains that, for strong and meaningful public participation, agencies should contact “local community leaders in the potentially affected minority populations and low-income populations” to help determine how best to design the scoping process (SP-SS3). Agencies can also consider “specifically inviting” potentially affected populations to public scoping meetings. They can also consider hiring a third-party facilitator that is familiar with environmental justice issues as well as with the particular community that may be affected by the action (SP-SS6).

Federal agencies may provide notice about the scoping process in various ways including:

- Communication through community newsletters;
- Information posted at community gathering places (civic centers, places of worship); and
- Online outreach (SP-SS5).

In some communities, agencies may provide an interpreter and/or translation to make sure that scoping meetings are accessible for people with limited English abilities (SP-SS6). Communities can also expect agencies to explain the outcomes of the scoping process. The agency will identify alternatives to be added to or eliminated from the study, and additional issues that will be addressed. *Promising Practices* suggests that agencies should distribute a post-scoping report to inform potentially affected minority populations and low-income populations about the outcomes of their participation. This increases the chances of meaningful engagement during later stages of the process, because affected communities are informed from the beginning (SP-SS8, SS9).

DEFINING THE AFFECTED ENVIRONMENT

1. What is the “affected environment” in environmental review?
2. How can agencies use community input to define the affected environment?
3. Can an agency change its definition of the “affected environment”?

1. What is the “affected environment” in environmental review?

The “affected environment” is defined, under NEPA, as the area(s) where the governmental action will occur and where its effects will be experienced. The affected environment for analysis can be much larger than the immediate geographic boundaries of the action under consideration (AE-GP1). In fact, the affected environment may include several different areas that are not adjacent to one another, because of different types of impacts and different users of resources (AE-GP3).

For Example: If a Federal agency is conducting a NEPA review of a proposal to apply pesticides to a particular forest or range land through aerial spraying, the affected environment would include adjacent lands and waters potentially affected by spray drift, as well as lands and waters that may be affected if there are errors by the aerial applicator, in addition to the specific lands where the pesticide would be applied. The affected environment could also include persons or communities who eat vegetables irrigated with water drawn from an area downriver of the application site, as well as communities that consume fish potentially carrying residual pesticides (or that ‘bioaccumulate’ chemical byproducts of the pesticides). It could also include farmworkers who spend part of the year in the application area and most of the year in other areas with other environmental exposures.

If the governmental action is nationwide, such as the adoption of rules for a nationwide program, the affected environment could include many communities and areas across the country where the program’s effects will be felt.

In considering the “affected environment,” Federal agencies will keep in mind that minority populations, low-income populations, Indian tribes and/or indigenous persons might face different impacts than the general public based on distinct community practices such as subsistence fishing, harvesting, or hunting (AE-SS4). *Promising Practices* also emphasizes that the geographic extent of the affected environment may vary for each resource topic analyzed in the NEPA document (AE-SS1).

2. How can agencies use community input to define the affected environment?

Agencies can use community input to accurately define the affected environment by understanding the particular history and current circumstances of affected populations. The definition of “affected environment” for each proposed action depends on the particular effects of the proposed action, and on the particular characteristics of the communities affected. There are numerous mapping tools and data sources that can help your community determine what affected environment might be relevant, including C-FERST, T-FERST, and NEPAassist, among others (see sidebars). *Promising Practices* (AE-GP2) makes the important point that:

“Data (including input from minority populations, low-income populations, and other interested individuals, communities, and organizations) on ecological, aesthetic, historic, cultural, economic, social, or health conditions of (these populations)... can provide agencies with useful insight into how the community’s conditions, characteristics and/or location can influence the extent of the affected environment.” “Agencies may wish to consider that the extent of the affected environment may be larger (or smaller) and differently shaped than the boundaries that would have been drawn without the existence of those conditions.”

You can help shape the definition of the affected environment, and what potential impacts an agency analyzes by providing information relating to (AE-GP4, AE-SS1):

- How the community might be exposed to environmental effects of the action through various exposure pathways (“routes by which the minority populations or low-income populations may come into contact with chemical, biological, physical, or radiological effects”);
- Consequences that communities could face directly, indirectly, or cumulatively, including ecological, aesthetic, historic, cultural, economic, social, or health impacts; and
- The distribution of adverse and beneficial impacts across potential affected environments.

Agencies can create maps or diagrams of relationships and impacts using community input and information to show the affected environment. Visual representations also aid communication with the public (AE-GP5).

3. Can an agency change its definition of the “affected environment”?

Yes. Agencies may change their definition of the “affected environment” for a proposed action, but are more likely to do so only very early on in the process. They will do this if they receive information that identifies previously overlooked potential impacts. *Promising Practices* gives reasons that agencies might change their definition of “affected environment.” These include:

- New analyses of exposure pathways;
- Direct, indirect, and cumulative impacts; and
- The distribution of impacts across regions.

C-FERST

(Community-Focused Exposure and Risk Screening Tool)

C-FERST will provide increased access to community-specific information, maps, and environmental data about potential environmental public health issues.

C-FERST Includes:

- Community-specific maps
- Environmental information and data
- Information about how other communities have managed similar issues
- EPA recommendations about reducing risks and exposure to environmental harm

C-FERST works with other community-focused tools including the [EnviroAtlas](#) and the [Eco-Health Relationship Browser](#).

Web Resources:

[C-FERST Fact Sheet](#)

[C-FERST Website](#)

T-FERST (in pilot phase)

(Tribal-Focused Exposure and Risk Screening Tool)

T-FERST is a mapping tool for decision-making about environmental risk for Tribal Nations.

T-FERST Includes:

- Community-focused step-by-step guide to identify important data, issues, risks, and impacts of actions
- Information for community decision-making including fact sheets, reports, guides to integrating traditional ecological knowledge with western science, best practices guides, and other relevant tools
- Maps that citizens can use to overlay demographic data with environmental data to reveal health and ecosystem risks

T-FERST will provide a mechanism for locally-collected data to be available for public use in the future.

Web Resources:

[T-FERST Fact Sheet](#)

[T-FERST Website](#)

These considerations could lead to an agency changing the “outer boundaries” of the area and the “pockets” of minority populations and low-income populations potentially affected by a proposed action from those originally defined (AE-SS5). *Promising Practices* (AE-SS6, SS7) recommends that agencies provide written explanations of the methods and the data that they used to characterize and define the affected environment. This explanation should be written in language that is clear and easily understood by the general population and potentially affected minority populations and low-income populations.

You can ask an agency early in the process how it is defining the affected environment. It has the opportunity to correct an incomplete or inaccurate definition and may take into account the advice of community advocates who suggest a different or varied affected environment (AE-SS5).

NEPAssist Tool

A mapping tool that aids environmental review and project planning

USERS can find information on how to use NEPAssist [here](#).

LAUNCH the tool [here](#).

MAP FEATURES include: Hazardous Waste, Air Emissions, Water Discharges, Toxic Releases, Superfund, Brownfields, RADInfo, Toxic Substances Control Act, Water Monitors, Places, Transportation, Water Features, and Boundaries. A comprehensive list can be found [here](#).



DEVELOPING AND SELECTING ALTERNATIVES

1. What alternatives are agencies required to consider?
2. How can I ensure that agencies consider alternatives proposed by my community?
3. What are specific steps that agencies can take when developing alternatives?
4. What is the “environmentally preferable” alternative?

1. What alternatives are agencies required to consider?

The CEQ NEPA regulations state that the process of identifying and analyzing alternatives helps produce better decisions by “sharply defining the issues and providing a clear basis for choice among options by the decision maker and the public.” 40 CFR 1502.14. Alternatives studied by the agency always must include, in addition to the proposed action, a “no action” alternative. They should also include other reasonable alternatives that cannot be excluded by the agency for reasons such as not meeting the statement of purpose and need or lack of feasibility. Alternatives include actions that are not within the jurisdiction of the lead Federal agency but that meet the purpose and need for the proposed project.

2. How can I ensure that agencies consider alternatives proposed by my community?

Promising Practices recommends that agencies encourage members of communities that may suffer a disproportionately high and adverse human health or environmental effect to provide information to the agencies, and notes that this can heighten attention to identifying reasonable alternatives that can mitigate these adverse impacts (DSA-GP6). Agencies can examine potential alternatives in light of relevant public input on the purpose and need statement (DSA-GP1). Some ways to increase the chances of agencies considering community-proposed alternatives:

- If you don’t see an alternative that meets the needs of your community, use your written or spoken comments during scoping to recommend one or more additional ones that address concerns you have (DSA-GP5). Agencies will be more likely to adopt additional alternatives for study if you can, at this early stage, provide information that shows how a proposed alternative differs from others, suggests at least a few advantages over others under consideration, and show how it meets the purpose and need statement (DSA-GP5, DSA-SS3).
- Propose reasonable alternatives that are just as detailed as the original proposal about the impact that the alternative will have on minority populations and low-income populations. *Promising Practices* suggests that agencies consider generating additional information if proposed reasonable alternatives have substantial difference in their levels of detail concerning impacts to minority populations and low-income populations (DSA-GP2).
- Alternatives that you propose can incorporate mitigation measures as part of the alternative itself. Treating these as core parts of the proposed action rather than as later activities to reduce undesirable impacts can lead agencies to consider identifying alternate locations or sites, altering the timing of activities to account for seasonal changes in activity and exposures, incorporate pollution prevention practices and policies, include other benefits to the community, and incorporate other changes suggested by the community (DSA-SS3, SS5).

At the scoping stage, when an agency is presented with a reasonable alternative, it must study that alternative unless the agency can show that the alternative does not meet the purpose and need of the project or if it is infeasible or duplicative.

3. What are specific steps that agencies can take when developing alternatives?

Listed below are steps that agencies can take to effectively develop and consider alternatives, based on *Promising Practices*. Communities can keep these steps in mind, and you can encourage agencies to use these practices:

- Provide minority populations and low-income populations with an “opportunity to provide input during agencies’ development of the purpose and need statement” early in the NEPA process (DSA-SS1);
- Give minority populations and low-income populations an early “opportunity to provide input” on the “range and design of potential reasonable alternatives” while these are still under development (DSA-GP5);
- Consider identifying which alternative has the least “adverse impact to minority populations and low-income populations” when identifying reasonable alternatives and the preferred alternative (DSA-SS7); and
- Document steps taken to receive community input on the development of the purpose and need statement, reasonable alternatives, and identification of a preferred alternative (DSA-SS8).

4. What is the “environmentally preferable” alternative?

NEPA regulations require an agency preparing an EIS to identify the “environmentally preferable” alternative. It is important to keep in mind that an agency is not required to select this alternative in its final decision. Identification of the environmentally preferable alternative is meant to ensure that the agency has taken a hard look at the choice it has to make.

You could urge the agency, when determining the environmentally preferable alternative, to look at the distribution of disproportionately high impacts, as well as the size of impacts, in the affected communities (DSA-SS6). *Promising Practices* suggest that agencies may want to expressly consider which alternatives have the least adverse impact to minority populations and low-income populations when identifying alternatives (DSA-SS7).



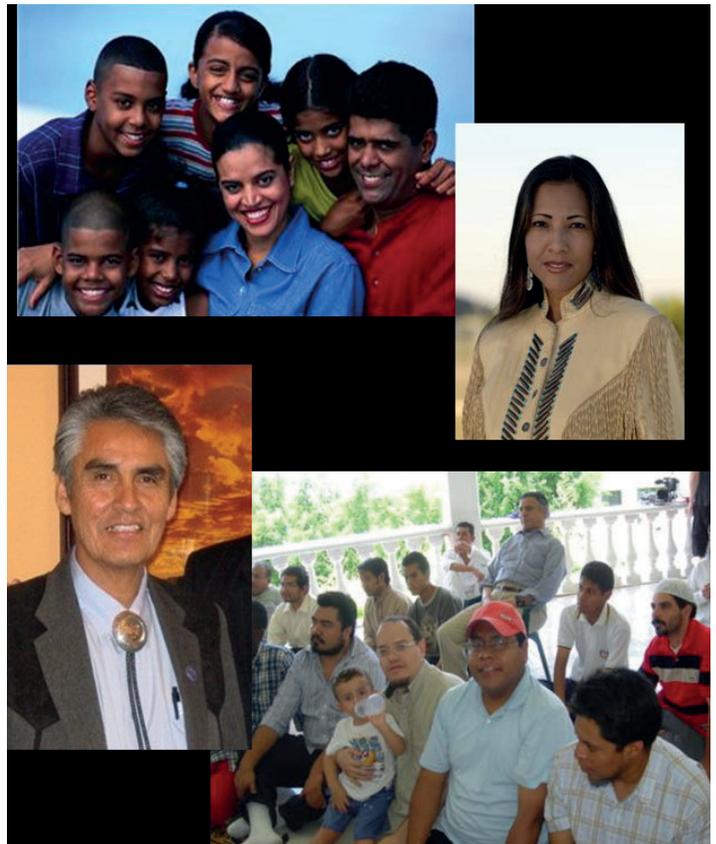
IDENTIFYING MINORITY POPULATIONS

1. How are minority populations identified?
2. What tests can be used to determine the presence of minority populations?
3. What can communities do if an agency does not determine the minority population for your community or determines that the affected community is not a minority population meeting a threshold for EJ consideration?

1. How are minority populations identified?

E.O. 12898 triggers an analysis by an agency when a proposed Federal action may produce disproportionately high and adverse impacts on “minority populations.”² *Promising Practices* explains that “minority populations may consist of groups of culturally different subpopulations with potentially different impacts and outreach needs.” These populations could either be dispersed throughout the study area or reside in tightly clustered communities (MP-GP1, MP-GP2). The relevant populations are defined based on the agency’s determination of the geographic area of the affected environment (*See Affected Environment*, page 30).

Promising Practices reflects substantial advances in agency practices for determining minority populations. Minority populations were identified for purposes of EJ analysis by one of the following conditions defined in the Appendix to CEQ’s 1997 *EJ Guidance*: “The minority population of the affected area exceeds 50 percent, or the minority population percentage of the affected area is meaningfully greater than the minority population percentage in the general population or other appropriate unit of geographic analysis.” (This includes when more than one minority group is present and the percentages when added together meet one of the above conditions.) *Promising Practices* includes additional measures and factors to consider. It emphasizes how an agency can work with communities to identify appropriate geographic units for analysis in order not to overlook small areas with concentrated minority populations. Selecting a geographic unit of analysis without sufficient justification can artificially dilute the representation of minority populations within the selected unit (MP-GP2). *Promising Practices* also recognizes that in appropriate circumstances agencies can use local demographic data, including data supplied by a community and by Indian tribes, in addition to Census data, to improve the determination (MP-GP3).



² Minority was initially defined by the EJ IWG in an Appendix to the 1997 *CEQ EJ Guidance* as “individuals who are members of the following population groups: American Indian or Alaskan Native; Asian or Pacific Islander; Black, not of Hispanic origin; or Hispanic.” *Promising Practices*, reflecting current practice, states that “agencies use their discretion to define the range of individuals and/or groups to which they will extend EJ analysis within their NEPA process.” (ME-GP1, footnote 3).

Promising Practices observes that use of the CEQ *EJ Guidance* threshold tests “may not always capture” the relevant information needed to identify minority populations for purposes of EJ analysis. Thus, some agencies use alternative approaches to determine the presence of any minority populations “regardless of population size” (MP-GP6). Agencies should also determine if any minority populations reside seasonally within the affected area, or enter the area for particular uses such as subsistence fishing or gathering activities (MP-GP9). Communities and Indian tribes can also provide the agencies with data to help them determine concentrations of minority populations (MP-GP3).

2. What tests can be used to determine the presence of minority populations?

Promising Practices recognizes that using percentage thresholds is an established approach to identify minority populations, but may not always capture the relevant demographic information needed (MP-GP6). Accordingly, *Promising Practices* identifies three ways to make the determination. Agencies often choose a method based on agency experience.

1. The *No-Threshold Analysis*: This analysis is a process that aims to identify all minority populations regardless of population size. Agencies select an appropriate geographic unit for review (such as a census block or a block group). Then agencies determine the total number of minority individuals and the percent minority population for each unit of analysis within the affected environment. Following that, agencies list and map the minority population(s) present in each geographic unit. The environmental analysis following this analysis can look at effects on all minority populations, even if they are small percentages of the overall population.
2. The *Fifty-Percent Analysis*: This analysis identifies areas where there is a majority-minority population, where more than half of residents or potentially affected persons are defined as minorities. This analysis is used in combination with the *Meaningfully Greater Analysis*.
3. The *Meaningfully Greater Analysis*: This analysis identifies instances where more people in the affected area are minorities than in the general population or in other areas used as reference areas. Agencies may either establish a percentage threshold (such as 10% or 20%) to discern that there is a “meaningfully greater” minority population in the affected area, or determine that any percentage is sufficient to qualify.



Combining the *Fifty-Percent* and *Meaningfully Greater* Analyses

The *Fifty-Percent* Analysis

For Example: If an agency analyzes the impact of a proposed Federal action on people that use a particular drinking water supply, the agency first will determine the total number of users and the number of users who are minorities. Suppose 20 percent of the water users are African-American, 28 percent Hispanic, and 5 percent American Indian across the entire study area. This means that more than 50 percent are minorities; this passes the *Fifty-Percent Analysis* test and an EJ analysis should be conducted as part of the NEPA environmental review. The same test can also be used in smaller geographic units within the affected area. For example, some parts of an affected area might be 70 percent minority, while others might be 40 percent or 10 percent minority. EJ Analysis using the *Fifty-Percent Analysis* can be conducted across the entire region or in any distinct sub-area.

The agency does not stop with the *Fifty-Percent Analysis*. It follows with the *Meaningfully Greater Analysis*. The agency selects an appropriate geographic area as a reference community for comparison. The reference community is typically a large area such as a county or an entire State.

The *Meaningfully Greater* Analysis

For Example: A State population might be 12 percent Hispanic and 11 percent Black, non-Hispanic, but the affected area might be 30 percent Hispanic and 5 percent Black, non-Hispanic. The total minority population in the unit of analysis is 35%, which would not require EJ analysis using the *Fifty-Percent Analysis*. But, since 35% minority population in the affected area is significantly greater than the 23% minority population Statewide, an agency can determine that there is a “meaningfully greater” minority population and an EJ analysis should be undertaken.

Even if a *Fifty-Percent Analysis* shows a majority-minority population, justifying an EJ analysis, conducting the *Meaningfully Greater Analysis* can add additional important information to help agencies. It could show a large difference between the affected community and the reference community, which would then inform the analysis of potential impacts (MP-GP5, MP-GP8).

Promising Practices recommends that a minority population determined using any of the methods be displayed in a map and table format to assist in communication (MP-SS.A, B).

3. What can communities do if an agency does not determine the minority population for a community or determines that the affected community is not a minority population meeting a threshold for EJ consideration?

Promising Practices recommends that agencies give a written explanation of why they selected the geographic area for analysis, what reference community they used and why, and any other methods that they used to identify minority populations (MP-SS.A5, B(ii)7).

Communities can:

1. Ask the agency which test or tests it is using to determine minority population.
2. Request the written explanation for their approach.
3. Review the agency's approach.
4. Identify populations that you think have been overlooked.
5. Identify different areas of geographic analysis that you think should have been used instead.
6. Seek further consideration by the agency of exposure pathways that may affect people in different ways or at greater distances from the affected area that is initially defined by the agency.

For Example: An agency may define an affected area and determine minority population based on census data for people who live year-round within the area. Your community may be able to identify the seasonal presence of people engaged in traditional hunting or harvesting practices. Or you may identify a minority population that is affected by indirect impacts of the action, such as the effects of greater truck traffic miles from the project site. Providing information about a wider affected area or different population can inform the agency's decision about identifying a minority population using one of the methods outlined in *Promising Practices*.

This information should be made available by agencies early in the process, because identifying affected communities is one of the first steps that agencies take when conducting NEPA review and undertaking to consider EJ effects.

IDENTIFYING LOW-INCOME POPULATIONS

1. How are low-income populations identified?
2. What tests can be used to determine the presence of low-income populations?
3. What can communities do if an agency determines that the affected community does not qualify as a low-income population?

1. How are low-income populations identified?

Low-income populations can be identified “with the annual statistical poverty thresholds from the Bureau of the Census’ Current Population Reports, Series P-60 on Income and Poverty.” Agencies can consider “either a group of individuals living in geographic proximity to one another, or a set of individuals (such as migrant workers or Native Americans), where either type of group experiences common conditions of environmental exposure or effect,” according to the *EJ Guidance*. *Promising Practices* adds additional sources of data, and recommends several approaches to setting thresholds for determining low-income households.



Promising Practices suggests that agencies use “the most current poverty data” as well as a combination of local, State, and national data. This may include, in addition to census data and thresholds, U.S. Department of Health and Human Services poverty guidelines or other agency-specific guidelines. In addition, local data sources on poverty may sometimes be more current than the Census Bureau’s American Community Survey (LI-GP1, LI-GP2). *Promising Practices* (LI-GP3) also explains that there are multiple ways that agencies can assess low-income thresholds for purposes of their analysis. These include identifying the proportion of:

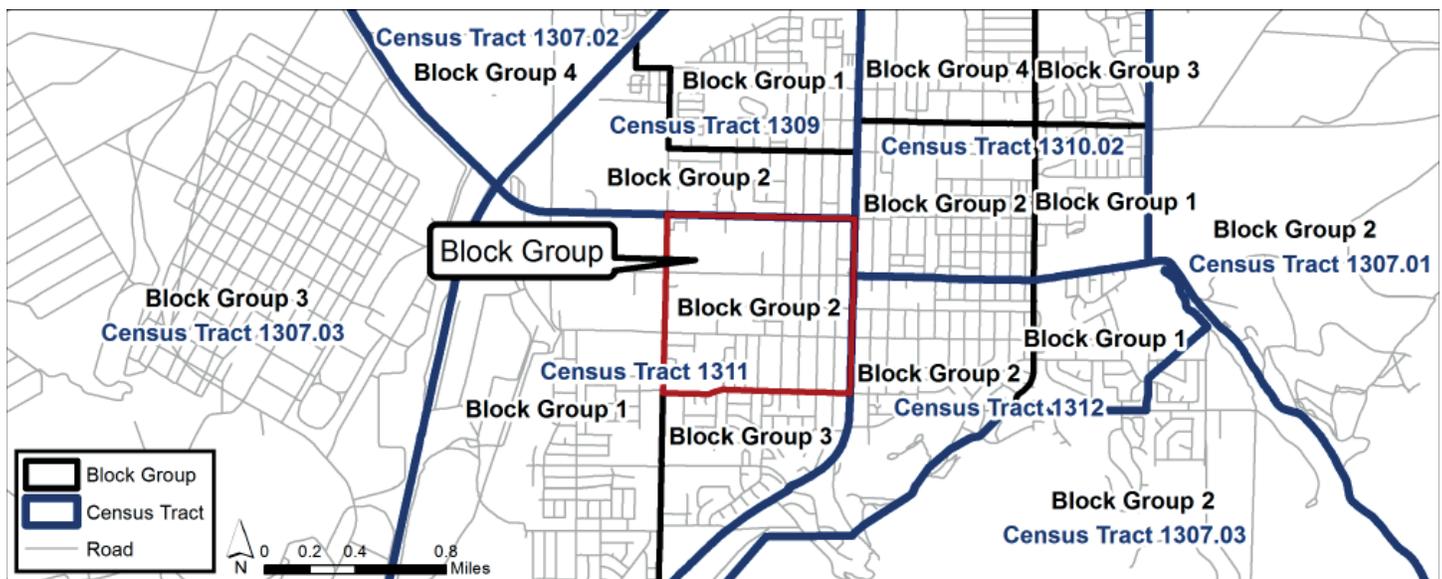
- Individuals below the poverty level;
- Households below the poverty level; and
- Families with children below the poverty level.

In some cases an agency may select a threshold for identifying low-income populations that exceeds the poverty level (such as 120 percent of the poverty level) in order to make sure that affected populations are not excluded. This is particularly relevant in areas that have high levels of economic disparity or where there is a high cost of living (LI-GP5).

2. What tests can be used to determine the presence of low-income populations?

Promising Practices (LI-SS.A, B) identifies two ways to determine low-income populations:

1. The *Alternative Criteria Analysis*: Using this analysis, the agency first chooses the official poverty level threshold that it will use. Then the agency selects a geographic area to analyze for low-income populations. The agency finds the total number of low-income individuals (or households) for each portion of the affected area, and determines the percentage low-income units.
2. The *Low-Income Threshold Criteria Analysis*: This approach is similar to the *Alternative Criteria Analysis*, but includes an additional step. The *Low-Income Threshold Criteria Analysis* identifies and reports the number and percentage of low-income people or households in each geographic unit. Then, the agency takes an additional step of finding a reference community (such as a county or a State) with which to compare the affected community. The percentage of low-income residents in the two (reference community and affected community) areas are compared to see if there is a meaningful difference.



For Example: An agency proposing to undertake a Federal action could find that nine of 12 census blocks in the affected area have more than 20 percent low-income residents (and some as many as 90 percent), while the reference county has 16 percent low-income residents county-wide. The difference indicates that a low-income population is present for purposes of conducting an EJ analysis.

Promising Practices recommends that a low-income population identified using either of these methods be displayed in a map and/or table format to assist in communication (LI-SS.A6, B9).

3. What can communities do if an agency determines that the affected community does not qualify as a low-income population?

If an agency determines that your community does not include low-income populations that would qualify for EJ analysis, you can:

1. Ask the agency what data it used to determine poverty thresholds.

2. Ask the agency what technique it used to find low-income populations in the affected area.
3. Ask the agency for the written explanation of their process and review their approach.
4. Identify alternative poverty data or percentage thresholds that you think should be used.
5. Consider whether there are exposure pathways that would justify expanding the affected area to include additional populations that might be low-income.

Agencies should provide a written explanation that explains how they selected data sources and the methods that they used to find low-income populations (LI-SS.B10).

IMPACTS ANALYSIS

1. What types of impacts must be reviewed?
2. What impact pathways are relevant to considering EJ?
3. What is considered a significant impact?
4. How can community interests be recognized when agencies are evaluating impacts?

1. What types of impacts must be reviewed?

Promising Practices observes that an impact is “the adverse or beneficial result of exposure or other environmental consequence of the proposed action” (IA-GP1). CEQ regulations recognize three types of impacts that must be analyzed in NEPA documents: direct, indirect, and cumulative. 40 CFR 1528.25 (c). All can be relevant to considering EJ implications of a proposed Federal action.



Direct Impacts: Direct impacts are “caused by the action and occur at the same time and place” as the action. 40 CFR 1508.8.

Indirect Impacts: Indirect impacts are “caused by the action and are later in time or farther removed in distance, but still reasonably foreseeable results of the action.” 40 CFR 1508.8.

Cumulative Impacts: Cumulative impacts are impacts that result from “the incremental impact of the action when added to past, present, and reasonably foreseeable future actions” regardless of which agency or person takes the other actions. They can result from “individually minor but collectively significant actions taking place over a period of time.” 40 CFR 1508.7.

For Example: If the proposed Federal action is the expansion of a port facility, the *direct impacts* may include those resulting from dredging of the harbor, construction of new facilities that remove or replace other buildings or land uses types, and increased truck, train and vessel traffic, that may result in related increases in air pollution. *Indirect impacts* may include the effects of spill-over traffic on community streets near the port, displacement of local business because of noise of port operations or traffic, and isolation of residential neighborhoods from goods or services. *Cumulative impacts* could include a change in housing values over time related not only to port expansion but also to other activities in the area, or the incremental effects of increases in diesel exhaust when added to previous or ongoing impacts on residents’ health as industries in the vicinity change.

Under NEPA review, the following types of impacts of a proposed action must be analyzed as they relate to environmental effects (40 CFR 1508.8):

- Natural resources and ecosystems,
- Aesthetic impacts,
- Historic impacts,
- Cultural impacts,
- Economic impacts,
- Social impacts, and
- Health impacts.

All of these impacts can affect minority populations and low-income populations directly, indirectly, or cumulatively (IA-GP3), and must be analyzed in the relevant EA or EIS.

Promising Practices notes that impacts from the proposed action to minority populations and low-income populations in the affected environment may be either adverse or beneficial (IA-GP2). Although an EIS is required only when a major Federal action could produce “significant” impacts, the EIS will analyze not only impacts that are themselves significant, but also impacts that may be below the level of significance. An EA that is expected to lead to a FONSI will analyze impacts even if they are below the level of significance or will be mitigated to below that level. Impacts still need to be understood and may need to be mitigated in a final decision.

Promising Practices also notes that the specific “conditions and characteristics” of the affected community can inform whether the impact is beneficial or adverse, and further explains that what is considered a beneficial impact by some communities may be considered adverse to others (IA-GP2).

2. What impact pathways are relevant to considering EJ?

Environmental and exposure pathways vary quite a bit among communities. They may include different patterns of consumption of food and water. Patterns of exposure to air pollutants or radiation, water pollutants, diseases, pesticides or other impacts will be strongly affected by communities’ living conditions, transportation, mobility, age profile, and other factors.



For Example: A community where most people spend their days working outdoors could be more affected by air pollutants than a community where residents and workers spend most of their time indoors in air-conditioned environments. A community that relies on fishing for subsistence could be more affected by toxins accumulating in fish than a community where people fish only occasionally for recreation.

All impact pathways are relevant to EJ because they are a way to determine whether Federal agencies should identify and include additional minority populations or low-income populations in their environmental review. *Promising Practices* suggests that agencies think about single, multiple, and cumulative exposures, interactions among pollutants, and possible aggravation of other existing health conditions of community members (IA-GP8). Agencies should also consider that contaminants might be experienced through air, water, soil, food, and land from multiple sources over long periods of time.

3. What is considered a significant impact?

An EA and FONSI are appropriate only if identified impacts are not significant or can be mitigated to a level that is no longer significant. Otherwise, an EIS is warranted.

In order to determine significance, agencies examine the *context* for the impact as well as its *intensity*. 40 CFR 1508.27. The *context* includes whether the impact is to society as a whole, particular interests, or a specific local area. For example, local effects might be most important in evaluating a small construction project, while larger regional or even national effects might be most important in the adoption of a plan to lease offshore lands for oil and gas development or wind energy.

Determining *intensity* includes an agency considering (40 CFR 1508.27):

- Severity of effect;
- Whether it is a positive or negative impact;
- Effect on public health or safety;
- Effect on unique characteristics of an area
- Degree of controversy as to potential environmental impacts;
- Uncertain, unknown, or unique impacts or risks;
- Precedent-setting potential for future actions;
- Effect on historic or cultural resources;
- Effect on endangered species; and
- Any threatened violation of Federal, State, or local environmental law.

Using Health Impact Assessments (HIA)

Effective HIAs require stakeholder and community engagement along each step of the process.

What do Health Impact Assessments do?

- Investigate how proposed projects, policies, programs or plans will impact health;
- Determine the effects of proposed policies on the population;
- Weigh input from community members; and
- Provide recommendations to decision-makers for minimizing negative health impacts of a decision.

Steps in the HIA Process

SCREENING: deciding where to conduct

SCOPING: determining scope of review

ASSESSMENT: data collection & analysis

RECOMMENDATIONS: providing modifications to proposed decisions

REPORTING: transparent documentation of processes, findings, funding sources etc...

MONITORING and EVALUATION: process evaluation, impact evaluation and outcome evaluation

Web Resources:

[EPA information on HIAs](#)

[Fact Sheet on EPA's Review of HIAs in the U.S.](#)

Transportation and Health Tool (THT) (Department of Transportation)

The THT provides data by state and metropolitan area to help practitioners survey and compare health impacts of transportation.

Uses of the THT: The purpose of THT is to allow users to look at the condition of a particular state or metropolitan area with regard to indicators affecting transportation and health, and to use that information to “improve public health through transportation planning and policy.”

Web Tools:

[THT Mapping Tool by State and Metropolitan Area](#)
[Background Information on the THT](#)

Significant impacts can include “ecological, aesthetic, historic, cultural, economic, social, or health impacts.” But economic or social impacts are not considered significant by themselves unless they are interrelated with natural or physical environmental impacts (IA-GP. Significance.1)

Promising Practices suggests that agencies should weigh significance both with reference to the general population and again with reference to minority populations and low-income populations specifically (IA-GP. Significance.4.5.8.).

4. How can community interests be recognized when evaluating impacts?

Promising Practices suggests that as appropriate, Health Impact Assessments, Social Impact Assessments, and consideration of economic and social conditions that influence human health, can provide agencies with important background data. Other Federal and State agencies and academic institutions have information that can help agencies generate this analysis (IA-GP6).

Promising Practices invites agencies to recognize the fact that some populations may have greater susceptibility to impacts and to exposures due to factors which may make some adverse effects harder to avoid (IA-GP5). Factors that may increase exposure or make avoidance more difficult for transient, geographically dispersed, and other populations may include:

- Working outdoors;
- Limited access to health care services;
- Generally lower levels of education; and/or
- Limited English proficiency.

In addition, some communities may hold opposing scientific or technical viewpoints from those of the agencies proposing the actions. *Promising Practices* invites agencies to hear these differing viewpoints and to discuss them seriously in the NEPA documents (IA-GP7).

Agencies may also wish to recognize that there may be cultural differences among individuals and communities regarding “what constitutes an impact or the severity of the impact” (IA-SS.1). This means that agencies should describe these impacts, and describe their rationale for decisions made as part of the analysis.

Community differences may make it essential for an agency to rethink an action or revise its typical approach to mitigating adverse impacts. These differences should be raised by commenters and communities early and often in the process.

For Example: A community that lacks access to notices, meetings, transportation, or daily electronic communications may be unable to take advantage of proposals to mitigate an action by providing residents with real-time smartphone notice of hazardous pollution release events. A community whose members rely on traditional healing practices may be less able to take advantage of proposals to mitigate an action by providing certain types of ongoing health screening.

DISPROPORTIONATELY HIGH AND ADVERSE IMPACTS

1. What are “disproportionately high and adverse impacts”?
2. How are “disproportionately high and adverse impacts” determined?
3. What is the timeline for determining disproportionately high and adverse impacts?
4. Why is determining “disproportionately high and adverse impacts” important?



1. What are “disproportionately high and adverse impacts”?

E.O. 12898 directs each Federal agency to make “achieving environmental justice a part of its mission” by “identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of

its programs, policies, and activities on minority populations and low-income populations.”

Disproportionately high and adverse impacts are effects on the environment and human health of minority populations, low-income populations, Indian tribes and indigenous persons. These effects are determined by a Federal agency after review to be significant and adverse, or greater than those effects experienced by other populations, taking into account a number of factors. Factors for making this determination were initially identified by the EJ IWG in an appendix to the CEQ *EJ Guidance*, and include:

For health effects, whether:

- The health effects, which may be measured in risk and rates, are significant, or above generally accepted norms;
- The risk or rate of hazard exposure appreciably exceeds the risk or rate to the general population or other appropriate comparison group; and/or
- The health effects occur in a minority population, low-income population, or Indian tribe that is affected by cumulative or multiple adverse exposures from environmental hazards.

For environmental effects, whether:

- Impacts on the natural or physical environment significantly and adversely affect a minority population, low-income population or Indian tribe;
- Significant and adverse environmental effects appreciably exceed those to the general population or other appropriate comparison group; and/or
- The environmental effects occur or would occur in a minority population, low-income population, or Indian tribe affected by cumulative or multiple adverse exposures from environmental hazards.

Promising Practices emphasizes that disproportionately high and adverse impacts are typically

determined based on the impacts in “one or more resource topics analyzed in NEPA documents.” These include any identified impact to human health or the environment, such as noise, wildlife, traffic/ congestion, land use, and others (DHAI-GP4).

Analysis has been further advanced using approaches outlined in the next section. For example, when determining a disproportionately high and adverse impact, *Promising Practices* adds new techniques, including analyzing the *distribution* of adverse and beneficial impacts among the general population and the minority population and/or low-income population in the affected environment (DHAI-GP10).

Where an impact from a proposed action initially appears to be identical to both the affected general population and the affected minority population and low-income population, additional factors should be taken into account. Some factors, such as unique exposure pathways, social determinants of health, or even community cohesion, can actually make an impact disproportionately high and adverse (DHAI-GP7). Amplifying factors listed in *Promising Practices* (DHAI-SS3) include:

- Proximity and exposure to chemicals and other stressors;
- Vulnerable populations;
- Unique exposure pathways;
- Multiple or cumulative impacts;
- Ability to participate in the decision-making process, including barriers to participation;
- Adequacy of physical infrastructure, such as roads, housing, water; and
- Non-chemical stressors, such as economic or social impacts.

As with the NEPA impact “significance” determination, agencies can use “context” and “intensity” to inform their determinations on this EJ concept (DHAI-GP2). *Promising Practices* notes that based on agency experience, it is important for any agency to consider impacts for the disproportionately high and adverse determination even if they are not “significant” for NEPA. A finding of no significant impacts to the general population is insufficient on its own to determine there are no disproportionately high and adverse impacts to minority populations and low-income populations (DHAI-GP3).

2. How are “disproportionately high and adverse impacts” determined?

Promising Practices encourages agencies to consider “any identified impact to human health or the environment (e.g., impacts on noise, biota, air quality, traffic/congestion, land use) that potentially affects minority populations and low-income populations in the affected environment” (DHAI-GP4). Agencies should also consider factors that could amplify the impact on minority populations and low-income populations of a proposed action (DHAI-GP6, GP7, GP8) such as:

- Unique exposure pathways,
- Social determinants of health,
- Community cohesion,
- Unique vulnerabilities,
- Cultural practices,
- Distribution of impacts, and
- Existing health conditions.



Agencies are encouraged to find an appropriate comparison group to provide context about the effects of the proposed action on minority populations and low-income populations (DHAI-GP14). The comparison calculations can include:

- Rates of exposure
- Risks of exposure

Comparison Group = provides context for analyzing differences in impact based on community characteristics
Reference Community = used to determine the differences in percentage of minority or low-income persons potentially affected.

Promising Practices says that identifying an appropriate comparison group or groups within the affected area can be helpful in determining disproportionality. (A comparison group is not the same as a “reference community” which is used to determine the percentage of minority or low income persons or households present in an affected area). The comparison group allows consideration of likely differences in pathways and exposures with the minority population or low-income population. Indeed, more than one comparison group may be appropriate in some instances.

You can ask agencies if they intend to identify comparison groups, and if so, what characteristics they consider relevant and important.

For Example: A population where everyone uses the bus for transportation may experience different impacts from delays and air pollution (experienced while waiting for the bus) than the experiences of a comparison group for whom most transportation is by private automobile.

Agencies may use several different approaches to determine whether a proposed action will cause a disproportionately high and adverse impact to minority populations and low-income populations. *Promising Practices* makes a distinction between beneficial impacts from an action, and mitigation measures that are adopted to reduce adverse impacts of the action (DHAI-GP11). Both are important. It observes that scenarios in which minority populations and low-income populations “receive an uneven distribution of benefits in the presence of adverse impacts” than those received by the general population, could indicate a potential disproportionately high and adverse impact (DHAI-GP10). *Promising Practices* (DHAI-SS6) describes two general approaches agencies can use to take these elements into account:

Impact Focus Approach

Using this approach, agencies:

1. Consider beneficial impacts on minority populations and low-income populations and compare the distribution of adverse and beneficial impacts between these populations and the general population in the affected area;
2. Consider mitigation measures developed prior to the analysis that reduce negative impacts on minority populations and low-income populations; and
3. After agencies consider benefits as well as mitigation measures, if there is still an adverse impact to minority populations and low-income populations, determine whether remaining impacts are disproportionately high and adverse.

Balancing Approach

Using this approach, agencies:

1. Consider steps that the agency can take to reduce impacts on minority populations and low-income populations, and include those developed during the analysis;
2. Think about how to balance remaining negative impacts with additional benefits;
3. If, after balancing the impacts, there is still a negative impact on minority populations and low-income populations, consider whether the remaining negative impacts are disproportionately high and adverse; then
4. Relate the beneficial impacts and mitigation measures to the type and location of the adverse impact.

Promising Practices notes that the balancing approach should *not* be used to balance project benefits with adverse impacts that directly affect human health at levels of concern, and especially impacts that exceed health criteria.

3. What is the timeline for determining disproportionately high and adverse impacts?

Agencies can take either of two approaches to determining disproportionately high and adverse impacts (DHAI-GP13):

1. Determine disproportionately high and adverse impacts before developing methods to decrease or offset the impact.
2. Identify measures that the agency can take to decrease or offset the impacts of proposed action on affected populations before determining the existence of disproportionately high and adverse impacts.

4. Why is determining “disproportionately high and adverse impacts” important?

E.O. 12898 tells Federal agencies to identify and “address” disproportionately high and adverse impacts of their actions. This is a key commitment of the Federal government toward advancing environmental justice in its decisions and operations.

However, the identification of such impacts does not prohibit a proposed agency action from going forward (DHAI-GP1).

The determination is important because it can “help inform how an agency develops and/or selects alternatives and mitigation measures to avoid, minimize, rectify, reduce, or compensate for adverse impacts” (DHAI-GP9). *Promising Practices* suggests that an agency identifying disproportionately high and adverse impacts may wish to:

- increase its focus on meaningful engagement to determine the preferences of the community,
- consider appropriate alternatives to the action (including alternative sites, where relevant), and
- consider additional responsive mitigation and monitoring measures (DHAI-GP1).

Mitigation measures are discussed in the next section at p. 46. These might include restructuring the proposed action to reduce impacts, or providing services or facilities that limit or offset the amount of harm done.

For Example: An agency considering an action that will result in temporary loss of green space in a low-income neighborhood could consider providing transportation to another area or creating pocket parks during the period of time where the community's green space is lost.

Promising Practices urges agencies to describe any determination of potential disproportionately high and adverse impacts “quantitatively whenever possible.” Agencies should try to assign risk numbers, exposure numbers and other quantitative measures to these analyses. This then makes it possible for the agency to determine how best to address these numbers and reduce or eliminate these risks (DHAI-GP17).

You can call on the agency to quantify these impacts and to work with the community to improve the final action. And if your community is dissatisfied with the result, the agency's clear identification and quantification of disproportionately high and adverse impacts on health or environment may be information you can share with others to pursue other responses.

MITIGATION AND MONITORING

1. What is mitigation?
2. How can mitigation address impacts to your community?
3. What kinds of mitigation and monitoring may agencies use?

1. What is mitigation?

The NEPA process calls for agencies to identify steps that they or other entities can take to avoid, reduce or offset environmental impacts of the proposed action. In the case of an EA, mitigation can be used to avoid, reduce or offset the environmental impacts so that they remain below the level of “significance”, and the agency can issue a “mitigated FONSI.”

Mitigation is defined by the CEQ NEPA regulations (40 CFR 1508.20) to include:

- Avoiding the impact altogether by not taking a certain action or parts of an action;
- Minimizing the impact by limiting the degree or magnitude of the action and its implementation;
- Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
- Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and
- Compensating for the impact by replacing or providing additional resources or environments.



Monitoring is a commitment to conduct research and take measurements during and after implementation of a Federal action. It is useful to see whether impacts are the same as predicted, to see if mitigation is working, and to see if there are changes needed to accomplish desired outcomes.

CEQ’s [Guidance on Appropriate Use of Mitigation and Monitoring](#) identifies ways in which mitigation can be structured and advises that monitoring of mitigation performance over time can help ensure that mitigation measures are performing as projected. Mitigation activities should be clearly identified in the NEPA documents, and agencies must explain how the mitigation will be implemented and tracked.

2. How can mitigation address impacts to your community?

When mitigation measures are identified as part of an EA/FONSI or EIS for any purpose, the *Presidential EJ Memorandum* says that they should “whenever feasible, address significant and adverse environmental effects of proposed Federal actions on minority populations, low-income populations, and Indian tribes.” So if a mitigation measure is described in a NEPA document, you can ask the agency to define how it will benefit these communities.

[Promising Practices](#) says that agencies “should identify and analyze mitigation measures for impacts to minority populations and low-income populations in the affected environment” and include any

“additional means to mitigate....for each identified disproportionately high and adverse impact to minority populations and low-income populations” (MM-GP1). Agencies may wish to evaluate mitigation measures “even if the project will have some benefits to minority populations and low-income populations” (MM-GP1).

These mitigation measures are often best developed in consultation with your community (MM-GP2).

You can ask whether agencies intend to identify specific mitigation and monitoring measures specifically designed to address impacts to minority populations and low-income populations in the affected environment. *Promising Practices* suggests that agencies consider identifying these separately “in the NEPA decision document and... in an environmental justice technical report” (MM-GP8).

Especially where there are unavoidable adverse impacts to minority populations or low-income populations in the affected environment (and assuming the decision is to move forward with the action), *Promising Practices* suggests that the agency consider “appropriate compensating mitigation and/or additional project benefits and provide express details in the NEPA document” (MM-GP6). Such approaches might include coordinating positive investments and new facilities or resources for a community with the action under consideration which might produce unavoidable adverse impacts.

For Example: An agency may be able to consider coordinating its activities that create exposures with new facilities that provide environmental benefits. Unavoidable environmental exposures created during the excavation and removal of environmental contaminants might be mitigated in part with the creation of a community health clinic by another agency serving the same area.

Promising Practices recommends that agencies involve potentially affected minority populations and low-income populations as they develop and implement their plans and approaches to mitigation and monitoring (MM-GP2). This can include:

- Discussions with communities “regarding the types of monitoring information that are of interest and how to best share monitoring results”; and
- Providing monitoring reports in appropriate formats and languages.

Communities can advocate for specific mitigation activities by asking agencies to:

- Commit to track the implementation of mitigation; and
- Measure the effectiveness of mitigation.

According to *Promising Practices*, “the descriptions of the mitigation measures should include (as appropriate) accountability measures (e.g. identify clear consequences) for failure to implement selected mitigation or monitoring measures” (MM-SS6).

3. What kinds of mitigation and monitoring may agencies use?

Mitigation can include any of the five approaches described in the CEQ regulations individually, or in combination. The range of mitigation and monitoring options is wide and depends largely on the creativity of the agencies and community commenters. *Promising Practices* notes that mitigation and monitoring measures are best developed with early engagement of minority populations and low-income populations in order to overcome these issues and meet community needs (MM-SS2).

As you participate in the NEPA review process, your community can ask agencies, for example, to:

- Change the location or timing of a project in order to avoid impacts related to community needs at a particular time (e.g. year, season);
- Offset increases in pollution from activities in the area, in whole or in part, by activities that reduce pollutants from other sources in the same vicinity or region;
- Provide ongoing monitoring of health impacts on local residents, or migrant workers, to determine whether mitigation is working and what the effect may be; and/or
- Provide frequent reports on the environmental sampling, water use, demographic or income change, or traffic totals, as a part of the monitoring plan.

You should recognize that Federal agencies may be constrained by budgets, legal authority to take certain actions, availability of personnel, and practical issues of technical feasibility. *Promising Practices* (MM-SS6) suggests that in order to establish clear performance expectations and maintain accountability to communities, agencies should consider specifying mitigation or monitoring commitments in terms of:

- Timeframe, and
- Measurable performance standards or expected results.

EPA's *Final Guidance for Consideration of Environmental Justice in Clean Air Act 309 Reviews* (1999), identifies "potential mitigation measures for addressing disproportionately high and adverse effects" in NEPA documents. These include:

1. Reducing pollutant loadings through changes in processes or technologies.
2. Reducing or eliminating other sources of pollutants or impacts to reduce cumulative effects.
3. Planning for and addressing indirect impacts prior to project initiation (e.g., planning for alternative public transportation alternatives if the project may result in increased population growth).
4. Providing assistance to an affected community to ensure that it receives at least its fair (i.e., proportional) share of the anticipated benefits of the proposed action (e.g., through job training, community infrastructure improvements, etc.).
5. Relocating affected communities, upon request or with concurrence from the affected individuals.
6. Establishing a community oversight committee to monitor progress and identify potential community concerns.
7. Changing the timing of impact-causing actions (e.g., noise, pollutant loadings) to reduce effects on affected communities.
8. Conducting medical monitoring on affected communities and providing treatment or other responses if necessary.

Agencies can document the feasibility of implementation by explaining how the mitigation and monitoring measures will be funded and who will implement the measures (MM-SS6). And they can consider developing an implementation and effectiveness monitoring plan to track performance (MM-SS9).

Making Your Case: Key Steps for Communities

Effective participation in the NEPA process by communities often results in better projects and stronger mitigation for communities. NEPA requires Federal agencies to respond to, address, and deal seriously with every substantive issue that is identified. And E.O. 12898 calls on Federal agencies to identify and address, as appropriate, disproportionately high and adverse impacts on minority populations and low-income populations.

Listed below are some key steps for communities to keep in mind when they engage with agency NEPA reviews.



Initial Steps

- Find out how to access the proposal and ask the agency what NEPA process will be employed (EA, EIS, or CATEX)
 - If the agency intends to prepare an EA, inquire as to why the agency believes that it will be able to produce a FONSI, focusing particularly on issues of significance to your community. Offer to become involved in identifying impacts and mitigation strategies.
 - If the agency intends to rely on a CATEX ask it to provide the regulatory language describing the CATEX. Ask the agency to evaluate whether there are extraordinary circumstances, including possibly disproportionately high and adverse impacts on EJ communities that suggest the agency should be preparing an EA or EIS. Ask the agency to allow you an opportunity to contribute to the determination of such circumstances.
- Find out from the agency who the primary contacts are at the lead agency and any cooperating agency and how to contact them.
- Find out from the agency what the timetable is for review and decision making; get this in writing if possible. Offer to participate in designing schedules that will enable your community to participate effectively.
- Determine the opportunities and deadlines for public comment and participation. Identify agency's schedule for scoping, public hearings, release of draft EA or EIS, length of comment periods, release of final EA or EIS, and date of anticipated decision.
- Find out from the agency what its plan is for "meaningful engagement" with minority populations and low-income populations and Indian tribes, and how it intends to carry out the strategies recommended in *Promising Practices* for early and effective engagement in all phases of the process.
 - Consider asking the agency to cooperate with you in developing a meaningful engagement plan using techniques that best support communication to and input from your community.

- Review the agency’s NEPA procedures along with the CEQ NEPA regulations to determine whether there are specific issues that will be important for the agency as well as the community.

Organizing Your Input

- Identify affected members of your community as well as other communities that may be affected by the proposed action or by alternatives to the proposed action.
 - Make connections with other communities that may be affected by the proposed action.
 - Together, determine what an appropriate “affected area” may be for the analysis (which may not be the one initially assumed or proposed by the Federal agency). Your affected area may be based on the characteristics of human communities that overlap a project area, or may include transient and/or migrant users of an area who spend time in other areas. You can use EJSSCREEN and other publicly accessible data tools to identify relevant populations, initial impacts, and other data sources.
- Once you determine who will be affected by the proposed Federal action, think about direct impacts, indirect impacts, and cumulative impacts.
 - Important impacts may be ones that relate to things that happened in a community many years ago (including cultural and health impacts), as well as reasonably foreseeable impacts in the future.
 - Consider cumulative and foreseeable impacts of unrelated activities, climate change effects, and community changes. These connections are important for the environmental impact analysis and for the analysis of disproportionately high and adverse impacts.
- Determine what demographic data may be needed to accurately characterize affected minority populations, low-income populations, Indian tribes and indigenous communities. Ask the agency what data it is using and intends to use.
- Identify any data sources that you might need to be effective.
 - Even if you can’t identify whether data exist, ask the Federal agency to find the data that are needed (historic rates of cancer deaths, industry data on potential health hazards, population data related to migrant farm workers and their work-patterns, cultural resource studies, fish consumption patterns, etc.).
 - If the issue is a reasonable one to pursue, asking the agency to obtain data is also reasonable and is supported by NEPA’s requirements.



Throughout the NEPA Process

- Talk to the Federal agency early and often.
 - Utilize the scoping process effectively and create additional opportunities to deal with the agency. *Promising Practices* suggests that such interactions over and above the formal scoping and comment periods may be very helpful in identifying mitigation measures or developing monitoring programs.
 - Consider asking the agency to form a committee to address concerns of minority populations and low-income populations.
 - Consider asking the agency if it will collaborate with you in developing or revising the statement of purpose and need for the proposed action.
- Participate in scoping, commenting, and all other formal public participation processes.
 - Missing formal deadlines and opportunities for public comment can make it difficult for agencies to respond to even well-documented concerns, issues, and facts. If more time is needed, identify this well in advance and discuss with the agency how best to supply information in a way so that it can be used.
 - Always submit something at the formal comment stages to identify the issues or concerns your community wants to raise, even if the information you have is incomplete. This makes it possible for the agency to respond and even engage in additional data-gathering itself.
- Consult with other community members about mitigation measures that might reduce or eliminate adverse impacts to your community from the proposed action.
 - Identify mitigation measures early in the process.
 - Advocate for inclusion of mitigation in alternatives.
- Propose alternatives.
 - Federal government agencies can be very good at developing proposed actions and initial alternatives, but developing and advocating for additional alternatives can be extremely helpful to the community and can improve outcomes even if a community-recommended alternative is not finally selected.
 - Propose alternatives early, rather than late, in the process. Propose them during scoping, or before scoping if possible.
 - Do not hesitate to suggest new alternatives; in fact, even if an agency has eliminated an alternative, its reasons may help you shape a new or revised alternative for agency consideration.

Insist on accountability. You have the right to expect honest communication from the agency, a response to substantive information you provide, and follow-through on agency commitments to mitigation and monitoring. Discuss a communications plan for continuing interactions between the community and the Federal agency.

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