

Range of Reasonable Alternatives

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Agencies routinely ask NEPA practitioners to analyze a “range of reasonable alternatives.” Relevant legal guidance focuses on the purpose and need for a proposed action, with the suggestion that the purpose and need should not be too narrow nor too broad. A too narrow purpose and need limits alternatives to the agency’s proposed action. A very broad one creates unnecessary alternatives.

Much agency folklore exists about the required number of alternatives. This folklore usually is that an adequate range contains at least two or three action alternatives, plus the no action alternative. Little guidance exists as to how to develop the magic number of alternatives. The result is that NEPA practitioners occasionally struggle to create reasonable alternatives to a single well-designed action alternative.

Instead of folklore about a magic number of alternatives, a better legal strategy would be for a NEPA practitioner to follow a structured process for identifying a “range of reasonable alternatives.” I describe such a structured process in this Shipley newsletter.

The following steps are ways for a NEPA practitioner to develop a written record about the range of alternatives. My recommendation is that NEPA teams document each of the following steps carefully.

The resulting EA or EIS would then summarize these steps in the traditional NEPA Chapter 2: Description of the Proposed Action and Alternatives. (Shipley Group recommends a standard outline for EISs and EAs. This outline appears in a core Shipley reference: *How to Write Quality EISs and EAs*, Third Edition. This outline is discussed in all Shipley NEPA workshops.)

A carefully written account of these process steps would help an agency justify a single action alternative in cases where a single alternative is the chosen analysis strategy. Such a condition exists when the purpose and need is properly narrow and when no scoping information leads to additional alternatives.

Here, then, are suggested steps for a structured process designed to develop a defensible range of alternatives.

- 1. Describe the proposed action, along with all connected actions and likely mitigations.**
- 2. Include measurable objectives in the agency’s purpose and need for the proposed action.**
- 3. Identify options or ranges of actions for each activity within the proposed action and connected actions.**
- 4. Prioritize the options, based on scoping information about impacts of concern and about suggested alternatives.**

5. **Develop a list of alternatives to be considered that reflect the range of actions from steps 2 and 3.**
6. **Prepare a written rationale for your belief that your listed alternatives from step 4 represent a “range of reasonable alternatives.”**

The following text expands on the preceding list of steps. Actual steps naturally vary depending on the specifics of a proposed action. Such variations are why the development of alternatives is a creative process, not rote repetition.

1. Describe the proposed action, along with all connected actions and likely mitigations.

NEPA practitioners and their managers should describe the full proposed action early in the analysis process. This description should be as detailed as possible, with a list of all project activities likely to be relevant. Shipley Group consultants recommend that a written Project Initiation Letter/Memo record such project activities. *See Shipley Group newsletter 65 (April 2009) for more discussion of the role of the Project Initiation Letter.* Shipley newsletters are available on the Shipley website: <http://www.shipleygroup.com/environmental/index.html?pg=news>

As an example of a proposed action, an agency’s proposal to renovate an existing building would include the following:

- The complete design of the “new” building
- An upgraded/replaced access road to the building
- An expanded/upgraded utility corridor for the building
- An upgraded/repaved parking lot
- Modified intersections nearby, assuming sufficient traffic

The description would also include any connected actions. For example, if tenants of the new building exceeded the number needing to use the building’s parking lot, then overflow parking might be necessary elsewhere. Perhaps a shuttle bus system would also be necessary. Similarly, if new building activities required an extensive warehouse, then additional structures might be necessary. Such structures might require a physical connection with the original building under renovation.

So, to repeat, the description of the proposed action would have to be comprehensive. In terms of the CEQ Regulations, Section 1508.25(a)(1), some of the associated actions would likely be connected actions. A connected action is one triggered by and dependent on another action. In this hypothetical example, the renovation of single building might trigger several connected actions.

2. Include measurable objectives in the agency's purpose and need for the proposed action.

Remember that concurrent with the proposed action, as discussed in step 1, an agency should have identified a project purpose and need. From the Shipley Group perspective, this stated purpose and need would include a well-defined list of measurable objectives. Then any reasonable action alternative for this proposed action would be one that best achieves the agency's stated objectives.

The Shipley Group newsletter 51 (June 2006) discusses and illustrates the role of objectives as a major source of the purpose and need statement in an EIS or EA.

One objective for the building project mentioned in step 1 might focus on the number of building tenants:

- 1. To provide office space of XXX square feet per person for up to 55 building tenants. Indicator: Average square feet per person (Source: GSA standard for office space)**

Another objective might be to minimize utility costs:

- 2. To provide power, water, and sewer service with the lowest per person cost while meeting current governmental utility standards. (Source: DOE energy recommendations and the parallel GSA standards)**

Then a third objective might be reflect design requirements for historic properties:

- 3. To design a renovated building consistent with both the existing historic building as well as nearby historic buildings in the established historic district. (Source: Building architectural standards meeting the design standards and consultation requirements under the National Historic Preservation Act)**

Note that all of these objectives allow for several action alternatives. Also, the preceding three objectives are specific to the project under discussion. So this list of project objectives avoids non-specific, useless objectives like this fourth one:

- 4. To renovate the building while complying with all applicable Federal laws and associated regulations.**

Remember that a reasonable action alternative would have to meet or approach full compliance with all project-specific objectives. The following paragraphs discuss why each objective is or is not useful for a NEPA analysis.

Objective 1 is framed with the "up to 55 building tenants" requirement. If the current tenants numbered only 40, then the 55 target number (based on estimates of future staffing needs) would allow for projected growth over the next decade or even longer. So agency planners could

measure the current conditions, as reflected in the impacts of the no action alternative, against several different staffing levels from 55 down to 45 or even 40. As an option, planners might suggest analysis of an alternative that projected up to 75 employees so that they had a NEPA analysis on the shelf to address unexpected future scenarios.

Objective 2 is framed so that agency planners can consider, as appropriate, different corridors for the utility lines as well as different power and water/sewer requirements (linked to the projected number of building tenants). Some agencies prefer to keep such budget considerations separate from the basic NEPA analysis. The test would be whether the stated budget objective affected different design choices in one or more the action alternatives. If it did, then it is a useful objective for a NEPA analysis and for the agency's purpose and need statement.

Objective 3 would similarly allow several different responses. All implementable/reasonable action alternatives would have to meet the design standards (or design mitigations), but costs might vary between different designs that met this objective. Such variations might be driven by comments from different publics interested in preserving the integrity of the historic district. Also, the affected State Historic Preservation Office would be a necessary partner in working on an acceptable design. Note that this key project objective links to different levels of potential impacts on valuable cultural/historic resources. Such links between a purpose-and-need objective and resource impacts are common. Many traditional impact analyses routinely identified resource objectives/goals.

Objective 4 is true but worthless. It is not project-specific; nor is it measurable. A legitimate project objective is specific enough that it triggers measurable differences between the action alternatives. A blanket statement about compliance with all laws and regulations would not create a legitimate objective. A basic tenet of NEPA is that it excludes illegal alternatives from routine analysis. After all, an alternative that planned for a violation of Federal law would be impossible for an agency to choose.

3. Identify options or ranges of actions for each activity within the proposed action and connected actions.

Review the actions proposed above in step 1 relating to the renovation of the building. Notice that each of them potentially includes a number of options or separate choices.

For example, in designing the building, the design might add one or more floors. Or optionally, the footprint on the site might change if the design needed to expand the floor space extensively, retaining only existing floors. Other design options would include architectural options, such as Spanish-revival features or neo-contemporary features. So a NEPA team addressing the redesign of the building would need to summarize its approach to all of the many options.

Note that many options might automatically be excluded, given the project objectives, as described in step 2. The NEPA team would need to document design options eliminated as well as those options fully analyzed/considered during the NEPA process.

As a second example, assume that the building's current utility corridor had no environmental problems (no hazardous waste site, no raptor nest, and no known cultural site). So, the simplest option might be to retain the existing corridor, merely installing upgraded electrical lines and new water and sewer lines. In this example, corridor options would not be necessary because the existing corridor (with its existing ground disturbance) would be the only option under analysis. So in this example, the agency could state that decisions about the utility corridor would not represent a range, based on the existing site conditions. Some considerations of range might be possible if different levels of electrical service were to be addressed.

As the preceding discussion illustrates, the intent of step 3 is to capture the many decisions that lead the agency to identify what alternatives to analyze in a final EA or EIS.

4. Prioritize the options (from step 3), based on scoping information about impacts of concern and about suggested alternatives.

Step 4 is usually concurrent with step 3.

An agency must consider two key types of scoping information coming from interested and affected parties. These includes other Federal, state, or local agencies, Native American tribes, and both public groups and individual citizens.

Under routine NEPA scoping and public involvement, these groups potentially comment on the following:

- Any environmental impacts that concern them
- Any alternatives that they either support or reject

A single example of how important such comments might be comes from consultation with a States Historic Preservation Office. Such an office might object, for example, to Spanish revival architecture as inconsistent with other historic properties nearby. These projected impacts, under the National Historic Preservation Act, would become a necessary constraint on any design decisions about the hypothetical building project.

In a similar way, scoping comments suggesting an alternative may well force an agency to analyze an unanticipated alternative. Such suggested alternatives must be addressed in writing, even if the agency decides, perhaps based on the project objectives, that an alternative is not a reasonable one for further analysis. For example, one suggested alternative might be to expand another nearby building and leave the historic building unchanged. Such a suggestion would generate a new range of alternatives and, quite likely, a new purpose and need.

So NEPA practitioners should be tracking (in writing) all scoping comments as they develop a list of alternatives to be considered. And their written comments should clearly explain why they are rejecting suggestions made in scoping comments.

5. Develop a short list of alternatives to be considered that reflect the range of actions from steps 3 and 4.

Each reasonable alternative appropriate for NEPA analysis should be an implementable package of actions. So in terms of the hypothetical building project, each action alternative would include a building design, a proposed access road, adequate parking space, a proposed utility corridor, and so on.

For most projects, agencies should limit analyzed action alternatives to no more than three or four, plus the no action alternative.

Only for very complex projects would analyzed alternatives, including no action, approach or enter double digits. This suggestion is why the objectives from step 2 above are so important. Properly framed objectives should limit action alternatives to those that match an agency's actual purpose and need. Remember that all reasonable action alternatives meet or approach the activity levels in the stated objectives.

Agencies should also avoid NEPA analyses of separate sub-options (often inaccurately called alternatives). For example the analysis of the building renovation would not have a list of separate alternatives for the utility corridor. Instead, utility corridor options would be included in one or more of the comprehensive action alternatives. A separate analysis of utility corridors would be appropriate in the early pre-NEPA decision making. Such decisions are the subject of steps 1 through 4 above. Be sure to record all such early decisions.

Similarly, valid resource mitigations are best tracked when attached to one or more of the action alternatives. Such mitigations, approved by agency managers for inclusion in the analysis, should be analyzed along with other project actions so that the estimated effects of each alternative accurately capture residual effects (that is, the effects that would remain after all actions and all mitigations have been implemented).

6. Prepare a written rationale for your belief that your listed alternatives from step 5 represent a "range of reasonable alternatives."

NEPA teams should prepare a written rationale for their belief that their chosen alternatives, as listed in step 5, represent a "range of reasonable alternatives." This rationale is best viewed as a list of persuasive reasons, with careful reference to the analysis file/administration record. As with other NEPA content essentials, such as an impact conclusion, this rationale needs to be supported by clear and credible evidence.

What are the some of the possible reasons supporting this rationale? The following are some sources for possible reasons.

1. **Return to the list of actions within the proposed action (Step 1 above)** . For each listed action you should know what options were available and discussed. Record and discuss the options.

Your goal is to show that the team was considering a range of options. For some actions, very few options likely existed. For example, if the current access road to the hypothetical building is adequate, then no range of options would exist for the access road. Or conversely, if you decided that you needed to analyze a second utility corridor based on problems with the existing corridor, then this option would expand your range of alternatives appropriately.

2. **Check the objectives in your purpose and need (Steps 2 and 3 above).** Most objectives will likely allow a range of possible actions. These ranges need to be discussed as further proof that your NEPA team was not ignoring reasonable alternatives (ones that achieve the written objectives).
3. **Summarize, as relevant, information from scoping (Step 4 above).** In this summary, highlight decisions your team made regarding possible alternatives and potential mitigations that link to different alternatives. This information should further prove that your team was open to different alternatives, especially any that the public suggested.
4. **Check to see that in the preceding three suggestions you have not overlooked another reason why your list of alternatives represents a “range of reasonable alternative.”** As appropriate, add any overlooked reasons to your legal rationale.
5. **Record your rationale/reasons in Section 2.4 of Chapter 2 in your EA or EIS.** This section number is the one that appears in Shipley Group’s suggested NEPA outline. Your section number will likely be different. Also, if your rationale is extensive, include your entire rationale in an appendix, with a summary of reasons retained for Chapter 2.

Remember not to be silent about the reasons for considering some alternatives and ignoring others. Silence is a gift to a possible plaintiff. So plan for and provide even a brief rationale about your range of alternatives. Such a discussion is especially important if your EA or EIS includes only a single action alternative. A single action alternative is a risky agency choice, especially if you determine that your EA or EIS is likely to be a high-risk and controversial document.