



Public & Agency Information/Participation Plan

**For Yellowstone/Grand Teton/John D. Rockefeller Memorial
Parkway Winter Use Planning and Environmental Impact
Statement**

As of October 2005

Submitted to:

Yellowstone Grand Teton National Parks Winter Use Interdisciplinary Team
for use by National Park Service and Interested Governmental and Non-
Governmental Groups and Individuals

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Dear reader: this process responds to generalized and particular public distrust and process fatigue.

For now, it emphasizes maximum, timely communication of relevant information and minimum expectations for large group meetings while staying open to other possibilities for public and agency engagement opportunities that could be created by participants, or emerge later.

In June 2005 we asked approximately 60 interested people how they would like to be engaged moving forward, and what makes information sharing and participation meaningful. As several interviewees said in one way or another: “meaningful” is in the honest connections between the public decision NPS is making, what the science says, what the law says, and what the people say. The purpose of the four tools and four methods here is to build trust, working relationships, and transparency – for making those connections.

Governmental and non-governmental stakeholders said emphatically that they need NPS to be clear about the history of winter use analysis and decisions to date – what’s already done and understood. Interviewees said how important it is to be exceedingly forthright about the nature of the decision making process moving forward. The honest and accurate portrayal of the various roles of decision makers and participants is key.

With more trust and transparency, resulting winter use management actions have the potential to be more durable – publicly understood and supported to the maximum extent possible.

If you have any questions for the Cadence team, please call 406-461-1621.

-- Nedra Chandler, with assistance from and many thanks to: Nicholas Dewar and Martha Bean

PUBLIC & AGENCY INFORMATION/PARTICIPATION PLAN

Yellowstone/Grand Teton/John D. Rockefeller Memorial Parkway Winter Use Planning and Environmental Impact Statement

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I. Introduction & Summary

Winter use in the parks is now governed by a temporary plan in effect for three winter seasons (2004-2007). Because this temporary plan is only in effect for three winter seasons the NPS must prepare a long-term Winter Use Plan and Environmental Impact Statement for Yellowstone and Grand Teton National Parks, and the John D. Rockefeller, Jr., Memorial Parkway (EIS). The long-term plan is intended to guide winter use management beginning in December 2007.

For more than six years, citizens and agencies have worked on and engaged in past National Environmental Policy Act processes at Yellowstone, Grand Teton. Litigation on past NEPA decisions continues unresolved in two federal courts today. As one unintended result, trust between and among the interested parties is low; public cynicism and process fatigue are high.

Almost all the interested parties seem to struggle with wanting both to engage in, and avoid, this new episode of the long-running conflict over winter use of the parks that stretches back to when the first motorized winter use in the parks began -- first with a few snowplanes entering in 1949, and then snowcoaches in 1955. The most central process question is how can people and agencies usefully reconcile their contradictory desires to engage and avoid?

This is a temporary participation plan to match a volatile and changing situation. It responds to these key factors of low trust and fatigue by focusing on a doable set of outreach and participation activities that includes maximum communication of relevant information and minimum attendance at meetings. We anticipate that this participation plan will need reviewing and adjusting in order to stay responsive as the situation continues to change.

This plan does not impose or create process for the sake of process; it places no new demands on reluctant, currently distrustful would-be participants.

The goal is to build trust and transparency for the process, and, the hope is, build trust and transparency in the resulting winter use management actions. Every contact opportunity is an opportunity to build or lose trust.

Stakeholders have said emphatically that they need NPS to be clear about the history of winter use analysis and decisions to date, and the nature of the decision making process moving forward. Then, and only then, they will know how best to focus their own participation. The primary means of response to this need will be person-to-person outreach and the series of written fact sheets proposed.

This participation plan responds to and matches the unique needs participants have said they have right now, does no harm, and leaves open the possibilities for mutual learning, collaborative problem solving and mutual gains that could develop or emerge in the

future. Even with the solid, and publicly shared respect and love for Yellowstone and Grand Teton in the winter, the conditions for good faith negotiations are not in place right now.

The elements of the participation plan include four main participation tools: contact list, web archive, written fact sheets and press releases. It includes four main participation methods: roving NPS winter use team, cooperating agency work, several rounds of targeted NPS phone calls and emails to alert interested parties to new information when it's available, and purposeful receipt and acknowledgement of written comments.

These tools and methods will generate a steady flow of consistent, accurate project information that's easily accessible. The point is to:

- Do everything possible to **demystify and make plain** what NPS has *already done* on winter use planning, where the agency is with it *right now*, and where the agency is *headed* in this coming year with the new EIS work.
- Invest the **necessary and significant resources** to develop and distribute the summary, targeted fact sheets (see list of proposed content in section VI) and ensure that all project materials, reports, monitoring data, etc., are immediately available on the web archive to those who want it.
- Commit the necessary **time and resources to the roving team**. The roving team is proposed to be one or more from the core NPS team for each visit or phone or video conference: Suzanne Lewis, Mary Gibson Scott, John Sacklin, Kevin Schneider, Gary Pollock, Mike Yochim or Denice Swanke. With a maximum level of responsiveness and candor, the roving team will, upon invitation, meet with stakeholders as much as time and resources allow. The explicit purpose is to create new opportunities for mutual listening and learning on the key substantive and procedural aspects of winter use decisions. This method is a two-way street, requiring initiative, willingness and flexibility all around.

What are the Process Problems to Address?

There are six main process problems that belong to everyone with a stake in how the National Park Service (NPS) manages winter use in the three parks. But, because NPS is the lead agency, and will be the sole decision maker on its own management actions, the process problems belong most closely and appropriately with NPS itself.

The process problems that the 60+ governmental and non-governmental interested parties brought out in a series of interviews in June 2005 included:

- 1) low trust and a sense of pretense or charade about the process;
- 2) process fatigue;

- 3) confusion about how *past* work and winter use decisions is connected to *this new EIS* and the related concern that NPS didn't use or acknowledge what they learned from past analyses and past public and agency comments;
- 4) ongoing litigation of past decisions confounds current work;
- 5) uncertainty around some of the science, and the use of science and monitoring data connected to the decision making; and
- 6) tension over national versus local/regional comments and how those perspectives are understood and used by NPS (*note this is a long-running tension related to public lands management and NEPA processes in general that is not likely to be reconciled any time soon.*)

More explanation of these problems and interpretation is provided in section II below. These six themes present particular challenges that need to be managed over the forthcoming one to two years of further environmental impact statement analysis and NPS decision making.

The Purpose of the EIS

The Notice of Intent published in the *Federal Register* on June 24, 2005 says, “the purpose of the Environmental Impact Statement will be to ensure that park visitors have a range of appropriate winter recreational opportunities, while ensuring that these recreational activities are in an appropriate setting and do not impair or irreparably harm park resources or values. Alternatives to be considered in the EIS will focus on responding to the purpose and need.”

II. Explanation of themes from Interviews with Interested Parties

In June 2005, the Cadence team spoke with 60+ people with a stake in the outcomes including internal stakeholders (to NPS) and external stakeholders (governmental and non-governmental organizations – see list attached to *Summary Report of Themes and Findings, Public Participation and Agency Cooperation in the Winter Use Planning Process for Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr. Memorial Parkway*, produced by Cadence, July 1, 2005).

The team asked each interviewee or group about their experience with NPS winter use decision making to date, what worked and what didn't, and, what could improve the situation in the future.

Six major themes permeated the comments of the interviewees and these drive the design features of the recommended participation process for this coming year -- recognizing the situation, and peoples' perceptions of it, will continue to change and develop as the work moves ahead.

1. low trust & and a sense of pretense or charade about the process

The interviewees showed pervasive distrust in NPS and the EIS process. There is low trust between and among the parties and particular distrust of the cooperating agency process itself. Some interviewees identified specific individuals in the management of the parks and of the Department of the Interior and singled them out as untrustworthy. There is mutual distrust between and among other interested parties as well, including snowmobile industry players, animal rights interests, organized conservation interests, gateway community interests, state governments, major media, members of Congress, and the Interior Department and the federal administration.

A few parties view the Secretary of Interior's involvement and outspoken pronouncements about snowmobiles in Yellowstone as understandable and appropriate leadership, others view her involvement at the park level as inappropriate and unhelpful.

In any case, the failure to recognize and acknowledge in a forthright way the Secretary's involvement and influence in this process is a surprisingly powerful source of the low trust felt by many interested parties. This is important to acknowledge and address in an explicit way in the participation and decision making process and is central to responding to the shared call for "no pretenses" in this new EIS work.

One subset of interviewees repeatedly remarked on a "growing agency culture of fear and intimidation" at NPS for those who aren't getting in line with the Secretary's public commitments and policy direction. This kind of worry and innuendo may or may not be new to the agency, but it generates an even higher than usual need for candor and transparency in all communications both internal and external to the agency.

There are also suspicions about the integrity of the NPS as managers of a process that invited counties in as cooperating agencies. This distrust dates back to 1997, when the states and counties were first invited to be cooperating agencies in the first EIS process. It's telling that this confusion and distrust about the cooperator role continues to confound the overall decision making process today.

There is skepticism about the fairness of decision-making in the EIS process. For example, are decisions made without reference to the numbers of comments, and location or origin of commenters supporting any particular position, or is it a numbers game?

2. intense process fatigue

Many of the interviewed individuals, organizations, and agencies described process fatigue. They described feeling personally exhausted by the years of conflict over winter use. They described how the perceived need to attend public meetings affected their quality of life, and how the prolonged public debate was damaging the cohesion of their communities. Agencies described how their budgets were strained by this process. This sense of fatigue was compounded for many of those interviewed by the sense that the process is, in any case, a charade.

Furthermore, the lengthy debate about winter use has provided ample opportunity for the issues to be framed in a way that some find simplistic and unproductive. The focus on

snowmobiles is seen by many as oversimplifying a complex question of how people travel and visit in and around the parks in the winter, which might otherwise be seen as rich in possibilities to attract and accommodate a wide variety of users.

3. confusion about how past work and winter use decisions are connected to this new EIS. Related to this is a concern that NPS didn't use what they learned from past analyses and past public and agency comments

There are doubts about the authenticity of the range of alternatives that are presented for consideration. And what about the enormous amount of analyses and work already done? What alternatives will really be considered, and has NPS already decided on the outcome?

4. ongoing litigation of past decisions confounds current work

There is skepticism about the capacity of the park to engage in “meaningful” participation with anyone and any cooperating agency while they are being sued by some of the cooperating agencies on past work. And, whether accurate or not, there is an expressed and shared assumption that aspects of the next NEPA decision are almost certain to end up in court as well.

There are doubts about the capacity of the parks’ administrations to assert their authority in the decision-making process. Is the decision in the hands of the superintendents, or are they unreasonably controlled by “dueling judges,” the administration, or elected officials in neighboring counties, states, or Washington DC?

5. uncertainty around some of the science, and the use of science and monitoring data connected to the decision making

Many interviewees see the appropriate use of authoritative scientific data as a key component in resolution of the conflicts over the Winter Use Plans. Some complain of abuse of data in earlier EIS processes by introducing data to the public debate before it had been properly prepared and vetted by representatives of all interested parties. This was seen as a manipulation of public opinion and exacerbated distrust in the NPS. Similarly, the conduct of research using methodologies and parameters that have not been considered and approved by all interested parties is considered to undermine mutual trust among the interested parties.

6. tension over national versus local/regional comments and how those perspectives have been, and will be, reconciled, understood and used by NPS

There is chronic tension over one view on one hand that local residents have closer knowledge of, and are more affected by these lands, and therefore should play a larger role in making decisions affecting the local area, and the view on the other hand that because these lands are owned by all the people of the country, they all should have equal say over their management.

There are some people with an interest in the outcome of the EIS who have a very limited experience of the parks and their vicinity, and perhaps have no personal experience of them at all. This contrasts with a relatively small number of interested parties who live in

the parks' vicinity, have extensive personal experience of the parks, whose livelihood may depend on public access to the parks, and who may have committed substantial personal resources to developing their dependence on the parks in this way. There is a marked sense of difference between the members of these two groups, and some stereotyping.

“Locals,” joined by those interested in motorized access for winter use, feel that “outsiders” do not understand that there is plenty of space in the parks for everyone to enjoy the parks in the ways that they prefer. They attribute differences in opinion about winter use to a lack of understanding about the parks' environment.

Some residents of the gateway communities consider that, because of their economic and personal commitment to the public use of the parks, they have more authority to inform the NPS decision-making process than others, or, indeed, that they deserve a measure of control over park management decisions.

Others, especially “outsiders,” think that emphasis on the economic consequences of park management decisions is misplaced, and inappropriate. There is also concern that the distinction of the five contiguous counties is artificial and that there should be recognition of the special interests in these management decisions of 25 or so neighboring counties.

Reflections on These Themes

On the surface, this public debate and decision making is about snowmobiles, public access, and the apparent conflict in the NPS mission between providing for public enjoyment of the parks while preserving them unimpaired for future generations.

Many of the interviewees have been in the role of winter use decision observer and participant since about 1997, some longer. A large number of interviewees actually referred to the Organic Act itself, and told us they've watched NPS continually balancing its resource protection mandate with the visitor use and enjoyment mandate for as long as they've been watching and participating.

Several said that this built-in dilemma has existed in some form since Yellowstone became the world's first national park in 1872. Yet, day to day, the Park Service makes and carries out park management actions "...to promote and regulate the use of the...national parks...which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations" (NPS Organic Act 16 U.S.C. 1).

It's interesting to note that this isn't just about Yellowstone winter use, interviewees routinely said, “this is about fundamental values.” In this way, the situation has also become a *surrogate* for a larger public conversation our society is trying to have about a number of deeper questions and public values.

Through this debate for example, people are grappling with different values attached to personal freedom, which some Americans associate with the mobility of motorized recreation and others associate with quiet, non-motorized recreation. The two would seem to be mutually exclusive, but much of the public expects to find both in the harsh, stunning winter environment of Yellowstone. People are also wrestling with the values inherent in a government of and for the people, embodied in the partnerships and mutual dependencies between NPS and gateway communities.

For some, this conflict epitomizes how we are working out these larger value questions as a society and explains, in part, why it is apparently so easy to generate a thick fog of rhetoric around winter use in the parks instead of the kind of mutual listening and learning that could possibly lift more durable decisions out of impasse.

The Ideal: Many Americans accept the good governance premise that if the right people get together, with good information, in processes that have integrity, the people themselves invent solutions to the problems in front of them. That's the theory, and we've all observed moments in history and been in situations ourselves where that premise turns out to be true in practice.

The Situation Right Now: In this particular situation surrounding winter use in the parks, cooperating agencies, organized stakeholder groups, and individual citizen participants are not only exasperated and fatigued, they are also savvy, and they continue to seize opportunities to engage where they think they can influence the outcomes the most. Invited governmental cooperating agencies, and non-governmental organizations, have used, are using, and are developing, various and simultaneous strategies for influencing the decisions.

These strategies have spanned multiple elected administrations locally to nationally and multiple leaders at NPS. The strategies use the new NEPA work itself (public scoping began June 24, 2005); continuing lawsuits in federal court over past NEPA work; building coalitions that focus on somewhat connected initiatives (e.g., regional community and economic vitality and others); as well as lobbying members of Congress, communicating with political appointees in the executive branch; using the major media, as well as using independent newsletters and other communications to shape perspectives. People do care about these issues and decisions and they are engaged in their own ways.

The Role of the Media: Although the situation is probably not as polarized or entrenched as it appears, most major media have portrayed this public conflict as binary and dug-in. Much of what people know about the situation has come through journalists who play a key role framing the public discussion.

An Irony that Could Help Eventually: More than a few interviewees pointed out an apparent irony that collectively, many of the participants who have been most actively involved feel confident that they know already what's best for park resources and visitors. Paraphrasing several interviewees, the theme goes something like this: "we

could probably get agreement on the right direction for winter use in the parks and go there arm and arm but for repeated decisions that don't stick, the actively-involved presidential administration, dueling judges, and media that somehow seem to, even if unintentionally, keep us all from moving forward to healing and more certainty, more stability.”

III. Core Values for Participation, Code of Ethics, and NPS Standards

Core Values: These core values come from the International Association for Public Participation and provide a solid, although admittedly general foundation to guide participation work in the forthcoming EIS.

- 1) The public should have a say in decisions about actions that could affect their lives.
- 2) Participation includes the promise that the public's contribution will influence the decision.
- 3) Participation promotes sustainable decisions by recognizing and communicating the needs and interests of all participants, including decision makers.
- 4) Participation seeks out and facilitates the involvement of those potentially affected by or interested in a decision.
- 5) Participation seeks input from participants in designing how they participate.
- 6) Participation provides participants with the information they need to participate in a meaningful way.
- 7) Participation communicates to participants how their input affected the decision.

Code of Ethics: This project, and consultant help for this process, abides by the following code of ethics (adopted and used here with permission from the International Association of Public Participation).

The International Association for Public Participation's Code of Ethics for public participation practitioners supports and reflects the core values (above) for the practice of public participation. The Core Values define the expectations and aspirations of the public participation process. The Code of Ethics speaks to the actions of practitioners.

Preamble

We recognize the importance of a Code of Ethics, which guides the actions of those who advocate for including all stakeholders in public decision-making processes. To fully discharge our duties as public participation practitioners, we define terms used explicitly. We define stakeholders as any individual, group of individuals, organization, or political entity with a stake in the outcome of a decision. We define the public as those stakeholders who are not the decision-maker(s). We define public participation as any

process that involves the public in problem-solving or decision-making and that uses public input to make better decisions.

This Code of Ethics is a set of principles which guides us in our practice of enhancing the integrity of the public participation process. As practitioners we hold ourselves accountable for these principles and strive to hold all participants to the same standards.

1. **PURPOSE.** We support public participation as a process to make better decisions that incorporate the interests and concerns of all affected stakeholders and meet the needs of the decision-making body.
2. **ROLE OF PRACTITIONER.** We will enhance the public’s participation in the decision-making process and assist decision-makers in being responsive to the public’s concerns and suggestions.
3. **TRUST.** We will undertake and encourage actions that build trust and credibility for the process and among all the participants.
4. **DEFINING THE PUBLIC’S ROLE.** We will carefully consider and accurately portray the public’s role in the decision-making process.
5. **OPENNESS.** We will encourage the disclosure of all information relevant to the public’s understanding and evaluation of a decision.
6. **ACCESS TO THE PROCESS.** We will ensure that stakeholders have fair and equal access to the public participation process and the opportunity to influence decisions.
7. **RESPECT FOR COMMUNITIES.** We will avoid strategies that risk polarizing community interests or that appear to “divide and conquer.”
8. **ADVOCACY.** We will advocate for the public participation process and will not advocate for a particular interest, party, or project outcome.
9. **COMMITMENTS.** We will ensure that all commitments made to the public, including those by the decision-maker, are made in good faith.
10. **SUPPORT OF THE PRACTICE.** We will mentor new practitioners in the field and educate decision-makers and the public about the value and use of public participation.

National Park Service Standards: In addition, the following “standards” are set out in the NPS Director’s Order on Civic Engagement and Public Involvement (November 2003, p. 9).

Public involvement strategies and activities will be deemed successful if they meet the following standards:

1) Match the tools to the job. We respect and respond to a community's or public's unique interests, capacities and civic culture. At the beginning of a public involvement and outreach process, we test and refine engagement strategies to respond to the public's diversity of experiences and perspectives. We explain the public involvement process and help the public define how they would like to participate. We clarify visions, goals and values early, and explain how they will influence decision-making.

2) Ensure that all voices are heard, but none dominate. We actively and meaningfully seek to listen to the voices of all interests. We solicit and hear the diversity of experiences and perspectives. We actively engage those members of the public who may not have been previously or traditionally involved, and keep updated contact lists (especially phone and email) of interested parties.

3) Maintain ongoing relationships. In the parks and programs, our day-to-day, ongoing relationships provide the foundation for effective public involvement among park superintendents, managers, and staff with their neighbors, fellow agencies, tribes and indigenous communities, local and state governments, and others. We will work with national, state, and local partners, and with park "friends" groups to sustain public engagement in parks, programs, and decision-making. We do not rely merely upon written correspondence or other notification methods to get people involved, but make the necessary phone calls and try to meet in person. Whenever key matters are under consideration, to the greatest extent possible, we call major partners and follow up with written communication. Beyond striving for quality and personal commitment to these critically important relationships, we also find ways to document and share them with succeeding superintendents and managers throughout the NPS, as appropriate, for the good of the Service.

4) Build trust and understanding first, then ownership. We include the public, project sponsors and policy makers in a collaborative exploration of the conditions and trends, precedents and possibilities, and key factors that will shape the future. That common knowledge base fosters working relationships, helps build support, and sets the stage for implementation.

5) Follow a "no surprises" ethic. As a public involvement process moves toward conclusion, we seek to ensure that no one is surprised by new information or controversy. We keep the channels of communication open among all participants.

Evaluation and Accountability

The Director's Order follows these standards with the following on evaluation and accountability: "to ensure that public involvement activities and processes are achieving their intended results, NPS will involve the public in evaluating the success of their role in the planning and decision-making process by soliciting feedback on whether or not they feel they have been given adequate opportunities to participate and have had their concerns heard. Visitor comments and suggestions will be reviewed with the goal of improving park management. Attention will be focused in particular on those activities where it appears that controversy is not being addressed through proper application of

this Director’s Order. The planning and social science programs will be called upon to design mechanisms to broadly assess public opinions and sentiments on park-specific or Service-wide issues.”

IV. Expected Role of the Public and Cooperators in Decision Making

What is the NPS Promise to the Public and Cooperating Agencies for this Process?

The NPS promise to governmental and non-governmental stakeholders is to open information sharing. We will actively listen to and acknowledge concerns. We will let you know where timely agency and public input was incorporated in the EIS, and how it did/did not influence NPS decisions.

NPS NEPA Decision

The National Park Service superintendents of Yellowstone and Grand Teton commit to:

- Seek meaningful input and advice from cooperating agencies and non-governmental stakeholder groups and general public at times that input can best be used and integrated by NPS.
- Keep parties informed about the timeframes for public scoping, public comments and alternatives under consideration – especially via telephone, individual visits, and the NPS website.
- Let cooperating agencies and public participants know how and where input influenced NPS decisions.
- Look for and foster public support, understanding and stability for a balanced, managed, well understood and durable winter use program in Yellowstone and Grand Teton that respects park resources, public access and sustainable communities.
- Defend NPS in federal court related to challenges to past winter use NEPA decisions and address issues raised by the Wyoming District Court and the Washington, DC, District Court.
- Manage winter visitation in Yellowstone and Grand Teton within legal, political, and resource constraints.

Cooperating Agency Expectations

As established in the Council on Environmental Quality (CEQ) regulations, 40 C.F.R. Part 1501, Executive Order 13352 on cooperative conservation, and the Department of Interior Departmental Manual on NEPA (516 DM 2.5), Interior bureaus will cooperate

with all cooperating agencies that have jurisdiction by law or special expertise to the “fullest extent practicable.” As the chair of CEQ emphasizes, “cooperating agency status is a major component of agency stakeholder involvement that neither enlarges nor diminishes authority of any agency involved in the NEPA process” and “determinations about whether to invite, accept, or end cooperating agency status should be made on a case by case basis” (January 30, 2002, memorandum from CEQ).

As of August 2005, the following governmental entities have been invited to serve as cooperating agencies in the process of preparing the Winter Use Plan EIS: the states of Idaho, Montana, and Wyoming; the counties of Fremont, Idaho; Gallatin, Montana; and Park and Teton, Wyoming; the Environmental Protection Agency; and the U.S. Forest Service.

As the lead agency, the NPS has sole and ultimate decision-making authority for the Record of Decision (ROD) and for NEPA compliance and preparation of the Winter Use Plan EIS. NPS will fully consider the views of the other parties to this MOU in developing its Record of Decision. Each cooperating agency will seek concurrence with NPS up front on each agency’s particular role and assignment of issues and memorialize that commitment in a memo of understanding. As of October 2005, the NPS has offered the text attached here as Attachment E. NPS is prepared to sign this MOU as is, but remains open, through the month of October, to suggestions from each agency on how best to tailor expectations with each entity.

V. Major Categories of Stakeholder Groups and Agencies

You are a stakeholder if you stand to gain or lose by NPS decisions on winter use in the parks. By that definition, stakeholders in this decisionmaking potentially span the globe – crossing all geographic scales from local to regional to national, even to global, from real to virtual visitors to the park.

Below is a list of major *categories* of representative interests. NPS will manage the actual stakeholder list as a comprehensive, up-to-date resource to allow NPS to share written information and make calls – with group names, individual contact names, phone numbers and email addresses when available.

- Animal rights interests
- Attorneys/field of Law/observers
- Coalitions of broader, or even unlike interests (e.g., watershed groups or other collaboratives whose work touches park issues, or Yellowstone Business Partnership, others?)
- Chamber groups in gateway communities
- Conservation interests (local, regional, national)

- County governments
- Elected officials (local, county, national)
- Federal agencies – especially EPA and Forest Service
- Media
- Motorized winter user groups
- Park recreation businesses, tourism interests and concessions
- Public health interest groups
- Public employees (NPS employees current and retired)
- Quiet winter user groups (skiers, snowshoers, wildlife watchers, photographers)
- Scientists and other contributing academics
- Snowmobile interests including manufacturers
- Snowcoach interests including manufacturers
- States (Idaho, Montana, Wyoming)
- Visitors (real, potential and virtual) and general public unaffiliated with any particular primary interest group
- Youth (some said perhaps through schools, but maybe other ways to reach “the next generation” of park visitors)

VI. Four Participation Tools and Four Methods

There is significant work to do to address the key factors of low trust and process fatigue. There is only so much that NPS can do unilaterally to address and dispel the deep sense of pretense and instability that’s hanging over this project, but the most important process thing to do right now is to confront and not avoid that challenge.

Accordingly, unless required by regulation or statute, we don’t recommend the use of extensive public meetings or hearings at this point. To be meaningful, this participation plan will not impose meeting requirements on reluctant participants. Participants report that even with careful design, meetings tend to be wasteful, repetitious, and a forum for grandstanding that harms any developing sense of healing and coming together in gateway communities, and hardens positions as they are portrayed by major media. If demand for other participation processes develops and/or this process isn’t working well, then NPS will be ready to respond appropriately – in ways that fit the current NPS capacity to support participation and fit NPS decision maker needs.

These four main tools and four main methods will generate a steady flow of consistent, accurate project information that’s easily accessible.

A. PARTICIPATION TOOLS AND MATERIALS NEEDED TO REACH BOTH TARGETED AND BROAD AUDIENCES

1) Project Contact List

Purpose

Reach people by email and with written materials in surface mail at key times. This is a centrally important foundation for all public information work. The purpose is to make sure people who need to be kept informed, or ask to be kept informed, do in fact receive project news on a regular basis.

Audience(s)

In addition to those who have already expressed an interest in the project, the mailing list will be updated on a monthly basis as people write in or call to be added to the list.

Content

NPS keeps their list in an ACCESS data base and can sort the contact list according to various fields as needed (e.g., by zip code or town).

Key Challenges

The key is constant vigilance about maintaining the mailing list database and making additions and mail label corrections as they come in – keeping the list up to date.

Timeline

Monthly updates and maintenance.

2) Web Archive: www.nps.gov/yell/winteruse.htm

Purpose

Up-to-date electronic source of all public documents relevant to the new EIS.

Audience(s)

Anyone interested in reviewing background reports, studies and data that is being integrated into the current analysis.

Content

E.g., documents and plans currently guiding winter use management and forthcoming monitoring, modeling, and scientific and/or technical reports, and court rulings.

Key Challenges

Given the ongoing and expected future litigation, release of pre-decisional documents especially through cooperating agency work is a recognized past problem for this

situation. NPS will have a public and explicit protocol regarding this issue and be sensitive to the open records and meetings law in each of the three states.

Timeline

The NPS commitment is to make final documents such as monitoring reports and so on available as expeditiously as possible.

3) Publish Project Newsletters and Updates to Website

Purpose

Convey key project news in short, summarized formats. Promote transparency of process and raise broader public awareness of the issues and alternatives under review and how the decision making process is moving forward. Upon request, the NPS will mail or email updates to stakeholders.

Audience(s)

Everyone on the email list and everyone who visits the website for project news.

Content and Timing (for example)

- 1) Frequently Asked Questions¹
- 2) Taking Stock of Winter Use History and Decisions to Date: Law, Science, Policy and Public and Agency Opinions Expressed To Date
- 3) The Nature of this Decision Making Process: How and When You Can Participate Most Effectively
- 4) Criteria NPS Will Use to Select Preferred Alternative
- 5) Key Areas of Scientific Uncertainty Surrounding Effects of Groomed Trails on Bison and Other Ungulates (include content from Gates and Meagher)
- 6) How NPS Used Public and Agency Comments in Last NEPA Processes, How NPS will Report Use of Public and Agency Comments in This EIS Process
- 7) One or more Short Reports on the Range of Public and Agency Comments Received and How NPS Understood and Used Those

¹ E.g.,

- 1) What's already known and understood by NPS from the past analysis since 1997?
- 2) What's NEW? What's left to do? What's different about this process than the last ones?
- 3) What has NPS learned from monitoring the implementation of the temporary plan so far?
- 4) Why is NPS doing this again?
- 5) Who will make the decision at NPS?
- 6) How will NPS practically deal with the dilemma of national and local/regional comments people give them this time – especially the pre-printed post cards and the problem of making it seem like a voting process?
- 7) What exactly is happening in federal court surrounding past decisions? Why? How is NPS dealing with those suits?
- 8) Why has NPS asked cooperators in again? What exactly will their customized roles be?

- 8) Some sort of usable “track changes” approach to the EIS document itself, so that reviewers may easily spot changes from previous analyses.

Key Challenges

Distillation of the material for these newsletters will require significant time and effort and require the use of professional interpreters/editors who are mindful of the substantive and procedural issues NPS is managing in this process.

4) NPS Press Releases

Purpose

Continue NPS practice of regular releases to get the broadest possible, accurate coverage in local, regional and national print and electronic media. To notify the public of ways to stay informed and participate in the NEPA process.

Audience(s)

Local, regional, national print and electronic media contacts.

Content/Timeline

For example when:

- 1) Cooperating Agency MOU Signed
- 2) Scoping Period Closes, Comments Grouped and Categorized – How NPS Understood What they Heard
- 3) Any Release of New Data or Reports, Results of Panel Discussions, Available New Summaries/Fact Sheets on the Web
- 4) DEIS Forthcoming with public comment period.

Key Challenges

This project has an uneasy relationship with the media and it needs to be improved. Interviewees expressed for example that use of the media has felt manipulative at key times. The most recent example was the appearance of the national media during the Secretary of the Interior’s visit to Yellowstone on a snowmobile last February. The public statements that she made on that occasion have been emblazoned on the minds of many and interpreted to indicate that the winter use management decisions have already been made. This put the validity of the current EIS process in doubt at the outset.

Also, several interviewees said that the media portrayed the winter use question as more polarized than it actually is. This has encouraged increased hardening of positions around snowmobiles, which is not necessarily seen as central topic by all those interviewed. Some interviewees who had participated in previous public participation processes felt that the media portrays those involved as “caricatures of ourselves,” showing only the worst behaviors and adding to the corrosive effect of the public participation process on

the local community. There is a general recognition that most of what outsiders know about park management issues comes from major media reports.

B. PARTICIPATION METHODS DESIGNED FOR MORE DIRECT INVOLVEMENT AND MUTUAL LEARNING

1) Roving NPS Winter Use Team

Purpose

Directly dispel the sense of pretense and fatigue hanging over this project by going to meet people and organizations where they are. The point is to have an un-orchestrated give and take about what this project is about, where it has been, where it's headed. Given the situation, anticipate and expect up front that there *will* be distrust and concerns about this method. It may get good press, bad press, no press. NPS may receive high, low, or no, invitations. It will be a two-way street. Acknowledge it's experimental and may not be effective. Commit and do it anyway. In 3-6 months assess how it's going, what it's costing, and what mutual gains there may or may not be in public understanding and quality of engagement.

In light of the confounding situation and six key themes that governmental and non-governmental interviewees described regarding participation, this roving team is the upfront, signature piece of “meaningful participation” that directly confronts instead of avoids the central public and agency confidence issues.

Audience(s)

Primarily organized stakeholder groups of governmental and non-governmental commenters and cooperating agencies who want to talk directly with NPS about the winter use work.

Content

Tailored to the specific interests of each requesting group. Consider not taking time up front to anticipate a whole lot of protocols or how you'll respond to different sized or differently-located groups and just take requests as they come. Respond on the spot in the spirit of this method – which is about open information sharing and being timely, accessible, and authentic about the situation and the nature of the decision making process.

Key Challenges/Things to Anticipate

The methods and extent of the documentation of these meetings should reflect the meetings' purpose. Their explicit purpose is to open communication and increase trust, rather than to collect data or comments on the EIS. The documentation of the visits should therefore simply report the contact information of attendees and, in brief bullet format, what was discussed. Also, participants may want or need coaching on how/where/when to get their comments in the record on their own.

There could be Federal Advisory Committee Act (FACA) concerns that may be addressed by emphasizing that NPS is primarily using this public participation method to build trust and communication about winter use and is not seeking unified or consensus advice.

In addition, NPS will need to be sensitive to the open meetings law in each state. In Montana, for example, if NPS meets with two or more county commissioners at once (a quorum), Montana’s open meetings law is triggered and the Commission will comply with the law by providing notice of the meeting.

Timeline

Make this team available as soon as you can, but not before you’ve clarified the purpose, costs, other staff and resource commitments connected to it as well as a date certain to evaluate and assess the utility of continuing it or ending it.

Responsibilities

NPS Interdisciplinary team with consultant support.

Cost Considerations

Significant: Realize that this method will undoubtedly be a learning experience with many uncomfortable moments and significant costs – including the necessity of air travel and lots of empowerment and resources on the part of staff to make independent decisions about how best to respond to requests. In-person visits are preferred whenever possible, but should not be disproportionately local. Internet, conference calls, or video conferencing could be viable options for these visits as well.

2) Cooperating Agency Work

Purpose

First, seek agreement on procedural agreement to guide the joint work. Second, carry it out in mutually acceptable, focused way. Confront and deal head on with the significant history, procedural issues and public distrust of the cooperating agency process in this unique case. Recognize this cooperating agency process isn’t “standard” because of the project’s unique history, how agencies said they wanted to be engaged, and the current litigation context.

Audience(s)

Invited cooperators to date include: the U.S. Forest Service forests surrounding the project area; The U.S. Environmental Protection Agency; the state of Idaho; state of Montana; state of Wyoming; and Fremont County, Idaho; Gallatin County, Montana; Park County, Montana; Park, County, Wyoming, and Teton County, Wyoming.

Content

Open information sharing is the focus for agency participation just as it is for non-governmental participation. This information sharing will occur through the mechanisms in this plan – roving team visits, website, phone calls, emails, press releases, and project newsletters as well as one round of joint stakeholder meetings around the time of the Draft Environmental Impact Statement -- now anticipated in the winter/spring of 2006 – probably one in each of the three states.

Key Challenges

The same six process challenges apply here (low trust and fatigue in the forefront). The honest, responsive, and accurate portrayal of the various roles of governmental participants, whether they sign on as cooperators or not in this process is what makes it meaningful.

Timeline

Cadence is the go-between shuttling a draft MOU between and among the invited cooperators, guiding the process to a written, procedural agreement on the information sharing and particular expectations of each signing party by the end of October 2004

Responsibilities

NPS delivered a ready-to-sign or ready-to-tailor text to the invited cooperators September 1, 2005. Cadence is continuing to serve as the agency and public participation go-between. It is relevant and important to note that since this process is not a shared decision making process, Cadence will not use the mediator's code of conduct, but rather the participation code of ethics found in section III of this document. It is the responsibility of the invited cooperators to offer suggested changes to section VI of the text by no later than the end of October 2005.

3) NPS Phone Calls and Emails to Parties

Purpose

Person to person, peer to peer, and NPS to organized group personal contact by phone and email will keep important lines of communication open, reduce the continuing tendency for rumor and innuendo to drive this process; and increase the transparency of, and public understanding of how NPS is proceeding. Also, when the round of calls results in person to person contact (rather than voice mail) it may also provide a significant opportunity for NPS to listen and learn about particular individual and/or group perspectives.

Audience(s)

Suggestion: NPS could start by using the list of those 60+ contacted during the June assessment as the base list for calls and emails.

Key Challenges

This has to be purposeful and genuine. It will feel risky and uncomfortable in any case, but particularly if NPS is not comfortable and clear with the purpose and intent of these calls.

Content/Timeline

Aim for three rounds this coming year: 1) Winter 2005 to report on what you got from scoping and what the next steps are; 2) just before the DEIS is released or immediately after; and then 3) again when the comment period closes.

4) NPS Purposeful Receipt and Acknowledgement of Written Public and Agency Comments

Purpose

Interviewees in June 2005 reported the most meaningful participation in this forthcoming process would likely be in writing.

NEPA and the rule making process specify public comment periods and agencies and other stakeholders will likely take these opportunities to comment, perhaps more broadly or differently than their specific memoranda of understandings with NPS call for.

Audience(s)

Anyone, everyone and any governmental agency interested in commenting on the issues and potential impacts they think the winter use plan should consider, and on the alternatives they favor.

Key Challenges

It is possible that the EIS process will generate large-scale letter-writing campaigns, and these may result in questioning of the NPS's criteria for the assessment of the significance of these campaigns. Explicit description of NPS perspectives and policies in this respect will help avoid misunderstandings and mistrust.

Content/Timeline

This method is connected to the particular fact sheet tool listed above on reporting out how NPS understood comments received during scoping (which closes September 1) and on the DEIS (expected spring of 2006).

VII. For More Information – NPS Contacts

Please call Debbie VanDePolder at 307-344-2019 with any questions or comments on the contents of this participation plan. This document may be updated by NPS as needed. The NPS commitment is to implement this plan, or a revised plan that responds to the

situation at hand, during the EIS process expected to be complete in or about December 2007.

The NPS interdisciplinary team directly responsible for the EIS includes:

John Sacklin: 307-344-2020
Gary Pollock: 307-739-3428
Kevin Schneider: 307-344-2024
Denice Swanke: 307-344-2023
Mike Yochim: 307-344-2703

VIII. Sources and Definitions

Selected Sources

- International Association of Public Participation IAP2 (2005) on the web at www.IAP2.org
- National Park Service Director's Order 75A: *Civic Engagement and Public Involvement* (2003)
- Statement of Ed Shepard, Assistant Director for Renewable Resources and Planning, Bureau of Land Management, Department of the Interior, House Resources Committee, Subcommittee on National Parks, Subcommittee on Forests and Forest Health, Joint Oversight Hearing on "Motorized Recreational Use on Federal Land" July 13, 2005²
- *Summary Report of Themes and Findings, Public Participation and Agency Cooperation in the Winter Use Planning Process for Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr. Memorial Parkway*, Cadence, Inc. July 1, 2005, Contact cadence@montana.com for a copy, including an appendix list of the approximately 60 parties interviewed in June 2005.

² excerpt: "At the outset, Mr. Chairmen, I would like to point out that motorized access, particularly snowmobile access within certain NPS units, has been one of the highest profile issues we have addressed. On two separate occasions, the Department and the Congress have successfully resisted efforts to eliminate snowmobile access to Yellowstone and Grand Teton National Parks. On November 10, 2004, the NPS published a final rule implementing winter use regulation for an interim period, through the winter of 2006-2007. The rule allows for continued snowmobile use, but requires that within Yellowstone all must be Best Available Technology (BAT). The temporary winter use management plan ensures that resources are protected, gives visitors, employees and residents of the park's gateway communities the information they want and need to plan for the near term, and will help minimize economic impacts on those communities. Secretary Norton's commitment to this balance is unwavering and her commitment to reasonable motorized access to public lands is strong as evidenced by her visit this past February to Yellowstone National Park where she rode a snowmobile approximately 150 miles through the Park to Old Faithful Canyon and other Yellowstone landmarks."

- Yochim, Mike. “Compromising Yellowstone: the Interest Group-National Park Service Relationship in Modern Policy-Making” Chapter 4: Snowmobiles in the Winter Wonderland. PhD dissertation, University of Wisconsin-Madison, 2004.

Definitions from NPS Director’s Order 75A (p.5)

Civic engagement is a continuous, dynamic conversation with the public on many levels that reinforces the commitment of both NPS and the public to the preservation of heritage resources, both cultural and natural, and strengthens public understanding of the full meaning and contemporary relevance of these resources. In this DO, civic engagement encompasses all of the activities that encourage public involvement in and dialogue about the meaning and future of the Nation’s heritage resources.

Public involvement (also called public participation) is the active involvement of the public in NPS planning and decision-making processes. Public involvement is a process that occurs on a continuum that ranges from providing information and building awareness, to partnering in decision-making. The NPS role is to provide opportunities for the public to be involved in meaningful ways, to listen to their concerns, values, and preferences, and to consider these in shaping our decisions and policies.

Attachments: Overview Process Charts and Proposed MOU as of October 2005

A: Process Chart – a picture of the history of winter use public decision making and the major elements of the process moving forward.

B: Participation Objectives

C: Participation Audiences

D: Schedule as of October 2005

E: Proposed MOU as of October 2005

Attachment A: Process Chart as of October 2005

Attachment B: Participation OBJECTIVES

Tools and Methods	Participation OBJECTIVES			
	Increase transparency and public understanding of situation	Build trust and address process fatigue	Help people know when and where to submit their comments	Integrate best possible data and science into decision
<i>Public Information TOOLS Designed to Reach Broad Audiences</i>				
1. Project contact list	x	x	x	
2. Web archive at www.nps.gov/yell/winteruse.htm	x	x	x	
3. Project newsletters	x	x	x	x ¹
4. NPS press releases			x	
<i>Participation METHODS Designed for More Direct Involvement</i>				
1. Roving NPS winter use team	x	x	x	x
2. Cooperating agency work				
3. NPS phone calls and emails to parties	x	x	x	
4. NPS receipt and acknowledgement of comments	x	x		x

¹ This box is checked because fact sheets are recommended to include, for example: interpretations of data on the potential effects on bison and other ungulates of road grooming; and summary reports on monitoring data.

Attachment C: Participation AUDIENCES

<i>Tools and Methods</i>	<i>Target AUDIENCES – categories of primary interests</i>								
	Animal Rights	Conservation	Cooperating Agencies	Electeds & exec branch	Media	NPS Employees	Tourism & Concessions	Snowmobile Industry	Visitors ² & Gen public
<i>Public Information TOOLS to Support the Project</i>									
1. Contact list of interested parties	X	X	X	X	X	X	X	X	X
2. Web archive at www.nps.gov/yell/winteruse.htm	X	X	X	X	X	X	X	X	X
3. Project newsletters	X	X	X	X	X	X	X	X	X
4. NPS press releases					X				
<i>Participation METHODS Designed for More Direct Involvement</i>									
1. Roving NPS winter use team	X	X	X	X	X	X	X	X	X
2. Cooperating agency work			X						
3. Rounds of NPS phone calls and emails to alert interested parties to new information when it comes out	X	X	X	X	X	X	X	X	X
4. NPS receipt and acknowledgement of comments	X	X	X	X	X	X	X	X	X

² Virtual, potential, real.

Attachment D: Schedule as of October 2005

Key Project Steps	Approx. Timing	Participation by Stakeholders and Cooperating Agencies
Independent situation assessment of peoples' and agencies' preferences for engagement	June 2005	60+ interviews with governmental and non-governmental interested parties.
Notice of Intent: Proposed Action	June 24 2005	NPS sent scoping brochure and updated website with new information.
Development of Cooperating Agency Work Structure (e.g., one MOU or Cooperating Agency Agreements)	July/August 2005	Contact with cooperating agency invitees by NPS and independent facilitation team to check and then report back with single text to route among all.
Public Scoping	Began June 24, 2005	
Development of Participation Plan		Designed to match the current situation at hand and build on main themes discerned from interviews conducted in June 2005.
Wyoming District Court Hearing	July 19, 2005	Oral arguments
Individual meetings/visits by NPS with each cooperator to discuss draft alternatives and pertinent data: check individually with each: is there a common understanding of the NEPA significant issues? What about the issues significant to each cooperator?	Begin July 2005	Focused give and take between each cooperator and NPS that fits the customized role of each. Aim for signed MOU with each to promote clarity and transparency about the process and to be attentive to Interior's NEPA manual.
Begin developing and distilling written, summary materials described in information tool # 3 – newsletters and updates to NPS website	Summer/Fall 2005	
Public scoping period ends	September 1, 2005	
DC District Court Hearing	September 8, 2005	Oral arguments

Key Project Steps	Approx. Timing	Participation by Stakeholders and Cooperating Agencies
Cooperating agencies provide any new, pertinent information to NPS	Pre-DEIS	
Analyze Alternatives	Winter 2005	Review and understand NPS criteria for selecting preferred alternative. Cooperating agencies may decide to meet by phone or in person at this point -- TBD.
Release Draft EIS with preferred alternative – publish on the web for likely 60-day comment period Publication of Proposed Rule on or about the same time	Spring 2006	Likely meeting to discuss DEIS – Idaho, Montana, Wyoming
Public and Cooperating Agency comments on Draft EIS	Spring or summer 2006	
Comment period ends on DEIS and Proposed Rule		
Response to comments on Draft EIS complete and incorporated into Final EIS. Begin internal and cooperating agency review of FEIS		
Final edits to FEIS incorporated, publish Final FEIS and NOA		
Superintendents recommend signing Record of Decision and NPS decision maker signs (acting Regional Manager is now is Mike Snyder, Denver)	Spring 2007	
Post-Decision Implementation & Monitoring		Possibility of adhoc group of interested agencies and stakeholders to come together on an annual basis to review monitoring data and implementation progress, and discuss issues and resolve problems as they arise.
Administrative or Judicial Challenges		

Attachment E: MOU as of October 2005

(under current review by invited cooperating agencies)

MEMORANDUM OF UNDERSTANDING

Between the National Park Service and

U.S. Forest Service; Environmental Protection Agency; State of Idaho; State of Montana; State of Wyoming; Fremont County, Idaho; Gallatin County, Montana; Park County, Montana; Park County, Wyoming; and Teton County, Wyoming

I. CONTEXT

Winter use in Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr., Memorial Parkway is now governed by a temporary plan in effect for three winter seasons (2004-2007). Because this temporary plan is only in effect for three winter seasons, the National Park Service (NPS) is preparing a long-term Winter Use Plan and Environmental Impact Statement (EIS) for these parks. The long-term plan is intended to guide winter use management beginning in December 2007.

Cooperating agency participation is intended to enable effective communication among government entities and provide relevant information to be used in the forthcoming NPS decision.

II. PURPOSE

As established in the Council on Environmental Quality (CEQ) regulations, 40 C.F.R. Part 1501, Executive Order 13352 on cooperative conservation, and the Department of Interior Departmental Manual on NEPA (516 DM 2.5), Interior bureaus will cooperate with all cooperating agencies that have jurisdiction by law or special expertise to the "fullest extent practicable." As the chair of CEQ emphasizes, "cooperating agency status is a major component of agency stakeholder involvement that neither enlarges nor diminishes authority of any agency involved in the NEPA process" and "determinations about whether to invite, accept, or end cooperating agency status should be made on a case by case basis" (January 30, 2002, memorandum from CEQ).

Accordingly, the purpose of this MOU is to establish the following governmental entities as cooperating agencies in the process of preparing the Winter Use Plan EIS: the states of Idaho, Montana, and Wyoming; the counties of Fremont, Idaho; Gallatin, Montana; and Park and Teton, Wyoming; the Environmental Protection Agency; and the U.S. Forest Service. The cooperating agencies agree and commit to engage as cooperators in the specific ways listed in Section VI "Roles and Assignment of Issues."

As the lead agency, the NPS has sole and ultimate decision-making authority for the Record of Decision (ROD) and for NEPA compliance and preparation of the Winter Use Plan EIS. NPS will fully consider the views of the other parties to this MOU in developing its ROD.

All parties recognize this MOU is to define the working relationships between the parties. It does not infer any contractual relationship, nor assumption of liability for any action of the other parties.

III. STATEMENT OF MUTUAL UNDERSTANDING OF COOPERATING AGENCY WORK

All parties recognize the purpose of cooperating agency status is to provide the decision-maker with the information necessary to make informed and timely decisions.

All parties recognize NPS is the decision-maker and lead agency and recognize this EIS is not an agreement-seeking or shared decision-making process.

All parties report they want to communicate candidly about the relevant substantive and procedural aspects of the forthcoming EIS work and keep the door open for future problem solving and dialogue.

All parties recognize that governmental decisions by each cooperating agency affect the overall situation in each community and in the region -- across the parks, national forests, communities, counties and states.

All parties recognize a shared interest in routine and regular communication of relevant and timely information.

All parties recognize a shared interest in long-term, more stable and predictable solutions for visitation to the parks in the winter.

All parties acknowledge a mutual interest in minimizing travel and meeting time while maximizing awareness and give and take among NPS and cooperators about when and how to contribute their special expertise.

All parties recognize their mutual needs to hear back from NPS specifically about how their data or special expertise was understood and used, or not used, in the EIS process.

IV. JURISDICTION & AUTHORITIES

It is understood that each party continues to exercise its respective jurisdictional authorities and that the cooperation extended to other parties to this MOU does not transfer any jurisdictional roles or responsibilities. It is mutually understood by all parties that, for this case, no cooperator has jurisdiction by law (e.g., authority to grant permits for implementing actions). The NPS, as lead agency, is the only agency with jurisdiction by law over management of winter recreational use of the parks.

This MOU is based on and consistent with the authorities provided in the following:

- National Environmental Policy Act of 1969, as amended, 42 U.S.C. § 4321 et seq.
- NPS Organic Act, 16 U.S.C. § 1 et seq.
- General Authorities Act, 16 U.S.C. § 1a-1 et seq.
- The Yellowstone National Park Act, 16 U.S.C. § 21 et seq.
- The Grand Teton National Park Act, 16 U.S.C. § 406d-1 et seq.
- The John D. Rockefeller, Jr. Memorial Parkway Act, PL 92-404

V. RELEVANT GUIDANCE FROM COUNCIL ON ENVIRONMENTAL QUALITY AND THE DEPARTMENT OF INTERIOR

The establishment of this MOU is consistent with the following guidance provided by the Council on Environmental Quality:

- Council on Environmental Quality (CEQ) regulations, 40 C.F.R. Part 1501
- Executive Order 13352 on cooperative conservation
- Department of Interior Departmental Manual on NEPA

VI. RESPECTIVE ROLES AND ASSIGNMENT OF ISSUES

Each cooperator has unique roles in this process related to its own agency's special expertise.

NPS Lead Agency Roles and Assignment of Issues

The National Park Service will:

1. Prepare the draft and final EIS and be responsible for the quality and content of these documents. The NPS will be solely responsible for selecting the preferred alternative during the EIS process.
2. Exercise sole decision making authority on the Record of Decision.
3. Seek meaningful input from cooperating agencies, non-governmental stakeholder groups, and the general public primarily at key moments in the EIS process, including: during scoping, when issues and alternatives to be addressed in the EIS are identified; during the development of the range of alternatives that will be analyzed; during review of the draft EIS; and on particular monitoring assumptions and inputs.
4. Keep all parties -- primarily via telephone, individual visits, and the NPS website -- informed about the timeframes for public scoping, public comments and alternatives under consideration.
5. Let cooperating agencies know specifically how and where cooperating agency data, information, or input was incorporated into, or considered in, the EIS, and how it may have influenced NPS decisions.

EPA Region 8 Roles and Assignment of Issues:

1. EPA will provide expertise in air quality monitoring and assessment, vehicle emissions, NEPA implementation, and other areas under the expertise of the agency as necessary. EPA will participate in meetings and review of documents on these topics, and on any other topics of interest to the cooperating agencies as resources allow.
2. Nothing in this cooperating agency agreement shall preclude or abridge the obligation of EPA to independently comment on the adequacy of the EIS or the effects upon the environment of the proposed action and its reasonable alternatives pursuant to EPA's obligations under Section 309 of the Clean Air Act.
3. EPA staff will participate in technical team analyses, reviews, and meetings to the maximum extent allowed by agency resource and budgetary constraints, and other program commitments.

U.S. Forest Service Role and Assignment of Issues:

1. Represent the six national forests and the ecosystem.
2. Provide the NPS data on winter visitor use trends and displacement collected by the Forests since the last EIS in time to be included in the Draft EIS.
3. Understand there are no, or minimal travel or meeting expectations connected to this process.

State of Idaho, Montana and Wyoming Roles and Assignment of Issues

1. Provide information on visitor use trends at public and private sites or areas in Yellowstone-Teton region as requested.
2. Provide socioeconomic data (including multi-year trends) for the Yellowstone-Teton Region, as well state-wide, as requested.
3. Provide technical review of air quality, soundscape, socioeconomic, and wildlife monitoring reports, as requested.
4. Provide technical review of draft modeling assumptions and inputs, as well as analyses related to air quality, soundscape, socioeconomics, and wildlife, as requested.

County Role and Assignment of Issues

1. Provide local political perspectives to give the NPS team the broadest possible context for the NEPA work.
2. Provide context regarding “mutual dependencies” between gateway communities and the parks especially related to infrastructure (roads, sewers, water, schools, subdivisions, garbage, emergency services, etc.)
3. Provide county level socioeconomic data, as possible and practical.

VII. EFFECTIVE DATES AND TERMINATION

This MOU will be effective from the date of the last signature and will continue until the Record of Decision is signed.

NPS may exercise its right to end the participation of any cooperating agency if NPS deems the situation warrants such action. (*e.g., see Memorandum for Heads of Federal Agencies, “Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act” with Attachment 1: “Factors for Determining Whether to Invite, Decline, or End Cooperating Agency Status,” January 30, 2002*)

Any party may terminate their participation in this MOU when that party provides thirty (30) days written notice of such termination to the other parties.

VIII. AMENDMENTS AND UNDERSTANDINGS ABOUT CONFLICT RESOLUTION

Any party to this MOU may identify a need for an amendment to the MOU and/or a need to schedule further communications with the respective parties at any time. The MOU may be modified by mutual written consent of all parties at any time.

If an issue arises that cannot be resolved at the primary contact level identified later in this MOU, a neutral facilitator will be available to convene the parties to seek voluntary resolution. If no mutually acceptable resolution can be found, the superintendents of the Yellowstone and Grand Teton National Parks will decide the issue and inform the primary contacts and the cooperating agency heads

(Governors, Commission Chairs, Regional Foresters, and EPA Region 8 Administrator) of their resolution.

IX. PRIMARY CONTACTS FOR THIS MOU

State Representatives

Idaho: Carl Wilgus, Commerce and Labor

Montana: Pat Flowers, Montana Fish Wildlife and Parks

Wyoming: Temple Stevenson, Office of the Governor

County Representatives

Fremont County, Idaho: Tamra Cikaitoga, Parks and Recreation Department

Gallatin County, Montana: Bill Murdock, County Commissioner

Park County, Montana: Larry Lahren, County Commissioner

Park County, Wyoming: Tim French, County Commissioner

Teton County, Wyoming: Larry Jorgenson, County Commissioner

Federal Agencies

U.S. Forest Service: Becki Heath, Gallatin Forest Supervisor

U.S. Environmental Protection Agency: Phil Strobel, Environmental Engineer

National Park Service: John Sacklin, Yellowstone National Park Superintendent's Office

X. STANDARD CONDITIONS:

- A. AUTHORITIES.** Nothing in this MOU shall be construed to extend the jurisdiction or decision-making authority of any party to this MOU beyond that which exists under current laws and regulations. Nothing in this MOU shall be construed as limiting or affecting the authority or legal responsibility of any party, or as binding any party to perform beyond the respective authority of each, or to require any party to assume or expend any specific sum of money. The provisions of this MOU are subject to the laws and regulations of the states of Idaho, Montana, and Wyoming; the laws of the United States; and the regulations of the Department of the Interior, as they may be applicable. Nothing in this MOU shall be construed as affecting the decision-making requirements of any party or impairing the independent judgment of each party regarding policy decisions.
- B. LEGAL RIGHTS AND REMEDIES.** Nothing in this MOU shall be construed to alter the legal rights and remedies that each party would otherwise have. No party waives any legal rights or defenses by entering into this MOU or participating in the process contemplated hereby.
- C. SOVEREIGN IMMUNITY.** The States of Idaho, Montana and Wyoming, political subdivisions, and the agencies of the federal government do not waive their sovereign immunity by entering into this MOU, and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU.
- D. SEVERABILITY.** Should any portion of this MOU be judicially determined to be illegal or unenforceable, the remainder of the MOU shall continue in full force and effect, and any party may renegotiate the terms affected by the severance.
- E. THIRD PARTY BENEFICIARY RIGHTS.** The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this MOU shall

not be construed so as to create such status. The rights, duties and obligations contained in this MOU shall operate only among the parties to this MOU, and shall inure solely to the benefit of the parties to this MOU. The provisions of this MOU are intended only to assist the parties in determining and performing their obligations under this MOU.

- F. NON-FUND OBLIGATION DOCUMENT.** This MOU is neither a fiscal nor a funds obligation document. Any endeavor or transfer of anything of value involving reimbursement or contribution of funds between the parties to this instrument will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate rules, policies, and statutory authority. This MOU does not provide such authority. Specifically, this MOU does not establish authority for noncompetitive award to the cooperator of any contract or other agreement. Nothing herein constitutes a binding commitment to fund any of the proceedings encompassed by the MOU. Any specific cost sharing or funding shall be executed separately through other funding mechanisms, as deemed necessary and appropriate by each of the signatories.
- G. PARTICIPATION IN SIMILAR ACTIVITIES WITH OTHER ENTITIES.** This MOU in no way restricts any of the parties from participating in similar activities with other public or private agencies, organizations, and individuals.

XI. APPROVALS

For the U.S. Environmental Protection Agency

Date

For the U.S. Forest Service

Date

For the State of Idaho

Date

For the State of Montana

Date

For the State of Wyoming

Date

For Fremont County, Idaho

Date

For Gallatin County, Montana

Date

For Park County, Montana

Date

For Park County, Wyoming

Date

For Teton County, Wyoming

Date

For Yellowstone National Park

Date

**For Grand Teton National Park and the
John D. Rockefeller, Jr., Memorial Parkway**

Date

Attachment 1 to Cooperating Agency Agreement

Scheduling of Tasks and Interim Products as of October 2005

Notice of Intent published in <i>Federal Register</i>	June 24, 2005
Process agreement(s) with cooperating agencies	August 2005
Scoping period closes	September 1, 2005
Individual meetings/visits by NPS with each cooperator to discuss draft alternatives and pertinent data	Fall 2005
Cooperating agencies provide any new, pertinent information to NPS	Summer-Fall 2005
NPS provides copy of Draft EIS to each cooperating agency contact for review	Winter 2005/06
Publish Draft EIS on the web, 60-day public comment period begins	Spring 2006
Publication of proposed rule, 60-day public comment period begins	Spring 2006
Response to comments on Draft EIS complete and incorporated into Final EIS. Begin internal and cooperating agency review of Final EIS	Winter 2006/07
Final edits to Final EIS incorporated	Winter 2007
Publish Final EIS Notice of Availability	Spring 2007
Issue Record of Decision and Final Rule	Summer 2007
Decision Implemented	December 2007