



**UNDERSTANDING THE RELATIONSHIP BETWEEN COLLABORATION & NEPA**





**THE MANAGEMENT OF OUR PUBLICLY HELD NATURAL RESOURCES CAN BE A CONFLICT-RIDDEN PROCESS.** When many different people have strong ties to the resources at stake, the management process may be overwhelmed by competing goals. Often, the concerns of various interested groups are not perfectly aligned, which can lead to a stalemate or a situation in which one group dominates the process and pays no heed to the ideas and perspectives of others.

Collaboration is a means of working through such controversy and toward outcomes that incorporate the perspectives of people from many backgrounds. Collaboration helps bring diverse groups together so that they might identify common problems and interests, and create solutions that could not be accomplished in isolation. In this way, collaboration differs from those approaches to public participation that are essentially one-way exchanges of information – such as providing written comments or holding meetings to educate the public. At the same time, it is important to note that the goal of a collaborative process is not necessarily to achieve consensus but, rather, to allow different groups the opportunity to meet and communicate on equal footing. By fostering such open communication, collaboration builds trust among participants and encourages transparency in the decision making process.

This document is one of a series of Collaboration Quick Guides intended to help people involved in community forestry understand the federal laws and regulations governing forest management, and to inform them as to how they can contribute to the federal policymaking process – both formally and informally. Other topics to be covered in the series include the National Forest Management Act (NFMA) and stewardship contracting.



## WHAT IS NEPA

## EXACTLY?

**THE NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)**, which was signed into law on January 1, 1970, established the nation's first comprehensive policy on the environment. A far-reaching piece of legislation, NEPA requires all federal agencies to conduct a thorough environmental review before taking any major action that could significantly affect the quality of the human environment. According to NEPA regulations, which are published by the White House's Council on Environmental Quality (CEQ), the term "human environment" includes the natural and physical environment, as well as the relationship of people with that environment.

To ensure public input in the review process, NEPA requires federal agencies to publicly disclose all proposed federal actions that may have a significant effect on the human environment and to provide a means for citizens to voice their opinions as the government weighs options. While NEPA does not force the agency to choose the most environmentally friendly alternative, the legislation is designed to fully inform agency officials of environmental costs and benefits of all potential options.

NEPA is concerned with federal actions, which under some circumstances can include the permitting or funding of non-federal activities. However, if an agency provides funds for general programs but does not control or direct the specific projects themselves, it is not likely that this would be recognized as a federal action for the purposes of NEPA.



The environmental review process that is articulated in NEPA follows the general steps outlined below, with critical distinctions in the environmental review process emerging in the “documentation” phase.

### STEP 1: The Pre-Proposal Period

This phase offers valuable opportunities for effective collaboration between the agency and the public. At this stage, citizens can help Forest Service officials identify problems and shape proposed actions before the agency makes a formal proposal. By working with the agency in the initial stages of project development, citizens have the opportunity to offer their own ideas and solutions prior to formal documentation.

➔ **OPPORTUNITIES FOR COLLABORATION DURING THE PRE-PROPOSAL PERIOD. There are a number of ways to collaborate with key stakeholders before the NEPA process has formally begun. For more information on how to initiate collaboration, check out the section of this guide titled “How do you start a collaborative process?”**

### STEP 2: Documentation

Over the course of the NEPA process, the agency produces a number of documents that provide an official record of the environmental review. These documents include Environmental Impact Statements (EIS), Environmental Assessments (EA), and Categorical Exclusions (CE), which are outlined below.

➔ **CATEGORICAL EXCLUSION FROM FURTHER NEPA DOCUMENTATION (CE OR CATEX).** *To qualify for Categorical Exclusion from further NEPA documentation, the proposed action must fall under a category of procedures that has previously been proven to have no significant impact—individually or cumulatively—on the environment, as determined by the Council on Environmental Quality. If an action meets those criteria, then neither an Environmental Assessment nor an Environmental Impact Statement is required. Several categories of actions are routinely excluded from documentation: research activities, resource inventories, educational programs, law enforcement activities, road closures in periods of extreme fire danger, road resurfacing or grading, and application of registered herbicides to control poison ivy in a campground.*

➔ **ENVIRONMENTAL ASSESSMENT.** *Once an agency has determined that the project it is proposing triggers the review process under NEPA, it puts together an Environmental Assessment (EA), which outlines the proposed action, alternatives to the proposed action, and the potential environmental effects of all options. The Environmental Assessment, which is made available to the public, lays the groundwork for a decision to pursue one of the following paths: (1) issue a Finding of No Significant Impact (FONSI) and follow through on the action as originally proposed; (2) begin a more thorough analysis of the potential environmental effects of all options in a more comprehensive Environmental Impact Statement; or (3) dismiss the proposal completely.*

## STEP 2: Documentation *(continued)*

**ENVIRONMENTAL IMPACT STATEMENT.** *If the Environmental Assessment has indicated that the proposed action may have significant effects on the environment, then the agency is obligated to prepare a detailed statement called an Environmental Impact Statement (EIS). The EIS spells out in detail the environmental effects of the proposed action, as well the environmental effects of any alternatives.*

### OPPORTUNITIES FOR PUBLIC INPUT DURING THE DOCUMENTATION PHASE

As the agency prepares an EIS it goes through a process called “scoping,” in which the agency invites interested groups and individuals to participate in identifying issues of concern, determining who would be affected by the action, and developing workable alternatives to the agency’s proposal. (In some cases, the preparation of an EA or a CATEX might also entail a scoping process.) At this stage, members of the public can seek to initiate a collaborative process with the agency by suggesting meetings, offering research support, or proposing to work with Forest Service staff on analyzing and possibly developing alternatives to the proposal.

In its regulations, the CEQ defines scoping as a “process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action.”<sup>1</sup> As it conducts scoping, the agency may collect written comments, sponsor field trips, hold public meetings, or conduct other activities authorized by the Forest Service. Scoping activities are sometimes announced in the Schedule of Proposed Actions (SOPA), a quarterly schedule that is available on the Forest Service Web site at <http://www.fs.fed.us/sopa/>. However, the most reliable way to find out about upcoming scoping activities in your area is to ask your local Forest Service office.

### Submitting Comments

Another way to give input during the documentation stage is to submit comments to the Forest Service. The public release of an EIS is followed by a public comment period, which lasts 45 days or possibly longer, as determined by the agency. (In some cases, a public comment period follows the release of an EA or CATEX as well.) Sometimes, the Forest Service accepts oral comments or comments sent to the agency via email; written comments are always accepted. Check the Web site of the National Forest in which the action is proposed to find an appropriate email or postal address.

Before writing your comments, be sure to do your research. To get access to relevant materials, you can start by looking in your local library or online (the EPA posts Notices of Intent, EAs, EISs, and other NEPA documents and announcements in the Federal Register, which is available at <http://www.epa.gov/fedrgstr/EPA-IMPACT/>). If requested, the agency will mail documents to anyone who asks for them. You can always check with your local Forest Service office to find out the best way to locate relevant documents.

In terms of content, your comments will be most useful if you carefully explain your concerns and provide specific suggestions that can help the Forest Service develop an alternative to the proposed action. It is important to note that in order to submit an appeal after the NEPA process has ended, you must have submitted “substantive” comments during the comment period.

<sup>1</sup>CEQ Regulation 1501.7.



While the content of the final EA or EIS is the responsibility of the federal agency, the public can contribute to the development of those documents by gathering information, submitting alternatives to the proposal, or analyzing effects within a specific area of expertise. It is important to remember, however, that once the environmental review process has begun, the public can only respond to proposals being formally considered by the agency; the most effective opportunity for collaboration remains in the pre-proposal stage.

### **STEP 3: The Final Decision**

After the comment period on the draft EA or draft EIS has ended, the agency completes the final version of the document. Then, in the case of an EIS, the agency announces its planned course of action in an official document called a Record of Decision (ROD). The ROD states the specifics of the decision and spells out the reasons why the agency has chosen to pursue that particular path. The ROD also indicates whether the appeals process will apply to the project. For an EA, the Forest Service issues a Decision Notice and, in some cases, a Finding of No Significant Impact (FONSI). It is possible that the agency might issue a Decision Memo for a CATEX, as well.



## WHAT IF I AM NOT SATISFIED WITH

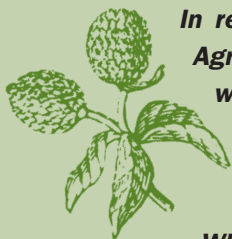
## THE AGENCY'S FINAL DECISION?

If, after the NEPA process is over, some members of the public have serious concerns about the agency's final decision, then they may submit an appeal to a higher authority within the agency—***provided that those individuals making the appeal have already submitted substantial comments on the proposal during the earlier comment periods.***

Once the agency has issued its Record of Decision, the public has 45 days to submit an appeal. Most successful appeals focus on the agency's alleged failure to adhere to a specific law or to follow the agency's own established policies and procedures of environmental review. The appeal must state the specific changes requested, and it must explain how the agency's decision represents a violation of laws, regulations, or policy.

After the appeal has been officially submitted, the agency official who signed the decision (this person is called the Responsible Official<sup>2</sup>) meets with the appellants to try to resolve the issue. Within 45 days following the end of the appeals period, an agency official called the Appeal Deciding Officer, who is usually one step above the Responsible Official in the agency's chain of command, makes the final decision. (In the Forest Service, for example, if the Responsible Official were a District Ranger, then the Appeal Deciding Officer would be the Forest Supervisor.) Except in some emergency situations, no action is taken on the proposal while the appeal is being processed.

Depending upon the outcome of the appeal, the Responsible Official may need to modify or cancel the proposed action, or to conduct further review of the action's potential environmental effects. However, if the appeal is unsuccessful for whatever reason, then the agency is free to follow through on the proposed action as previously outlined in the Record of Decision. In this case, the appellants may either accept the decision or, as a last resort, take their demands to court.



***In regards to litigation, it is interesting to note that the U.S. Department of Agriculture (USDA)—under which the Forest Service falls—has a history of winning the majority of lawsuits brought against it. Thus, litigation should be considered a tool of last resort, not only because of its non-collaborative spirit and associated financial expense, but also because of its history of failure to bring about change.***

***While one goal of the NEPA process is for Federal officials to consider environmental effects of their proposals before decisions are made, another goal is to inform the public of those consequences and seek public comment on environmental documents. However, the NEPA process was not specifically designed to facilitate collaboration (although the legislation does not preclude collaboration).***

<sup>2</sup>The Responsible Official is the agency employee who has been delegated the authority to make and implement a decision on a proposed action.



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### **FROM THE PUBLIC'S PERSPECTIVE**

Once the NEPA process has begun, members of the public have the opportunity to respond to proposals. At this point, however, the agency has the ability to frame the discussion. If the agency does not do an adequate job of informing the public about the existence of a project proposal before asking the public to comment—a common complaint among community groups—then it can be very difficult for citizens to put together an informed response. And even if a citizen or group of citizens proposes other viable, well-researched alternatives, the agency, while it must consider the alternatives, is ultimately under no obligation to adopt one of them. Indeed, some citizens have complained that NEPA's scoping process is often unproductive, as the focus can tend to be on voicing opinions rather than understanding multiple interests and promoting collaborative learning, discussion, and solutions.

### **FROM THE AGENCY'S PERSPECTIVE**

For its part, the agency can often be constrained by having to work within the limits posed by its budget and the timeline of the project. Furthermore, the Forest Service, like all federal agencies, is subject to the requirements of the Federal Advisory Committee Act (FACA), which requires the agencies to follow very specific guidelines when asking for and receiving advice from outside individuals or groups. At times, some agency officials might feel that the FACA requirements are a barrier to a free exchange between the Forest Service and the public during the pre-proposal (pre-NEPA) stage, a time when outside voices can have a powerful impact on future actions.

*True collaboration requires the time, effort, and commitment of everyone involved. For its part, the agency must inform the public about upcoming proposals and allow ample time for a thorough review and response. Furthermore, as they receive input, agency officials must remember to treat citizens as partners, not adversaries. At the same time, interested members of the public should work together to gather resources and inform themselves about the issues at hand. They should also try, whenever possible, to work with agency partners in the project development phase, before the NEPA process has begun.*





## HOW CAN A NON-AGENCY GROUP START

## A COLLABORATIVE PROCESS?

As mentioned earlier, the greatest opportunity for collaboration between agency staff and members of the public occurs in the pre-proposal stage, before the NEPA process has begun. At this point, you, as community members, may approach the Forest Service with your own project ideas, policy initiatives, or recommendations on how management or services might be improved. You also might offer to help the agency identify problems or generate ideas for future proposals. In this regard, you can take the initiative by gathering information, focusing your ideas, and contacting your local Forest Service office. Keep in mind that the most useful input is specific, backed up by research, and supported by individuals from a variety of backgrounds.

The process of generating this kind of input may seem daunting, but with time and effort, you can generate a strong proposal for presentation to the agency. The first steps in the process are outlined below.<sup>3</sup>

- ▶ *Contact key professionals in your area to start a discussion on the issue that concerns you.*
- ▶ *Set up a field trip or meeting to talk about the land management issues you need to address. Advertise the meeting in local papers or newsletters and invite the professionals you have already met with.*
- ▶ *Write down the names and addresses of those who came to the meeting. Have someone take notes to document comments and questions.*
- ▶ *Form your issue team. Using information gathered in the first three steps of the process, draft a general plan for what you will analyze and what projects you will initiate.*
- ▶ *Mail your draft plan to those who attended the first field trip or meeting and announce a second meeting to discuss the draft. Advertise the meeting publicly.*
- ▶ *At the second meeting, assess the levels and issues of concern among those in attendance. Let this information determine what you do next.*

### Potential Participants in a Forest Management Collaborative Process<sup>1</sup>

- ▶ **USDA Forest Service and/or BLM**
- ▶ **State Forest Service**
- ▶ **County Commissioners and other elected officials**
- ▶ **Fire Chiefs**
- ▶ **State Departments of Natural Resources**
- ▶ **Industry representatives**
- ▶ **Public Land Managers (e.g., county, state, or city planners)**
- ▶ **Colleges and Universities**
- ▶ **Home Owners Associations**
- ▶ **Local Environmental Groups**
- ▶ **Interested Community Members**

<sup>3</sup>Harper, Carla. 2005. *Collaboration Quick Guide*.

## WEBSITES

**The Forest Service's Web site on NEPA**

<http://www.fs.fed.us/emc/nepa/>

**The Council on Environmental Quality's online NEPA reference page:**

<http://ceq.eh.doe.gov/nepa/nepanet.htm>

**The Council on Environmental Quality's assessment of NEPA's effectiveness in its first 25 years**

<http://ceq.eh.doe.gov/nepa/nepa25fn.pdf>

**Environmental Protection Agency Web site with FAQ's on NEPA**

<http://www.epa.gov/compliance/resources/faqs/nepa/index.html>

**Listing of every agency's Environmental Impact Statements on the EPA Web site, organized by date submitted**

<http://epa.gov/fedrgstr/EPA-IMPACT/>

**Partnership Resource Center**

<http://www.partnershipresourcecenter.org/resources/partnership-guide/chap8-2htm>

**Continental Divide Trail Alliance Web site on NEPA**

<http://www.cdtrail.org/nepadoc.htm>

**Cascadia Wildlands Project Web site on NEPA**

<http://www.cascwild.org/timbersales/NEPAProcess.htm>

## PAPERS AND GUIDES

Abrams, Jesse. 2003. "Overview of NEPA and Appeals," prepared for Understanding Appeals and NEPA: A Workshop for Community-Based Forestry Groups. Available at <http://www.sustainablenorthwest.org/pdf/policy/collab/nepaforcbf.pdf>

"Determining Whether a Proposal is Subject to the National Environmental Policy Act (NEPA) Section 102." Forest Service Paper. Updated March 2005. Available at [http://www.fs.fed.us/emc/nepa/includes/thresholds for NEPA.pdf](http://www.fs.fed.us/emc/nepa/includes/thresholds%20for%20NEPA.pdf)

Harper, Carla. 2005. *Collaboration Quick Guide*.



## WHO CAN I TALK TO

## FOR ADVICE?

The most useful way to get information about NEPA proceedings in your area is to contact your local Forest Service Office. If you can, try checking the Web site of National Forest you are concerned about. At the end of this guide, you will find a complete listing of all the National Forests, their Web sites, office locations, and phone numbers.

At the Regional Level, you can try contacting Partnership Coordinators, who specialize in building relationships between the Forest Service and non-agency stakeholders. A listing of these individuals is provided below.

### REGIONAL PARTNERSHIP COORDINATORS

**Northern Region (R1)** – northeastern Washington, northern Idaho, and Montana; and the national grasslands in North Dakota and northwestern South Dakota

*Steve Kratville*  
(406) 329-3141  
sjkratville@fs.fed.us

**Rocky Mountain Region (R2)** – Colorado, Wyoming, South Dakota, Nebraska

*Melanie Woolever*  
(303) 275-5007  
mwoolever@fs.fed.us

**Southwestern Region (R3)** – Arizona, New Mexico; and the national grasslands in New Mexico, Oklahoma and the Texas panhandle

*Denise McCaig*  
(505) 842-3406  
dmccaig@fs.fed.us

**Intermountain Region (R4)** – Utah, western Wyoming, southern Idaho, Nevada and a small portion of California

*Danny Ebert*  
(208) 373-4279  
debert@fs.fed.us

**Pacific Southwest Region (R5)** – California and Hawaii

*Janice Gauthier*  
(707) 562-8995  
jgauthier@fs.fed.us

**Pacific Northwest Region (R6)** – Washington and Oregon

*Margaret Petersen*  
(503) 808-2414  
mpetersen02@fs.fed.us

**Southern Region (R8)** – Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, Texas, and Virginia

*Position not currently filled.*

*You can reach the front desk of the Region's Atlanta Headquarters at (404) 347-4177.*

**Eastern Region (R9)** – Connecticut, Delaware, Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, West Virginia, and Wisconsin

*Kimberly Anderson*

*(414) 297-3257*

*khanderson@fs.fed.us*

**Alaska Region (R10)** – Alaska

*Macky McClung*

*(907) 586-7904*

*mmclung@fs.fed.us*

**Forest Service, Washington Office**

*General Phone Number: (202) 205-8333*

**Forest Service NEPA contact person at the Washington Office:**

*Joe Carbone*

*Forest Service NEPA Coordinator*

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*Washington, DC 20250-1100*

*Email:jcarbone@fs.fed.us*

