

# Incidental Take Permit Issuance Criteria

## Section 10 Criteria

Habitat conservation plans (HCPs) are required to meet the permit issuance criteria of Section 10(a)(2)(B) of the Endangered Species Act (ESA) and its implementing regulations (50 CFR 17.22 and 17.32) which require that:

- Taking will be incidental;
- The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of the taking;
- The applicant will ensure that adequate funding for the plan and procedures to deal with unforeseen circumstances will be provided;
- Taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild;
- Other measures, as required by the U.S. Fish and Wildlife Service (USFWS), will be met; and
- Assurances that the plan will be implemented are provided.

As part of making the decision to issue an Incidental Take Permit, the USFWS must also consider the anticipated duration and geographic scope of the applicant's planned activities, including the impact to listed species and their habitat.

HCPs are also required to comply with the Five Point Policy by including:

1. Biological goals and objectives, which define the expected biological outcome for each species covered by the HCP;
2. Adaptive management, which includes methods for addressing uncertainty and also monitoring and feedback of biological goals and objectives;
3. Monitoring for compliance, effectiveness, and effects;
4. Permit duration which is determined by the time-span of the project and designed to provide the time needed to achieve biological goals and address biological uncertainty; and
5. Public participation according to the National Environmental Policy Act (NEPA).

## What needs to be in HCPs?

Section 10 of the ESA and its implementing regulations define the contents of HCPs. They include:

- An assessment of impacts likely to result from the proposed taking of one or more federally listed species.
- Measures that the permit applicant will undertake to monitor, minimize, and mitigate for such impacts, the funding available to implement such measures, and the procedures to deal with unforeseen or extraordinary circumstances.
- Alternative actions to the taking that the applicant analyzed, and the reasons why the applicant did not adopt such alternatives.
- Additional measures that the USFWS may require.

## What is the process for getting an Incidental Take Permit?

The applicant decides whether to seek an Incidental Take Permit. While USFWS staff members provide detailed guidance and technical assistance throughout the process, the applicant develops an HCP and applies for a permit. The components of a completed permit application are a standard application form, an HCP, an Implementation Agreement (if applicable), the application fee (if applicable), and a draft NEPA analysis. A NEPA analysis may result in the preparation of a Categorical Exclusion, an Environmental Assessment (EA), or an Environmental Impact Statement (EIS).

While processing the permit application, the USFWS prepares the Incidental Take Permit and a Biological Opinion under Section 7 of the ESA and finalizes the NEPA analysis documents. Consequently, Incidental Take Permits have a number of associated documents.

## Overview of the National Environmental Policy Act

The Environmental Impact Statement (EIS) for the Clark County Multiple Species Habitat Conservation Plan (MSHCP) project will be prepared in compliance with the NEPA and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA. The Act requires federal agencies to consider the environmental consequences of proposed actions in their decision-making process. The intent of NEPA is to protect, restore, or enhance the environment through a well-informed decision-making process. The CEQ was established under NEPA to implement and oversee federal policy in this process.

## Purpose of a National Environmental Policy Act Document

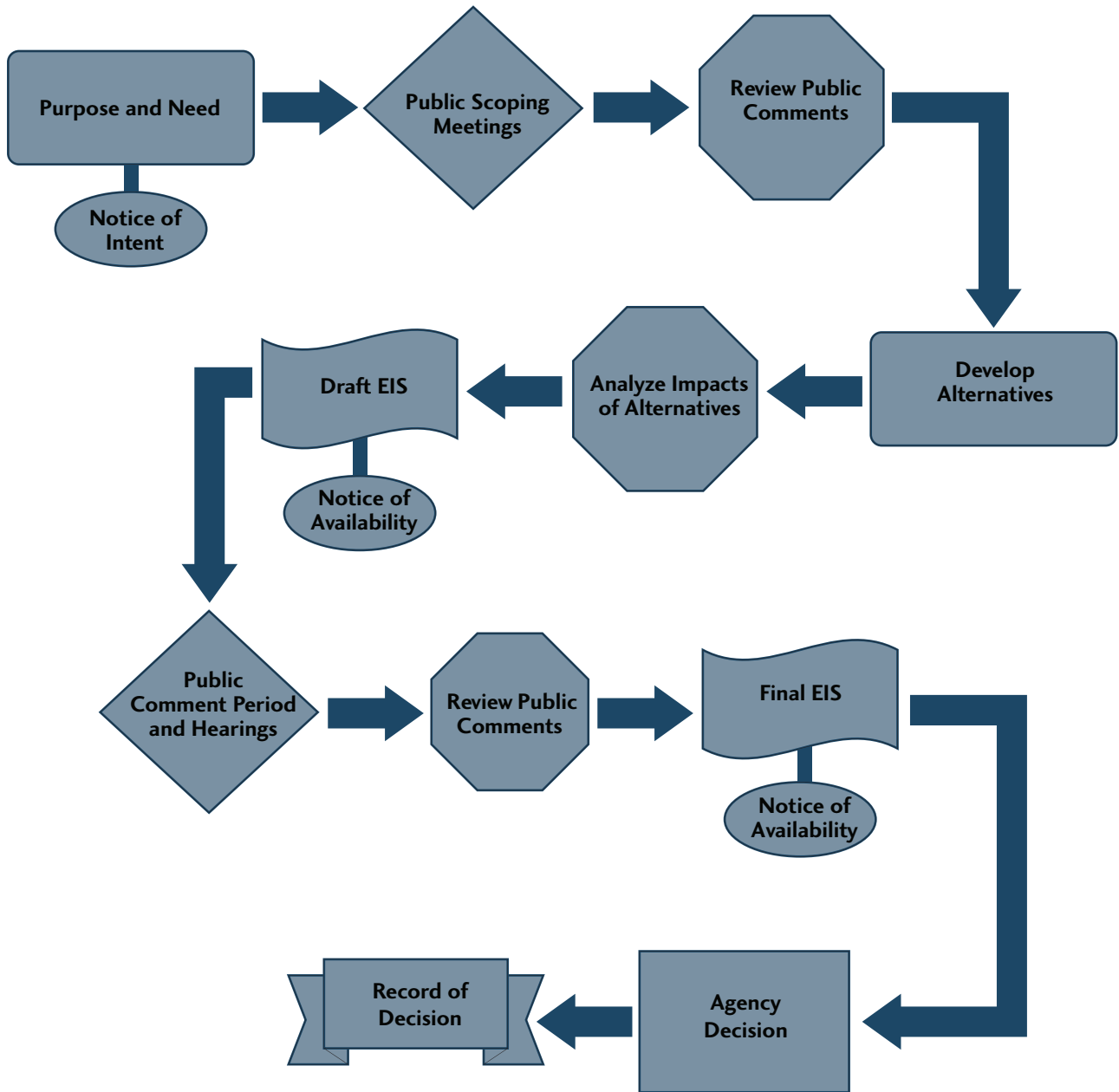
The primary purpose of a NEPA document is to serve as a decision-making tool to ensure that the policies and goals defined in NEPA are incorporated into the ongoing programs and actions of the federal government. A NEPA document will provide full and fair discussion of significant environmental impacts. In addition, it will inform decision makers and the public of the reasonable and feasible alternatives that were considered in an effort to avoid or minimize adverse impacts, or enhance the quality of the human environment. The NEPA document is used by federal officials in conjunction with other relevant material to plan actions and make decisions as well as review and approve non-federal applicant-proposed projects on federal lands. An EIS is prepared for actions with a federal nexus if there is a “potential to significantly affect the quality of the human environment”.

## The Public Involvement Process

The CEQ regulations require that “agencies shall make diligent efforts to involve the public in preparing and implementing their NEPA procedures”. There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process is termed scoping. As soon as practicable after its decision to prepare an EIS, and before the scoping process, the lead agency shall publish a Notice of Intent (NOI) in the Federal Register. In addition, as part of the scoping process the lead agency shall invite the participation of affected federal, state, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons. The lead agency shall then determine the scope and the significant issues to be analyzed in depth in the EIS.

In addition to the public involvement that occurs during the scoping process, the Draft EIS must be made available for public and agency review and comment, and comments must be addressed in the Final EIS. The EIS process, from scoping to the publication of a Record of Decision, typically takes from 18 months to 24 months, but may take longer for controversial or complex actions. This process is depicted in the flow chart on the next page.

## The Environmental Impact Statement Process



## Public Participation in the Amendment Process

### **Does the public get to comment on the permit amendment? How do public comments affect the MSHCP?**

The ESA requires a 30-day period for public comments on applications for Incidental Take Permits. Generally, the comment period is 30 days for a Low Effect HCPs, 60 days for an HCP that requires an EA, or 90 days for an HCP that requires an EIS. The USFWS considers public comments in permit decisions. In addition, because the NEPA requires public comment on certain documents, the USFWS operates the two comment periods concurrently.

### **The Scoping Process**

Scoping is the process used to determine the appropriate content of an EIS. Scoping begins before any analysis of impacts is done, and it continues until the EIS is finished. Public participation is an integral part of scoping, which involves the public and affected agencies early in the process. Scoping participants usually include:

- Citizens who live, work, or recreate in the area where the proposed action is to or may occur;
- Public interests groups and native communities that have concerns about possible impacts to environmental, social, or economic resources;
- Federal, state, local, and tribal governmental agencies that have responsibilities for managing public resources or services;
- Construction and recreational industry representatives that might conduct business activities within the impacted areas; and
- Scientists and other technical experts with knowledge of the impacted area's natural resources and the possible impacts of construction development and recreational activity.

The first step in the scoping process is to announce to the public, by a Federal Register NOI and press release, that an EIS will be prepared and to ask for comments about what topics / issues should be included in the EIS. The scoping period formally begins with the publication of the NOI and will extend for at least 30 days.

The lead agency holds one or more public meetings in communities that might be affected by the proposed activities. The purpose of soliciting input is to properly identify as many relevant issues, alternatives, mitigation measures, and analytical tools as possible. Comments received at these meetings are then compiled and incorporated in the EIS. The scoping comments assist in determining the breadth and depth of the analysis.

Public comments on the proposed Clark County MSHCP and Incidental Take Permit Amendment may be submitted in writing, either during the public scoping meetings, or by sending comments to the address below. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment (including your personal identifying information) may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

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