

# Bureau of Indian Affairs

## Solar Project Regulatory Considerations and NEPA Compliance

**DOE Tribal Webinar**

**Project Regulatory Considerations**

**August 31, 2016**

# NEPA Compliance

- Statute, Executive Orders, DOI Memos, Policy, DOI Handbooks
- Process
- Coordination

# National Environmental Policy Act (NEPA)

- **NEPA-Public Law 91-190**  
42 U.S.C. 4321-4347  
January 1, 1970
- **CEQ Regulations**  
40 CFR 1500-1508  
November 29, 1978
- **DOI Implementing Procedures**  
516 DM 1-6 (April 23, 1980)
- **DOI Final Rule on Implementation of NEPA** 43 CFR Part 46 (Oct. 15, 2008)
- **BIA NEPA Handbook, as revised August 2012** (59 IAM 3-H)
- **Federal Register Notice (December 24, 1996) - BIA Categorical Exclusions (CE) 516 DM Appendix 4 (as revised May 27, 2004 – 516 DM 10). \* New CE on single family homesite leases (2012)**
- **BIA's Tribal Government-to-Government Consultation Policy (Dec. 13, 2000) and new DOI Tribal Policy (Dec. 2011)**

# **BIA NEPA Handbook**

## **- 59 IAM 3-H (August 2012)**

- **Policy**

- **Consider the environmental effects,**
- **Account for the review (documentation)**
- **Mitigate negative environmental impacts**
- **Monitor/assess mitigation strategies**
- **Review CATEX for continue applicability**
- **CATEX fractional interest acquisition**

# OTHER KEY FEDERAL LAWS

- \*Endangered Species Act

  - \*Clean Water Act

- \*National Historic Preservation Act

  - \*Clean Air Act

  - \*Executive Orders

  - \*Secretarial Orders

# Federal Indian Policies

- **Executive Order 13084** - Consultation and coordination with Indian Tribal Governments (reissued as EO 13175 on November 6, 2002).
- **Government - to - Government Relations with Native American Tribal Governments** - Memorandum for the Heads of Executive Departments and Agencies (April 19, 1994).
- **Secretarial Order 3175** - Departmental responsibilities for Indian Trust Resources (changed to Department Manual Release November 8, 1993).
- **Executive Order 12898** - Environmental Justice (February 11, 1994)

# NEPA Compliance

- Why are NEPA documents required?
  - Because of a Federal nexus such as BIA funding or approval actions.
- Why is NEPA documentation important?
  - To ultimately make better decisions after identifying project concerns or issues and, if necessary, mitigating any impacts to the human environment.

# TYPES OF FEDERAL ACTIVITIES & ACTIONS SUBJECT TO NEPA

- Policies – Plans - Programs – Projects
- Federal Approvals (i.e. Realty leases, ROW's, permits, fee-to-trust acquisitions, forestry activities, housing, roads, irrigation, agricultural projects, etc.)
- Funding Actions
- Legislative Proposals



# NEPA PROCESS

Process would officially begin when Tribe, tribal member, or third-party applicant submits documents to BIA for review/approval (such as a lease agreement) along with tribal notification/consent (Tribal Resolution/Letter)

If approval is deemed necessary, then level of NEPA documentation is determined.

# Types of NEPA Documents

- Categorical Exclusions (CatEx's)
- Environmental Assessments (EA's)
- Environmental Impact Statements (EIS's)

# **Types of NEPA Documents**

## **Environmental Impact Statement**

**The following BIA actions normally require preparation of an EIS:**

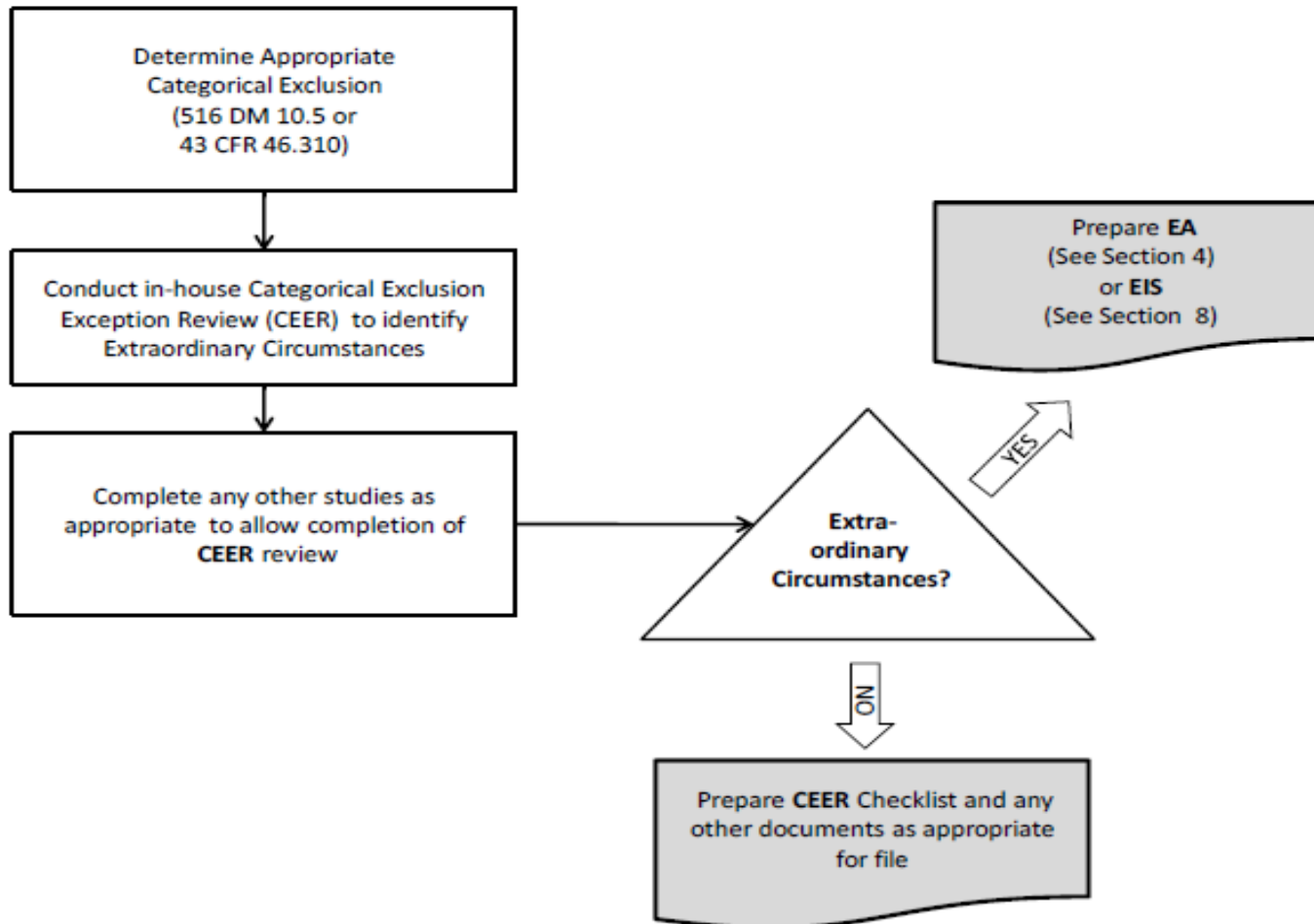
- **Proposed large/utility-scale development projects (renewable energy)**
- **Proposed mining contracts or new mines of 640 acres or more**
- **Proposed water development projects which inundate more than 1,000 acres or store more than 30,000 acre feet**
- **Construction of hazardous or solid waste disposal facilities for commercial purposes**

# Types of NEPA Documents

## Environmental Assessment

- Not on the EIS list
- Not an exclusion category
- Extent of the impacts are unknown

# Categorical Exclusion Process



# Solar Related Categorical Exclusions

- 10.5 (F). Rights-of-Way
- (2) Service Line Agreements to an individual residence, building, or well from an existing facility where installation will involve no clearance of vegetation from the ROW other than for placement of poles, signs, or buried power/cable lines.

# Solar Related Categorical Exclusions

- Survey type activities (Land, Environmental)
- Renewals of ROWs
  - If NEPA was previously completed.
- Utility encroachment permits (Transportation)
  - If NEPA was previously completed
- Administrative Actions
  - i.e. Management of trust funds

# Procedures and Processes

- Project Management – Lead Agency(s)
- Coordination and Consultation
- Meetings
- Conference calls
- Site Visits
- MOU's



# Who is Involved in the NEPA Compliance Process?

- \*Lead Federal Agency
- Cooperating Agencies

- \*Tribes and Allottees

Third Party Consultants

Private Project Applicants

Other Federal Agencies

State and Local Agencies

General Public

# Agency Coordination

- The BIA will be the lead federal agency for any renewable energy projects occurring on tribal lands.
  - Another Federal Agency may be a cooperating agency in all BIA projects that have a connected Agency action. (i.e. BLM ROW)
  - Only one NEPA document will be prepared with two agency decisions, one for BIA and one for the other federal Agency.
    - Exception: if in California, an EIS/EIR may be prepared

# Role of Cooperating Agencies

- Participate in Scoping & Public Meetings
- Review and provide comments on Administrative Draft/Final NEPA documents
- Prepare certain sections of the NEPA documents (environmental analyses)
- Prepare & Issue Decision Documents for their Agency

# Partnerships with Others

- Federal
- State
- Local
- Tribes
- NGO's
- General Public
- Contractors/Consultants

# NEPA Compliance Environmental Issues

- Biological Resources
- Cultural Resources
- Water Resources (surface & groundwater)
- Air Resources/Climate Change
- Environmental Justice
- Indian Trust Assets (ITA's)
- Socio-economic conditions
- Human Health and Public Safety

# NEPA Compliance Mitigation Measures

- Biological Resources
  - Fences, buffer zones, relocation of species, monitoring of construction activities, establishment of tribal escrow accounts (mitigation fees)
- Cultural Resources
  - Monitoring of construction activities, data recovery including testing and excavations
- Water Resources
  - Monitoring wells for water quality or quantity

# Can We Avoid NEPA Compliance?

- Yes, if a federal nexus is eliminated
  - Corporate Charter
  - Leasing Regulations (Hearth Act)
- No federal funding
- No federal approval (i.e. lease)
- No federal permits
- No federal loan guarantees

# Avoiding NEPA but..

- *Other Agency actions may trigger NEPA.*
- *Environmental Statutes*
  - *Clean Air Act*
  - *Endangered Species Act*
  - *Clean Water Act*



# Solar Project

- Originally 2,153 acres, 350 mV Solar Project
- 1.5 year EIS Process
  - BIA Lease and ROW
  - BLM ROW
  - ROD signed by Secretary of Interior 6/2012
- Biological Opinion
  - Desert Tortoise
  - Moapa Dace

# Avoid NEPA Compliance?

It Depends!!!





02/17/2015 14:58

# NEPA Compliance

Questions?

**Bureau of Indian Affairs  
Western Region  
Contacts**

**Stan Webb, Regional Realty Officer**

**[Stan.Webb@bia.gov](mailto:Stan.Webb@bia.gov)**

**Tamera Dawes, Realty Specialist**

**[Tamera.Dawes@bia.gov](mailto:Tamera.Dawes@bia.gov)**

**Chip Lewis, Regional Environmental Specialist**

**[Chip.Lewis@bia.gov](mailto:Chip.Lewis@bia.gov)**