In: "Trail Blazer," Issue One, January, 2004, pages 7-8, 16.

"NEPA is often said to be the Magna Carta of the environmental movement... Most NEPA issues that will affect trail riders will be on federally managed lands. However, non-federal actions can also be affected by NEPA if such actions require a federal permit or require project-specific federal funding."

Dr. Gene Wood in his explanation of the National Environmental Policy Act.

Trails 101: NEPA and The Equestrian Trail Rider

(Ever wonder just what occurred that resulted in the closure of your favorite horse trail? In our ongoing endeavor to help bring useful information to trail riding groups regarding the way the United States bureaucratic system works, we are presenting Dr. Gene Wood's explanation of the National Environmental Policy Act. It is critical that the individual recreational trail advocate, along with trails organizations, begin to understand just what they are dealing with when attempting to lobby and press for fair treatment on our public lands.)

CLEMSON, S. Carolina – As Trail horsemen become more Involved in decision-making on federal lands, they ere increasingly confronted with the acronym "NEPA." The National Environmental Policy Act of 1969 (NEPA) applies to any federal action that may affect the quality of the human environment. Even if the effect of any such action is anticipated to improve the environment, such as replacing a poorly designed trail with a better one, the appropriate aspects of NEPA absolutely must be addressed. Such an address is highly expensive and very time consuming, but federal agencies have no alternative.

The fundamental purpose of NEPA is to prevent the federal government from participating in any action that might degrade the human environment. Each federal agency is responsible to itself to address the mandates of NEPA. The Council on Environmental Quality (CEQ), which is responsible directly to the President, gives guidance to the agencies on how to meet the mandates, and provides oversight on agency accomplishments in these endeavors. Much of the NEPA interpretation has been shaped by court opinion. Any citizen or citizen's organization can bring suit against a federal agency for not, In the litigants opinion, having adequately addressed the mandates of NEPA. This Act is the foremost battle weapon of environmental organizations opposing federal activities.

NEPA is often said to be the Magna Carta of the environmental movement. It came to be that both by circumstance and by design. Rachel Carson's book *Silent Spring*, published in 1962, was to the environmental movement what a match can be to an open powder keg. Carson's book documented federal complicity in allowing the use of pesticides aimed at pests that harmed humans and their agriculture. However, these chemicals were clearly shown to have secondary effects that were unforeseen and unintended.

By the end of the 1960s, the nation' was bogged down in a war that it could not win. The Congress and the administration were searching for something that they could do right. Assuming a strongly offensive posture in addressing the needs to clean up and protect the environment had to be a good thing and the right thing to do. So in 1969, along with about 2000 other pieces of environmental legislation, NEPA was considered by the U.S. Congress. It was signed into law by President Richard M. Nixon on January I, 1970.

NEPA is triggered by any federal proposal that may affect the human environment. The consideration of effects is limited to impacts on the biological and physical aspects of the environment When the agency prepares to develop a proposal for action, such as build a new trail, it must immediately conduct the process of scoping.

In the scoping process, the agency informs the citizenry and other agencies that may be affected or that may have some jurisdiction over various aspects of the project, such as state and federal agencies that may need to give approval to some action that may affect water quality as protected under the Clean Water Act, of its intentions. All affected federal agencies are required by law to respond to the scoping letter. Only citizens that have specifically requested to be on mailing lists of the local agency's office, such, as a District Ranger's or Forest Supervisor's office, will receive the scoping letter. However, if they are on that mailing list, NEPA requires that agency to send them the scoping letter. Where matters such as clean air, clean water, and rare and endangered species are concerned, the agency preparing a proposal must also begin consultation processes with the agencies that have regulatory authority over such resources. I

The scoping letter describes the need for and intent of the project, its location, and the time frame in which it should be accomplished. It also describes the preliminarily anticipated environmental consequences. The letter requests input from the recipients that should be considered in the development and analysis of the proposal.

Following the scoping process, the agency may or may not conduct an Environmental Assessment (EA). If the agency already knows that the project is one that will require the development of an Environmental Impact Statement (EIS), the EA will be bypassed. The fundamental purpose of an EA is to determine the need for an EIS. With 34 years of experience with the Act, the agencies have become very good at anticipating when an EA will suffice, and when to move directly to the EIS process. If an EA is conducted, the agency anticipates a Finding of No Significant Impact (FONSI). The finding of the EA must be published in the Federal Register (FR), the official written notice of the federal government telling the citizens that it intends to do. However, such a finding can be appealed through the appropriate administrative channels and ultimately litigated by persons opposing the project.

In the language of NEPA, any "major action that significantly affects the human environment" will require the preparation of an EIS. "Major action" has to do with context. Major action may be in the context of geographical area, or it may be in the context of a single resource, such as water or a species in an area. "Significantly affects" means the intensity of the effect. Even if the action is going to be beneficial, it must be definitively addressed.

When an agency is preparing to develop an EIS, it must file a Notice of Intent (NOI) to do such. It informs all declared interested parties (those on the mailing list), appropriate federal and non-federal agencies, and publishes the notice in the Federal Register.

In consideration of effects, the agency must deal with the issue of cumulative effects. These are effects that at the individual project level may be minor, but that may be additive when considered in the context of the impacts of other projects conducted either in the past, or are currently active, or that might be anticipated for the future.

The EIS is the heart of NEPA. It is referred to as an "action forcing" provision that causes every federal agency to justify to itself, the citizenry, and, if necessary, to the courts why it should be allowed to implement a proposed project. The EIS document has five major parts that must be definitively addressed:

1. Anticipated environmental impacts of the project.
2. Adverse unavoidable impacts and how such impacts will be mitigated.
3. Reasonable alternatives to the proposal.
4. Relationship between uses of the environment by this project and the maintenance and enhancement of biological productivity in the affected environment.
5. All irreversible or irretrievable commitments of the resources to this project.

It is not unusual for the preparation of the first draft of an EIS to take several years and require many man-years of effort. The first product is referred to as the Draft Environmental Impact Statement (DEIS). The DEIS must be published in hard copy for review by any agency, federal and non-federal, or citizen to review. Copies must be supplied upon request. In today's world, the document is also normally published on the agency's website from which it can be downloaded by anyone.

The agency must then advertise for public comment

in writing and conduct public hearings in the vicinity of the proposed project. The agency is also required to respond to those comments.

Typically, the EIS is redrafted at least once, sometimes more, depending upon level of opposition to the project. Assuming that the process is carried to completion, a Final Environmental Impact Statement (FEIS) is produced. The FEIS is what the agency is convinced it should do and intends to do. It must be published in the Federal Register. It can be administratively appealed.

At some administrative level, which varies among agencies, a Record of Decision (ROD) is developed and published, including in the Federal Register If the ROD is not litigated, the agency will proceed with the project. If it is litigated and the agency loses in court, the court will tell the agency to go back to the drawing board and start over. Even the judicial process itself can involve a stream of appeals. Often the agency gives up, or simply gives in to the complaints of the litigants.

Most NEPA issues that will affect trail riders will be on Federally managed lands. However, non-federal actions can also be affected by NEPA if such actions require a Federal permit or require project-specific federal funding. While in such cases it is the responsibility of the appropriate permitting or funding agency to respond to NEPA, the non-federal entity is told that if it wants the process done in a timely manner, it should prepare all documents, and the agency will approve them if they are acceptable.

Should anyone wonder why federal projects take so long between the initial idea and implementation? Should anyone wonder why the USDA Forest Service spends 40% of the National Forest budget on planning processes? Should anyone wonder why NEPA is the main club used to force federal agencies to abandon projects, or sometimes just not propose them, even if, from an environmental standpoint, it is the right thing to do – such as a major trail realignment project?

Dr. Wood is a Professor in the Department of Forestry and Natural Resources and Extension Trails Specialist at Clemson University, Clemson, SC 29634. He can be reached at gwood@clemson.edu.