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Hello everyone. Thanks for joining us today for the webinar presentation. We're going to wait just a few minutes to get started to allow folks time to log on and get settled in, and we'll start very shortly. Thank you.

Hello again everyone, and welcome to today's installment of the Understanding HUD Environmental Reviews webinar series sponsored by HUD's Office of Community Planning and development or CPD. My name is John McGah. I work for the National Center on Family Homelessness, and I'll be the moderator for today's webinar. On behalf of CPD and the Office of Environment and Energy, I'd like to thank all of you for joining us.

Today's webinar is "Introduction to the National Environmental Policy Act." And before we begin, I'd like to make some logistical announcements. Today's webinar will last approximately 90 minutes in total, and the webinar is being recorded. You can access a PDF of the slides in handout format through the first link in the web links box in the bottom center of your screen in case you want to follow along by taking notes next to the slides. The recording and the PowerPoint presentation in full slide format will be posted on HUD's CPD Environment page. You can check the training website also listed in the web links box, and that will have updates for this webinar series and for in-person training opportunities as well. The full series -- I'm sorry -- the full series and accompanying material should be available online by November.

Now as an attendee of this webinar, your microphone will be automatically muted. Please listen to the presentation through your phone for best results. The call-in information has been sent to you and it is also listed in your meeting room screen under "Audio instructions." Another option is to use your computer speakers. This means that you will need to turn on and turn up the speakers on your computer.

Now due to the large number of attendees, there may be a slight delay in the advancement of the slides. If you do experience any other technical difficulties, please let us know by using the question-and-answer box on your screen. You may also submit content-related questions using the same box. Feel free to submit questions at any point during the webinar; however, we will wait until the end of the webinar to answer as many content-related questions as time allows.

Immediately following the webinar, you will be directed to a follow-up survey. Participants are strongly encouraged to respond to the evaluation to help us improve future webinars. At the start of this webinar we will be asking a couple of simple poll questions, which you can see to the lower left of your screen now. Please take a moment to answer those questions. Today's webinar will feature Therese Fretwell and Martha Curran as the presenters.

Therese Fretwell is the regional environmental officer for HUD regions one and two. She has 20 years of experience in the environmental field, and she was involved in NEPA compliance work for the HUD disaster grant funded redevelopment of the World Trade Center and began her career working in the Everglades restoration project in South Florida.

Martha Curran has been a field environmental officer in the Boston office since 2011. Prior to joining HUD, she held a variety of environmental management and compliance positions in both the private and public sectors.

And now I'd like to pass this over to Therese to begin the presentation. Therese.

Thank you, John. I'd like to thank everybody for joining us this afternoon. Martha and I are going to spend the next hour or so talking to you about the National Environmental Policy Act. We're going to go through the history, the purpose of the act, a little bit of the evolution, and the implementation of the CEQ regulations for NEPA.

By the 1960s there was a new movement forming in America called "Environmentalism." The population was better educated and more affluent than any group in history, and they were enjoying new freedoms and higher levels of disposable incomes. But the headlines were filled with reminders of the toxic byproducts of our uncontrolled industrial heritage, and the New Deal had sparked a massive public works

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program that created great feats: a national highway system, hydroelectric dams, and et cetera. But the effects on the communities, the wildlife and environmental quality were unanticipated and widely felt. Adding to that, pollution from a largely unregulated industry was reaching a breaking point and affecting human health in some very visible ways.

One of the first manmade environmental disasters to receive national attention happened in Donora, Pennsylvania, a mill town south of Pittsburg. Donora's economy ran on coal and much of the town made their living working in a steel mill. In those days the mill emissions were unregulated and uncontrolled. On Tuesday, October 26th of 1948 a dense fog fell on Donora that lasted for six days. All of the airborne detritus from the uncontrolled furnaces, ovens, stoves, and locomotives they put in the valley, the foul mixture of carbon monoxide, sulfur dioxide, metal dust and fluoride compounds emitted by the mill emissions mixed with the fog and created a deadly smog event. As the sickness and the misery spread, the mills kept running because there was no one in any authority who had any power to order them offline.

Five days after the beginning of it on Sunday morning, the mill director voluntarily shut the mill down for one day. But by the time blue skies had returned, over 20 Donorans had died from the smog event, and nearly half the town of 14,000 had fallen sick. Americans had learned a shocking lesson on the importance of air quality. But air quality wasn't the only pressing concern of the time.

In some ways the water was even worse. Industrial manufacturing plants directly discharged hazardous chemicals into streams, lakes, and rivers. Additionally, municipalities dumped raw sewage into the water bodies. I mean the results were predictable. There were foul odors and fish kills, but there was nothing more dramatic than the fires. The Cuyahoga River in Cleveland had for, almost a century, been regarded as an open sewer that ran through the heart of the city. Fires on the river dated back as far as 1868.

In 1952 there was a fire on the river that was so severe that the boats sent to extinguish it had only added to the blaze. There's a photo of that fire on the left-hand side of the slide. The one fire that occurred in 1969 triggered a spark of press and was coupled with a dramatic photo seen on the right of a black gooey hand coming out of the Cuyahoga River like a B movie swamp monster. Ohio immediately became a poster child for the nation of just how bad water quality in our nation's rivers and lakes had become, and by association, it indicted all industrial American cities and a culture that, for a century, had generally viewed natural waterways as a means to an end.

In 1962 Robert Moses, a planner in New York City, proposed a Lower Manhattan Expressway Project. The controversy over this proposed expressway demonstrated a tipping point for citizens' frustration over ever-larger public works projects into which the average Joe had zero input. The plan, which would have changed the very nature of Lower Manhattan, was opposed vigorously during a six-hour knock-down drag-out fight at City Hall in early December of 1962.

During the fight, assemblyman Louis Desalvio was famously quoted as calling Robert Moses a cantankerous and stubborn old man and saying that the time had come for him to release his grip on the city's development. The public wanted to know who exactly gets to decide what constitutes the public good.

In the same year, 1962, Rachel -- excuse me, Rachel Carson's book, "Silent Spring," was published, and it sparked huge controversy, bringing the pesticide problem to the public attention and largely is credited with launching the modern environmental movement. As you can see on the right, there is a photograph, a dramatic photograph of dozens of dead robins. The book illustrated the connection between the widespread use of DDT and resulting decimation of songbird populations in the area. The public seemingly had been primed by the publicity of all of the previous environmental disasters, and this book garnered enormous attention for the movement.

Numerous environmental action groups were starting to form as a reaction to these unfolding environmental events; Environmental Defense Fund, Natural Resource Defense Council, Friends of the Earth just to name a few. These groups were throwing their weight and their funds into politics. As a

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result of, a new crop of politicians came into office in the mid '60s, with a perceived mandate from their constituents to do something about these problems. The people wanted the advantages of the new products, the increased food production and the easier transportation, but they also wanted accountability and some control over the most offensive of the impacts.

So in 1969 the National Environmental Policy Act was signed by President Nixon. It was actually signed as his first act in 1970, on January 1st, in response to an overwhelming national sentiment that federal agencies should take the lead in providing greater protection for the environment. Nixon proclaimed the 1970s as the environmental decade, and NEPA established a first-ever national policy statement on the environment. It was to create and maintain conditions under which man and nature can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations of Americans. It's the nation's broadest environmental law still, and it applies to all federal agencies and most of the activities that they manage, regulate, or fund. NEPA was followed by a cascade of additional environmental protection laws, such as the Clean Water Act and the Clean Air Act in 1972, and then the Endangered Species Act followed in 1973.

So what is NEPA? The purpose of the National Environmental Policy Act were multiple. The main one was to declare a national policy, which was to encourage productive and enjoyable harmony between man and his environment. According to the Supreme court, the purpose of NEPA was to place upon an agency the obligation to consider every significant aspect of the environmental impact of a proposed action and to ensure that the agency would inform the public that it has considered environmental consequences in its decision making plan. So it's a process-oriented law designed to give the public a voice and to ensure that agencies are making wise decisions.

Section 102(2)(c) of the National Environmental Policy Act is considered the action-enforcing clause within the act. It's not a particularly long piece of legislation, but this one clause states that the federal government shall include in every recommendation or report on proposals for legislation and other major federal actions significantly affecting the quality of the human environment a detailed statement by the responsible official. The open-endedness of NEPA has led to a great deal of debate. Implementation in NEPA has, as a result, relied heavily on litigation and the court to define intentions of the wording, as justice Marshall said, "The vaguely-worded statute seems designed to serve as the catalyst for the development of a common law of NEPA."

Calvert Cliffs Coordinated Committee v. the Atomic Energy Commission was one of the first court cases ever heard on the National Environmental Policy Act, and it set the tone for all the subsequent cases. It made a decision that the general substantive policy of the act is flexible. It leaves room for responsible exercise with discretion. The procedural provisions of the act, however, are not as flexible. In other words, NEPA doesn't require agencies to avoid all environmental impact, but it does require them to identify them, consider them, and make an informed decision on how to proceed, and to disclose that process to the public.

There are some key definitions of the National Environmental Policy Act. The passage -- the 102(2)(c) passage of NEPA, the action forcing passage, has been interpreted by the court system over the past 40 years, and it's through case law that we have developed the following definition. The idea of significance, in particular, was a subject of frequent litigation from the very beginning. The term is used not only to determine what federal actions warrant NEPA but also what impacts are considered large enough to require a full-scale EIS.

In an early court case of Hanly versus Kleindienst from 1973, there was a challenge to a GSA determination of no significance. The key finding in that case was that the agencies must develop a reviewable environmental record for the purpose of a threshold determination of significance under 102(2)(c). So decisions of insignificance can't be made capriciously. These records must provide an opportunity for public input as well. This finding helped formalize the environmental assessment as a process for determining potential for significant impact. A federal action includes any action taken directly by an agency, as well as agency actions that allow private individuals to affect the environment. So an

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action becomes a federal action if an agency is directly involved through rule making, permitting, controls, or funding.

Impacts to the human environment come in three categories -- direct, indirect, and cumulative. Direct impacts were determined to be caused an action and occur in the same time and place as the proposed action; for example, demolition of a historic resource to build affordable housing. Indirect impacts would occur later in time in degrees removed from the original project; for example, increased sedimentation rates downstream due to increased runoff from new developments. And cumulative impacts result from the effects of an action combined with other past, present, or reasonable foreseeable future actions, such as school crowding from an increase in density as a result of a series of large housing developments in a single zone.

So, as I stated, the National Environmental Policy Act is considered a procedural law. So I'll just go a little bit through what that process is. The process would be an evaluation of the environmental effects of the federal undertaking, including an alternatives analysis, and this process is triggered by any proposal for a major federal action that might significantly affect the quality of the human environment. So that basically discusses Title 1 of the National Environmental Act.

Title II of the NEPA developed the Council on Environmental Quality. The Council on Environmental Quality is referred to generally as the "CEQ." They have three president-appointed senate-approved members, and they report annually to the president on the status of NEPA. They oversee the implementation of NEPA by other federal agencies and they mediate agency disagreements.

Their oversight of NEPA was, until 1978, done fully through guidelines. Guidelines lack the weight of official regulations. This resulted in the guidelines often being ignored, which contributed to the tendency of NEPA implementation being guided by lawsuits. So in 1978, President Jimmy Carter issued an executive order requiring the CEQ to develop regulations for the implementation of NEPA. These regulations went into effect in 1979, and they are 40 CFR Part 1500 of the federal register.

Under 1500.6, these regulations also instructed each federal agency to adopt their own specific NEPA implementation regulation. At HUD, these regulations are found under 24 CFR 58 and Part 50. The general purpose of Part 1500 is to implement the action-forcing items in NEPA under Title 1 Section 102(2)(c). It is a set of instructions for integrating NEPA into the early planning process for evaluating significance, and for preparing the detailed statements and involving the public in the decision-making process.

Now I'm going to hand the microphone over to Martha Curran, and she's going to discuss in more detail the CEQ regulations. Martha.

Thank you, Therese. As Therese said, the CEQ regulations are essentially a set of instructions or a roadmap for federal agencies to follow in determining whether NEPA compliance is required when undertaking agency actions. The regulations require agencies to identify classes of actions that normally require a full Environmental Impact Statement; those actions that normally require an Environmental Assessment but not necessarily an Environmental Impact Statement; as well as actions that normally do not require an Environmental Impact Statement, and that last group of actions are called "categorical exclusions."

A proposed action that doesn't normally require an Environmental Impact Statement and isn't covered by a categorical exclusion would require the preparation of an Environmental Assessment. So then the classification of the action determines the level of review, and I'll talk about this a bit more in subsequent slides.

There are some important fundamental concepts woven into the NEPA process and procedures. One is that NEPA is to be applied early in the planning process; specifically, agencies are to integrate the NEPA process with other planning at the earliest possible time, and this is to ensure that planning and decisions

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reflect environmental issues and values; to avoid delays later in the process; and to head off potential conflicts.

As part of the NEPA process, when agencies are preparing an EIS, they must consult with other federal agencies that may have an interest in the action and with other interested parties, including the public. Scoping is a process invented and defined by the CEQ regulations. It's designed to assure clear definition of the issues, early public involvement, and to focus on the issues of greatest importance to the agency's decisions. So the scoping process is intended to invite the participation of the groups affected by the decision to help determine the significant issues that should be analyzed in the Environmental Impact Statement.

Scoping is also supposed to eliminate from detailed study the issues that are not significant or that might be covered in prior Environmental Impact Statements, and to also identify the relevant resources, responsibilities, and timing for the review and decision making process. The scoping process must involve effective federal, state, and local agencies, Indian tribes, the proponent of the action, and the public. And scoping is the point when an agency establishes a schedule for the entire NEPA process.

Next we'll go into some of the detail of the NEPA process. This flowchart, which is from the CEQ publication, "A Citizen's Guide to the National Environmental Policy Act," is a good overview of the steps of the NEPA process. As you implement NEPA within your organization or are working with HUD or another federal agency on the NEPA process, I encourage you to refer back to this chart as a good reference to help you navigate through the process and to get perspective on where you might be in the process.

So the fundamental question is, "Are the environmental effects of the project or activity likely to be significant?" And if the answer is "Yes," then you go immediately to the column on the right-hand side of the chart, which is the Environmental Impact Statement. And then if your answer is, "No," and the proposed action is described in a categorical exclusion, then you work your way down through the process on the left-hand side. If the effects are uncertain or there is no specific categorical exclusion, then you're in the middle column, which goes through the Environmental Assessment process.

You can also see there are feedback loops for both categorical exclusion and the Environmental Assessment. After initial analysis in certain circumstances, you may need to conduct a more detailed level of review. Those of you familiar with HUD's Part 58 regulations may notice that exempt activities are not specifically addressed in this flowchart. Additionally, emergency actions aren't addressed in flowchart either, and I'll address those activities in the next two slides.

Exempt activities are considered to have no physical impact upon the environment by their very nature. That is to say, by their very nature, they will not significantly affect the quality of the human environment. They include activities such as administrative and management activities and engineering and design costs, and in HUD's regulations specific activities that are exempt are delineated in Section 58.34.

Another category of action not addressed in the flowchart is emergency actions. The CEQ NEPA regulations recognize that in some instances an emergency may make compliance with NEPA temporarily infeasible. There are two general categories of circumstances in which an agency may use the emergency exemption. In the first, if a statute or regulation imposes a time schedule on an agency's action, either expressly or impliedly, and that schedule does not allow an agency to fulfill NEPA's requirements before taking the action, the courts have found that the statute or regulation takes precedence over NEPA.

So for an example, the Natural Gas Act imposed a statutory duty on the Federal Power Commission to take effective interim curtailment action on the demands presented by gas shortages. In a court case interpreting the applicability of NEPA to that situation, the court stated that Congress underscored the need for immediate action by specifying that the President should promulgate regulations within 15 days after the enactment of the Emergency Petroleum Allocation Act. The court also stated that Congress

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must have intended that the President proceed to quickly allocate oil supplies without the elaborate formal determination of environmental impact.

In the second category of emergency action, the circumstances surrounding the agency's action made compliance with NEPA prior to the action impractical. Such a situation may result, for example, when certain national security concerns are present. In another case called "Valley Citizens for a Safe Environment versus Vest," the Air Force was permitted to bring flights into Westover Air Force Base to serve Persian Gulf operations based on the CEQ's certification of an emergency, as well as the Air Force's commitment to prepare an Environmental Assessment as soon as possible. And another possible example in this second category is when an agency must act immediately to protect public health and safety. So the key with respect to exemption of emergency actions from the NEPA process is that it's temporary forbearance from NEPA. The regulations specify that the federal agency taking the action consult with CEQ about alternative arrangements, and the actions must be only actions necessary to control the immediate impacts of the emergency, so it's a very narrow window there. I also want to note that HUD has guidance on exemption for disasters and imminent threats for purposes of the HUD Part 50 and Part 58 environmental reviews, and that guidance is referenced on the resource page at the end of this presentation.

Categorical exclusions are intended to facilitate agency compliance with NEPA by identifying common actions that will rarely, if ever, be major federal actions with potentially significant impacts on the human environment. In other words, they do not individually or cumulatively have a significant affect on the human environment. While the identification of specific categorical exclusions is largely left to the discretion of individual agencies, that discretion is constrained by the CEQ regulations that define the purpose of categorical exclusions and require that agencies adopt exceptions to the categorical exclusions. So the regulations state that agencies shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect. That's basically considered a recapture provision, so that an action that would otherwise be categorically excluded would require an Environmental Assessment or an Environmental Impact Statement. And if you remember back to the flowchart, that's one of the circulations back around to do Environmental Assessments.

The HUD regulations define extraordinary circumstances at 58.2(a)(3), where it states that indicators of unusual conditions are: actions that are unique or without precedent; actions that are substantially similar to those that would normally require an Environmental Impact Statement; actions likely to alter existing HUD policy or HUD mandates; or actions that, due to unusual physical conditions on the site or in the vicinity, have the potential for a significant impact on the environment or in which the environment could have a significant impact on the users of the facility. So, in those conditions, a categorical exclusion -- an activity that would otherwise be a categorical exclusion -- would require further analysis in the form of an Environmental Assessment or an Environmental Impact Statement.

In recent years, the CEQ has encouraged agencies to make greater use of their authority to define categorical exclusions. In 2010, CEQ issued final guidance, setting forth an approach for adoption and administration of categorical exclusions going forward. Agencies must consult with CEQ when they are developing categorical exclusions. They must summarize the information in the agency's record that supports the proposed exclusion. They must identify how extraordinary circumstances may limit the use of the categorical exclusion. And they must provide for public comment on the proposed categorical exclusion.

An Environmental Assessment is not the detailed statement required by NEPA that Therese mentioned in Section 102(2)(c), the action forcing clause, it's an administrative creation originating in the CEQ regulations. The regulations define an Environmental Assessment as a concise public document: that contains sufficient evidence and analysis to determine whether to prepare an Environmental Impact Statement or whether a Finding of No Significant Impact is warranted; that aids agency compliance with NEPA when no Environmental Impact Statement is necessary; and that facilitates preparation of an Environmental Impact Statement when necessary.

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The Environmental Assessment has evolved to be the dominant form of environmental analysis under NEPA. A CEQ report from 1997 states that over 50,000 Environmental Assessments are prepared annually, with an average of fewer than 500 Environmental Impact Statements. While that statistic is a bit outdated, nevertheless, the disparity between Environmental Assessment preparation and EIS preparation is likely similar today.

The significance determination is a crucial aspect of the Environmental Assessment.

The significance determination establishes whether there is a Finding of No Significant Impact and, thus, no further action required under NEPA, or a finding of significance, which would then require the preparation of an Environmental Impact Statement. Whereas the major federal action is not usually too difficult for agencies or courts to determine, what constitutes “significantly affecting the quality to human environment” is often more problematic. So the significance determination takes into consideration context, including society as a whole, the affected region, affected interests, and the locality of the action. It also takes into consideration the intensity or severity of the impact.

The CEQ regulations outline ten factors that should be considered when evaluating the severity of the impact.

- Both beneficial and adverse impacts. A significant effect may exist even if on balance the effect would be beneficial.
- The degree to which the proposed action affects public health or safety.
- The unique characteristics of the geographic area, such as proximity to historic or cultural resources.
- The degree to which the effects on the quality to human environment are likely to be highly controversial.
- The degree to which the possible effects are highly either highly uncertain or involve unique or unknown risks.
- The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration;.
- Whether the action is related to other actions with individually significant but cumulatively individually insignificant but cumulatively significant impacts. The regulation here states that significance exists if it's reasonable to anticipate a cumulatively significant impact on the environment, and, also, that significance cannot be avoided by saying an action is temporary or by breaking it down into smaller components. Another consideration for severity is the degree to which the action may adversely affect districts, sites, highway structures, or objects listed in or eligible for listing in the national register of historic places.
- Also the degree to which the action may adversely affect an endangered or threatened species or its habitat.
- And finally, whether the action threatens a violation of federal, state, or local law requirements imposed for the protection of the environment.

I am sorry. I did not forward the slide, so that was significance determination.

Given the importance of the significance determination resulting from preparation of an Environmental Assessment, federal agencies have, in many instances, adjusted the proposed action with mitigation measures in order to stay below the threshold of significance and so justify the issuance of a Finding of No Significant Impact rather than trigger the preparation of an Environmental Impact Statement. So the CEQ regs don't speak directly to a mitigated FONSI, but CEQ issued guidance in January of 2011 that outlines best practices for agencies when making mitigation commitments and sets forth guidelines for agencies when adopting a mitigated Finding of No Significant Impact.

The guidance emphasizes that when agencies commit to mitigate the environmental impacts of a proposed action, and thus reach a Finding of No Significant Impact, they must adhere to the commitments, monitor how the commitments are implemented, and monitor the effectiveness of the commitments to achieve their goal.

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Specifically, the guidance affirms that agencies should:

- commit to mitigation and decision documents (for example, by including appropriate conditions in grants, permits, or other agency approvals, and making funding or approvals for implementing the proposed action contingent on the implementation of the mitigation commitment).
- Agencies should monitor the implementation and effectiveness of mitigation commitments.
- They should make information on mitigation monitoring available to the public, and preferably through websites. and
- They should remedy mitigation efforts that are proving to be ineffective - so revising mitigation efforts that aren't proving to achieve their goal.

So some mitigation measures in practice. The grizzly bear picture refers to a case in which the court upheld the Forest Service's approval of mineral exploration in a designated wilderness area based on an Environmental Assessment that included recommendations for mitigation measures to minimize or avoid impacts on grizzly bears. The court stated that if the proposal is modified prior to implementation by adding specific mitigation measures which completely compensate for any possible adverse environmental impacts stemming from the original proposal, the statutory threshold of significant environmental effects is not crossed, and an EIS is not required. The court also stated that to require an EIS in such circumstances would trivialize NEPA and would diminish its utility in providing useful environmental analysis for major federal actions that truly affect the environment.

The speed limit picture refers to a case in which the courts emphasized the need for an agency to examine in the Environmental Assessment the possible impacts if for some foreseeable reason the identified mitigation measures are not carried out. In this case, the court said that they were emphasizing the requirements that mitigation measures be supported by substantial evidence in order to avoid creating a temptation for federal agencies to rely on mitigation proposals as a way to avoid preparation of an EIS. The court said that in this case the Environmental Assessment itself comes very close to explicitly acknowledging that without the enforcement of the 35-mile-per hour speed limit through a wilderness area, the project would have significant impact on the environment, and yet the administrative record also showed that the entity responsible for enforcing the speed limit has not been enforcing it on the existing road.

And then the wetlands picture is to acknowledge that courts have, several times, affirmed that compensatory wetlands mitigation satisfactorily brought a hydroelectric project below the threshold of significance for an Environmental Impact Statement; in other words, that the Finding of No Significant Impact was supported by the mitigation measures.

If the initial determination about the proposed action is that the environmental affects are likely to be significant or the Environmental Assessment results in a finding of significant affects, then an Environmental Impact Statement must be prepared. Applicants can't prepare an Environmental Impact Statement. It has to be a federal agency. But I'd also like to acknowledge that in the case of HUD's NEPA statutes and regulations, in certain instances, authority has been delegated to recipients or other responsible entities to assume the federal role in conducting the environmental review.

In some cases there may be more than one federal agency involved in an undertaking. In this situation, a lead agency is designated to supervise preparation of the environmental analysis. Federal agencies, together with state, tribal, or local agencies, may also act as joint lead agencies.

The first steps in the preparation of an Environmental Impact Statement is the publication of a Notice of Intent in the Federal Register. The Notice of Intent provides some basic information on the proposed action in preparation for the scoping process. The scoping process is 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. Scoping is to begin as soon as practicable, after the agency has decided to prepare an EIS, and it must involve affected federal, state, and local agencies, Indian tribes, the proponent of the action, and the public. And the scoping process is also the point where the agency establishes a schedule for the entire NEPA process.

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I also wanted to mention that there are two basic types of Environmental Impact Statements. Most common is the site-specific EIS, which analyzes the environmental impacts of a particular project. The second is a programmatic EIS, which addresses a group of concerted actions to implement a specific policy or plan. And an example might be a plan by the Secretary of the Interior to implement a new national coal-leasing plan, the environmental impacts of which would be addressed on a national basis.

Tiering is the procedure to take that programmatic EIS and develop a narrower analysis or a site-specific EIS -- so a narrower analysis of an action that's included in the broader program. So, for example, it may be an Environmental Impact Statement for a coal lease at a specific location.

The alternatives analysis is often called the "lynchpin" of the Environmental Impact Statement. The CEQ regulations require that the alternatives section of an EIS include:

- An objective evaluation of all reasonable alternatives and a discussion about why alternatives were eliminated from detailed study;
- Enough detail on each alternative so that reviewers may compare the various merits;
- Reasonable alternatives outside the jurisdiction of the lead agency;
- The alternative of no action;
- The agency's preferred alternative or alternatives; and
- Appropriate mitigation measures not included in the proposed action or alternative.

Ultimately, the draft EIS is issued for public comment, and while it is a draft and change are expected, the draft Environmental Impact Statement is supposed to satisfy, to the fullest extent possible, NEPA requirements for a final Environmental Impact Statement.

The comment process and public involvement is also a key aspect of the National Environmental Policy Act. There is a 45-day minimum public comment period on the draft Environmental Impact Statement. There may also be public hearings, depending on the level of interest in and controversy about the project, and comments are also to be solicited from federal agencies that have jurisdiction by law or have special expertise with respect to any environmental impacts involved.

The final Environmental Impact Statement includes the agency's response to comments, and those responses could be:

- modifying the alternatives evaluated,
- developing and evaluating new alternatives,
- improving or modifying the analysis,
- making factual corrections, or
- explaining why the comments don't warrant further response.

There is a post Environmental Impact Statement comment period after the final EIS is published in the federal register, and that's 30 days, and the agency can't make its final decision until the 30-day period has elapsed.

Following the final Environmental Impact Statement, the agency prepares a record of decision that:

- states what the decision is;
- identifies alternatives considered and specifies those alternatives that are environmentally preferable;
- states whether all practicable mitigation measures were adopted, and if not, explain why; and
- commits to a monitoring and enforcement program to ensure implementation of mitigation measures.

Although the record of decision, or ROD, is a public document, it need not be specifically circulated for review.

Under the Administrative Procedure Act, a person asserting a NEPA claim against an agency must challenge the agency's final decision. So in the case of an Environmental Impact Statement, that would be challenging the ROD, or Record of Decision. In the case of an Environmental Assessment, that would

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be the Finding of No Significant Impact. An agency can also delineate, by regulation, an administrative appeal process before the challenge to the NEPA procedure gets judicial review by the courts.

Additionally, an agency's failure to prepare an EIS or Environmental Assessment may be considered final agency action when the agency takes action that will result in irreparable injury to the potential plaintiff. So, in other words, the potential plaintiff must couple the agency's failure to go through the NEPA process with some action that triggers the NEPA requirements in order to challenge the failure to go through the NEPA process.

I recognize that this is a very busy slide, but it's just meant to show that Environmental Impact Statements are very involved documents. You can see by looking through the table of contents here for the EIS that many different issues were addressed here; socioeconomic conditions, historic resources, neighborhood character, air quality, noise, etc., as well as mitigation alternatives and unavoidable adverse impacts.

The CEQ regulations tried to address the fact that EISs were often very lengthy documents. The CEQ regulations state that Environmental Impact Statements normally shall be less than 150 pages, and for proposals of unusual scope or complexity, less than 300 pages. But what that has sometimes resulted in is forcing things into appendices while not necessarily shortening the length of the overall document.

So that's a summary, perhaps a whirlwind summary, of the NEPA process. A key message to take away is that enactment of the National Environmental Policy Act really caused a fundamental shift in environmental law, and not just at the national level in the United States. 17 states, plus the District of Columbia, Guam, and Puerto Rico, have implemented NEPA-style laws. The World Bank has initiated environmental impact assessment procedures. As they state on their website, the purpose of environmental assessment is to improve decision making, to ensure that project options under consideration are sound and sustainable, and that potentially affected people have been properly consulted.

NEPA-like requirements have created a global environmental policy fashioned after NEPA, affecting over a hundred countries around the world, and it has fundamentally changed the way we approach planning our actions and puts consideration for environmental issues on a par with consideration of economic concerns. Every federal agency in existence now has staff dedicated to environmental considerations. This single piece of legislation has greatly affected the entire world. In America in particular, our young people simply can't imagine a landscape that would allow for possibility of rivers of fire or the willful obliteration of sensitive resources. It really changed the way we act by changing the way we think.

And that concludes the presentation. Although we do have a page on resources for you, and in particular, I recommend the Council on Environmental Quality website. And I will turn it back over to John.

Great. Thanks, Martha. At is this time, as Martha has indicated, we will be taking questions. As a reminder, you can submit questions by using the Q&A box on your left side of your screen. Kathryn Au from HUD's Office of Environment and Energy will be reading the questions. Kathryn.

Thank you, John. And the first question is for Martha. "The severity list sounds similar to the statutory checklist. Are they the same thing?"

They're not the same thing, but they are similar and our statutory checklists and our Environmental Assessment checklists and procedure, which you can find on HUD's website, are, of course, based on the NEPA procedures, you will see a lot of similarities there.

Okay. And a related question. "Where can we find a list of the ten factors to determine severity as defined by the CEQ?"

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They are in the CEQ regulations, and if you hold on one second I believe it's at 40 CFR 1508.27. If you go to the CEQ website, you'll be able to access the CEQ regulations, or similarly, if you go to the Code of Federal Regulations, you will be able to access them and find them there.

Okay. The next question, and this could be for either Martha or Therese. And it is "What is an undertaking?"

Therese, do you want to take that one?

Sure. An undertaking for NEPA would be a federal action. I believe that would be what the question is directed to, NEPA, since that's what we're talking about. An undertaking might have a slightly different definition under, say, Section 106 of the National Historic Preservation Act. But for an undertaking under NEPA, it would be any federal action, with the potential for environmental effect, so any action that is either funded or permitted or directly undertaken by a federal agency.

So in the case of HUD in particular, the granting of HUD money is a major federal action that takes in the NEPA process.

Or alternatively, public and Indian housing, granting a disposition action to a housing authority.

Okay. Thank you. This is for Therese. "Is there a threshold for HUD projects for doing environmental impact statements, such as monetary or numbered units?"

There is a threshold number of units. Anything that's greater than 2500 new units would require an environmental impact statement. That being said, the real threshold for an environmental impact statement is whether or not a project has potentially significant impacts on the environment.

Okay. And the next question is for Martha. "So for a part (INAUDIBLE) HUD project that requires an environmental impact statement, does the responsible entity prepare it or does HUD prepare it?"

The responsible entity has been delegated federal authority for implementing the NEPA regulations, so the responsible entity would take the lead on preparing the environmental impact statement as the federal authority.

Okay. And this is for Therese. "is the National Environmental Policy Act frequently vulnerable to political pressure to dismantle it?"

Well that's an interesting question. There has been talk over the years, particularly under certain administrations rather than others, of not dismantling the National Environmental Policy Act but perhaps altering it. However, as it turns out, environmental protection tends to be fairly popular amongst the public, and open debates over curtailing environmental protections tends to be very politically unpopular. So most of the attacks on environmental protections have taken place as a lesser level than legislation through executive orders or, simply, rulemaking within individual administrations.

Okay. And this is a follow-up for Therese. "When there is no federal threshold of significance, should the environmental assessment or environmental impact statement defer to the state threshold to establish a level of significance?"

Determination of level of significance is a decision that's generally left to the judgment of the decision-making authority. So if the state agency happens to be the decision maker in this case, and they have determined a threshold of significance under state law then it would not be inappropriate to use that threshold for the determination under NEPA. I believe that answered the question.

Okay. And the next question, "What are some of the big picture measurable impacts of NEPA over time on the U.S. or neighboring countries, environment pre and post 1969?"

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Therese, I think your pictures address that very well, so I'll let you answer that. But I mean that's kind of the heart of it right there, I think.

Yeah, I think that's pretty big picture of a question. I mean obviously we haven't had rivers on fire or deadly smog attacks killing, with confirmed cases of casualties, at any rate. I do believe the air quality, the water quality, wildlife impacts have been curtailed substantially. Not that we are perfectly successful in any way, shape, or form, but at the very least, the simple fact that we're at the table and the conversations take place, I think, is a big victory for NEPA. There are a ways to go, but I would say, on a whole, the act has been a big success. And even internationally for other countries to have adopted it, and individual states to have implemented similar laws, clearly it was a good idea.

And I would just follow up by saying also organizations like the World Bank adopting an environmental impact assessment process in their review of projects brings the principles of the National Environmental Policy Act to countries all over the world, in less developed countries, as well as developed countries.

I mean I would say that the clear area where there is still progress to be made is finding a way to rally get a handle on the concept of cumulative impacts. I mean there are global issues right now that are potentially a result of cumulative effects that we need to find a better way of internationally working together and addressing those issues.

Okay. The next question, "What documentation is needed for the file if a project is both categorically excluded and exempted?"

Well, if the project is categorically excluded, you must go through the regulatory checklist, and if no other laws and authorities apply to the project, the project can be converted to exempt. It's still a categorical exclusion, but it converts to exempt by virtue of 58.34(a)(12), I think it is. So you'd want to have the project description, the statutory checklist, and then the determination that the project has converted to exempt all in your environmental review record.

And that's going to be a subject of a future webinar as well, where we'll go into detail on implementing the Part 58 regulation.

Okay. And that's all we have for questions for now. If you want to submit any further questions, you can do so at this time. We'll give it a minutes. As a reminder, you can submit questions through the question-and-answer box on the left-hand side of your screen.

And we have one question for Therese." Who are the political bedfellows that came together to help the Act get passed with NEPA?"

Well it was President Nixon who signed it into law. The actual authors of the Act, I do not have the names at my fingertips. I apologize. I could certainly get back to you on that.

Okay. Thank you. Last chance for questions. Okay. I'll turn it back over to John.

Okay, great. Thank you very much, Therese and Martha and Kathryn. And thanks everyone, for taking the time to attend today's webinar.

Also, as mentioned, the slides and recording of this presentation will be available on the HUD CPD requirement website. The links are provided in the Q&A box on the left, and you can check the training page for updates as well. We will send you an e-mail notification once all these materials become available.

Please do complete the follow-up survey so we can get your thoughts for future webinar, and, again, we greatly appreciate your participation in those surveys. And, please join us next Wednesday, September 26th, for the next webinar in this series titled "Applying HUD's Floodplain Management and Wetlands

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Protection Standards.” The registration link is in the web links box, And once again, on behalf of the Office of Community Planning and Development, thank you, and enjoy the rest of your day.