NEPA's Ambiguous Purpose and Need

Writing an accurate and useful Chapter 1: Purpose and Need has been and continues to be a challenge. For over 25 years, National Environmental Policy Act (NEPA) practitioners have wrestled with the role of this ambiguous chapter. The resulting versions of Chapter 1 have often been too vague to be useful or obviously biased justifications of the proposed action.

The following five suggestions include techniques for making Chapter 1 if not easy to write, at least an understandable conceptual framework for a NEPA analysis.

Suggestions for Writing Chapter 1: Purpose and Need

1. **Profile major needs by describing existing conditions that need to be changed.**

2. **List major objectives (the purpose) for each need identified in suggestion 1.**

3. **Link each objective to a source, especially any federal laws or regulations.**

4. **Focus listed objectives on achievable tasks and choose one or more indicators for measuring achievements.**

5. **Link all analysis steps and the final agency decision to both achievement of objectives and the resolution of resource issues.**

The purpose and need information should be logically traceable through each chapter of an EIS or EA. Similarly, the purpose and need should be the credible basis for the decision recorded in a Record of Decision or a Finding of No Significant Impact. A convincing decision document should explain clearly, with reference to the Purpose and Need, why the agency is choosing one alternative as opposed to the others analyzed.

Such conceptual tracking from the Purpose and Need in Chapter 1 to the agency's decision is rarely present. From my personal review of many EAs and EISs, I would argue that the Purpose and Need information often vanishes after Chapter 1. It is rarely mentioned in later chapters, and if mentioned, the text is a bald assertion that a certain analysis detail is consistent with the Purpose and Need. Proof of the assertion is usually missing.

1. Profile major needs by describing existing conditions that need to be changed.

In simplest terms, why does the agency need to do something? This question is a variant of the common-sense questions— Why here? and Why now?

The agency's list of needs should identify any resource conditions that are undesirable and thus need changing. Some needs, of course, reflect an agency's responsibility for issuing a permit. In permit situations, the agency's need is a legal responsibility, which may or may not link to resource conditions that need changing.

Text describing the agency's identified need or needs should be simple and clear. Lay readers (including a judge) should be able to review the listed needs and conclude that the agency has a credible rationale for proposing actions in the project area. Such a description of needs should not become a biased justification for the agency's proposed action. At the same time, readers of an EIS or EA should see clearly why the agency is proposing actions in the project area.

The usefulness of the stated need is probably why the CEQ Regulations speaks in Section 1502.10 of the "purpose of and need for action." A clearly expressed need for action goes back to resource conditions that merit agency actions of some kind or degree. And as I note below, legal or regulatory requirements often link to project needs and the agency's associated purpose (objectives).

The following need descriptions are samples of the sort of information that should appear in adequate versions of Chapter 1: Purpose and Need. (These samples are not from actual projects, but they are indirectly based on many typical proposed actions.)

1. A mile of State Route 188, including the Shoal Creek Bridge, has washed out. Travel from West Fork to Hard Times is now impossible without a lengthy detour. The State Department of Transportation has a proposed action ready for analysis. Project funding will include both State funds and Federal Highway Administration funds.

2. For over three decades, no wildfire has burned through Cottonwood Canyon. Trees have grown into dense stands, and bushes and seedlings have filled in under mature trees. Up to 20 percent of the mature trees are now dead from beetles and many have fallen over. Much of the underbrush is dry and highly flammable. BLM studies show that some 4500 acres are at high risk from a catastrophic wildfire.

   A wildfire, from lightning or from human carelessness, could move rapidly up Cottonwood

Canyon. Fire fighters would have difficulty fighting the fire because of the steep terrain. Nearby houses and many summer cabins would be at high risk in the event of a wildfire.

Land ownership of Cottonwood Canyon breaks down as follows: BLM land (35 percent), state land (15 percent), county land (5 percent), and private land (45 percent).

3. The Dead Moose Campground and its Forest Service facilities are often filled to capacity. During July and August there are long waiting lists for campsites every weekend. Calls about reservations begin in early spring and continue throughout the camping season. Full 100 percent use is damaging campground resources faster than they can be repaired or replaced. Campers often have to wait up to 30 minutes to get into the campground toilets. Boaters often have to wait for up to an hour to launch boats.

4. Congress has passed a law authorizing and funding a 20 percent increase in soldiers taking Army basic training at Camp Crowder in Missouri. Current training levels reflect some 300 recruits entering basic training each month or an overall camp census of between 3100 and 3400 troops being trained at any one time. Camp data show that current camp facilities, including barracks, are operating at nearly 100 percent capacity. The new recruits would require new barracks, new training rooms, and expanded field facilities (including a new weapons firing range).

5. A Department of Energy weapons testing facility in Carlsbad, New Mexico has recently had an audit of its security procedures by the DOE Inspector General and by the Department of Homeland Security. The audit found that security procedures needed updating, but even more important, the audit identified several problems with the perimeter fencing (a double fence with three entrance gates) and with the electronic monitors. In several places around the site, the monitors fail to provide adequate warning of anyone approaching the fence. The fence itself is nearly 30 years old and does not meet current security specifications. Footings for the fence are also much too shallow to provide protection in the event someone attempts to breach the fence.

6. Edward X. Murphy has submitted a renewal application for a guide permit to use two backcountry areas in the Blackwater National Forest. The application is consistent with the Blackwater Land Management Plan (an associated EIS) and with Forest Service policies dealing with outfitter guides.

Murphy has over 10 years of experience as a guide, and his guide business is a qualified applicant for permit renewal. He asks for access to the two areas, including associated trails and three existing primitive camping areas. His application is for a maximum of 8 clients and 3 guides at one time, with trips lasting from 3 to 7 days. His clients are primarily hunters. Murphy states that he wants to guide groups from May 1 until mid October.

Note: As in the preceding instance, permit requests usually signal two parallel needs. The permittee's need is to conduct some sort of business on or across federal land (or other actions requiring a federal decision). The federal agency has a legal or regulatory need to process the permittee's request following its own agency processes.

Notice also in the Murphy example that the agency's objective might not be easily measurable. But Murphy's objective(s) likely would be. So Murphy's objectives would be the preferred tool for designing and analyzing different alternatives.

2. List major objectives (the purpose) for each need identified in suggestion 1.

The word "purpose" in Section 1502.13 of the CEQ Regulations overlaps with the agency's need (as defined and illustrated above). In common language, we often say that we "need to decrease sediment in Big Sugar Creek." Notice that the action of decreasing sediment is equated with a need." As in this example, the actual need (only implied) is that Big Sugar Creek currently has too much sediment, perhaps even exceeding state standards for allowable sediment.

This common phrasing ("need to decrease sediment") includes the aim or intended result—to decrease sediment. It is this aim or result that leads to the recommendation that the stated Purpose and Need contain a clear list of objectives (or goals).

The common phrasing for an objective is to begin with an action verb and to state what the action should achieve. In most cases, the action or actions are measurable, so a well-designed objective includes ways for its progress to be measured.

Primary Objectives for the Above Needs (in Suggestion 1)

1. To repair State Road 188 so that it is a safe and efficient route from West Fork to Hard Times for the projected numbers of vehicles that daily travel the route.

2. To decrease combustible fuels (dead and down trees and underbrush) on up to 4500 high-risk acres in and near Cottonwood Canyon so that a catastrophic wildfire is less likely.

3. To decrease crowding and resource damage at the Dead Moose Campground during the peak summer months.

4. To provide adequate training facilities and all supporting facilities for a projected 20 percent increase in individuals going through basic training at Camp Crowder.

5. To increase the security features of the perimeter fence, consistent with the latest DOE security specifications.

6. To process Murphy's application in a timely manner, identifying any permit conditions necessary for safe and legal operation of Murphy's proposed guide activities.

Murphy's purpose would also be relevant:

> To obtain a valid guide permit for up to 8 clients and 3 guides at one time, with trips lasting from 3 to 7 days (from May 1 to mid October annually).
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> Note: As in example 6, the clearest way to list objectives would be to distinguish between the agency's objectives (with a focus on its legal and regulatory responsibilities) and the applicant's objectives (often reflecting personal or business objectives).

The preceding six objectives parallel the six needs under Suggestion 1. Such parallelism is almost always true. After all, in following suggestion 1, an agency's needs should focus on a problem or a condition that needs changing or perhaps an external request (as in need 6). Then in suggestion 2, the agency frames an objective that shows how it proposes to address the stated problem, condition, or request.

Achieving the objective (in whole or part) should move the project area toward a desired condition, thus addressing the stated agency need(s). In the case of an external applicant, the resources affected should continue to be legally useful and productive despite whatever actions are included in the permit.

The preceding six objectives are only one of several objectives for each of the six stated needs under suggestion 1. For example in the Cottonwood Canyon example, the BLM would find it useful to identify several other objectives:

- **To improve roads and trails in Cottonwood Canyon so that fire fighters have safe and efficient access to the area in the event of a wildfire.**

- **To educate (and to fund) non-federal landowners as to actions they should take to lessen the risk of a catastrophic wildfire.**

3. Link each objective to a source, especially any federal laws or regulations.

Text under the Purpose and Need should always link an agency's potential actions to relevant laws or regulations. Such references are important because they help an agency make a credible case that good reasons exist for the agency to propose actions within a project area.

Cited references properly include and distinguish between NEPA documents (and associated decisions) and other non-NEPA laws or regulations.

Prior NEPA documents and their associated decisions are legally binding on an agency. Such prior references illustrate what the CEQ Regulations call "tiering." Tiering means that the agency has already analyzed the project area or the resource conditions in a prior NEPA document. Signed decisions made in this prior document are binding on an agency unless the agency chooses to revisit the original decision by preparing a supplementary NEPA analysis.

Non-NEPA laws or regulations will also be binding on an agency, but they have a different legal and conceptual purpose than under tiering (as discussed in the preceding paragraph). Agencies, for example, are expected to comply with all applicable laws, but the text of such laws is rarely very specific as to a certain area or specific resource. Compliance would require that the agency explain how relevant and binding the referenced law or regulations actually is. For example, the Endangered Species Act is mandatory, but an agency necessarily has to establish first that suitable habitat or listed species exist in the project area before the ESA applies to a specific project.

4. Focus listed objectives on achievable tasks and choose one or more indicators for measuring achievements.

Objectives should be measurable. As in the Cottonwood Canyon objectives, measurements could include (1) the number of acres of land with dead or dying trees removed and underbrush removed, (2) miles of roads and trails improved, and (3) funding levels for education and matching grants designed to help non-Federal landowners lower the risk of wildfire.

Measurements are important because they allow the agency to measure different levels of success (as in several different alternatives). Notice also that reasonable alternatives (that is, those that are feasible to implement) should achieve the stated objectives, either totally or in large part.

NEPA practitioners will often find that they need to revise initial objectives in order to make them measurable and thus useful throughout the entire NEPA analysis process. The necessity for measuring an agency's actions is why objectives like the following one are not useful:

--To comply with the National Fire Plan.

This objective is legally accurate, but it is too broad to be useful in framing or assessing alternatives. In addition, this objective, as phrased, does not allow for numerical measurements of the degree of compliance. After all, full compliance might mean compliance with dozens of goals and recommendations. About the only way to measure compliance might be with inexact, general trend descriptions: minor compliance, moderate compliance, full compliance. Such trend descriptions naturally require careful explanations as to their exact meanings.

The National Fire Plan (at least, the version I saw a couple of years ago) had nearly two pages of proposed goals and activities. These goals, which can be very project specific, would be the basis for any number of site-specific project objectives, such as the two additional objectives as given above for the Cottonwood Canyon project. Specific objectives are measurable, and they allow an agency to distinguish clearly between several similar action alternatives.

5. **Link all analysis steps and the final agency decision to both achievement of objectives and the resolution of resource issues.**

Each chapter in an EIS or an EA should link directly to the Purpose and Need in Chapter 1. Similarly, the agency's written decision should also link to the Purpose and Need.

Chapter 1 refers to the Purpose and Need in both the list of prior NEPA analyses and the major issues. Prior NEPA analyses, as recorded in signed decision documents, usually describe and forecast future resource conditions. These future conditions often generate resource objectives (the purpose) in the current NEPA analysis.

Major issues in Chapter 1 often overlap or expand on the stated project objectives (the purpose). For example, a road improvement project might have an objective such as this:
To provide safe and efficient road travel between points A and B. Then in the resource discussion, impacts on user safety and satisfaction might be one impact topic for discussion.

Chapter 2 refers to the Purpose and Need in its description of the alternatives, both those analyzed and those eliminated from detailed analysis. All action alternatives (including specific mitigation measures) should achieve in varying degrees the stated project objectives (from Chapter 1). Alternatives eliminated include those that fail to achieve one or more objectives (as stated in Chapter 1).

At the end of Chapter 2, agencies commonly display how the alternatives address the various issues (best viewed as impact topics of concern). Most EISs and EAs contain a matrix with issue topics listed on one axis and with alternatives analyzed on the other axis. Project objectives should appear on the issue axis when an issue and an objective overlap.

Chapter 3 refers to the Purpose and Need when the existing conditions of a resource are described as being undesirable. Such undesirable conditions are described in suggestion 1 above as the typical source of one or more project needs. Not every resource problem equals a major project need. For example, if a proposed action were focusing on the control of wildfires, the major project objectives would be fire related. But other resources, such as wildlife, might profit from having a more open stand of trees (thus satisfying a minor resource objective for wildlife).

Chapter 4 refers to the Purpose and Need in its descriptions of potential resource impacts. These impacts are really a description of the desired conditions (usually linked to one or more stated project objectives).

Agency decision documents should always have clear references back to the Purpose and Need. Both a Record of Decision (ROD) and a Finding of No Significant Impact (FONSI) properly explain why the agency is choosing a single alternative. The clearest way to organize this rationale should begin with the Purpose and Need, as framed in Chapter 1 of an EIS (for a ROD) or of an EA (for a FONSI).

This decision rationale properly appears even if an EIS or EA has only single action alternatives. In such an instance, the discussion should show exactly why the no action alternative fails to meet the Purpose and Need.

Conclusion: A Challenge

Test the preceding suggestions for drafting a clear and logical Purpose and Need chapter. Use either draft text for upcoming project or, optionally, pull a finished EIS or EA out of agency files.

Ask the following questions:

- Do the agency's stated need or needs provide a clear and credible basis for going ahead with some type or degree of proposed action?

- Are objectives clearly listed and do they help frame the alternatives analyzed, thus helping readers to choose between competing alternatives?

- Does the written purpose and need information clearly support each subsequent step in the NEPA analysis and in the final agency decision document?

A conclusive yes for all three questions says that you have an accurate and useful version of the NEPA's Purpose and Need.