

Collaboration in NEPA

A Handbook for NEPA Practitioners

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This handbook presents the results of research and consultations by the Council on Environmental Quality (CEQ) concerning the consideration of collaboration in analyses prepared under the National Environmental Policy Act (NEPA). It introduces the NEPA practitioner and other interested parties to the issue of collaboration, outlines general principles, presents useful steps, and provides information on methods of collaboration. The handbook does not establish new requirements for collaboration or public involvement. It is not and should not be viewed as formal CEQ guidance on this matter, nor are the recommendations in the handbook intended to be legally binding.

TABLE OF CONTENTS

| | |
|---|-----------|
| I. INTRODUCTION..... | 2 |
| II. COLLABORATION AND ITS BENEFITS..... | 3 |
| A. COLLABORATION: THE FOCUS OF THE HANDBOOK | 3 |
| B. THE BENEFITS OF COLLABORATION | 4 |
| III. THE CONTEXT FOR COLLABORATION | 5 |
| A. WHEN COLLABORATION WORKS BEST | 6 |
| 1. <i>Collaboration in General</i> | 6 |
| 2. <i>Collaboration Between Agencies and other Parties</i> | 7 |
| B. WHEN COLLABORATION WORKS LESS WELL | 7 |
| IV. BASIC APPROACH TO DESIGNING A COLLABORATIVE NEPA PROCESS | 8 |
| A. SPECTRUM OF ENGAGEMENT IN NEPA DECISION-MAKING | 8 |
| B. THE PHASES AND EXTENT OF COLLABORATION | 10 |
| V. OPPORTUNITIES FOR COLLABORATION WITHIN THE NEPA PROCESS | 12 |
| A. THE PROPOSED ACTION / DEVELOPMENT OF PROPOSAL | 12 |
| 1. <i>Development of Statement of Purpose and Need for Agency Action</i> | 12 |
| 2. <i>Coordinating with other Planning Processes</i> | 13 |
| B. THE ROLE OF COOPERATING AGENCIES | 13 |
| C. NOTICE OF INTENT | 14 |
| D. SCOPING..... | 14 |
| E. ALTERNATIVES DEVELOPMENT / PREFERRED ALTERNATIVE | 15 |
| F. AFFECTED ENVIRONMENT AND ENVIRONMENTAL CONSEQUENCES (ANALYZING IMPACTS)..... | 15 |
| G. ADDRESSING MITIGATION | 16 |
| H. MANAGING DRAFT AND FINAL REVIEWS..... | 16 |
| I. RECORD OF DECISION (ROD) / FINDING OF NO SIGNIFICANT IMPACT (FONSI)..... | 17 |
| J. IMPLEMENTING AND MONITORING DECISION..... | 17 |
| K. GUIDE TO COLLABORATIVE ENGAGEMENT DURING NEPA..... | 17 |
| VI. ADDRESSING CHALLENGES TO NEPA COLLABORATION..... | 22 |
| A. RESOURCE REQUIREMENTS..... | 22 |
| B. MANAGING CONFLICT WHILE PRACTICING COLLABORATION | 22 |
| C. FEDERAL AGENCY CULTURE..... | 23 |
| D. THE FEDERAL ADVISORY COMMITTEE ACT (FACA)..... | 24 |
| VII. CONCLUSION | 25 |

APPENDICES

- APPENDIX A: EXAMPLE MEMORANDA OF UNDERSTANDING
- APPENDIX B: SELECTED CASE STUDIES
- APPENDIX C: RESOURCES
- APPENDIX D: STRATEGIES FOR PREVENTING CONFLICTS
- APPENDIX E: FEDERAL ADVISORY COMMITTEE ACT
- APPENDIX F: ATTITUDES AND BEHAVIORS THAT ENHANCE COLLABORATION
- APPENDIX G: ACRONYMS
- APPENDIX H: ACKNOWLEDGMENTS

I. INTRODUCTION

One of the primary goals of the National Environmental Policy Act (NEPA)¹ is to encourage meaningful public input and involvement in the process of evaluating the environmental impacts of proposed federal actions. This once innovative feature of the 1970 landmark legislation has become routine practice for most NEPA review processes. However, the full potential for more actively engaging other agencies, affected and interested parties, and the public at large in collaborative environmental analysis and federal decision-making is rarely realized.

The purpose of this handbook is to assist those within federal agencies who are responsible for conducting environmental reviews in expanding the effective use of collaboration as part of the National Environmental Policy Act (NEPA) process, as called for by the NEPA Task Force Report to the Council on Environmental Quality (CEQ), *Modernizing NEPA Implementation* (available at <http://www.ceq.eh.doe.gov/ntf>). Among its many conclusions, the NEPA Task Force found that collaborative approaches to engaging the public and assessing the impacts of federal actions under NEPA can improve the quality of decision-making and increase public trust and confidence in agency decisions.

This handbook discusses how federal agencies can benefit by working collaboratively with others in the NEPA process. Collaboration often requires hard work, commitment, agency leadership, different kinds of skills and resources, and a new way of approaching environmental review processes. The cases referenced throughout the handbook show that federal managers have successfully used collaborative processes in a variety of contexts and that its benefits can be well worth the investment.

The NEPA Task Force found collaborative practices to be synonymous with good government. These practices are also consistent with the national policy objectives set forth in Section 101 of NEPA. In this section, Congress declared it to be “the continuing policy of the Federal Government . . .to create conditions under which man and nature can exist in productive harmony.” To carry out this policy, Section 101 of NEPA makes it the responsibility of the federal government to take measures so that “the Nation may -

- 1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
- 2) assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
- 3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
- 4) preserve important historic, cultural and natural aspects of our national heritage, and maintain, whenever possible, an environment which supports diversity, and variety of individual choice;
- 5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life’s amenities; and

¹ 42 U.S.C. 4321-4347

- 6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.”

The principles underlying Section 101 are in large part the central tenets of environmental conflict resolution and collaborative problem-solving. For example, environmental conflict resolution and collaborative problem-solving emphasize:

- including in processes diverse interests and affected communities;
- addressing all key issues of concern to public welfare;
- basing choices and recommendations on the best available information;
- analyzing impacts and consequences;
- weighing social, economic and environmental values; and
- working toward agreements with long term efficacy for future generations

These overlapping principles from environmental conflict resolution, collaborative problem-solving, and Section 101 of NEPA can help parties work through issues within the NEPA process. Whether the issue involves air quality, the economic health of communities, endangered species, the scarcity of water resources, or how we recreate on public lands, the application of these principles can anticipate and turn conflict into constructive problem-solving.

II. COLLABORATION AND ITS BENEFITS

Collaboration is a broadly used term that describes how people work together, literally meaning “co-labor.” There are many ways for people to collaborate: informally or formally, as partners or in teams, in advisory capacities or as joint decision-makers.

When we collaborate with someone we allow that person a relatively high level of influence in our decision-making. This distinguishes collaboration from other degrees of influence in decision-making, which will be discussed in greater detail in Section IV.

A. Collaboration: The Focus of the Handbook

One of the hallmarks of NEPA is that it requires the federal government to involve the public in the environmental review process. To this end, the CEQ implementing regulations (40 C.F.R. parts 1500-1508) require agencies to make diligent efforts to involve the public in NEPA processes and to give the public notice of NEPA-related public meetings and hearings. The regulations also encourage agencies to actively identify parties that might be interested in a federal action, to hold public hearings and meetings, and to give notice to the public through a variety of media such as the Federal Register, local newspapers, or direct mailing. The regulations allow agencies to determine the details of each public involvement process.

Public involvement practices and techniques have evolved considerably since Congress passed NEPA in 1970. Today, practitioners of public involvement usually complement or modify the traditional public hearing with more informal meetings that encourage citizens to interact with agency officials on a one-to-one basis. These practitioners also use innovative and pro-active methods to identify and communicate with individuals and groups that might be interested in

particular governmental decisions. Many also use interest based processes to help people with divergent views to find common ground and collaborate with one another.

Collaboration applies in many contexts and can include a broad range of activities, from information sharing to joint decision-making; however, there is no set definition. This handbook focuses on collaboration in the context of NEPA where an agency engages other governmental entities and/or a balanced set of affected and interested parties in seeking agreements at one or more stages of the NEPA process by cultivating shared vision, trust, and communication. The main goal of the handbook is to encourage collaboration where appropriate by showing how agencies have collaborated with parties in the past and how agencies can better collaborate with parties in the future throughout a NEPA process.

This handbook focuses on collaboration directly in the context of NEPA and more specifically as that form of collaboration that is engaging other governmental entities and/or a balanced set of affected and interested parties in seeking agreements at one or more stages of the NEPA process by cultivating shared vision, trust, and communication.

The extent of collaboration between any two parties in a NEPA process can vary considerably depending on the phase of the NEPA process and the roles assigned to each party by the lead agency. However, regardless of the level of collaboration between parties, agencies retain the responsibility for obtaining and considering the views of the general public even while collaborating under NEPA.

The lead federal agency is the agency charged with conducting the NEPA process. A lead agency might find opportunities to collaborate throughout the NEPA process, whether it is preparing an Environmental Impact Statement (EIS) or an Environmental Assessment (EA). The lead agency might wish to collaborate in defining the purpose and need for a project, in developing a proposal for an action; in identifying impacts and issues; in generating alternatives; in analyzing alternatives; or in determining a preferred alternative. A lead agency can collaborate with others in one or more discrete stages, or in every aspect of the NEPA process. Documents prepared by a collaborative group in a NEPA process may become part of the NEPA administrative record.

While collaborating with others lead agencies retain decision making authority and responsibility throughout the NEPA process, including the formulation and issuance of a Record of Decision (ROD) in the EIS process, or a Finding of No Significant Impact (FONSI) in the EA process. Collaboration takes place without an agency abdicating its statutory responsibilities, it enables decision makers to give appropriate weight to any consensus that may have been reached among the interested and affected stakeholders.

B. The Benefits of Collaboration

The collaborative process can offer a lead agency many benefits, including:

CALFED BAY-DELTA: A multi-party collaborative group dealing with water issues in California that relies heavily on consensus-based scientific and technical information. (See <http://www.calwater.gov>)

Information. By engaging relevant expertise, including scientific and technical expertise, and knowledge of a local resource, a collaborative body can reach a more informed agreement and advise decision-makers accordingly. Similarly, the diversity of perspectives, transparency and openness of collaborative processes tend to encourage creative thinking, which can also lead to more informed decisions.

A fair process. Effective collaboration involves most or all interests involved in an issue. This increases the likelihood that important interests, particularly those from traditionally disadvantaged or under-represented communities, will be invited to participate in a process.

Integration. Since collaboration emphasizes a sharing of ideas, opinions, and sometimes resources, it can also enhance integration and coordination among jurisdictions. For example, NEPA's interdisciplinary framework has the potential to allow agencies to integrate, coordinate, and streamline the multiple reviews and analyses associated with different legal and permitting requirements.

Conflict Prevention. Parties working collaboratively on a NEPA analysis can surface and resolve differences as they arise, thus preventing conflict or at least mitigating its impact.

Fact-Finding. Innovative tools such as joint fact-finding (an inclusive and deliberative process to foster mutual learning and resolve disputes over scientific and technical issues), collaborative monitoring (where the collaborative group participates in the monitoring of environmental impacts), adaptive management (emphasizes learning from the outcomes of management actions), and others can bring parties to a common understanding of the facts that underlie issues being tackled by a collaborative group. If the parties cannot agree on a decision, they may at least be able to agree on the methodology for producing technical information.

Social Capital. Collaboration can produce long-lasting intangible benefits like social capital. Collaborative processes can build trust between people who will work together on other projects, lead to the formation of partnerships, and increase public confidence in government.

Implementation. Collaboration also can enhance and ease the implementation of a decision. If stakeholders feel vested in a decision, they will have a stake in its implementation. They can also bring the knowledge they gained during the collaborative process to bear on decisions relating to monitoring, enforcement, and other issues.

Reducing Litigation. Collaboration can reduce the likelihood of litigation by including key stakeholders early and often, solving problems at the lowest possible level as they arise, and building agreements between stakeholders. Even if litigation ensues, the collaborative process may help narrow issues and make them more amenable to agreement.

III. THE CONTEXT FOR COLLABORATION

Context is important in collaborative efforts under NEPA. An agency might be unable to (or might not want to) seek agreement with every party during every phase of NEPA. In some cases

collaboration is clearly called for; in other cases, a level of engagement offering stakeholders lesser degrees of influence, like public input or an outreach effort, may be most appropriate. Lead agencies should be sure, however, to communicate with each party about their role in the process to avoid setting expectations that cannot be met.

A. When Collaboration Works Best

Collaboration works best when interested and affected parties believe they can individually and collectively achieve better outcomes by working together instead of independently. Some situations are more conducive to a collaborative process than others.

1. Collaboration in General

Collaboration requires hard work, focused attention, adequate time, and considerable dedication of staff and funding resources by all participants. Private citizens in particular often serve in volunteer roles in collaborative processes. Consequently, the parties to a process must give it high priority to justify the time and resources needed to do a good job.

Collaborative approaches often work best when there is sufficient decision space among alternatives — room for parties to mold the solution that meets their needs. Similarly, parties have more incentive to collaborate if the “best” outcome is truly unknown. For example, joint fact-finding may be helpful if the lead agency lacks the information necessary to make an informed decision. Similarly, an agency might opt for an adaptive management approach when the effects of its decisions cannot be known for certain until they are implemented at the field level. The likelihood of litigation, with its costly delays, may also strengthen the desire to collaborate.

Support from lead agency leadership is essential for a collaborative process to have credibility with external parties and legitimacy with agency staff. For example, agency leadership was the driving force behind the twelve agency partnership to develop the recent I-73 project in North and South Carolina (See Appendix B-15). Agency support should include a good faith commitment (within the parameters of its authority) to sincerely consider incorporating the recommendations that are developed during the process into the agency’s final decision. The success of a collaborative effort often requires an active, internal agency advocate with sufficient authority or persuasive ability to ensure support and buy-in from agency leadership.

Collaboration is often an ideal process for parties that are likely to have a continuing relationship beyond the immediate issue in which they are involved. Federal land managers, for instance, often deal with the same people (community leaders, property owners, advocacy groups) on a variety of issues over a long period of time. The respect and trust established in one project

Carryover Benefits: The Bureau of Land Management (BLM), Forest Service, and other state and local agencies formed a partnership in the mid-1990s for the initial purpose of identifying the causes of the rapid decline in the mule deer population in the Uncompahgre Plateau in Colorado. This effort was so successful that the agencies involved decided to continue working together, and in recent years have collaboratively completed landscape assessments, fuel reduction plans, grazing allotment studies, among other projects. (See <http://www.upproject.org>)

often carries forward to other projects, increasing their chances of success.

The prospects for collaboration improve when parties need to rely on one another. In the 1995 *Swan Valley Conservation Agreement*, the USDA Forest Service, United States Fish and Wildlife Service, and Plum Creek Timber Company agreed on measures to protect grizzlies in the Bob Marshall Wilderness and on private land (See Appendix, B-14). For the agreement to be effective, each party to the agreement had to rely on the good faith and performance of the other parties. Collaboration is more likely to succeed when parties believe that working toward a joint solution will produce a better outcome than taking unilateral action (i.e., through the legislature, the courts, or the media).

2. Collaboration Between Agencies and other Parties

Lead agencies often find that the NEPA action they wish to undertake affects other governmental agencies. This gives the lead agency an opportunity to collaborate with these other agencies and draw upon their experience and expertise. NEPA, its implementing regulations, and CEQ guidance encourage lead agencies to designate federal, state, local and tribal agencies that share jurisdiction, authority, or subject matter expertise as “cooperating agencies” (discussed in greater detail in Section V.B.). When a lead agency engages the public or representatives of specific interests, there are a variety of authorities besides NEPA that can influence the design of the collaborative approach, including the Administrative Procedures Act, the Federal Advisory Committee Act (FACA), and the Administrative Dispute Resolution Act (See Section VI.D. and Appendix E for further FACA discussion). When the lead agency engages other government agencies (federal, state, local, or tribal government agencies) in interagency meetings, for purposes of meeting their NEPA responsibilities, any such meetings held exclusively among government agencies are not subject to the requirements of FACA.

B. When Collaboration Works Less Well

Parties have little motivation to collaborate if they believe they have better ways to achieve their interests. If a party believes it can achieve its goals through unilateral action, the courts, or the legislature, it might not be motivated to collaborate with others.

Collaboration in the NEPA process may not work as well if there is strong internal resistance within the lead agency to using the approach. Impediments like scheduling delays, lack of resources, and insufficient staff experience and knowledge might make project managers think twice about designing a collaborative process, particularly if it would involve engaging highly polarized and skeptical interested parties.

In addition, lead agencies sometimes fear relinquishing control over their statutory responsibilities. Ambiguity in an agency’s commitment might also hinder participation in a process. Participants in a collaborative process are unlikely to dedicate their time and effort to an enterprise if they perceive that the lead agency is not whole heartedly behind the effort.

Parties might also have conflicting views on the meaning and significance of data. If they cannot agree on the underlying facts, they are much less likely to agree on substantive issues.

Collaborative processes are also more likely to fail where a high level of distrust exists among the parties. Distrust can stem from simple personality conflict between individuals to conflict between the aims of organizations, as expressed through their representatives.

These are just some of the reasons a collaborative approach might not work in a particular situation. However, as stressed throughout this handbook, practitioners of collaborative problem-solving often find that these obstacles can be overcome through education and the application of a collaborative problem-solving approach.²

IV. BASIC APPROACH TO DESIGNING A COLLABORATIVE NEPA PROCESS

A. Spectrum of Engagement in NEPA Decision-Making

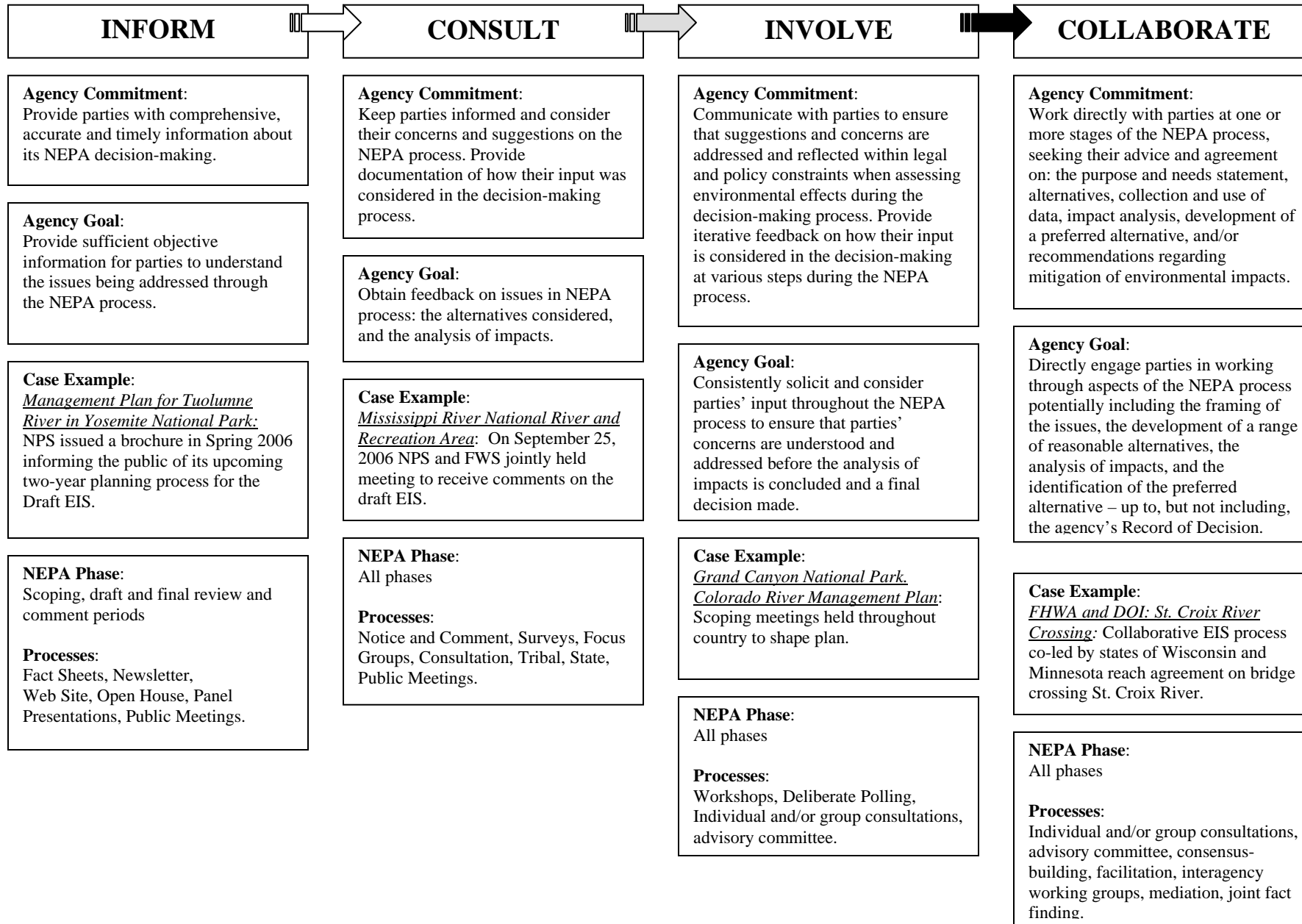
The “Spectrum of Engagement in NEPA Decision-Making”, adapted from the International Association for Public Participation’s *Public Participation Spectrum* (available at <http://www.IAP2.org>), shows four levels of potential engagement for a lead agency with other governmental and non-governmental entities. From the left side of the spectrum and beginning with the level of least shared influence with parties, they are to: *Inform*, *Consult*, *Involve*, and *Collaborate*.

At the *Inform* level, the agency informs the parties of its activities. At the *Consult* level, the agency keeps parties informed and considers their concerns and suggestions on the NEPA process. Here the agency consults with parties without intending to reach agreement with them. At the *Involve* level, the agency works closely with parties to address their concerns within the agency’s legal and policy constraints. At the *Collaborate* level, parties exchange information and work together towards agreement on one or more issues at one or more stages in the NEPA process. The focus of this handbook is on the *Collaborate* end of the spectrum; however, all levels may be used in a given NEPA process, and tend to reinforce, in a cumulative manner, the potential for effective collaboration. In designing a collaborative process under NEPA, the lead agency should:

1. Determine the parties with whom the agency wishes to collaborate.
2. Determine how it will involve each party within each phase of the NEPA process, and avoid creating expectations it cannot fulfill. The mistrust created by promising collaboration and only delivering information, for example, can ruin an agency’s relationships with parties and potentially undermine the agency’s credibility.
3. In situations where collaboration is inappropriate or infeasible, determine whether to engage parties at the Inform, Consult, or Involve levels of influence.

² Attitudes and behaviors that are conducive to applying a collaborative approach vary. One practitioner’s examples are presented at Appendix F.

Spectrum of Engagement in NEPA Decision-Making



B. The Phases and Extent of Collaboration

Most NEPA processes proceed smoothly from the development of a proposal to the issuance of a ROD or FONSI. However, in complex and controversial NEPA processes, lead agencies often find themselves dealing with parties asserting competing interests-- the underlying causes of environmental conflict. This is not necessarily a bad thing. Some degree of conflict is healthy, forcing parties to examine and think deeply about issues, which often leads to better solutions. What is critical is how conflict is managed. Practitioners of collaborative problem-solving often use the following approach to managing conflict in multi-party public policy disputes. This approach typically involves these five phases:

1. Assessment and Planning;
2. Convening and Initiating;
3. Sharing Interests and Exchanging Information
4. Negotiating to Seek Agreement; and
5. Decision-making, and Implementing (including Monitoring and Evaluation).

This approach has been used successfully in many NEPA processes.

In the **assessment and planning phase** (often referred to as “conflict” or “situation” assessments) agencies clarify the issues and assess the opportunity for collaboration. (See Deborah Shmueli, *Conflict Assessment: beyond intractability*, Conflict Research Consortium, University of Colorado 2003). Complex or controversial issues might warrant a rigorous assessment. The lead agency might want to engage a neutral party to identify and interview stakeholders, and submit a written report on whether the conflict was amenable to resolution through a collaborative process. Less controversial or complex conflict can often be planned for and assessed through less formal means. Through the assessment process agencies can educate parties about the benefits of collaboration and begin building trust between parties. Lead agencies that enter into collaborative processes without undertaking an assessment risk pursuing an approach that is inappropriate under the circumstances and being surprised by unexpected issues as the process unfolds.

Assessing the Conflict: The National Park Service recently chose to utilize a rigorous assessment of the conflict over off-leash dog walking at Golden Gate National Recreation Area (GGNRA). The assessment found the issue to be ripe for resolution through a collaborative process (See Appendix B-15).

After reviewing the assessment, the lead agency determines whether the collaborative process should proceed to the **convening and initiation phase**. In this phase the lead agency brings parties together to educate them about the process and to develop a plan for how they can work together. The lead agency or convener might choose a casual or structured approach to convening, depending on the complexity of the issues at hand, and the history of conflict between parties, among other things. The lead agency clarifies expectations and the roles and responsibilities during this phase. The agency might consider providing training to the collaborative group, which is what the National Park Service did in the GGNRA example discussed above.

Groups typically begin to work together during convening by jointly establishing ground rules. They identify additional participants that need to be engaged; clarify areas in need of agreement; determine resource and funding sources; choose appropriate meeting times and venues; enter into memoranda of understanding, identify needs for information and technical expertise; and select an independent facilitators or mediators as appropriate.

During convening and initiation, groups should determine how they will make decisions. The lead agency should explain to the group the range of its decision space, particularly the statutory authorities that may restrict its options. Practitioners of collaborative problem-solving tend to encourage group decision-making that is based on consensus rather than majority rule. Consensus decisions can be defined in different ways; as full and unanimous endorsement within the group for example, or as a range of graduated levels of support with no outright vetoes. Some consensus rules require parties to develop alternative solutions that would meet collective needs before opting out. Many groups will set up a default decision-making process if they cannot reach consensus, such as decisions based on super-majority or majority votes or provide for minority reports. Third-party neutrals can often help groups devise the decision-making process that is right for them.

Following the initial convening, parties usually begin **sharing interests and exchanging information** that will last throughout the entire process. There are many ways to introduce discussions about interests, from carefully managed presentations, to informal brainstorming sessions. Parties might also identify gaps in knowledge during this phase or agree to methodologies (for data gathering, like joint fact-finding, and for data analysis) that help them reach a common understanding of the facts that underlie the issues.

Often considered the heart of the collaborative process, yet in many respects the culmination of an effective collaboration, is the next phase where participants **negotiate through a deliberative agreement-seeking process**. This phase could involve a discrete negotiation over one finite set of issues or proceed in an iterative fashion over a period of time; for example, throughout an entire NEPA process. During this phase, the lead agency and interested parties consider possible options that would best meet all parties' needs and interests, and work toward agreements that maximize "joint gains" and minimize costs and losses for all parties.

The **decision-making and implementation phase** is the final phase of collaboration. The primary goal for collaboration in the NEPA process is to arrive at an alternative that can be implemented. The lead agency will find itself in a more justifiable position when adopting a consensus-based recommendation. Additionally, the lead agency can draw on the increased capacity for cooperation that has developed through the collaboration to expedite implementation. During the implementation phase, there may be ongoing benefits for the parties to continue working together on some or all parts of the action plan.

V. OPPORTUNITIES FOR COLLABORATION WITHIN THE NEPA PROCESS

This handbook encourages lead agencies to consider, where appropriate, going further than the minimum requirements in engaging the public throughout the NEPA process. Section 102 of NEPA and the CEQ implementing regulations specify minimum requirements for engaging the public in the development of an EIS. The regulations require agencies to engage in forms of public participation such as notice and comment procedures, and public outreach (40 C.F.R. §§1503.1(a), and 1506.6).

Agencies are also required to involve the public to the extent practicable in developing EAs (40 C.F.R. §§ 1501.4(b), and 1506.6), and may choose to apply the public involvement processes available for preparing an EIS to the development of an EA. This is important, as CEQ in its 1997 report “*The National Environmental Policy Act, a study of its effectiveness after twenty-five years*” and its 2005 “*Report on Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act*” (http://ceq.eh.doe.gov/nepa/coop_agency_status.htm) concluded that agencies issue far more EAs than EISs.

This chapter provides advice and examples of how to collaborate more fully within and across the different phases of the NEPA process. NEPA practitioners can use the matrix that follows this discussion as a tool to explore approaches to collaboration at different stages in the NEPA process.

A. The Proposed Action / Development of Proposal

Lead agencies can begin using collaborative processes at the start of the process that leads to the development of a proposed action.

1. Development of Statement of Purpose and Need for Agency Action

Before identifying alternatives including the proposed action, agencies must determine the purpose and need for the action. To develop a purpose and need statement, agencies collect information, define the problem, and often brainstorm for possible solutions. For example, a land management agency might be concerned about traffic congestion in an environmentally sensitive area of public land. Before it can begin to solve this problem it must collect data on the extent of the traffic problem, its impact on resources, the desires of visitors to the area, and possible solutions to the problem. This information could support a NEPA purpose and need statement. Agencies can work together during this phase to reach a common understanding of operational, regulatory and fiscal constraints that impact the implementation process. The purpose and need are key in developing alternatives including the proposed action. When several agencies have a role in alternatives and the proposed action they can collaboratively develop a NEPA analysis and documentation that meets their collective needs. For example, collaboratively developing the purpose and need with agencies that have regulatory authority for the proposed action can help ensure that the subsequent development and analysis of alternatives results in a NEPA process upon which the permitting agencies can rely.

2. Coordinating with other Planning Processes

CEQ regulations encourage agencies to integrate the NEPA process with other processes at the earliest possible time (40 C.F.R. § 1501.2). For example, federal land management agencies often use planning procedures developed initially by the USDA Forest Service to collaboratively develop the desired conditions of areas of federal land (“Plan Implementation/Public Involvement Triangle”, available at

Collaborating Early: In the mid-1990s the Bureau of Land Management began collaborating in the planning process with external parties to develop the desired conditions of the Las Cienegas National Conservation Area. Early collaboration in planning led to a successful NEPA process, with many of the consensus recommendations made by the collaborative group being incorporated into the EIS issued by the BLM in 2003.

<http://www.fs.fed.us/biology/planning/guide/howorganized.html>). In many planning processes desired conditions are rolled into subsequent proposed actions that initiate the NEPA process. This is an opportune time for engaging the public through a variety of means such as workshops, focus groups, informal meetings. Early collaborative involvement like this can minimize the contentiousness of issues that might surface during scoping.

If the proposed action is likely to generate controversy, the lead agency may want to conduct an assessment during the early NEPA phases to determine the extent of hostility to the action. The lead agency could also consider (consistent with authorities such as FACA) engaging a representative group of parties to help form the proposed action statement.

B. The Role of Cooperating Agencies

At the outset of any NEPA process, the lead agency needs to consider the degree to which it wishes to seek agreement at the various stages of the NEPA process with cooperating agencies as well as with other parties that aren’t cooperating agencies. Seeking agreement from a cooperating agency is not required, but as part of collaboration it is recommended.

As noted in Chapter III, CEQ regulations implementing NEPA provide that the lead agency may designate other federal, state, local and tribal agencies that have legal jurisdiction or special expertise with respect to any environmental impact involved in a proposal to be cooperating agencies (40 C.F.R. §§ 1501.6 and 1508.5). The lead agency must determine how, if at all, it will collaborate with the cooperating agency. It is helpful to remember that working with cooperating agencies is not subject to FACA so long as the group of cooperating agencies is composed exclusively of federal officials and elected officials from federal, state, and local governments or tribes (or their designated employees with authority to speak on their behalf).

Multi-Agency Collaboration: The collaborative group undertaking the Department of Transportation’s SAFETEA-LU 6002 process has established a rule for participating agencies that provides for collaborative efforts with agencies not designated as cooperating agencies.

The lead agency should also consider how it

wishes to work with other parties that are not deemed cooperating agencies. It is possible to develop arrangements to structure consistent communications, coordination, and information sharing.

The more promising the process is for mutual benefit, the more likely cooperating agencies and other parties will engage in it. Memorandums of Understanding (such as those in Appendix A) can clarify roles and a situation assessment can be helpful in clarifying expectations for partner agencies in the process.

C. Notice of Intent

The publication of a Notice of Intent in the Federal Register is the first formal step in an EIS process. The lead agency could use the Notice of Intent to emphasize its commitment to collaboration and how it intends to engage interested parties throughout the analysis. Lead agencies can supplement the Federal Register notice (as well as provide notice for an EA process) with other forms of notice such as announcements on websites, newspapers, newsletters, and other forms of media.

D. Scoping

Scoping is an early and open process for determining the breadth of issues to be addressed in an EIS and for identifying the significant issues related to a proposed action. By collaborating with others at this point, the lead agency can help ensure that the analysis adequately addresses those issues of importance to affected stakeholders and interested parties. A situation assessment here (if not conducted in an earlier phase) will help determine who should be involved in the scoping process-- to what extent, and for what purpose. Collaboration during scoping can help define study boundaries, identify possible effects of various actions, and establish a schedule for the analysis. The lead agency can be innovative in how it reaches the public during scoping by means such as setting up project websites, distributing periodic newsletters, and holding meetings in diverse locales.

Innovative Scoping: From 2002-2004 the National Park Service conducted extensive scoping meetings throughout the United States, encouraging the public to express their thoughts by writing on maps, speaking to stenographers, or speaking directly to park personnel, to frame the issues for the Colorado River Management Plan EIS (See Appendix B-15).

The lead agency can use scoping to clarify the roles of participants, determine gaps in resources, establish dispute resolution procedures, reach agreement with parties on meeting protocols and ground rules, and clarify project goals and objectives. The lead agency can conduct an assessment through individual interviews to identify the key issues and concerns expressed by stakeholders. In addition, public workshops to generate dialogue and prioritize issues, and continued meetings among cooperating agencies to further identify and prioritize issues, can be useful techniques during scoping.

If the lead agency decides to establish a representative group to work toward consensus agreements during scoping, it should also consider an appropriate legal procedural framework for this, including applicability of FACA (see Section VI. D. and Appendix E).

E. Alternatives Development / Preferred Alternative

NEPA requires lead agencies to develop and assess reasonable alternatives that meet the purpose and need for agency action. The development of alternatives can be conceptually challenging and laden with value judgment and assumptions, either unspoken or even unrecognized. The selection of alternatives drives the remainder of the NEPA process by framing the issues, the possible solutions, and the analysis. Thus, if agencies desire broader agreement in identifying the preferred alternative, engaging in effective collaboration at this stage of NEPA is absolutely essential.

Lead agencies often find it challenging to develop alternatives through their internal process. When the process is expanded to include external parties, the challenge is even greater. Parties often need to be educated about the many ways in which objectives (purpose and need) can be met and how alternatives can be structured before they can begin deliberating and considering options. Collaboratively developed alternatives are likely to withstand external challenges and enable stakeholders to focus on the choices among alternatives when deliberating over the draft EIS. Agencies can use a range of techniques to enhance collaboration during alternatives development, such as:

- Public workshops to discuss draft alternatives and how they can be improved, and identify any new alternatives that are viable.
- Working with cooperating agencies to identify and refine alternatives,
- Working with advisory committees or other existing stakeholder groups to identify and refine alternatives, and
- Working with groups organized by others (Chambers of Commerce, environmental coalitions) to identify and refine alternatives.

F. Affected Environment and Environmental Consequences (Analyzing Impacts)

The analysis of the affected environment and the environmental impacts of alternatives can also be challenging. Parties may challenge the technical analysis — its assumptions, its data, its methodology, its conclusions, and even the credentials of the analysts. Collaboration can not only improve the credibility of the technical analysis, but also its legitimacy in the eyes of diverse stakeholders. Collaboration may also decrease the risk of project delay later in the process. Collaborative groups may find expert panels useful to engage as part of a joint fact-finding process when confronted by complex scientific or technical issues. For example, the CALFED Bay Delta collaborative group in Northern California regularly utilizes expert panels to address water issues in the San Francisco Bay area.

An agency might also consider:

- Holding a public “state of the science” workshop(s) where experts discuss available information – what is known, not known, what can be studied easily or not, what assumptions rest within certain analysis, and what uncertainties exist.
- Convening experts from cooperating agencies, including tribes and local municipalities, to jointly undertake the analysis, thus bringing in additional expertise as well as increasing opportunities for agreement on the results.
- Collaborating with other agencies or parties to determine the appropriate methodologies for scientific analysis (e.g., assessing existing conditions). For example, all parties could agree on the geographic and temporal boundaries to be used in a cumulative impact analysis.
- Engage expert panels in workshops open to the public where stakeholders can pose questions and make comments.

G. Addressing Mitigation

Similar to the affected environment and environmental consequences phase, the lead agency could collaborate with other agencies or parties to determine the appropriate methodologies and criteria to use for assessing mitigation strategies.

H. Managing Draft and Final Reviews

At these stages, collaboration is more focused and likely more formalized, especially if effective collaboration has been used in all stages leading up to the formal public comment and review periods. The public review and comment periods and their concurrent public engagement for the Draft or Final EIS or EA might involve:

- A series of focused workshops to get more detailed feedback than standard public meetings.
- Meetings with individual groups to explain the draft NEPA document, and to obtain feedback.
- Multiple means to receive public comment such as letters, and electronic (internet) comments.
- Receiving feedback from organized groups such as the cooperating agencies, resource advisory councils or advisory groups.

The public review phase might also provide an opportunity to establish and build internal and interagency leadership commitment. Once comments are received, the lead/proposing agency

could collaboratively consider comments received on a Draft or Final EIS or EA with other cooperating agencies and collaborating entities before issuing the final ROD or FONSI.

I. Record of Decision (ROD) / Finding of No Significant Impact (FONSI)

The lead agency cannot share or delegate its legal authority for issuing a ROD or FONSI. However, the degree of collaboration in a particular NEPA process will probably be reflected, either explicitly or implicitly, in the ROD or FONSI.

J. Implementing and Monitoring Decision

The lead agency can work closely with other agencies or interested parties to collectively monitor implementation of the ROD or FONSI. Collaborative monitoring will enable the lead agency to determine whether objectives have been achieved, and whether adjustments to the action or any mitigation measures are in order. Lead agencies can leverage the resources and expertise of the collaborative group to achieve results they might be unable to achieve on their own.

Collaborating During Implementation: The Glen Canyon Adaptive Management Working Group, for example, consists of agencies with a variety of expertise, all brought together to advise the Bureau of Reclamation on implementing the 1996 EIS issued for operations at the Glen Canyon Dam in Arizona.

K. Guide to Collaborative Engagement during NEPA

The following guide depicts some of the factors agencies can take into account when considering how to collaborate with other agencies, entities, or individuals during the NEPA process.

GUIDE TO COLLABORATION DURING NEPA
A tool to help NEPA practitioners identify opportunities and options for collaboration.

| NEPA Activity | Collaboration Goal | Commitment | Options/Tools | Issues | Case Examples |
|--------------------------------|---|--|---|--|---|
| Developing the Proposed Action | Inform and shape optimal proposed action from outset. | Directly engage or partner with appropriate agencies, stakeholders or interested parties in the proposal development process. | <p>Community or regional information exchange meetings/workshops.</p> <p>Meetings with stakeholders and interest groups.</p> <p>Situation assessment.</p> <p>Initiate multi-stakeholder forums or committees.</p> | <p>With whom is it appropriate or feasible to collaborate with at this phase?</p> <p>Applicability of FACA</p> | <p><i>Collaborative Environmental and Transportation Agreement for Streamlining (CETAS):</i></p> <p>Transportation and resource agencies in Oregon discuss issues early in the NEPA process through regular working group meetings, fostering relationships built on trust.</p> |
| Establishing Purpose and Need | Adjust and strengthen justification for proposed action by addressing needs and concerns of affected stakeholders, interested parties, and public | Frame the purpose and need statement based on shared understanding of issues, as well as any regulatory and fiscal constraints that must be satisfactorily addressed in developing a viable solution. Explain the purpose and need for agency action in a way that reflects the needs and concerns of affected stakeholders, interested parties, and the public. | <p>Identify other agencies with jurisdiction by law or special expertise and consider appropriate collaboration framework.</p> <p>Situation assessment.</p> <p>Identify early in process interests that would be affected by agency action.</p> <p>Convene balanced array of interests to collaborate on development of the purpose and need statement.</p> | <p>Identify potential value and risks of initiating or not initiating collaboration at this point.</p> <p>Think through clearly to avoid unattainable expectations.</p> <p>Applicability of FACA</p> | <p><i>Spring Mountain National Recreation Area:</i> In 1994, Forest Service (lead) and Fish and Wildlife Service (cooperator) enter into interagency agreement which enables them to jointly develop EIS, including Purpose and Need and subsequent steps of process.</p> |

| NEPA Activity | Collaboration Goal | Commitment | Options/Tools | Issues | Case Examples |
|---------------------------------|--|---|---|--|--|
| Cooperating with Other Agencies | Determine extent of interagency collaboration and clarify roles and responsibilities. | Work in partnership with agencies through a clearly articulated structure and process for collaborative decision-making. | Granting cooperating agency status to agencies and tribes. Other arrangements for interagency cooperation and coordination. Interagency meetings/forums/committees. Situation assessment. | What is the agency level of interest in the proposal? Are agencies willing to be cooperating agencies or enter into agreements to collaborate? What is the need and feasibility for resource sharing among agencies? | <i>Everglades</i> : Starting in late 1990's, US Army Corps of Engineers develops Supplemental EIS to protect endangered Sparrow with Cooperators after initial effort that lacked Cooperators was not successful. |
| Issuing Notice of Intent (NOI) | Delineate and publicize agency commitment to collaboration. | Clarify goals and initial plans for collaborating with other agencies, stakeholders and parties. | Outline in NOI to the extent feasible how lead agency intends to proceed. Supplement NOI with public meetings /discussion forums. | Watch out for expectations that cannot be met. | <i>Las Cienegas National Recreation Area</i> : EIS issued in 2003 refers to multi-stakeholder collaborative effort that led to agreements on use and protection of Las Cienegas National Recreation Area. |
| Scoping | Assure comprehensive scoping of issues to inform appropriate analysis of alternatives. | Work collaboratively with other agencies and/or parties to identify nature and extent of issues and impacts to be addressed in the EIS. | Use facilitator Individual interviews or situation assessment to detail issues and concerns. Workshops/field trips/study forums to generate dialogue and set priorities. Visioning exercises or collaborative planning processes. Joint fact-finding or mapping exercises. Representative stakeholder group. | Applicability of FACA Are all interests represented? Is issue ripe/ready for collaboration? Time constraints. Resources required. Is all relevant information available, accessible, being used? | <i>Spring Mountain National Recreation Area</i> : In 1994, Forest Service (lead) and Fish and Wildlife Service (cooperator) enter into interagency agreement which enables them to jointly develop EIS, including scoping and subsequent steps of process. |

| NEPA Activity | Collaboration Goal | Commitment | Options/Tools | Issues | Case Examples |
|---|---|--|--|--|---|
| Developing Alternatives | Jointly develop alternatives that address the array of conditions, issues and concerns raised, presenting viable options and choices for consideration. | Work collaboratively on alternatives development with other agencies/ parties involved in collaboration. | Use facilitator. Joint fact-finding. Representative stakeholder group. Topical study groups, working subcommittees, or public advisory/review groups. Public/private partnerships for sharing resources and expertise. | Applicability of FACA. Does range of alternatives reflect full spectrum of views? Are all interests represented and concerns taken into account? | <i>Wisconsin: Karner Blue Butterfly: In mid 1990's multi-stakeholder group develops combined Habitat Conservation Plan/EIS. Group discusses all alternatives. Group's preferred alternative becomes basis for ROD.</i> |
| Analyzing Impacts and Addressing Mitigation | Strengthen rigor and credibility of impact assessment and mitigation strategies. | Collaborate with other agencies or parties to determine the appropriate methodologies and criteria to use for scientific analyses (assessing existing conditions) and mitigation strategies. | Expert panels as part of joint fact-finding. Multi-party review group. | Extent of certainty or consensus about technical/scientific data and methodologies. Connection between technical issues and policy choices. How analyses and findings can be communicated to lay people. Applicability of FACA. | <i>San Juan National Forest, Southern Colorado - USDA Forest Service: Working groups focused on particular scientific or technical issues; outside experts were brought in to explain the state of scientific knowledge, then facilitated small groups would discuss how it applied to the plan revision.</i> |

| NEPA Activity | Collaboration Goal | Commitment | Options/Tools | Issues | Case Examples |
|--------------------------------------|--|--|---|-----------------------|---|
| Managing Draft and Final Reviews | Assure adequate time and breadth of outreach for solicitation and collection of public comments and for analysis and consideration before ROD or FONSI. Build internal and interagency leadership commitment. | Shared process for review of and response to public comments with other agencies and parties in collaboration, ensuring comments from parties are understood and addressed in Final EIS/ROD or EA/FONSI. | Inter-agency working group to review comments. In-depth public comment workshops. Meetings with issue groups. | Applicability of FACA | <i>Wisconsin: Karner Blue Butterfly:</i> Multi Stakeholder group (Fish and Wildlife Service lead) collaboratively considers comments on draft EIS to jointly produce final EIS. <i>Everglades:</i> In late 1990's Interagency group refines preferred alternative based on comments to EIS for purpose of protecting endangered sparrow. |
| Implementing and Monitoring Decision | Share implementation and monitoring expertise, resources and accountability. | Work collaboratively with other agencies and parties in monitoring implementation of ROD. | Interagency or multi-party monitoring or adaptive management group. | Applicability of FACA | <i>Glen Canyon National Recreation Area:</i> EIS issued in 1995 on operation of Glen Canyon Dam indicated that there was much uncertainty regarding the downstream impact of water releases from Glen Canyon Dam. The Glen Canyon Dam Adaptive Management Group has been set up to perform this function. |

VI. ADDRESSING CHALLENGES TO NEPA COLLABORATION

Agencies will often find it challenging to collaborate with others in NEPA processes. This chapter addresses four common challenges relating to resource requirements, conflict dynamics, internal federal culture, and the Federal Advisory Committee Act. Agencies that are committed to a collaborative process stand the best chance of turning these challenges into opportunities.

A. Resource Requirements

Challenges: Collaboration is rarely inexpensive, easy, or a quick fix to a problem. The high stakes of complex environmental conflict - whether it involves property rights, the economic health of communities, endangered species, or fragile ecosystems—often trigger deeply held views in people. Groups need time to work out a process, to develop a shared vision, and to develop trust and respect between members. If the meaning, availability or credibility of data is at issue, the group might need to gather and exchange information (as in a joint fact-finding process) to assess the relevance and significance of the data. If the group discovers that some interests are unrepresented, it should consider inviting representatives of those missing interests to participate. These and other considerations can lengthen a process, as well as require funding and the time and skill of agency personnel.

Opportunities: The additional time and expense that a collaborative process might add to a stage of the NEPA process can be worthwhile if it results in an preferred action that can be implemented, increased trust and social capital, and relationships that can work constructively on this and future projects. For help in weighing these factors, federal agencies can turn to the U.S. Institute for Environmental Conflict Resolution (<http://www.ecr.gov>), which was established for the purpose of assisting agencies in assessing collaboration opportunities and resolving the types of environmental conflict often involved in NEPA processes. Several agencies have established similar programs to promote the use of collaborative problem-solving such as EPA's Conflict Prevention and Resolution Center and DOI's Office of Collaborative Action and Dispute Resolution.

Additionally, agencies might be able to find ways to maximize and leverage their funding through means such as cost-sharing, video and teleconferencing, and employee details.

B. Managing Conflict while Practicing Collaboration

Challenges: Because passions often run deep in environmental conflict, discussion between parties can become hostile. Parties might question the good faith of other parties, as well as the federal agency convening the process. Conflict is often embedded in historical relationships (good and bad), and framed by advocates and interest groups, often at the expense of interested parties who have not made their interests known. Conflicts may be exacerbated by poor communication, conflicting interests, competing values, changing demographics, and poor relationships. One of the challenges in carrying out a successful collaborative process is to recognize and address these dynamics, so that competing interests can be discussed in a constructive manner.

Opportunities: One way to address these complex dynamics is to follow the best practices of collaborative problem-solving. The *transparency* of a process should give skeptical parties the assurance that there is nothing happening behind the scenes and therefore beyond their control. A *focus on interests instead of positions* can get parties to talk more openly with one another about what they hope to achieve through the process. An emphasis on *inclusivity and balance of interests* can give comfort to parties who might be concerned that the process will favor one interest over another. A group that has *autonomy* will have the confidence that it is not under the control of a particular agency or party. A group whose members are *committed to working through the issues* and with one another toward a common goal will have confidence that they are engaged in a worthwhile endeavor. In addition, the use of a third-party neutral can give all parties the assurance that the process will be fair and impartial. Most of these practices are discussed in a November 28, 2005 Office of Management and Budget and President’s Council on Environmental Quality Joint Memorandum on Environmental Conflict Resolution (Joint Memorandum). (See Appendix C-3).

For more detailed strategies for preventing conflicts in the context of collaboration, see Appendix D.

C. Federal Agency Culture

Challenges: The NEPA Task Force found that “the decision to bring people to the NEPA table and not proceed with the analysis until everyone is comfortable with their role, the process, and the projected products seems to contradict agency objectives to expedite analyses and decisions”, and that “although many (respondents) agreed with the concept of collaboration, only a few claimed a collaborative experience.” These observations underscore the importance of educating agencies on the value of collaborative processes to increase their familiarity and comfort level with their use.

Agencies will sometimes find that there is tension between traditional NEPA practices and collaborative approaches. Agencies on a strict deadline to complete a NEPA process might be deterred by projections of the length or costs associated with a collaborative approach. However, the time savings an agency might achieve by forgoing a collaborative process are often illusory, if the failure to collaborate exposes the NEPA process to subsequent legal challenges.

Opportunities: As collaborative processes become increasingly ingrained in an agency’s culture, more of its personnel will have stories to tell of its use – successes and challenges. The transmittal of first-hand knowledge from one NEPA practitioner to another will help demystify the concept of collaboration and enable managers to make informed decisions about the use of collaborative processes.

Ultimately, the principles of collaboration need to seep into the everyday work environment before they become part of an agency’s culture. As the Task Force noted, “(i)f integrating more agencies into NEPA processes is a goal of the Federal government, time must be spent instilling the values underlying that goal.” Federal agencies can benefit from dedicating

resources to training, and by creating and supporting an agency culture that supports collaboration.

To this end, the Joint Memorandum discussed above directs federal agencies to increase the effective use of environmental conflict resolution and to build institutional capacity for collaborative problem-solving. The implementation of this policy will provide additional opportunities for agencies to integrate environmental conflict resolution into agency missions, performance goals, and strategic planning.

D. The Federal Advisory Committee Act (FACA)

FACA governs the establishment, management, and termination of advisory committees within the executive branch of the federal government. FACA applies to groups that include individuals who are not federal employees if the group is established, managed, or controlled by a federal agency to obtain collective advice. FACA does not apply when the group is composed exclusively of federal officials and elected officials from federal, state, and local governments or tribes (or their designated employees with authority to speak on their behalf) and the purpose of the group is to exchange views, information, or advice relating to issue(s) of intergovernmental responsibility and administration, as is the case when working collaboratively throughout the NEPA process. FACA requires, among other things, that such groups be chartered, their meetings be noticed in advance and open to the public, the membership be balanced in the points of view represented, and the public have an opportunity to submit comments.

Challenges: FACA can present procedural and structural challenges to agencies wishing to collaborate with groups that include non-federal organizations or private citizens. Among other things, to determine whether a group needs to be chartered under FACA several questions need to be answered, including what is the membership of the group (are non-federal organizations or private citizens involved?), what is the product of the group (is it giving group advice?), and who controls or manages the group (a federal agency?). The answers to these questions, addressed in more detail in Appendix E, are oftentimes fact and situation-specific.

Opportunities: Questions relating to FACA can be more easily answered by clearly determining the purpose of the collaborative effort and then exploring the most appropriate forum or structure to support that effort. Depending on the goals of the parties, collaborative processes can be designed that both meet the interests of all members of a group and satisfy FACA. In some cases, existing FACA committees can become the “parent” committee; in other cases, an independent forum under non-federal leadership may be more appropriate. In many instances, chartering a FACA committee can be expedited and serve the purposes of collaboration perfectly. Because FACA provides for several of the best practices of collaborative problem-solving, FACA committees are often ideal vessels for carrying out a collaborative process. There are several ways to approach the challenges posed by FACA, particularly if they are viewed as opportunities to design the best possible process for the intended purpose. These concepts are discussed in greater detail in Appendix E.

VII. CONCLUSION

People are interested in and care about proposed governmental actions that are evaluated through the NEPA process. Proposals that might impact air and water quality, wildlife, property rights, and the economic well-being of communities, among others, can trigger fervent and conflicting views.

Two of the major goals of the NEPA environmental analysis process are better informed decisions and enhanced citizen involvement. The CEQ NEPA Task Force found that federal agencies can perform this function more effectively by working collaboratively with representatives of interested and affected parties. Collaborative processes, though, can be a challenge to implement successfully. It is often difficult to bring together people who are asserting competing interests that result in environmental conflict.

Federal managers need tools that can allow them to turn competing interests into a constructive force. The information provided in this handbook will enable federal managers to learn about some of these tools for working collaboratively with others in NEPA processes for the purpose of accomplishing their missions more effectively.

APPENDIX A: EXAMPLE MEMORANDA OF UNDERSTANDING

Appendix A contains Memoranda of Understanding from several projects that used a collaborative approach for operating plans, roles and responsibilities for conducting NEPA preparation and review and/or solving problems that arose during the NEPA process. Please note that these samples are not intended to be templates or to demonstrate appropriate MOU language. Agency counsel should be consulted regarding appropriate content of and legal issues relating to MOUs.

APPENDIX A1

MEMORANDUM OF UNDERSTANDING

between

UNITED STATES ARMY CORPS OF ENGINEERS, JACKSONVILLE DISTRICT;

and

NATIONAL PARK SERVICE, EVERGLADES NATIONAL PARK;

SOUTH FLORIDA WATER MANAGEMENT DISTRICT;

**UNITED STATES FISH AND WILDLIFE SERVICE, SOUTH FLORIDA FIELD
OFFICE**

Agreement to Jointly Sponsor Collaborative Combined Structural and Operating Plan (“CSOP”) Environmental Impact Statement (“EIS”) Process

A. PARTIES

This Memorandum of Understanding (MOU) is hereby entered into by, between, and among the United States Army Corps of Engineers, Jacksonville District (the “Corps”), the National Park Service, Everglades National Park (the “Park”), the South Florida Water Management District (the “District”), and the United States Fish and Wildlife Service, South Florida Field Office (the “Service”).

B. PURPOSES

As established in the National Environmental Policy Act (NEPA), under which this CSOP EIS process is being conducted, it is the continuing policy of the federal government, in cooperation with State and local governments, Tribes, and other concerned public and private organizations, to use all practicable means and measures, including technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

Accordingly, the purposes of this MOU are:

1. To establish the parties’ agreement and commitment in jointly sponsoring a collaborative Environmental Impact Statement (“EIS”) process under NEPA in the development of a Combined Structural and Operating Plan (“CSOP”) for Modified Water Deliveries to Everglades National Park (Mod-Waters) and the Canal 111 Project (“C-111”).
2. To establish the Park, the District, and the Service as cooperating agencies in the CSOP process.
3. To affirm that the Corps has sole and ultimate decision-making authority for the Record of Decision and primary responsibility for NEPA compliance and preparation of the EIS.

4. To establish the commitment of the parties to seek agreement on key steps in the EIS process, including: development of the Purpose and Need Statement for the proposed action, development of the Goals and Objectives for the proposed action, development of a range of alternatives, modeling and analysis of the alternatives, consideration of public comments, and development of a preferred alternative.
5. To affirm the commitment of the Corps to fully consider the views of the Park, the District, and the Service in developing its Record of Decision and to work with the agencies to collaboratively monitor the impacts of its decision.
6. To affirm the agencies' agreement to jointly sponsor a multi-stakeholder process in which they will collectively consult with and seek the involvement of other entities that may have an interest in participating in the CSOP EIS process.

AUTHORITIES

This MOU is based on and consistent with the authorities provided in the following laws, regulations, orders, decisions and documents:

- Everglades Preservation and Expansion Act of 1989, Public Law 100-229
- National Environmental Policy Act of 1969, as amended, 42 USC § 4321 et seq.
- The Endangered Species Act of 1973, as amended, 16 USC § 1531 et seq.
- Environmental Policy and Conflict Resolution Act of 1998, Public Law 105-156
- Administrative Dispute Resolution Act of 1996, Public Law 104-320
- Title 33, Code of Federal Regulations, Part 320
- Title 40, Code of Federal Regulations, Parts 1500-1508
- Executive Order 11988, Floodplain Management, May 24, 1977
- Executive Order 11990, Protection of Wetlands, May 24, 1977
- Executive Order 13158, Marine Protected Areas, May 26, 2000
- Executive Order 13112, Invasive Species, February 3, 1999
- Executive Order 13089, Coral Reef Protection, June 11, 1998
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994
- Executive Order 11514, Protection and Enhancement of Environmental Quality, March 5, 1970, as amended May 24, 1977
- Modified Waters General Design Memorandum (GDM), 1992
- Draft Supplemental Modified Waters GDM, April 2000
- C-111 General Reevaluation Report (GRR) Environmental Impact Statement, 1994
- Real Estate Memorandum (REDM), November 1994
- 8.5 Square Mile Area Record of Decision, December 2000
- Supplemental C-111 GRR Environmental Impact Statement, 2002

D. RELEVANT GUIDANCE FROM COUNCIL ON ENVIRONMENTAL QUALITY (CEQ)

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

- 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
- Memorandum for Heads of Federal Agencies, “Designation of Non-Federal Agencies to be Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act”, July 28, 1999
- “The National Environmental Policy Act: A Study of its Effectiveness After Twenty-five Years”, January 1997
- “Environmental Justice: Guidance Under the National Environmental Policy Act”, December 10, 1997
- “Incorporating Biodiversity Considerations Into Environmental Impact Analysis Under the National Environmental Policy Act”, January 1993
- “Council on Environmental Quality Guidance Regarding NEPA Regulations”, 1983
- CEQ’s Forty Most Asked Questions Concerning NEPA Regulations, March 21, 1981

E. STATEMENT OF MUTUAL INTERESTS AND BENEFITS

All parties recognize they can benefit from collaboration on the CSOP EIS process, as well as from increased communication, disclosure of relevant information early in the analytical process, sharing of available data and staff expertise, improved coordination, avoidance of duplicated efforts, and proactive resolution of interagency disputes. Additionally, the parties can benefit from engaging in collaboration to help achieve better outcomes for all parties while ensuring that each agency’s key mandates and legal requirements are adequately and appropriately met.

F. IT IS MUTUALLY AGREED AND UNDERSTOOD BY ALL PARTIES THAT:

I. BASIC ROLES.

- The **U.S. Army Corps of Engineers** is the lead agency for the CSOP EIS process with the sole and ultimate decision-making authority for the Record of Decision and primary responsibility for NEPA compliance, as well as preparation of the environmental impact statement. The Corps mission is to provide engineering services to the nation, including the planning, designing, building, and operating of water resource and civil works projects. In accordance with this mission, the Corps began investigating the hydrologic problems in south Florida in the 1940’s which resulted in their design and construction of a complex multi-purpose water management system designed to meet the needs of the region with regards to flood control, regional water

supply for agricultural areas, urban areas and Everglades National Park, the preservation of fish and wildlife resources, the prevention of salt-water intrusion, navigation and recreation. The Corps has special expertise in all aspects of water resource engineering and management that includes meteorology, hydrology, planning, design, construction, the integration of project features and operations, and a detailed understanding of the operational capabilities and limitations of the water management system to contribute to a well-informed decision on CSOP.

- **Everglades National Park**, as the primary funder of the Modified Waters project, is a principal benefactor of the CSOP process. The Park's mission is to preserve unimpaired the natural and cultural values of Everglades National Park for the enjoyment, education, and inspiration of this and future generations, including a permanent wilderness preserving essential primitive conditions including the natural abundance, diversity, behavior, and ecological integrity of its flora and fauna. The Park has special biological, ecological, and hydrology expertise to contribute toward a well-informed decision on CSOP.
- The **South Florida Water Management District** is the local sponsor of the C-111 project and primary operational implementer of the CSOP decision. The mission of the South Florida Water Management District is to manage and protect water resources of the region by balancing and improving water quality, flood control, natural systems, and water supply. The District has special biological, ecological, and hydrology expertise, as well as detailed understanding of the capabilities and limitations of the regional water management system, to contribute toward a well-informed decision on CSOP.
- The **U.S. Fish and Wildlife Service** has legal responsibility to enforce the Endangered Species Act and to review proposed actions to determine whether they would result in jeopardy to any endangered species; and if so, how to mitigate or avoid that jeopardy situation. The Service has the responsibility to communicate its determinations to the lead agency through a Coordination Act Report, which is incorporated into the environmental impact statement. The Service has special biological and ecological expertise to contribute toward a well-informed decision on CSOP.

II. THE CORPS SHALL:

1. Serve as the lead agency for the CSOP EIS process with sole and ultimate decision-making authority for the Record of Decision and primary responsibility for NEPA compliance, as well as preparation of the environmental impact statement.
2. Designate the Park, the District, and the Service as cooperating agencies in the CSOP EIS process.
3. Fully utilize the relevant data and assessments provided by the Park, the District, and the Service in support of the decision-making process.
4. Seek agreement with the Park, the District, and the Service on key steps of the NEPA process, including: development of the Purpose and Need Statement

for the proposed action, development of the Goals and Objectives for the proposed action, development of a range of alternatives, modeling and analysis of the alternatives, consideration of public comments, and development of a preferred alternative.

5. Utilize mediation to resolve important disagreements among the four sponsoring agencies involving issues during the NEPA process.
6. Elevate unresolved issues to the next highest level of decision-making within the District, the state, the U.S. Fish and Wildlife Service, or Everglades National Park when three of the four agencies have agreed that they are at an impasse, which requires elevation to resolve.
7. Exercise its independent authority regarding issues of key importance to the other parties to this agreement only after mediation and elevation efforts, pursued according to a mutually agreed upon schedule and deadline, have failed to resolve an impasse.
8. Fully consider the views of the Park, the District, and the Service in developing its Record of Decision.
9. Work with the Park, the District, and the Service to collaboratively monitor the impacts of its decision.

III. THE PARK, THE DISTRICT, AND THE SERVICE SHALL:

1. Serve as cooperating agencies and joint sponsors with the Corps of a collaborative CSOP EIS process.
2. Contribute data and information relevant to the CSOP decision-making process.
3. Cooperate with the Corps in providing neutral facilitation and mediation support for the CSOP EIS process, as mutually determined is required.
4. Provide adequate staff resources to ensure active participation on the interagency CSOP Core Planning Team (“Team”) and its Sub-Teams to provide for timely development and review of draft documents.

IV. THE CORPS, THE PARK, THE DISTRICT, AND THE SERVICE SHALL:

1. Work collaboratively with each other through the Team to seek agreement on detailed ground rules for their interaction, a statement of the purpose and need for the proposed action, the goals and objectives for the proposed action, the process for scoping relevant issues, the process for involving other interested and affected entities, the schedule for completion of milestones, development of a range of alternatives, modeling and analysis of alternatives, consideration of public comments, development of a preferred alternative, and monitoring the impacts of the decision.
2. Designate appropriate representatives with relevant technical and policy expertise and delegated provisional negotiating authority to the Team and any Sub-Teams established, which will seek to develop consensus-based

recommendations for consideration by agency policy decision-makers in accordance with the respective decision-making requirements of each agency.

3. Seek the endorsement and active support for their participation in a collaborative CSOP EIS process within their own hierarchies and up any relevant chains-of-command or necessary levels of review and approval for decisions during the CSOP process.

V. INTERAGENCY CSOP CORE PLANNING TEAM.

Each party shall designate representatives with relevant technical and policy expertise and delegated provisional negotiating authority to the Team and any Sub-Teams established, which will seek to develop consensus-based recommendations for consideration by agency policy decision-makers in accordance with the respective decision-making requirements of each party.

VI. GROUND RULES FOR INTERAGENCY COLLABORATION ON CSOP.

Within 60 days following the effective date of this MOU, the parties shall develop and agree upon a detailed set of ground rules for their interagency collaboration on CSOP. Among the elements to be addressed and clarified in these ground rules shall be:

- Purpose and Need for CSOP
- Goals and Objectives of CSOP
- Schedule and deadlines for the overall CSOP process and key milestones
- Modeling strategy for CSOP
- Base condition for modeling
- Purpose, need, and use of the Flood Study
- Protocols for sharing information
- Lead agency roles and responsibilities
- Cooperating agency roles and responsibilities
- How to handle a withdrawal from the collaborative process
- Representation on the Team
- Role, responsibilities, delegated decision-making authority, and constraints on agency representatives the Team
- Decision making rules of the Team
- Policy review and ratification process for interim recommendations developed by the Team
- Use of facilitation and mediation assistance to help resolve interagency disagreements during the NEPA process
- Elevation process within and among parties for policy questions that need to be resolved during key steps in the NEPA process
- Process for resolution and/or peer review of technical issues

- Frequency, schedule, length, agendas, location, organization, planning, conduct, and documentation of Team meetings
- Expectations regarding access to information, confidentiality of interagency dispute resolution sessions, and disclosure
- Communications with the media, the public, the courts, political institutions
- Expectations regarding costs and expenses for participants and for facilitation and mediation services
- Role and responsibilities of any other cooperating agencies
- How to handle new participants
- Role and responsibilities of other partnering entities
- Constituent outreach and communication plan
- Stakeholder participation plan
- Public participation plan

This MOU shall be amended to incorporate the ground rules for the parties' collaboration on the CSOP EIS process once they are developed.

G. STANDARD CONDITIONS:

- I. 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 State of Florida, the laws of the United States, and the regulations of the Department of the Army and 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.
- II. 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. This MOU may not be used as evidence by or against any party in any legal proceeding, whether now existing or subsequent.
- III. SOVEREIGN IMMUNITY.** The State of Florida 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.
- IV. 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.

- V. 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.
- VI. 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.
- VII. 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.
- VIII. MODIFICATION.** Any party may request changes in this MOU. Any changes, modifications or amendments to this MOU which are mutually agreed upon by and among the parties to this MOU shall be incorporated by written instrument, executed and signed by all parties to this MOU.
- IX. TERMINATION.** Any party to this MOU may terminate in writing its participation in this agreement in whole, or in part, at any time before the date of expiration, with 30 days notice to the other parties.
- X. ENTIRETY OF AGREEMENT.** This MOU, consisting of nine (9) pages, represents the entire and integrated agreement among the parties and supersedes all prior negotiations, representations and agreements, whether written or oral.
- XI. PRIMARY CONTACTS.** The primary agency contacts for carrying out the provisions of this MOU are the CSOP Project Managers for each agency:

Kim Taplin for U.S. Army Corps of Engineers
Dave Sikkema for Everglades National Park
Dave Swift for the South Florida Water Management District
Dan Nehler for U.S. Fish and Wildlife Service

- XII. EFFECTIVE DATE.** The effective date of this MOU is the date of the signature last affixed to these pages.
- XIII. COMPLETION DATE.** Unless terminated sooner, this MOU is effective through December 31, 2005, at which time it will expire unless renewed by the parties through a duly executed amendment hereto.

H. SIGNATURES

In witness whereof, the parties to this MOU through their duly authorized representatives have executed this MOU on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this MOU, as set forth herein.

**U.S. Army Corps of Engineers
Park**

Everglades National

Signed 10/15/02
Col. Greg May Date
Jacksonville District Commander

Signed 9/4/02
Maureen Finnerty Date
Superintendent

South Florida Water Management District

U.S. Fish and Wildlife Service

Signed 8/15/02
Trudi Williams Date
Chair, SFWMD Governing Board

Signed 8/29/02
Jay Slack Date
Florida Field Supervisor

SFWMD PROCUREMENT APPROVED:

Signed 8/7/02

SFWMD OFFICE OF COUNSEL APPROVED:

Signed 8/7/02

APPENDIX A2

OPERATING AGREEMENT FOR THE ST. CROIX CROSSING PROBLEM-SOLVING PROCESS

PURPOSE

1. To facilitate a common understanding of the transportation, environmental and historic preservation issues among the government and non-government stakeholders;
2. To define the various solutions (including transportation alternatives) to these issues by exploring the advantages and disadvantages of each solution
3. To arrive, if possible, at a consensus
4. To reach agreement among permitting/cooperating/core agencies on the components of the supplemental draft environmental impact statement for the long-term bridge project and on the related regulatory conclusions, among them:

Section 7 of the Wild and Scenic River Act
Section 106 of the Historic Preservation Act
Section 4f of the USDOT ACT
Local concurrence

Specific issues under consideration include, but will not be limited to:

New Bridge Alternatives
Long-Term Alternatives for Lift Bridge
Criteria for Selecting a Preferred Alternative
Integration of Federal Mandates
Mitigation Associated with Alternatives
Local Concurrence for Transportation Projects

ROLES

Group Members

The group members will:

- engage in a thoughtful, thorough deliberation
- advocate for the interests of his/her agency
- share relevant information with the other group members
- keep constituencies informed and advocate within constituent organizations for support of the group's work
- keep the group informed about constituent perspectives
- work to identify promising options
- openly discuss and evaluate those options
- refrain from undermining group recommendations and reports

- secure approval within the organization for permission (within limits) to negotiate an agreement
- explicitly inform the group when the limits of authority are reached
- elevate issues within the organization as a way of addressing the limitation

Membership

The group will include:

Minnesota Department of Transportation*
 Wisconsin Department of Transportation*
 Wisconsin Department of Natural Resources*
 Minnesota Department of Natural Resources*
 Minnesota State Historic Preservation Office*
 Wisconsin State Historic Preservation Office*
 City of Stillwater*
 City of Oak Park Heights*
 National Park Service*
 Federal Highway Administration*
 US Army Corps of Engineers*
 US Coast Guard*
 US EPA*
 Advisory Council on Historic Preservation*
 US Fish and Wildlife Service*
 Preservation Alliance of Minnesota
 Stillwater Historic Preservation Commission
 St. Croix River Association
 Friends of the St. Croix
 Stillwater Area Chamber of Commerce
 Sierra Club
 St Croix Alliance for an Interstate Bridge
 St Croix County Highway Commission
 Town of St. Joseph
 Stillwater Lift Bridge Association
 Board of Realtors
 Minnesota Center for Environmental Advocacy

Those named above will attend the meetings and will not send alternates unless absolutely necessary, and then only if the alternate is fully advised of the group's work and the group is advised in advance.

If the full group – permitting/cooperating/core agency members and other stakeholders – cannot reach consensus, the permitting/cooperating/core agency representatives, as enumerated above (*), are expected to participate in the final consensus-building effort as indicated in the schedule.

Should any organization or representative wish to withdraw from the process, they will provide a written explanation to the group.

Mediators

Mediators from RESOLVE will design work session agendas and conduct the meetings. The mediators will remain impartial – not favoring any particular outcome. The mediators are responsible to the whole group and not to one member or interest. RESOLVE will distribute draft meeting summaries and provide an opportunity for the group to review and finalize each summary. Final summaries will be made available to the public.

Public Input

The group will work with the lead transportation agencies (Minnesota Department of Transportation and Wisconsin Department of Transportation) to hold public meetings that satisfy NEPA, WEPA and MEPA public involvement requirements and the public involvement requirements of other laws and regulations. These include scoping meetings; meetings to discuss alternatives prior to selection of a preferred alternative and the Draft Supplemental Environmental Impact Statement (DEIS); public meetings to present and take feedback about the preferred alternative; and a formal public hearing on the DEIS. The group may advise the agencies to conduct additional public involvement.

DECISION-MAKING AND DELIBERATION

The group's highest goal is consensus. A consensus agreement is one that all group members can support, built by identifying and exploring all parties' interests and by developing an outcome that satisfies these interests to the greatest extent possible. To enhance creativity during meetings, individuals are not expected to restrict themselves to the prior positions held by their organizations, agencies or constituencies. The goal of the meetings is to have frank and open discussion of the topics in question and the options to address the topics. Therefore, ideas raised in the process of the dialogue, prior to agreement by the whole group, are for discussion purposes only and should not be construed to reflect the position of a member or to prematurely commit the group.

If consensus is not possible, the permitting/cooperating/core agencies will work to build a consensus of their own, using the whole group's deliberation as the basis for their work. Finally, if full agency consensus is not possible, the lead agencies may use the group's work to make decisions in line with their regulatory authority and in keeping with the limitations of that authority.

The participants agree to use this venue to attempt to resolve all questions associated with the St. Croix Crossing. At the same time, the participants recognize that there are other venues for addressing their concerns, including the formal comment periods associated with state and federal environmental review processes. Participation in this problem-solving process does not preempt participation in any other venue.

Federal environmental streamlining offers the opportunity for federal agencies to coordinate their work and to resolve differences that could impede the consensus-building work. In addition, state agencies are expected to coordinate their efforts and resolve differences at the highest levels

of state government. The policy advisory group, specified below, is one venue for resolving any differences.

COMMUNICATION WITH OTHER GROUPS, INDIVIDUALS AND THE MEDIA

Group members wish to maintain an environment that promotes open, frank and constructive discussion. Members recognize that such an environment must be built on mutual respect and trust, and each commits to avoid actions that would damage that trust. Therefore, the meeting sessions of the full group and subcommittees are closed working sessions unless the group decides otherwise.

In communicating about the group's work, including communicating with the press, each member agrees to speak only for herself or himself; to avoid characterizing the personal position or comments of other participants; and to always be thoughtful of the impact that specific public statements may have on the group and its ability to complete its work. No one will speak for any group as a whole without the consensus of that group. Should anyone wish the group to release information to the press, the group will do so only through a mutually agreeable statement, drafted by consensus of all of that group's members.

The mediators and the technical advisory team will assist the group in scheduling and conducting press briefings and public involvement events. The problem-solving schedule includes milestones for public participation. The group will also work to keep elected officials informed of the progress of the problem-solving process, including periodic electronic updates.

DISCUSSION GUIDELINES

The following guidelines encourage productive deliberation. Group members will commit to best efforts at following them and will give the mediators the authority to enforce them:

OPENNESS

- To other points of view
- To outcome
- To all representatives

LISTENING

- Focus on each speaker rather than prepare your response
- No interruptions

FAIRNESS

- Speak briefly
- Everyone participates

RESPECT

- Disagree without being disagreeable
- No personal attacks

COMMITMENT

- Prepare for each session
- Attend each session
- Honor the agenda and make agenda changes with the whole group

Begin and end on time
Get up to speed if didn't attend

All parties agree to act in good faith in all aspects of the group deliberations, to conduct themselves in a manner that promotes joint problem-solving and collaboration, and to consider the input and viewpoint of other participants. Members agree not to use specific offers, positions, or statements made by another member during non-public discussions for any other purpose not previously agreed to in writing by the Members involved. Personal attacks will not be tolerated. Negative generalizations are not productive and have the potential to impede the ability of the group to reach consensus. All members will be given an equal opportunity to be heard with the intention of encouraging the free and open exchange of ideas, views, and information prior to achieving consensus.

Members and other participants are requested not to bring beepers or cellular telephones into the meetings.

SUBCOMMITTEES

It will be necessary for the groups to establish subcommittees to explore topics, develop proposals, resolve differences, etc.

Process Advisory Committee

The mediator will establish a Process Advisory Committee to assist the mediators to develop agendas and guide the decision-making process.

Technical Advisory Team (Project Staff Team)

The staff team, including transportation, historic preservation and environmental interests and any consultants hired to assist in the problem-solving process, will work to provide important information to the group to successfully accomplish meeting agendas.

Policy Advisory Team

A high-level team of agency representatives will convene periodically to measure the progress of the consensus-building efforts, assess the relationship between the negotiation outcomes and the regulatory and policy requirements. The team will work to resolve policy differences that the group may elevate to them.

Other Meetings and Discussions

Meetings in support of the process (whether a meeting among a subset of agencies or a meeting of advocates with a shared perspective) are expected and are encouraged so long as they do not preempt the group's deliberations.

DRAFT SCHEDULE AND MILESTONES

As part of this process, all participating organizations recognize that they are part of a decision-making process and not a study or data collection effort. Further, they accept that funds used for study come from the same source as the funds for the transportation project and for mitigation. In keeping with this perspective, all agree to use existing information whenever possible, to streamline necessary data collection efforts, to allocate financial resources carefully and to work diligently to make the following schedule possible:

| Problem-Solving Group Process | |
|---|-----------------|
| Activity | Dates |
| Opening Meeting <ul style="list-style-type: none"> • Affirm purpose, process, participation, etc. • Meeting schedule | June 10, 2003 |
| Meeting #2 <ul style="list-style-type: none"> • Range of Options | June 30, 2003 |
| Meeting #3 <ul style="list-style-type: none"> • Transportation Options – New and Lift Bridges • Environmental Review | July, 2003 |
| Meeting #4 <ul style="list-style-type: none"> • Transportation Options • Environmental Review • Mitigation Options • Review – Updated Draft Scoping Document (Revised, Amended, Supplemental) and Scoping Decision Document | September, 2003 |
| Meeting #5 <ul style="list-style-type: none"> • Evaluating Options | October, 2003 |
| Meeting #6 <ul style="list-style-type: none"> • Alternatives Evaluation | November, 2003 |
| Meeting #7 <ul style="list-style-type: none"> • Alternatives Evaluation • Building on the Most Viable Options | January, 2004 |
| Meeting #8 <ul style="list-style-type: none"> • Consensus Building – Preferred Alternative | February, 2004 |
| Meeting #9 <ul style="list-style-type: none"> • Consensus Building – Preferred Alternative | March, 2004 |
| Meeting #10 <ul style="list-style-type: none"> • Consensus Building – Preferred Alternative | July, 2004 |
| Meeting #11 <ul style="list-style-type: none"> • Revisions Based on Public Comment • Implementation Issues • Final Agreement | October, 2004 |

APPENDIX A-3

**MEMORANDUM OF UNDERSTANDING
NEPA ENVIRONMENTAL IMPACT STATEMENT REVIEWS AND
PERMITTING FOR THE PROJECT**

Between

(Lead Agencies)

And

(Cooperating Agencies)

And

(Applicant)

I. Statement of Intent

State that the Memorandum of Understanding (MOU) sets forth responsibilities and schedules that will lead to effective and timely National Environmental Policy Act (NEPA) review involving an environmental impact statement (EIS) or supplemental environmental impact statement (SEIS) and agency permitting decisions for *Applicant's* _____ *Project* (_____ Project)

II. Background and Purpose

Describe the background and purpose of the project. Provide language for the draft Purpose and Need section of the EIS or SEIS.

III. Scope

State that the MOU covers the analysis of the environmental impacts of the project under the NEPA process, sets forth the processes and procedures that will be followed for related permits and consultations, and establishes how permitting actions and schedules will be coordinated.

IV. Authorities

List all legal authorities that will be covered by the MOU, including NEPA.

V. Lead and Cooperating Agencies and Applicants

Identify the lead and cooperating agencies and applicant and set forth the concept of an interagency coordinating committee.

VI. Responsibilities

A. Lead Agency Responsibilities

This section should list the principal responsibilities of the lead agency or agencies. The lead agency or agencies shall:

1. Commit to adhering to a schedule, as set forth in an exhibit to the MOU, unless modified by agreement of cooperating agencies and applicant;
2. Identify project manager;
3. Identify cooperating agencies and establish duty to include all such entities early in the NEPA process to avoid delays;
4. Define role of lead agency or agencies for making final determination

on EIS/SEIS content, including data, analyses, and conclusions;

5. Establish good faith effort responsibility of lead agency to identify and achieve timely completion of consultations and coordination under other applicable laws, including preparation of schedules to guide such reviews;
6. Specify lead agency or agencies' consultation responsibilities under other laws, including duty to designate applicant as nonfederal representative for appropriate roles (e.g., Endangered Species Act) and to include applicant, as appropriate, in meetings;
7. Confirm responsibility of lead agency to make a good faith effort to achieve full and timely participation of cooperating agencies in accordance with established schedule;
8. Define procedures for ensuring confidentiality of sensitive information submitted by applicant;
9. Develop in consultation with the applicant and third-party EIS contractor (if applicable) a request for information (RFI) process specifying the criteria and documentation for obtaining information from the applicant to ensure timely, focused and efficient information gathering;
10. Develop and maintain documentation procedures for the administrative record; and
11. State that nothing in this MOU shall be construed as altering, or in any way limiting, any agency's ability or responsibility to act in accordance with all applicable federal and state laws and regulations.

B. Cooperating Agency Responsibilities

This section of the MOU should define the responsibilities of cooperating agencies. The cooperating agencies shall:

1. Identify any actions or consultation requirements applicable to the action early in the NEPA process;
2. Designate the lead official responsible for participating in the EIS/SEIS process;
3. Commit to adhere to schedule established in the MOU, subject to change in accordance with defined procedures;
4. Commit to confidentiality requirements;
5. Commit to coordinating public notice requirements with corresponding steps in NEPA process; and
6. Establish good faith effort commitment to raise all issues early in NEPA process to avoid delay and inefficiency.

C. Applicant Responsibilities

This section should define the duties of the applicant to submit all required applications and data, to participate effectively throughout the NEPA review, and to pay all appropriate NEPA costs. The applicant shall:

1. Provide a sufficient application, including any accompanying environmental report;
2. Identify project coordinator for applicant;
3. Serve as designated nonfederal representative under ESA and prepare a biological assessment;
4. Serve in the defined role for other procedures, such as preparation of essential fish habitat assessment, historic preservation review, etc.;
5. Commit to providing all reasonably justifiable, nonprivileged technical or environmental information needed to prepare an EIS/SEIS, as determined by lead agency, in consultation with cooperating agencies;
6. Commit to necessary funding;
7. Commit to provide timely responses to data requests and provide comments on draft documents; and

8. Serve the defined role of applicant in public meeting coordination.

VII. EIS Procedures

This section would establish key steps in the EIS/SEIS preparation process. The objective is to ensure adequate information gathering, full and careful agency and public review, objective EIS/SEIS preparation, adherence to a defined schedule, and an appropriate role for the applicant.

A. Coordinating Committee

A "coordinating committee" will be established to guide EIS/SEIS preparation for large-scale projects. This committee will consist of the lead agency, project coordinators for cooperating agencies, and the applicant (except on issues not appropriate for applicant involvement). The coordinating committee shall:

1. Establish a regular schedule for coordinating committee meetings;
2. Define duties of coordinating committee to include: tracking EIS/SEIS in relation to established schedule; reviewing draft documents; selecting EIS/SEIS contractor; and coordinating public review, etc.; and
3. Identify issues not appropriate for applicant involvement, and relevant authority for this conclusion.

B. EIS Contractor

1. Require applicant to prepare a list of qualified contractors and submit to lead agency;
2. Require lead agency to forward list to coordinating committee for review, bidding process, and ranking;
3. Require coordinating committee to recommend a preferred EIS/SEIS contractor or to reject all contractors on the list to applicant through lead agency;

4. Provide that applicant will decide whether to accept recommendation or seek further review of additional contractors by coordinating committee;
5. Require that, once the EIS/SEIS contractor has been selected, the lead agency will secure conflict of interest statements from the contractor;
6. Define procedures to ensure proper communication between applicant and EIS/SEIS contractor; and
7. Provide that the contract between the Applicant and the contractor, and any subcontracts thereunder, shall be consistent with the provisions of the MOU and shall specifically incorporate the provisions herein which address the conduct of the contractor.

C. Scoping Process

After the contractor is selected, the lead agency, in consultation with cooperating agencies, the contractor, and the applicant, will conduct and finalize scoping, if required, for the EIS/SEIS. The lead agency shall:

1. Publish a Notice of Intent to prepare an EIS/SEIS in the Federal Register and local publications;
2. Establish a reasonable schedule for meetings among cooperating agencies;
3. Establish a reasonable schedule for public hearings to obtain public input on the appropriate scope of the EIS/SEIS early in the NEPA process;
4. Define the necessary baseline studies; and
5. Publish a scope of work that includes a detailed description of all work to be performed, the persons responsible for performing the work, the estimated work hours required for each task, and the schedule for performing each task.

D. EIS/SEIS Availability

1. Define procedures to be followed for draft and final EIS/SEIS availability and distribution including public meetings;
2. Establish website arrangements;
3. Define procedures to be used for assembling and reviewing all public comments on scoping and the draft EIS/SEIS;

4. Provide for applicant to have an appropriate role in responding to comments on draft EIS/SEIS.

APPENDIX B: SELECTED CASE STUDIES

This appendix provides case examples of situations in which collaboration has been used in the context of NEPA. It is provided here for the convenience of the reader.

Case: Everglades Interim Operating Plan Interagency Collaboration - U.S. Army Corps of Engineers, National Park Service, U.S. Fish and Wildlife Service, South Florida Water Management District

Brief Case Description

In early 2001, the U.S. Army Corps of Engineers had already completed a Draft Environmental Impact Statement (DEIS) for an Interim Operational Plan (IOP) to protect the endangered sparrow until the Combined Structural and Operational Plan (CSOP) for the long-delayed Modified Water Deliveries to the Everglades National Park and C-111 Canal projects could be completed. The DEIS had not been well received by other agencies, and the President's Council on Environmental Quality (CEQ) asked the Corps to complete a Supplemental EIS (SEIS) within a nine-month timeframe. The other agencies involved included Everglades National Park, U.S. Fish and Wildlife Service, and the South Florida Water Management District; the Corps needed their cooperation to complete the SEIS. Several months of negotiations facilitated by the U.S. Institute for Environmental Conflict Resolution and a team of contracted mediators led to an interagency agreement on a preferred alternative, which was incorporated into a Supplemental EIS that was then issued for public comment. The preferred alternative was refined based on stakeholder comments, and an FEIS and ROD were issued.

The collaborative group agreed on protocols for monitoring. The agencies involved agreed that a high-quality decision resulted that is being implemented even while under litigation. Continued mediation assistance is provided on an as-needed basis to deal with clarification that are required in implementing the plan. Specific on-the-ground improvements have resulted, since the Corps has expedited the construction of some features to enhance the existing water delivery system. Institutionalized interagency teams have resulted facilitating much better working relationships between the agency staff.

The four agencies are currently engaged (Fall 2006) in a multi-stakeholder EIS process for the CSOP that will actively involve other state, local, and tribal governments, as well as concerned stakeholders and nongovernmental organizations. The four agencies collaboratively developed a scope of work to produce a new hydrologic model for use on the CSOP.

Scope of Case

Regional Ecosystem-level

Themes of Interest

Conflict emerged in a NEPA process.

Interagency conflict over the use and interpretation of hydrologic modeling results relating to emergency water management decisions designed to protect the endangered Cape Sable seaside sparrow.

Existing long-standing interagency conflict relating to use and interpretation of hydrologic modeling results. As part of the process, parties have begun a collaborative multi-stakeholder EIS process for the CSOP.

Key Stakeholders

Federal Agencies:

- Army Corps of Engineers
- Everglades National Parks
- U.S. Fish and Wildlife Service

State/Local Agencies:

- South Florida Water Management District

Environmental Conflict Resolution Principles Exemplified

- Informed Commitment – Agency leadership and staff from federal state and local levels committed to engage in a collaborative process.
- Balanced Representation – This interagency collaborative process engaged all the federal agency stakeholders and the state water management district. From the initial assessment, it was determined that the agencies themselves needed to work together and address internal issues before taking the next step to engage external stakeholders in a broader public collaborative effort (which is now underway).
- Informed Process – The focus of the interagency collaborative effort was to seek agreement on how to share, test and apply relevant information and resolve disagreements on the appropriate hydrologic modeling for the project.

Results and Accomplishments

- The agency participants determined to limit involvement to government employees and that FACA did not apply. However, FACA, as well as state “government-in-the-sunshine” requirements have been raised as issues in subsequent unsuccessful litigation challenging the resulting NEPA decision. While there may be advantages to limiting negotiations to agencies with jurisdictional authority, there are also disadvantages of inadequate engagement of other external governmental and nongovernmental stakeholders.
- While the draft EIS prepared by the lead agency gave the participants a starting point to work from, the parties determined that it would have been better for them to work on developing alternatives together from the start.
- More intensive coaching and collaborative skills development with participants could have improved the process.
- Strategic leadership changes and staff assignments enhanced the likelihood for a successful outcome; unanticipated personnel changes interfered with progress.
- Encouragement by CEQ was a decisive factor in the agencies pursuing a conflict resolution approach using the assistance of third-party neutrals.
- Several key staff with effective collaborative problem-solving skills were crucial in successfully forging agreements with their counterparts.

Contact Information

For more information contact U.S. Institute for Environmental Conflict Resolution, 520-670-5299, at <http://www.ecr.gov>.

See also the National Environmental Conflict Resolution Advisory Committee’s Final Report to the U.S. Institute for Environmental Conflict Resolution, April 2005, at <http://www.ecr.gov/necrac/reports.htm>.

**Case: St. Croix River Crossing Controversy – 2001-2006 -
Federal Highway Administration, U.S. Department of the
Interior, States of Minnesota and Wisconsin**

Brief Case Description

In the 1950s, the towns of Stillwater, MN, and Houlton, WI, began discussing how to improve transportation between the two towns, which are connected by an historic lift bridge over the St. Croix River, a waterway within the Wild and Scenic River System. In 1995, a proposal to build a new bridge and remove the lift bridge was accepted, that was successfully challenged in court.

By 2000, the intersection of three public policy goals—enhancement of transportation services, preservation of historic resources, and protection of a wild and scenic river—had produced gridlock among the Federal Highway Administration, U.S. Army Corps of Engineers, U.S. Coast Guard, U.S. Environmental Protection Agency, National Park Service, U.S. Fish and Wildlife Service, Advisory Council on Historic Preservation, and the Depts. of Transportation, Depts. of Natural Resources, and State Historic Preservation Offices of both MN and WI.

In 2001, the affected parties requested the assistance of the U.S. Institute for Environmental Conflict Resolution. The Institute conducted an initial assessment to determine if a negotiated agreement would be feasible and, if so, how to proceed.

Based on recommendations from the assessment, the parties agreed to participate in a collaborative problem-solving process. In 2002, a group of 27 agency and non-agency stakeholders began meeting to find a transportation solution.

Scope of Case

Minnesota & Wisconsin

Themes of Interest

The mediated agreement is innovative in that many of the non-agency stakeholders will continue to be involved in collaborative governance via oversight and implementation of the mitigation measures associated with the final agreement.

This case highlights both the importance and the challenges of effectively integrating collaborative problem-solving into NEPA review processes.

Key Stakeholders

- Minnesota Department of Transportation
- Wisconsin Department of Transportation
- Wisconsin Department of Natural Resources
- Minnesota Department of Natural Resources
- Minnesota State Historic Preservation Office
- Wisconsin State Historic Preservation Office
- City of Stillwater
- City of Oak Park Heights

National Park Service
Federal Highway Administration
U.S. Army Corps of Engineers
U.S. Coast Guard
U.S. Environmental Protection Agency
Advisory Council on Historic Preservation
U.S. Fish and Wildlife Service
Preservation Alliance of Minnesota
Stillwater Historic Preservation Commission
St. Croix River Association
Friends of the St. Croix
Stillwater Area Chamber of Commerce
Sierra Club
St Croix Alliance for an Interstate Bridge
St Croix County Highway Commission
Town of St. Joseph
Stillwater Lift Bridge Association
Board of Realtors
Minnesota Center for Environmental Advocacy

Results and Accomplishments

The five-and-a-half-year long process resulted in an agreement to retain the lift bridge as a pedestrian and bicycle crossing and construct a new bridge for vehicular traffic. To address the natural, social, and cultural impacts of the new bridge, a comprehensive mitigation package was developed.

The mitigation measures went significantly beyond compensating for the direct impacts of the new bridge (wetland replacement, relocation of threatened and endangered species, and bluffland restoration), to include removal of visual intrusions from the waterway, addition of a river access point, funding for lift bridge preservation, designation of Stillwater as a historic district, capacity-building for growth management in St. Croix County, and a basin-wide water quality study.

Relationships and communication among the stakeholders improved remarkably during the problem-solving process. In the words of one stakeholder, *“We were able to spend the time necessary to get over our natural inclination to not trust people from the other side. [...] We had enough time and enough space to come to a conclusion that everybody could feel comfortable with.”*

Contact Information

For more information contact U.S. Institute for Environmental Conflict Resolution, 520-670-5299, at <http://www.ecr.gov>.

**Case: US 93 Corridor – Montana -
U.S. Department of Transportation, Federal Highway
Administration**

Brief Case Description

The US 93 Corridor consists of a series of complex reconstruction projects along the existing US 93 Corridor between Hamilton and Whitefish, Montana. The highway traverses national and State forestland, national wildlife refuges, and ecosystems with regionally and nationally important wildlife and habitat resources. The route travels through several Rocky Mountain valleys, crosses the Flathead Indian Reservation, and links major recreational areas to major population centers. Montana began work on upgrading US 93 in the 1980s, and key issues to resolve have included induced growth, adverse impacts to the natural environment, impacts to tribal cultural and spiritual sites, wildlife linkage areas, wetlands, right-of-way acquisition on tribal land, and access control.

Scope of Case

US 93 Corridor was selected as a Priority Project under Executive Order 13274 (Environmental Stewardship and Transportation Project Reviews), and as such receives national focus by not only DOT, but other Federal agencies.

Themes of Interest

Stakeholders continue to be involved in collaborative oversight and implementation at the project-specific level. The 1996 ROD deferred construction until the Montana Department of Transportation (MDT), Federal Highway Administration (FHWA), and Confederated Salish and Kootenai Tribes (CSKT) could agree on the appropriate design that would address social, economic, and environmental impacts. This was an explicit “adaptive management” strategy that allowed decision-making under NEPA but conditioned project implementation on post-approval collaboration. In 2000, part of the three governments’ shared vision was the understanding that environmental and cultural issues had to be linked to highway safety and capacity. It was agreed that the new highway would be designed with the idea that the road is a visitor and should respond to and be respectful of the land and Spirit of Place (a continuum of everything on the reservation that is seen and unseen, touched and felt and traveled through). Rebuilding trust, honor, and mutual respect among the governments allowed place-sensitive design strategies to be successful. Current issues to be addressed center on the requirements for wetland mitigation resulting from construction on the Flathead Indian Reservation of the CSKT. Specifically, discussions are ongoing between CSKT and the Army Corps of Engineers relating to obtaining assurances that wetland mitigation sites will be protected in perpetuity.

Key Stakeholders

Confederated Salish and Kootenai Tribes, Montana DOT (MDT), FHWA, USFS, EPA, USACE, BIA, USFWS, Counties, private parties and stakeholders, and the public

Environmental Conflict Resolution Principles Exemplified

- Balanced Representation
- Group Autonomy

- Accountability

Results and Accomplishments

MDT has learned that a collaborative environmental review process can produce safe, higher capacity highways that are welcomed by communities. US-93 could have been a standard straight four-lane highway with destructive impacts on the community, yet MDT, federal agencies, tribes, citizen groups, and consultants did an exemplary job of developing this road to fit more harmoniously into the landscape. During the discussions, the connection between the tribal culture and wildlife habitat preservation became very evident; this led to innovative wildlife crossings being incorporated into the project. The US 93 corridor could become a model for delivering timely, environmentally sound transportation projects.

Contact Information:

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<http://www.mdt.mt.gov/pubinvolve/us93corridor/overview.shtml>.

Case: Collaborative Environmental and Transportation Agreement for Streamlining (CETAS) - Federal Highway Administration

Brief Case Description

After the passage of the Transportation Equity Act for the 21st Century (TEA-21), the number of transportation projects in Oregon doubled. To streamline the review process, in 1996 Oregon merged its NEPA and Section 404 processes. The Collaborative Environmental and Transportation Agreement for Streamlining (CETAS) Group, formed in June 2000, committed to promoting environmental stewardship while providing for a safe and efficient transportation system.

Transportation and resource agencies in Oregon discuss issues early in the NEPA process through regular working group meetings, fostering relationships built on trust. Decision-making is by consensus. Elevation to the next level of decision-makers within the agencies occurs on the rare occasion when consensus is not reached. The group does not have a neutral facilitator; meetings are led by the Oregon Department of Transportation (ODOT).

Early resource agency involvement accelerates the NEPA process by avoiding agency conflicts and subsequent permit delays during final design, allowing projects to be completed in budget and on time. Efficiency in the project permitting process is achieved without compromising agency missions. Obstacles had to be overcome. For example, some resource agencies did not have the staff to participate. ODOT now funds three TEA-21 coordinator positions at the National Marine Fisheries Service (NMFS), one position at the US Fish and Wildlife Service (FWS), and three positions at the Oregon State Department of Fish and Wildlife (ODFW).

Scope of Case

Transportation projects in Oregon

Themes of Interest

The CETAS process covers the whole NEPA spectrum, beginning with purpose and need, continuing through alternatives, criteria for selection of a preferred alternative, and identification of the preferred alternative. Beginning with purpose and need is a key point in the success of the project. So far in the process, there has been one example of the group not being able to reach consensus, and this was on identification of a preferred alternative. The group had agreed on criteria for selection, but thought that it would lead to a different outcome. For this disagreement, an elevation process was developed whereby the next level of decision-makers within the agency attempts to reach consensus; this process will now be used if lack of consensus occurs in the future.

Key Stakeholders

Participating agencies include the federal and state Departments of Transportation, as well as a variety of other state and federal agencies.

Environmental Conflict Resolution Principles Exemplified

- Clear goals, objectives, and expectations defined

- Responsible and sustained engagement of all parties
- Structured process design to facilitate timely productive and effective engagement
- Process consistent with existing laws and regulations, agency missions, policies and legislative parameters

Results and Accomplishments

ODOT was able to obtain permits in one week to build a temporary culvert in place of a failing bridge, allowing emergency equipment such as fire trucks to reach a part of eastern Oregon. The culvert was removed in time for local endangered fish to spawn, and the bridge repaired in an environmentally sound manner.

Contact Information:

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**Case: San Juan National Forest, Southern Colorado -
USDA Forest Service**

Brief Case Description

This multi-stakeholder process was convened by the USDA Forest Service along with county governments, the Ft. Lewis College Office of Community Services (OCS) and others, for the purpose of developing a land use plan for the San Juan National Forest in southwestern Colorado. While the process was open to the public at large, the Bureau of Land Management (BLM), as well as several State and local agencies have been involved in the effort. The process built on an earlier collaborative effort for ponderosa pine restoration that involved many of the same partners.

The process began during the pre-NEPA and scoping stages, and is continuing to evolve all the way through the NEPA process for the San Juan National Forest Plan revision. Two types of working groups were formed—three groups that addressed geographically focused issues, and eight groups that addressed topical areas (timber, old growth, prescribed fire, recreation management, travel management, wildlife, range and aquatic issues). All groups were facilitated by the Ft. Lewis College Office of Community Services. Working groups recommended ideas to include in one or more NEPA alternatives. Those with wide support would appear in more alternatives, those with fewer advocates in only one. People kept showing up for the study groups. Afterwards, many of them joined the working groups for another six months to a year. Many have gone on to participate in project-level analyses and decisions, and volunteering to help with implementation. Participants are also willing to come back to the table after a long hiatus. This effort helped spawn a great deal of public participation in a later Fire Plan effort. A National Monument was recently designated in this area, and though many in the community were opposed, planning for the new monument has been a productive community process in part due to all of the collaborative efforts that preceded it.

The process aims to build knowledge and understanding of issues and the interactions between the community and public land management, along with encouraging commitments to stewardship. The meetings had a roundtable format, and all input was recorded. The process promoted community-based stewardship. When the National Fire Plan came along, the same partners developed community fire plans in the five counties. The plans are very comprehensive, including an integrated Regional strategy, a strong education component, and collaborative mapping of interface areas.

Scope of Case

National Forest level; regional

Themes of Interest

The San Juan Initiative conveners now know how to do the front end, and are still learning how to follow it all the way through to an outcome that incorporates all the perspectives. Once the NEPA work has been done, it should not be used just for that plan or project; agencies need to carry forward what was learned to future issues and decisions. Another suggestion is not to start on the hardest, most complex project. In this community, the process was used on more localized

projects first, which led to confidence in the process when it was then applied to the highly complex plan revision.

Local organizations were well positioned with national counterparts. State-level environmental groups declined to participate based on request of the local groups, who kept them informed of progress.

County and Ft. Lewis College participation in the convening granted a lot of legitimacy to the process; the college is institutionally neutral, and the county is highly accessible and credible to constituents and to the political chain. Because of the success of the preceding ponderosa pine restoration initiative, this kind of collaborative effort had legitimacy with the local public from the start.

This group tries to stay away from “dueling scientists” and instead builds a common knowledge base and common set of accepted facts. The meeting structure focused on a particular scientific or technical issue; outside experts were brought in to explain the state of scientific knowledge, then facilitated small groups would discuss how it applied to this plan revision. Field trips sometimes followed these meetings, such as one on fire ecology. The eventual intent is for outcomes to be openly monitored to adapt management when necessary.

Key Stakeholders

USDA Forest Service

U.S. Department of the Interior – Bureau of Land Management

State and local agencies

Public stakeholders

Environmental Conflict Resolution Principles Exemplified

- Participants have access to best available information
- Process is voluntary, informal, and flexible
- Process design is transparent to parties
- Neutral facilitation

Results and Accomplishments

The NEPA Section 101 concept of “productive harmony” was discussed during this process. People will take care of the environment and its habitats if it makes sense to them and meets their needs. The community considered providing information on social and economic resources to be their “field work”. A social/economic assessment was prepared, built around productive harmony. It included things such as the relationship of settlement patterns to public lands, and correlations of changes in the local economy with changes in public land management.

Both the short- and long-term were considered throughout the process, seeking solutions that will benefit future generations. One focus is to understand the trends that are at work, e.g. new development occurring against the Forest boundary - two counties now require fire hazard mitigation plans in order to get approval for subdivisions.

Immediate suggestions for on-the-ground improvements were passed on and implemented. In one example, a request from the District Ranger for people to not use a specific trail, to help the elk during a hard winter, was complied with even without regulation and enforcement. Another example of a pragmatic solution is the manner in which the group analyzed sage grouse management. After all the factors were considered the group realized that it was not cattle grazing that had caused a decline in sage grouse, but rather that the brush component had been removed by land managers over the years. This led to trying some reintroduction of sage grouse in likely places as a first step in adaptive management.

Contact Information

For more information contact: Thurman Wilson, Planning & Public Services Staff, San Juan Public Lands Center, 15 Burnett Court, Durango, CO 81301; phone: (970) 385-1246; email: twilson02@fs.fed.us; or Mike Preston, Associate Director, Office of Community Services, Fort Lewis College, Durango CO; phone: (970) 565-8525; email: mpreston@co.montezuma.co.us

Bibliography of Additional Cases

Applegate Partnership. See the National Environmental Conflict Resolution Advisory Committee's Final Report to the U.S. Institute for Environmental Conflict Resolution, April 2005, available at <http://www.ecr.gov/necrac/reports.htm>.

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Cape Cod National Seashore. available at www.nps.gov/caco.

Cape Hatteras National Seashore. available at www.nps.gov/caha.

Corridor H Case Report. See the National Environmental Conflict Resolution Advisory Committee's Final Report to the U.S. Institute for Environmental Conflict Resolution, April 2005, available at <http://www.ecr.gov/necrac/reports.htm>.

Fire Island National Seashore. www.nps.gov/fis.

Glen Canyon Adaptive Management Work Group. See the National Environmental Conflict Resolution Advisory Committee's Final Report to the U.S. Institute for Environmental Conflict Resolution, April 2005, available at <http://www.ecr.gov/necrac/reports.htm>.

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I-73 Project in North Carolina and South Carolina. FHWA's Office of Project Development and Environmental Review, Ruth.rentch@fhwa.dot.gov.

Las Cienegas National Conservation Area Project - U.S. Department of the Interior, Bureau of Land Management. See the National Environmental Conflict Resolution Advisory Committee's Final Report to the U.S. Institute for Environmental Conflict Resolution, April 2005, available at <http://www.ecr.gov/necrac/reports.htm>.

Spring Mountains National Recreation Area of Toiyabe National Forest in Nevada. See the National Environmental Conflict Resolution Advisory Committee's Final Report to the U.S. Institute for Environmental Conflict Resolution, April 2005, available at <http://www.ecr.gov/necrac/reports.htm>.

Swan Valley Conservation Agreement. See the National Environmental Conflict Resolution Advisory Committee's Final Report to the U.S. Institute for Environmental Conflict Resolution, April 2005, available at <http://www.ecr.gov/necrac/reports.htm>.

West Eugene Parkway in Oregon. FHWA's Office of Project Development and Environmental Review, ruth.rentch@fhwa.dot.gov

Wisconsin Karner Blue Butterfly. See the National Environmental Conflict Resolution Advisory Committee's Final Report to the U.S. Institute. For Environmental Conflict Resolution, April 2005, available at <http://www.ecr.gov/necrac/reports.htm>.

APPENDIX C: RESOURCES

This appendix provides a compendium of resources for collaboration and environmental conflict resolution and selected resources on public involvement.

WEBSITES OF FEDERAL ENVIRONMENTAL CONFLICT RESOLUTION PROGRAMS

Federal Energy Regulatory Commission, ADR Page: <http://www.ferc.gov/legal/adr.asp>

Interagency Alternative Dispute Resolution Working Group Enforcement & Regulatory:
<http://www.adr.gov/civil-enf.htm>

U.S. Department of Agriculture Forest Service, National Partnership Program:
<http://www.fs.fed.us/aboutus/partnership/index.shtml>

U.S. Department of the Air Force Environmental ADR:
<http://www.adr.af.mil/afadr/environmental.htm>

U.S. Department of Energy Office of Alternative Dispute Resolution:
<http://www.gc.doe.gov/adr.html>

U.S. Department of the Interior

Office of Collaborative Action and Dispute Resolution (CADR):
<http://www.doi.gov/cadr/>

Bureau of Land Management, Natural Resources Alternative Dispute Resolution (ADR)
and Conflict Prevention Partnerships: <http://www.blm.gov/adr/adrNR.html>

U.S. Department of the Navy, Alternative Dispute Resolution: <http://adr.navy.mil/>

U.S. Department of Transportation, Federal Highway Administration, Environmental
Streamlining/Stewardship - Conflict Resolution:
<http://environment.fhwa.dot.gov/strmlng/es2conflict.asp>

U.S. Environmental Protection Agency, Conflict Prevention and Resolution Center:
<http://www.epa.gov/adr/>

U.S. Institute for Environmental Conflict Resolution: <http://www.ecr.gov>

SELECTED REFERENCES ON COLLABORATION AND ENVIRONMENTAL CONFLICT RESOLUTION

Cooperative Conservation: <http://cooperativeconservation.gov>

Council on Environmental Quality - Executive Office of the President. *A Citizen's Guide to the National Environmental Policy Act-Having Your Voice Heard*. Under Review. 2006.

Council on Environmental Quality – Executive Office of the President. NEPA Task Force. Compendium of Useful Practices: <http://ceq.eh.doe.gov/ntf/compendium/toc.html>.

Council on Environmental Quality – Executive Office of the President. NEPA Task Force, *Modernizing NEPA Implementation*. September 2003: <http://ceq.eh.doe.gov/ntf/report/index.html>.

National Environmental Conflict Resolution Advisory Committee, Final Report. Submitted to the U.S. Institute for Environmental Conflict Resolution of the Morris K. Udall Foundation. April 2005: http://www.ecr.gov/necrac/pdf/NECRAC_Report.pdf.

Office of Management and Budget and President's Council on Environmental Quality Memorandum on Environmental Conflict Resolution, November 28, 2005: <http://www.whitehouse.gov/ceq/joint-statement.html>.

Reclaiming NEPA's Potential – Can Collaborative Processes Improve Environmental Decision-Making? O'Connor Center for the Rocky Mountain West, University of Montana; Institute for Environment and Natural Resources, University of Wyoming. March 2000.

U.S. Department of Energy Guidance on Public Participation: <http://www.eh.doe.gov/nepa/tools/guidance/volume2/4-1-pubpart.html>

U.S. Government Accountability Office Report on Interagency Cooperation: <http://www.gao.gov/new.items/d0615.pdf>.

SELECTED WEBSITES ON PUBLIC INVOLVEMENT

Federal Highway Administration. Public Involvement Techniques for Transportation Decision-Making. <http://www.planning.dot.gov/Pitool/toc.asp>

The International Association for Public Participation. <http://www.iap2.org>

U.S. Environmental Protection Agency. <http://www.epa.gov/publicinvolvement>;
http://www.epa.gov/publicinvolvement/pdf/eap_report.pdf

U.S. Department of Interior, Bureau of Reclamation. <http://www.usbr.gov/pmts/guide/pi.html>

U.S. Department of Interior, Office of the Secretary. <http://oepc.doi.gov/ESM/ESM03-7.pdf> and <http://www.doi.gov/cadr>

APPENDIX D: STRATEGIES FOR PREVENTING CONFLICTS

Challenging and controversial issues arise throughout the NEPA process, many of which ripen into conflicts or are conflicts that can intensify over time. In many instances, these can be anticipated and agencies can prevent unnecessary conflict and take actions to minimize the escalation of conflict when it arises. The following strategies are offered for consideration under a range of potential types of conflicts.

Strategies for Preventing Conflicts due to Differing Missions and Mandates

- Conduct orientation sessions to build mutual understanding of each agency's mission, mandates, and procedures.
- Consider and seek to accommodate each participating agency's procedural requirements.
- Create opportunities for management-level discussions or reviews to distinguish between personal interpretations and agency policies.
- Respect each agency's unique mission and mandate for serving the public interest and, as appropriate, accept joint responsibility to help other agencies fulfill their mandates.
- Create a partnership or team approach to work together to address all aspects of the public interest.

Strategies for Preventing Conflicts Concerning Interpretation of Terms

- Develop jointly derived definitions that can apply across projects.
- Share copies of guidance documents that define the terms.
- Hold joint education sessions conducted by specialists or policy makers.

Strategies for Preventing Conflicts Concerning Information

- Jointly identify key questions that must be addressed (such as anticipated impacts), prior to gathering the information.
- Agree on a methodology to be used for data collection and analysis.
- Respect each other's expertise and the variety of relevant expertise.
- Accept the validation of information by the agency having jurisdictional authority.

Strategies for Preventing Conflicts Arising From Differences in Personality and Communication Styles

- Participate in training to understand different communication styles, issue-processing approaches, and motivational factors. Apply this understanding by becoming more tolerant of differences.
- Become more effective by modifying one's own behavior to be more accommodating of others.
- Build relationships through opportunities for informal conversation and interaction.
- Avoid making assumptions about the motives of others. Examine assumptions before reacting.
- Learn – through training and conversation – about other agencies' cultures and operating styles.

Strategies for Preventing Conflicts Related to Insufficient Agency Resources

- Work to solve problems jointly to make the review process easier and more efficient.
- Prioritize projects so agencies can focus attention where needed.
- Adjust meeting times and venues to accommodate limited staff resources. Use teleconferencing when travel funds are not available.
- Determine resources needed (staffing, GIS mapping) to streamline projects.

Strategies for Preventing Conflicts Caused by Failure to Deliver Timely Comments and Responses

- Clarify each agency representative's level of authority. Seek as much delegation of authority as is practical and appropriate.
- Keep higher levels of authority informed of progress on a project and the rationale for decisions made.
- Use technology as appropriate to expedite reviews (e.g., electronic submissions, teleconferencing, etc.)
- Circulate meeting minutes that are approved by all participants.
- Establish signed written agreements upon completion of negotiations.

Strategies for Preventing Conflicts Caused by Failure to Fulfill a Commitment

- Clarify each agency representative's level of authority. Seek as much delegation of authority as is practical and appropriate.
- Clarify the level and specific elements of the commitment up front and document, as appropriate. Examine assumptions when a commitment appears to be broken.
- Establish parameters/conditions for revisiting issues, and avoid revisiting unless those conditions are present.
- Keep higher levels of authority informed of progress on a project and the rationale for decisions made.
- Use technology as appropriate to expedite reviews (e.g., electronic submissions, teleconferencing, etc.)
- Circulate meeting minutes that are signed off on by all participants
- Establish signed written agreements upon completion of negotiations.

APPENDIX E: FEDERAL ADVISORY COMMITTEE ACT

What Is The Federal Advisory Committee Act?

The Federal Advisory Committee Act (FACA or Act),³ governs the establishment, management, and termination of advisory committees within the executive branch of the federal government. FACA ensures that these federal advisory committees are accountable to the public by maximizing public access to advisory committee deliberations through open meetings and availability of documents and minimizing the influence of special interests through balanced committee membership. In addition, the Act seeks to reduce wasteful expenditures and improve the overall administration of advisory committees.

Federal advisory committees can significantly strengthen the federal agency's collaboration processes. Establishing a federal advisory committee can be the best approach for achieving NEPA's Section 101 objectives. It also ensures that advice provided to the federal agency is developed through a structured, transparent, and inclusive public process. Agency managers and outside interested parties generally view the advice provided by federal advisory committees as highly credible due to the thorough vetting and selection process used to ensure balanced membership of the committees, formal opportunities for members of the public to provide written (and oral) public comment, and transparency of the meeting process. While FACA sets up requirements that federal advisory committees must follow, those requirements generally are similar to the best practices normally used in collaborative processes.⁴

Although FACA has had a profound influence on participation in government decision-making, agencies can be reluctant to form advisory committees under the Act⁵. This "fear of FACA" results from confusion about FACA requirements, the perception that it is a time-consuming process to establish a FACA committee and comply with public notice requirements, and the fact that agencies have been directed by Congress, the President and the Office of Management and Budget to limit the number of advisory committees that they are allowed to establish.

FACA Requirements Are Best Practice for Public Involvement

The chart below shows how the best practices of public involvement are similar to the FACA requirements. Requirements relating to balanced representation, transparency of process, clarity of objectives, public access, assessment of need, and others, are best practices in conducting public involvement, as well as FACA requirements.

| Best Practices for Public Involvement | FACA Process |
|---|--|
| Involves all affected parties | Requires balanced membership § 5 |
| Charge states goals, schedule, resources, members | Charter states objective, scope, funding resources, and estimated number and frequency of meetings § 9 |

³ 5 USC App. 2

⁴ For more information on federal advisory committees, see the General Services Administration's Committee Management Secretariat's website at: <http://www.gsa.gov/>.

⁵ See Rebecca J. Long and Thomas C. Beierle. 1999. *The Federal Advisory Committee Act and Public Participation in Environmental Policy*. Resources for the Future, Washington, DC. <http://www.rff.org>.

| Best Practices for Public Involvement | FACA Process |
|--|---|
| Meetings held in public whenever feasible | Requires open meetings unless Agency head determines that meeting can be closed § 10 |
| Provisions made for public input | Requires opportunity for written public comment and oral public comment when appropriate § 10 |
| Meetings planned and announced in advance | Meetings generally announced 15 days in advance in the Federal Register – GSA Federal Advisory Committee Management Rule 41 CFR § 102-3.150 |
| Meeting summaries open to public scrutiny | Meeting minutes are required and are publicly available § 10 |
| Convening a group involves early contact & assessment with parties | Agencies analyze need & membership when establishing committee |
| Operating rules are common | Charter may be supplemented with ground rules |
| Potential conflicts of interest are discussed | Conflict of interest and ethics rule apply to members who are federal government employees (regular or special) |

How Does FACA Affect Collaborative Approaches Used In The NEPA Process?

In general, FACA applies to collaborative efforts when all of the following criteria are met:

1. A federal agency establishes the group (that is, organizes or forms it) or utilizes an outside group by exerting “actual management or control” over the group;
2. The group includes one or more individuals who are not full-time or permanent part-time federal employees or elected officials of state, tribal, or local government or their designated employees with authority to speak on their behalf; and
3. The product of the collaboration is group or collective advice to the federal agency. (Note that the advice is not required to be consensus advice for FACA to apply.)

Thus, for example, if an agency formed a group that included private interested parties to obtain collective advice on the alternatives that should be included in an EIS, the group would be subject to FACA. If, however, the agency did not seek group advice, but rather the individual advice of the participants, the assembled group would not be subject to FACA. For assistance in determining whether FACA applies to a particular group, contact your agency’s FACA attorney.

How Does The NEPA Practitioner Ensure Compliance With FACA?

To help agency personnel, including NEPA project managers, meet all of the FACA requirements, the General Services Administration Federal Advisory Committee Management Secretariat issued a final rule that explains how to set up, manage and terminate a federal advisory committee. GSA also provides FACA training several times a year. In addition, most federal agencies have developed guidance on FACA management that includes agency-specific processes. FACA requirements that apply to all agencies include the following:

1. Develop a charter and publish notice of the establishment of the committee. FACA § 9. A charter is a two- to three-page document that specifies the mission and general operational characteristics of the committee.
2. Balance the points of view represented by the membership of the committee in relation to the function the committee is to perform.
3. Announce meetings in the Federal Register in advance of the meeting.
4. Open the meetings to the public unless the agency head determines that the meeting can be closed and allow the public to send in or present comments.
5. Keep minutes of each meeting, make committee documents available to the public, and maintain the committee's records for the life of the committee.
6. Appoint a Designated Federal Officer (DFO) to manage the committee.

Are There Collaborative Problem-Solving Activities That Are Not Subject To FACA?

The following processes are not subject to FACA:

1. An agency seeks advice and recommendations from the participants on an individual basis and not from the group as a whole;
2. The group is composed exclusively of federal officials and elected officials from federal, state, and local governments or tribes (or their designated employees with authority to speak on their behalf) and the purpose of the group is to exchange views, information, or advice relating to issue(s) of intergovernmental responsibility and administration;
3. The group is formed or assembled by a non-federal entity (such as a non-federal government, a contractor or a private organization) provided that the group is not actually managed or controlled by the federal government;
4. The purpose of the group is to develop advice for non-federal entities (such as States or industry sectors);
5. The purpose of the group is to exchange information.

Pre-collaboration *situation assessments* (See Section IV. B. of this handbook) can assist NEPA managers and staff by providing information to assist the agency in determining whether a collaborative approach should be used, and, if so, what collaboration approach is appropriate. If the selected collaboration effort would be subject to FACA, agency managers and staff should consult with the office in their agency responsible for FACA for guidance on setting-up and operating a federal advisory committee. If there are any questions as to whether FACA might apply, managers and staff should consult with the FACA attorney in their Office of General Counsel or Solicitor's Office.

Alternatives to FACA-Chartered Groups

Agencies should also consider potential alternatives to establishing a FACA committee in determining the most appropriate approach and procedural framework for convening a collaborative process, depending on the specific situation and desired outcomes.

- Agencies can establish a collaborative working group solely with other governmental entities, e.g., other federal, state, and local government or tribal employees working in their official capacities.
- One of the non-federal entities involved or interested in a NEPA process can take the lead in organizing and setting up a collaborative group. This could be a trusted stakeholder group or an independent, impartial organization or convening group. FACA only applies to federal agencies. If a tribe, state, county, or local agency or public interest group puts a collaborative group together, controls membership, sets the agenda, funds the work of the group, and sets up meetings, the federal agency can participate without violating FACA, providing the federal members do not manage or control the group.
- In some situations, the federal agency can form a working group as a subcommittee of an existing committee, such as a Resource Advisory Committee (RAC) or other FACA-chartered advisory committee. Make sure the working group always reports to the RAC or chartered committee and not directly to the federal agency. In most federal agencies, subcommittees that advise a parent committee rather than a federal agency are not subject to the FACA openness requirements.
- Sometimes group advice is not the desired purpose. It may be that the federal agency only wants individual advice from public parties. Or sometimes a federal agency needs to provide information to educate the community about the agency's programs and decisions. In this case, the best approach may be to hold town hall-style public meetings with open public participation and opportunities to respond to questions. Such meetings do not violate FACA as long as the federal agency is not seeking group advice, but rather is sharing information or seeking advice from individuals.

APPENDIX F: ATTITUDES AND BEHAVIORS THAT ENHANCE COLLABORATION

Attitudes and behaviors that are conducive to applying a collaborative approach vary. One practitioner, Louise Smart of CDR Associates in Boulder CO, prepared the following examples of individual attitudes and behaviors to assist participants in collaborative processes based on her observations of interagency deliberations on transportation projects going through the NEPA process and on interagency discussions on how to coordinate NEPA and permitting processes. .

Attitudes

- a. Being open to others' views that may differ with one's own professional judgment.
- b. Embracing a wider range of needs and concerns than one's own or one's agency's.
- c. Respecting and accommodating other agencies' or stakeholders' decision-making hierarchies or processes, including allowing time and opportunity for communication with constituents, colleagues, or managers.
- d. Being willing to consider the trade-offs among competing mandates, interests, and concerns.
- e. Being realistic about what is achievable and allowing this sensibility to temper positions, hopes, or expectations.
- f. Being committed to improvement of decisions through learning from others.
- g. Being willing to share power in decision making without abdication of authority and responsibility.
- h. Accepting the risk of failure that comes with the opportunity of seeking mutual agreement.
- i. Resistance to the temptation to take differing views as personal affronts.

Behaviors

- a. Disclosing information – whether favorable or unfavorable.
- b. Having a transparent decision making process, within which each collaborative partner can understand his/her/their (agency/entity) role.
- c. Spending time talking with people – whether singly, in groups, or in structured committees.
- d. Exercising and keeping commitments to: attend meetings; speak up with ideas and concerns; provide information; read information and be prepared; talk with constituents, colleagues, and managers; keep others abreast of progress; listen to others and seriously consider different points of view; work towards mutually acceptable solutions.
- e. Engaging in mutual education about collaborative partners' missions, mandates, decision-making processes, plans, goals, visions.
- f. Raising concerns as they occur rather than waiting until late in the process.
- g. Advocating for a need, interest, or responsibility with a tone that invites reflection from rather than alienates those who think differently.
- h. Asking questions from a desire to learn rather than a desire to confront.
- i. Addressing concerns that are raised, as early as possible or identifying when and how the concern will be addressed.
- j. Focusing on what matters rather than small sticking points that are not really important to the decision at hand.
- k. Asking others for solution suggestions as well as for expressions of concerns.
- l. Seeking and finding the flexibility that may be inherent in regulations or commonly accepted standards.
- m. Facing up to political or managerial pressure in order to advocate for a collaboratively-achieved outcome.
- n. Framing the decision-making task in terms that encompass a broad range of identified needs.
- o. Seeking out the views of others even when the individuals are not able to participate.
- p. Knowing when to narrow deliberations in order to move forward.

- q. Directly addressing or elevating unresolved issues in an agreed-to manner rather than allow them to fester and result in a permanent breakdown of a collaborative process and rather than unilaterally going over someone's head within his/her organization or seeking political clout to prevail.
- r. Knowing when collaboration has produced all that it reasonably can and exercising decision-making authority without forgetting about what was learned in the collaborative process.
- s. Reaching agreement about the meaning and applicability of terms, such as "reasonable, prudent, feasible, and practicable" and how to apply these terms to the NEPA decisions at hand.

APPENDIX G: ACRONYMS

Acronyms

| | |
|-------------------|--|
| BLM | Bureau of Land Management |
| CEQ | Council on Environmental Quality |
| CETAS | Collaborative Environmental and Transportation Agreement for Streamlining |
| DOI | United States Department of the Interior |
| DOT | United States Department of Transportation |
| EA | Environmental Assessment |
| EIS | Environmental Impact Statement |
| EPA | Environmental Protection Agency |
| FACA | Federal Advisory Committee Act |
| FHWA | Federal Highway Administration |
| FONSI | Finding of No Significant Impact |
| FWS | United States Fish and Wildlife Service |
| GGNRA | Golden Gate National Recreation Area |
| NEPA | National Environmental Policy Act |
| NOI | Notice of Intent |
| NPS | National Park Service |
| NRA | National Recreation Area |
| ROD | Record of Decision |
| SAFETEA-LU | Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users |
| USDA | U.S. Department of Agriculture |

APPENDIX H: ACKNOWLEDGMENTS

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