

Collaboration's Role in NEPA Compliance

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Collaboration supports full compliance with the National Environmental Policy Act (NEPA). But NEPA practitioners have often ignored this potential link between collaboration and NEPA. Their view was that the routine NEPA scoping notices were an adequate substitute for effective collaboration with interested and affected parties.

Shipley Group consultants have also given less emphasis to collaboration than desirable. Our consultants often considered collaboration a benefit but not legally essential. After all, the primary mandate of NEPA is to disclose impacts, not develop collaborative relationships. Thus Shipley managers and I were surprised when several Shipley clients expressed interest in an overview session on NEPA collaboration. A quick Internet search showed that several federal agencies had offices working to encourage their employees to develop collaborative or partnership relationships. For example, the website for the Partnership Resource Center (PRC) at www.partnershipresourcecenter.org shows how the Forest Service encourages its employees to develop collaboration in its routine contacts with interested and affected constituents.

Collaboration complements NEPA compliance efforts because it would support an agency's assertion that it has made a good faith effort to discover and then to disclose all impacts. Such a good faith effort would be even more credible if any and all interested parties had been brought early into the NEPA process.

The following newsletter makes suggestions for including collaboration as a useful tool during NEPA analyses. These suggestions complement core Shipley Group principles. For example, a Shipley Group newsletter from October 2008 argues that transparency is a key NEPA goal. Transparency, as presented in that newsletter, is one way for an agency to begin to collaborate with all interested constituents. See the Shipley Group website at <http://www.shipleygroup.com/environmental/index.html?pg=news> for archive of past newsletters.

Here are some suggestions for integrating collaboration into NEPA analyses:

- 1. Expand routine scoping activities to develop a collaborative perspective on proposals of high interest to agency publics.**
- 2. Make collaboration a core process that substantively contributes to the agency's NEPA analyses of major proposals.**
- 3. Prepare a written collaboration plan for all EISs and major EAs.**

4. **Remind NEPA contributors that all agency actions and associated documents should reflect a collaborative perspective.**
5. **Monitor your unit's progress making collaboration a core activity in agency planning.**

The preceding suggestions would assist NEPA practitioners to comply fully with NEPA's legal mandates. Whenever possible, I expand below on each suggestion with a checklist of major points or questions for practitioners to use as they build collaboration into a NEPA analysis.

1. Expand routine scoping activities to develop a collaborative perspective on proposals of high interest to agency publics.

I begin with NEPA's mandated scoping activities because careful scoping is the key to NEPA compliance. If well done, scoping begins early, usually internally, and continues by involving all interested and affected groups and individuals.

NEPA practitioners, however, often take scoping for granted. They assume that their publics will have the same repetitive comments, so why bother with an updated newsletter or with a poorly attended scoping meeting? Such cynical views often result in scoping that is merely a routine legal notice to the public that such-and-such a project is under study. The written notice usually states that anyone interested in the project is free to visit the agency office to talk about their concerns. No wonder members of the public often say, "The agency has already made its decision. They aren't interested in my comments or concerns."

This approach to routine scoping, as just described, is not effective, and it is surely not collaboration.

Collaboration assumes cooperation and involvement, not just late-stage notification. Collaboration reflects the reality that NEPA analyses necessarily must adjust to the current political climate. Even a minor local proposal at an agency's field office is often of concern to local residents and to the local county or city governments. Scoping was originally intended to initiate contacts with all such concerned constituents (local, state, other federal agencies, tribes, private interest groups, and individual citizens).

Effective collaboration includes these same contacts because it assumes that these constituents have information of value and points of view that the federal agency should take into account. Effective collaboration invites constituents to assume a role in the development of an agency project during the ongoing NEPA analysis process.

Effective collaboration has these strengths:

- Interested constituents are involved early in the agency's project planning. The agency is still making planning and analysis decisions when they involve constituents. See suggestion 2 below for specific NEPA steps when collaboration would be desirable.
- Agency decision makers and NEPA practitioners take time to listen to all concerns and suggestions. And these concerns and suggestions have a measurable influence on the agency's planning decision.
- Collaboration begins with and includes any and all possible communication tools: website information, formal and informal meetings, field trips, frequent newsletter announcements, public hearings, and even one-on-one meetings over a constituent's fence gate.
- All participants in collaboration may not agree with the agency's final decisions about a project, but they should feel that they have had a role in the agency's decision processes.

See the Partnership Resource Center's website (mentioned above) for additional information on how to integrate collaboration into day-to-day agency planning.

2. Make collaboration a core process that substantively contributes to the agency's NEPA analyses of major proposals.

Collaboration could and probably should begin weeks or months before a specific agency proposal requires a NEPA analysis. Such early collaboration would signal to constituents that their early contributions were important. Early collaboration allows an agency to listen to different points of view well before making a project-specific decision to begin NEPA analysis. Potential political points of view are dealt with early, before an agency has to worry about project-specific details, which are often difficult to negotiate.

See the Montana collaboration example, as summarized at the end of this newsletter, for an instance where pre-NEPA collaboration occurred months before NEPA analyses began.

The following suggestions focus on NEPA-specific opportunities for collaboration. This focus is deliberate because NEPA practitioners are the main recipients of this Shipley newsletter. Such recipients are more likely to be interested in NEPA-specific suggestions, ones that would integrate collaboration suggestions into an ongoing NEPA analysis. So the suggestions discussed below do not reflect the early pre-NEPA collaboration activities that some agencies have found beneficial.

The NEPA analysis process has a number of key process decision points. NEPA practitioners might want to consider ways for their constituents to have a voice in such process decisions. Major analysis process decision points include the following:

- **An agency's purpose (listed objectives) and the need for a proposed action**
- **Possible impact topics/issues of concern**
- **Alternatives analyzed and alternatives rejected**
- **Possible mitigations, if desired**
- **Impact projections (appropriate detail and clear and valid methodologies)**

Most agencies routinely handle the preceding decision points internally. The results are then presented to constituents after the agency's decision maker has chosen the details and scope for the NEPA analysis. So the challenge from a collaboration perspective is to include constituents' information in each of these internal NEPA decision points. Early consideration of constituents' information signals that the agency is still open to different internal decisions about a proposal being analyzed.

Recommendation: Honestly solicit and consider constituents' information before making internal NEPA analysis decisions.

For example, an early scoping effort might include a scoping workshop/field trip that focuses on the possible agency purpose and need. As appropriate, interested constituents might be asked to frame different purpose and need statements for the agency to consider.

This example does not remove the agency's legal responsibility for eventually identifying and then stating the appropriate purpose and need. So here as elsewhere in the NEPA process, non-agency contributors do not violate the Federal Advisory Committee Act restrictions on outsiders inappropriately advising an agency. Any constituent's contributions to the NEPA analysis would be done in an open and unbiased manner consistent with NEPA scoping guidelines. For example, any scoping meetings would be open to all interested participants, and the results of meetings would be appropriately published for all interested parties to review. No group or single individual would have unfair access or unfair influence on the agency's internal processes.

Note: NEPA practitioners should always check with their agency legal counsels if any questions arise about possible violations of the Federal Advisory Committee Act.

3. Prepare a written collaboration plan for all EISs and major EAs.

This suggestion parallels the long-time Shipley advice that good NEPA project management begins with a written Project Initiation Memo. One recommended step in the writing of this memo is the preparation of a public involvement plan. This plan should include collaboration strategies. As noted in suggestion 2 above, constituents should be contributing to each internal NEPA analysis decision.

Note that emphasis on a written plan, including listed collaboration activities. Without a written plan, agency employees and their managers cannot track the integration of collaboration activities into routine NEPA analyses. Such collaboration strategies should apply both to public groups and individuals and to all potential lead and cooperating agencies.

The following text first discusses collaboration with public groups and individuals. Then it summarizes the role of collaboration when a lead agency has one or more cooperating agencies.

Collaboration with Public Groups and Individuals. Public groups and individuals are important because a NEPA process is inherently political. And as a political process, an agency's NEPA process should reflect ongoing involvement from interested and affected citizens (a hallmark of an effective democracy).

Here are some of the key questions agencies should ask as they plan for effective public collaboration during a projected NEPA analysis:

- **What public groups and individuals are likely to be interested in or affected by possible agency actions?**
- **How early in the NEPA process should such groups and individuals be brought into the agency's NEPA process? (See Suggestion 2 above for key NEPA decision points.)**
- **What communication tools should the agency use to get useful information from these groups and individuals?**
- **How will information from these groups or individuals directly affect the NEPA decision points (as listed above in Suggestion 2)?**

Collaboration with Lead and Cooperating Agencies. One planning option used by governmental agencies is a negotiated memorandum of agreement/memo of understanding with interested and affected parties. Such memos are especially desirable when a lead agency includes other governmental agencies as cooperating parties in its NEPA analyses. In 2005 the Bureau of Land Management (BLM) published A Desk Guide to Cooperating Agency Relationships. Section 4 of the Desk Guide (pp. 29-

32) covers written agreements between agencies. The BLM Desk Guide recommends careful preparation of such written agreements.

Such agreement memos between agencies are important, but often they are not substantive enough. As suggestion 2 above indicates, cooperating agencies could submit substantive NEPA information throughout a typical analysis process. For example, cooperating agencies can contribute to the lead agency's purpose and need. Somewhat later in the NEPA analysis process, they might help the lead agency identify a range of reasonable alternatives. Such substantive tasks should be recorded in the initial memo of agreement/understanding between the lead agency and all cooperating agencies.

Such written agreements would help guarantee substantive contributions from cooperating agencies. And such contributions, in turn, would begin to reflect ongoing collaboration, not late-stage review of written information and associated agency decisions. Too often late-stage reviews are an indication that true collaboration has not occurred.

Written agreements requiring collaboration do not lessen the lead agency's legal responsibility for all substantive information and decisions in the NEPA analysis process. After all, the NEPA process does not remove or lessen the lead agency's responsibility for decisions that achieve the agency's legal mission.

4. Remind NEPA contributors that all agency documents should reflect a collaborative perspective.

Effective documents are essential. And most importantly, such documents need a collaborative perspective.

Recommendation: Make each agency message (hard copy, email, text message, or minor trail signs) reflect the agency's collaborative approach to the NEPA process.

The following are some simple questions you and your colleagues should ask as you work to integrate constituents' viewpoints into your NEPA processes. The result will be agency documents that have a collaborative approach.

- 1. What are the individual's or the other agency's main concerns or worries about your proposed project?**
- 2. How do these concerns link to specific actions within the proposed project?**
- 3. How can we explain our proposed project so that the individual (or agency) better understands our goals and our approach?**

4. **What changes or adjustments can or should we make to our project or to our analysis of the potential impacts?**
5. **What technical terms or concepts related to our project need more down-to-earth explanations?**
6. **What additional information or actions would be appropriate for the individual or agency to contribute to our ongoing analysis effort?**
7. **How should we continue to communicate with these interested parties during the analysis process and before issuing a DEIS or EA for public review?**

These seven questions should remind NEPA contributors that their primary goal is to communicate effectively with collaborators. Technical information and impact analyses are valuable, but only if they tell readers clearly and credibly what the agency is doing.

A similar approach to dry, routine agency documents appears in a talk given by Associate Chief Sally Collins in June 2006 to a USDA Forest Service Partnership Coordinators' Meeting. Chief Collins argued for a new Forest Service vocabulary, with terms and concepts clear to lay readers. She noted that common Forest Service terms, like "precommercial thinning," did not clearly communicate proposed actions to lay readers. For copies of her talk, go to www.fs.fed.us/news/2006/speeches/06/collaboration.shtml . Chief Collins' speech is also interesting because she made a case for integrating collaboration into day-to-day Forest Service work.

5. Monitor your unit's progress making collaboration a core activity in agency planning.

Monitoring tasks is an important final step. Without it, improvements within NEPA analyses are glacial. Agencies spend thousands of dollars on a single NEPA analysis process. Surely such expenditure merits a careful review when an analysis ends.

Such a review is essentially a lessons-learned process. Contributors to an EIS or a high-profile EA should meet a final time to discuss and list what went well and what didn't go well. Their findings should be part of the agency's public record, perhaps even issued in a newsletter to all contributing publics.

One topic for such a lessons-learned review should be an evaluation of collaboration activities.

- **Did collaboration even occur?**
- **Was it early enough to be useful?**

- **Did collaboration information contribute substantive details to the separate NEPA process steps?**

I have seen only a handful of such after-project evaluations in my 30 years of work with federal agencies and their NEPA processes. One was a thoughtful lessons-learned summary for a Forest Service EIS. Another was a monitoring report checking up on mitigations listed in a dozen prior EAs. The monitoring report's goal was to validate which mitigations were actually implemented and which weren't. Then secondarily, the report assessed the on-the-ground effectiveness of individual mitigation actions.

Two project examples, as described below, show how and when collaboration might be effective in contributing to an environmental analysis. And for each of these, monitoring would be a wise final step.

A Site for the Salt Lake City Administrative Office. Just this past spring, Salt Lake City (SLC) officials learned that their collaborative strategies were too limited and too late to be useful. While not subject to NEPA, the Salt Lake example is a very clear example of why collaboration is often helpful.

For well over the past year, the SLC mayor and the City Council studied different sites for the new SLC administrative offices, including the Police Department. Finally, early this past spring they announced that their preferred site would be across the street from the new SLC library. All citizens (and architectural professionals) had previously praised the library and its site. Citizens immediately objected to the projected site for the administrative office. They argued that it would be inconsistent with the design and function of the library. Details of their objections are not important in context of this example.

The SLC mayor and City Council agreed to abandon the site across from the library. The political pressures were too great.

What the SLC mayor and City Council learned (and admitted later) was that they should have been more open earlier as to their options. Such early collaboration with interested parties would have headed off months of planning efforts that turned out to be largely wasted time (and money).

Early Collaboration in Montana on an Environmental Vision. This planning effort appears in the website for the Partnership Resource Center, as previously described earlier in this newsletter.

According to the brief summary on the PRC website, major environmental groups in Montana were brought together in 2007 to discuss possible common ground. Groups

included the timber industry, conservation groups, the US Forest Service, the state of Montana, and non-profit groups. For years these groups had been arguing, often in the federal courts. “Decades of polarized interests [had] created a near paralysis of [forestry] work”

The Montana groups worked diligently in 2007 and produced 13 major principles (goals) that all participants could agree with. Here are several of their major principles (numbers reflect their published principles):

- “ 5. Reestablish fire as a natural process on the landscape.
- 6. Consider social constraints and seek public support for introducing fire on the landscape.
- 7. Engage community and interested parties in the restoration [fire] process.
- . . .
- 13. Establish and maintain a safe road and trail system that is ecologically sustainable.”

Work on these principles came before any specific timber projects were being considered. As the PRC summary goes on to observe, the utility of the 13 principles is being tested in two pilot timber projects on the Lolo National Forest and one on the Bitterroot National Forest. As described by the PRC, these three projects include extensive collaboration. To learn more about these projects, go to www.montanarestoration.org .

Summary. Collaboration works! As stated at the opening lines of this newsletter, honest collaboration complements NEPA analyses. What is missing most often is an agency’s failure to commit to collaboration when a NEPA analysis is beginning.