

## Compiling a Decision File for NEPA Reviews

The purpose of this document is to provide guidance for assembling a decision file for a categorical exclusion that requires documentation (CE), environmental assessment (EA), or environmental impact statement (EIS). Much of the information in this document is derived from the *Department of the Interior Standardized Guidance on Compiling a Decision File and an Administrative Record* (2006).

A “decision file” is a collection of documents that details the agency’s decision-making process and the basis for the agency’s decision. A decision file is not the same thing as an administrative record. “Administrative record” has a specific meaning under the Administrative Procedure Act: it is the record prepared after litigation is initiated. While an administrative record is generally drawn from the decision file, it does not necessarily include the entire decision file, and it is only prepared in the event of litigation. Because the decision file will form the basis for the administrative record that will be used to defend the National Park Service’s (NPS) decision if challenged in court, it is extremely important that a decision file is complete and well-organized.

A decision file should contain substantive documents and materials considered by the NPS during a NEPA review. This includes technical publications and references, meeting minutes, public comments, natural and cultural resource data, agency correspondence, and decision documents. A decision file should *not* include records that do not document the decision-making process, such as emails sent solely for the purpose of scheduling meetings, communications related to contracting, drafts of documents that only reflect minor grammatical edits, etc. In most cases there is no need to include copies of reasonably available sources of legal mandates, such as sections of the Code of Federal Regulations, the NPS Organic Act, NPS Management Policies, etc., although you may wish to include links to locations where such materials can be found, when appropriate.

It is much more efficient to compile a decision file as records are identified than it is to wait until after the NEPA process has concluded. Therefore, a decision file should be compiled as documents are generated or received during the NEPA process. Documents should be dated, assigned a file number and assigned category based on what type of document it is. An index should be created that will allow the files to be sorted chronologically and by category. This will create efficiencies in the event that it is necessary to create an administrative record (courts often require the NPS to submit an administrative record that is arranged chronologically) or to respond to a Freedom of Information Act (FOIA) request. Microsoft Excel and similar programs can be useful tools for maintaining an index. Some examples of common decision file document categories include:

Internal Correspondence: This category includes documentation of the internal deliberative process among members of the project team. It includes conference call notes, project team meeting notes and summaries, deliberative emails, telephone conversation records, and explanatory memos to the project file.

Public Involvement: This category contains documents related to public outreach, including documents related to public meetings. It includes sign-in cards, poster displays, presentation slides, mailing lists, newsletters, park press releases, and newspaper notices and articles on public meetings.

NEPA Document: This category includes EAs and EISs, including internal drafts and internal draft chapters that contain substantive changes. It can also include documentation that is prepared for CEs that require documentation.

Consultation and Coordination: This category includes correspondence documenting Endangered Species Act Section 7 consultation, National Historic Preservation Act Section 106 consultation, tribal consultation, and consultation and coordination with other local, state, or federal agencies.

Reference Materials: This category includes scientific papers, plans, reports, data, maps, photographs, news or magazine articles, and information that was considered during the planning process and cited in the plan. It includes data and information from websites as well as data and information generated internally by the project team.

Park Planning Documents: This category includes park planning documents considered during the planning process. Examples include previous EAs or EISs, Superintendent's Compendia, development plans, strategic plans, GMPs, etc.

Public Comment Analysis: This category includes comments received during all formal public comment periods during the planning process. It also may contain concern/response reports, comment analysis summaries/reports, and responses to comments.

In some cases, a decision file will contain documents or materials that include protected information, such as confidential communications between NPS staff and legal representatives at the Department of the Interior Office of the Solicitor. These “privileged” documents should be identified and properly labeled and categorized as such. In the event of litigation or a FOIA request, privileged documents may need to be redacted or removed from the record. Before doing so, you should discuss how to handle these types of records with your legal representative at the Office of the Solicitor.

### **Helpful Hints and Tips to Consider When Compiling a Decision File**

- Designate a particular individual to take the lead for compiling the decision file.
- Ensure that all documents have dates on them and that the appropriate date is entered into your index. For example, references such as journal articles should be arranged by their publication date. Websites should be stamped with the date that the information was downloaded or viewed, not the date that they were later printed or converted to a pdf. Emails should be arranged by the date they were sent or received, not the date they were printed or converted into a pdf format. You should insert the appropriate date into the file name and not rely on the date that an electronic document was last edited or downloaded.
- Do not include documents and materials that were created after the CE, FONSI, or ROD was signed, except for cases when a regulation is necessary before a decision can be implemented.
- Audit decision file documents periodically and remove duplicate documents or those that don't belong in the decision file.
- Ensure that all project team members provide documents and emails as they are created to avoid having to collect and enter a large amount of files at the end of the process.

- Do not include emails that do not contain substantive information documenting the agency decision-making process. If the sole purpose of an email is to transmit an attachment for inclusion into the decision file, the email does not need to be part of the decision file.
- Do not include uncirculated personal notes in the decision file.