

COUNCIL ON ENVIRONMENTAL QUALITY

# Collaboration in NEPA

*A Handbook for  
NEPA Practitioners*



OCTOBER 2007

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 is informational and 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.

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# Table of Contents

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I.	Introduction	1
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	7
	A. When Collaboration Works Best	7
	B. When Collaboration Works Less Well	9
IV.	Basic Approach to Designing a Collaborative NEPA Process	11
	A. Spectrum of Engagement In NEPA Decision-Making	11
	B. The Phases and Extent of Collaboration	14
	C. Coordinating with Other Planning Processes	16
	D. The Role of Cooperating Agencies	16
V.	Opportunities for Collaboration Within the NEPA Process	19
	A. Proposed Action/Purpose and Need	19
	B. Notice of Intent	20
	C. Scoping	20
	D. Alternatives Development/Preferred Alternative	21
	E. Affected Environment/Environmental Consequences (Analyzing Impacts)	22
	F. Mitigation	22
	G. Draft and Final Review	22
	H. Record of Decision (ROD)/Finding of No Significant Impact (FONSI)	23
	I. Implementation/Monitoring	23
VI.	Guide to Collaboration During NEPA	25
VII.	Addressing Challenges to NEPA Collaboration	31
	A. Resource Requirements	31
	B. Managing Conflict While Practicing Collaboration	32
	C. Federal Agency Culture	32
	D. The Federal Advisory Committee Act (FACA)	33
VIII.	Conclusion	35

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## Appendices

Appendix A: Strategies for Preventing Conflicts.....	37
Appendix B: Attitudes and Behaviors That Enhance Collaboration .....	41
Appendix C: Case Studies.....	45
Appendix D: Resources .....	61
Appendix E: Example Memoranda of Understanding.....	65
Appendix F: Federal Advisory Committee Act.....	89
Appendix G: Acronyms.....	95
Appendix H: Acknowledgments .....	97

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# I. Introduction

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One of the primary goals of the National Environmental Policy Act (NEPA)<sup>1</sup> 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 some NEPA review processes. However, the full potential for more actively identifying and engaging other Federal, Tribal, State and local 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. 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.<sup>2</sup> Agencies responsible for preparing an Environmental Impact Statement (EIS) or an Environmental Assessment (EA) will find this handbook helpful in identifying and realizing opportunities to collaborate throughout the NEPA process.

This handbook discusses how Federal agencies can benefit by working collaboratively with others in the NEPA process. Other planning processes that tie into the NEPA process, such as the state and local long range transportation and land use planning processes, can provide additional opportunities for collaboration. Collaboration 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. NEPA practitioners are the primary audience for this handbook; however, all practitioners and decision makers involved in the NEPA process, including planners, engineers, environmental scientists and specialists, and public involvement specialists, will find the handbook helpful. This handbook can also be useful to citizens and citizen groups.<sup>3</sup>

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<sup>1</sup> 42 U.S.C. sections 4321-4347.

<sup>2</sup> Council on Environmental Quality, "NEPA Task Force Report to the Council on Environmental Quality — Modernizing NEPA Implementation," (September 2003) available at <http://www.ceq.eh.doe.gov/ntf>.

<sup>3</sup> See the Council on Environmental Quality proposed "Citizen's Guide: A Citizen's Guide to the National Environmental Policy Act — Having your Voice Heard," available at <http://ceq.eh.doe.gov/ntf/implementation.html>.

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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
- 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:

- engaging diverse interests and affected communities;
- addressing 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 conflict and respond with constructive problem-solving.

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## II. Collaboration and Its Benefits

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Collaboration is a broadly used term that describes how people and organizations work together, literally meaning “co-labor.” There are many ways 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 regulations implementing NEPA 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 CEQ regulations also require agencies to actively identify parties that might be interested in a proposed federal action, and to give notice to the public through a variety of media such as the Federal Register, local newspapers, or direct mailing.<sup>4</sup> 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, it is not uncommon to 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, or to use innovative and pro-active methods to identify and communicate with individuals and groups that might be interested in particular governmental decisions.

*This handbook focuses on collaboration directly in the context of NEPA and more specifically on that form of collaboration that engages a balanced set of affected and interested parties in seeking agreement at one or more stages of the NEPA process by cultivating shared vision, trust, and communication.*

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<sup>4</sup> Council on Environmental Quality, “Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act,” 40 C.F.R. parts 1500-1508, available at [www.NEPA.gov](http://www.NEPA.gov). Public involvement requirements include 40 C.F.R. §§ 1501.4(b), 1501.7(a)(1), and 1506.6(b).

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Collaboration applies in many contexts and can include a broad range of activities; 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.

The extent of collaboration between any 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.

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). A lead agency can collaborate with others in one or more discrete stages, or in every aspect of the NEPA process. 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. Documents prepared by a collaborative group during the NEPA process may become part of the NEPA administrative record.

Participants in a collaborative process need to be cognizant of the boundaries of collaborative influence and of the extent of Federal agency authority and State, Tribal and local authorities. 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. Using collaboration does not increase or decrease the agency's responsibilities or authority. Collaboration does not turn the NEPA process into a process where an agency's responsibility to make sound decisions is replaced by how many votes are cast for a particular option or alternative. Collaboration does enable decision makers to consider any consensus that may have been reached among the interested and affected stakeholders, furthering the lead agency's ability to make informed and timely decisions.

## B. The Benefits of Collaboration

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

**Better 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.

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**Fairer 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.

**Better 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 and serve to reduce delays and make time lines more predictable.

**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.

**Improved 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 (a process that 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.

*CALFED BAY-DELTA:  
The CALFED Bay-Delta  
Program is a multi-party  
collaborative group dealing  
with water issues in  
California that relies heavily  
on consensus-based scientific  
and technical information  
(Appendix C, page 60).*

**Increased 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.

**Easier Implementation.** Collaboration 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.

**Enhanced Environmental Stewardship.** Collaboration can promote stewardship of human and natural resources through mutual understandings and cooperation.

**Reduced 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.



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# III. The Context for Collaboration

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Context is important in collaborative efforts under NEPA. An agency might be unable to seek agreement with every party during every phase of the NEPA process. An agency should consider factors such as the dimensions of the decision making process (e.g., extent of the Federal agency's role and ability to influence outcomes), particularly in situations involving applicants, as well as the available time and resources when determining whether and to what extent collaboration is appropriate and feasible.

In some cases collaboration is clearly called for; however, in other cases a level of engagement providing stakeholders with opportunities for public input supplemented with outreach efforts may be more appropriate. Lead agencies should be sure to communicate in a timely manner with each party about their respective roles in the process to avoid creating 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 rather than by pursuing their interests unilaterally. Some situations are more conducive to a collaborative process than others.

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.

Support from lead agency senior management and 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* (Appendix C, page 60). Agency support should include a good faith commitment

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(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. On a practical level, support by providing resources for training on how to collaborate, as well as the resources to collaborate, is essential to implement collaborative processes.

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.

***Carryover Benefits:***  
*The Bureau of Land Management (BLM), Forest Service, and other state and local agencies formed a partnership in the mid-1990s to identify the causes of the rapid decline in the mule deer population in Colorado’s Uncompahgre Plateau. This effort was so successful that the agencies decided to continue working together, and in recent years have collaboratively completed landscape assessments, fuel reduction plans, and grazing allotment studies, among other projects (Appendix C, page 60).*

Lead agencies may 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 IV.D., page 16). When the lead agency engages with other government agencies (Federal, State, local, or Tribal government agencies) for purposes of meeting their NEPA responsibilities, any meetings held exclusively among the government agencies are not subject to the requirements of FACA.

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 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 (Appendix C, page 60). For the agreement to be effective, each party to the agreement had to rely on the good faith and performance of the other parties.

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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 (Section VII.D., page 33, and Appendix F, page 89, for further FACA discussion). In addition, legislation may address cooperation and collaboration for specific agencies or proposals (see text box on page 16).

## 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 hesitant to design and implement 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 undermine others' interest in wanting to participate in a process. Potential participants in a collaborative process are unlikely to be willing to dedicate their time and effort to an enterprise if they perceive that the lead agency is not completely behind the effort.

Parties may also have strongly conflicting views on the meaning and significance of available data and information. If they cannot agree on the underlying factual information, they are much less likely to agree on substantive issues. Collaborative processes are also less likely to be successful when a high level of distrust exists among the parties. Distrust can stem from a personality conflict between specific individuals to fundamentally opposed aims of different organizations.

These are just some of the reasons a collaborative approach might not be appropriate 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.<sup>5</sup>

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<sup>5</sup> Attitudes and behaviors that are conducive to applying a collaborative approach vary. An ECR practitioner's examples are presented at Appendix B, page 41.



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# IV. Basic Approach to Designing a Collaborative NEPA Process

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## 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*, shows four levels of potential engagement for a lead agency with other governmental and non-governmental entities.<sup>6</sup> 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*.<sup>7</sup>

At the *Inform* level, the agency informs interested parties of its activities. At the *Consult* level, the agency keeps interested parties informed, solicits their input, and considers their concerns and suggestions during the NEPA process. Here the agency consults with parties without necessarily intending to reach agreement with them. At the *Involve* level, the agency works more closely with interested parties and tries to address their concerns to the extent possible give 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 steps in the NEPA process.

The focus of this handbook is on the *Collaborate* end of the spectrum; however, all levels of engagement may be used at different steps in a given NEPA process, which can cumulatively serve to reinforce the potential for effective collaboration. In designing a collaborative NEPA process, the lead agency should:

1. Determine the parties with whom the agency could collaborate.

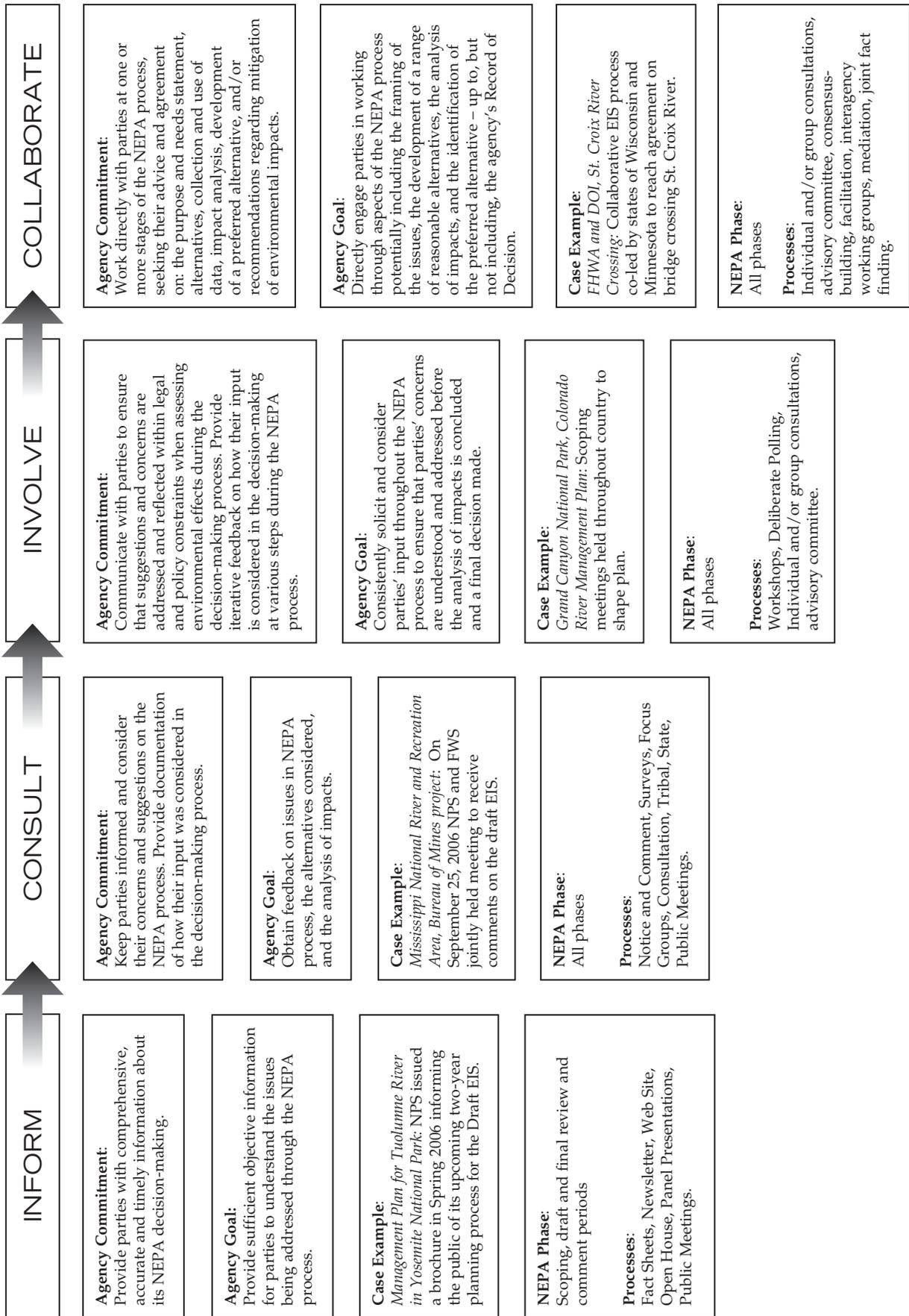
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<sup>6</sup> Available at <http://www.IAP2.org>.

<sup>7</sup> These terms may have specific meanings in various statutes; however, in this handbook they are used generically unless a specific meaning is identified.

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2. Determine the extent to which it is willing to involve different parties during each step 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 not feasible, determine whether and how to engage parties at the Inform, Consult, or Involve levels of engagement.

# Spectrum of Engagement in NEPA Decision-Making



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## B. The Phases and Extent of Collaboration

Many 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 manage 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. Seeking Agreement through Deliberation and Negotiation; and
5. Decision-making and Implementation (including Monitoring and Evaluation).

This approach has been used successfully in many NEPA processes.

***Assessing the Conflict:***  
*The National Park Service chose to use 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 (Appendix C, page 60).*

In the **assessment and planning phase** (often referred to as “conflict” or “situation” assessments) agencies clarify the issues and assess the opportunity for collaboration.<sup>8</sup> 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 conflicts can often be planned for and assessed through less formal means. Agencies can use the assessment process to inform 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.

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 inform them about the process and to develop a plan for how they can work together. The lead agency or convener might choose a less formal or a more structured approach depending upon, among other things, the complexity of the issues at hand and the history of conflict between parties. During this phase, the lead agency clarifies expectations and the roles and responsibilities. The

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<sup>8</sup>Deborah Shmueli, “Conflict Assessment: beyond intractability,” Conflict Research Consortium, University of Colorado (2003).

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agency might consider providing training to the collaborative group, which is what the National Park Service did in the Golden Gate National Recreation Area example.

Groups typically begin to work together during the convening phase 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 independent facilitators or mediators as appropriate.

During convening and initiation, groups also address how they will make decisions together in the future. The lead agency should explain to the group the extent to which its decisions can be shaped through collaboration and the extent to which its decisions are limited by statutory authorities, regulations, or resource constraints. 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; for example, as full and unanimous endorsement within the group, 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 a process of **sharing interests and exchanging information**. 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.

The next phase where participants **seek agreement through deliberation and negotiation**, is often considered the heart of the collaborative process. In many respects, it is the demonstration of an effective collaboration effort. 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 or culminating 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 which may include monitoring and implementing mitigation measures.

### C. Coordinating with Other Planning Processes

CEQ regulations encourage agencies to integrate the NEPA process with other processes at the earliest possible time.<sup>9</sup> For example, 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 Project*. 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.<sup>10</sup>

In many land management planning processes, future desired conditions are developed early in the planning process and incorporated into subsequent proposed actions that initiate the NEPA process. The early planning stages are an opportune time for engaging the public through a variety of means such as workshops, focus groups, and 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 opposition to, or concern about, the action. The lead agency could also consider (consistent with authorities such as FACA) engaging a representative group of parties to help frame the proposed action statement.

**Multi-Agency Collaboration:**  
*The U.S. Department of Transportation, under SAFETEA-LU section 6002 (23 U.S.C. §139), established a process for involving “participating” agencies. Participating agencies are more broadly defined than cooperating agencies; they are agencies with “an interest” in the project. The process requires inviting participating agencies and providing them and the public the opportunity to participate in defining the proposed project’s purpose and need and determining the range of alternatives. The process also provides participating agencies the opportunity to work in collaboration with the lead agencies in determining the methodologies and level of detail to be used in analyzing the alternatives.*

### D. The Role of Cooperating Agencies

At the outset of any NEPA process, the lead agency should 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 are not cooperating agencies. Seeking agreement with cooperating agencies is not required, but it is recommended when using more collaborative approaches to NEPA and decision making.

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. The lead agency must determine how and to what extent it will collaborate with the cooperating agencies.<sup>11</sup> It is helpful to remember that working with

<sup>9</sup> 40 C.F.R. §§ 1501.2 and 1502.25(a).

<sup>10</sup> 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) available at <http://www.ecr.gov/necrac/reports.htm>.

<sup>11</sup> 40 C.F.R. §§ 1501.6 and 1508.5.

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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).

The lead agency should also consider how it wishes to work with other parties that are not deemed “cooperating agencies.” It is possible to establish arrangements to enhance consistent communications, coordination, and information sharing with other interested parties.

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



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# V. Opportunities for Collaboration Within The NEPA Process

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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.<sup>12</sup>

Agencies are also required to involve the public to the extent practicable in developing EAs.<sup>13</sup> An agency may choose to apply the public involvement processes available for preparing an EIS to the development of an EA. This is important because agencies prepare far more EAs than EISs.<sup>14</sup>

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 as they develop EAs and EISs. If the lead agency decides to establish a representative group to work toward consensus agreements it should also consider the appropriate legal procedural framework for this, including applicability of FACA (Section VII.D., page 33, and Appendix F, page 89).

## A. Proposed Action/Purpose and Need

Lead agencies can begin using a collaborative approach at the start of the NEPA process when initially conceptualizing the proposed action.

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<sup>12</sup> 40 C.F.R. part 1503, §§ 1500.2(d) and 1506.6.

<sup>13</sup> 40 C.F.R. §§ 1501.4(b) and 1506.6.

<sup>14</sup> See for example the CEQ Reports, “The National Environmental Policy Act, A Study of Its Effectiveness After Twenty-five Years” (January 1997) available at <http://ceq.eh.doe.gov/nepa/nepa25fn.pdf> and “Report on Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act” (May 2005) available at [http://ceq.eh.doe.gov/nepa/coop\\_agency\\_status.htm](http://ceq.eh.doe.gov/nepa/coop_agency_status.htm).

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Before identifying alternatives including the proposed action, agencies must first determine the purpose and need for the action. To develop a purpose and need statement, agencies collect information, define the problem, and often brainstorm 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 might impact the feasibility of potential alternatives. The purpose and need are key in developing alternatives to consider along with the proposed action. When several agencies have a role with respect to one or more alternatives or the proposed action, they can agree to collaboratively develop the NEPA analysis and documentation in a way that will address 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 also rely. Similarly, when dealing with project proposals from the private sector, an agency may work collaboratively with private sector applicants, regulatory agencies and other interested parties to ensure that the public interest as well as the applicant's role and needs are taken into account when developing the purpose and need statement.

## B. 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 with other forms of notice such as announcements on websites, newspapers, newsletters, and other forms of media. Similar methods can be used to provide notice for an EA process.

## C. 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 that may need to be addressed when considering 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 appropriate study boundaries, identify possible effects of various actions, and establish a realistic schedule for the analysis.

The lead agency can use scoping in many ways. It can use scoping to clarify the roles of participants, determine gaps in resources, establish dispute resolution procedures,

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reach agreement with parties on meeting protocols and ground rules, and clarify project goals, objectives, and time lines. The lead agency can also use scoping to conduct an assessment through individual interviews to identify the key issues and concerns expressed by stakeholders.

The lead agency can be innovative in how it reaches the public during scoping such as by setting up project websites, distributing periodic newsletters, and holding meetings in diverse locales. 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.

***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 (Appendix C, page 60).*

#### D. 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 unrecognized. The selection of alternatives drives the remainder of the NEPA process by framing the issues, the possible solutions, and the analysis.

Lead agencies often find it challenging enough to reach internal agreement on what the range of reasonable alternatives should be. When the process is expanded to include external parties, the challenge can be even greater. Parties must first come to realize that there may be a number of ways by which their objectives (purpose and need) can be met. Collaboratively developed alternatives are more likely to withstand external challenges because such an approach enables stakeholders to have a meaningful role in choosing among alternatives when developing the Draft EIS. Agencies can use a number of methods and approaches to enhance collaboration when developing viable alternatives, such as:

- ❖ Public workshops to discuss draft alternatives and how they can be improved.
- ❖ Working with cooperating agencies to identify and refine alternatives.
- ❖ Working with advisory committees or other existing stakeholder groups to identify and refine alternatives.
- ❖ Working with groups organized by others (e.g., Chambers of Commerce, League of Women Voters) to identify and refine alternatives.
- ❖ Meeting with stakeholder groups or nongovernmental organizations to discuss draft alternatives and how they can be improved.

If agencies desire broader agreement in identifying the preferred alternative, engaging in effective collaboration at the alternative development stage of NEPA is absolutely essential. Selecting a preferred alternative collaboratively can be an effective way of reducing future conflicts and expediting the NEPA process.

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## E. Affected Environment/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.

Convening expert panels may be a useful way to advance a joint fact-finding process when confronted by complex scientific or technical issues. For example, the *CALFED Bay Delta Program* collaborative group in Northern California regularly utilizes expert panels to address water issues in the San Francisco Bay area.<sup>15</sup>

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. 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.

## F. Mitigation

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

## G. Draft and Final Review

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:

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<sup>15</sup> Additional information is available at <http://www.calwater.ca.gov>.

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- ❖ 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 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 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.

#### H. 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.

#### I. Implementation/Monitoring

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 (Appendix C, page 60).*



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# VI. Guide to Collaboration During NEPA

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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 different steps in 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
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 collaboration.	<p>Granting cooperating agency status to agencies and Tribes.</p> <p>Other arrangements for interagency cooperation and coordination.</p> <p>Interagency meetings/forums/committees.</p> <p>Situation assessment.</p>	<p>What are other agencies' levels of interest in the proposal?</p> <p>Are agencies willing to be cooperating agencies or enter into agreements to collaborate?</p> <p>What is the need and feasibility for resource sharing among agencies?</p>	<p><i>Everglades</i>: Starting in late 1990's, US Army Corps of Engineers developed Supplemental EIS to protect endangered Cape Sable seaside sparrow with cooperators after initial effort that lacked cooperators was not successful (Appendix C, page 46).</p>
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 at this phase?</p> <p>Are applicants involved and, if so, how are their responsibilities described?</p> <p>Applicability of FACA.</p>	<p><i>Collaborative Environmental and Transportation Agreement for Streamlining (CETAS)</i>: Transportation and resource agencies in Oregon discuss issues early in the NEPA process through regular working group meetings, fostering relationships built on trust (Appendix C, page 55).</p>

NEPA Activity	Collaboration Goal	Commitment	Options/Tools	Issues	Case Examples
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.	Identify other agencies with jurisdiction by law or special expertise and consider appropriate collaboration framework.  Situation assessment.  Identify early in process interests that would be affected by agency action.  Convene balanced array of interests to collaborate on development of the purpose and need statement.	Identify potential value and risks of initiating or not initiating collaboration at this point.  Are applicants involved and, if so, how are their roles and responsibilities described?  Think through clearly to avoid unattainable expectations.  Applicability of FACA	<i>Spring Mountain National Recreation Area:</i> In 1994, Forest Service (lead) and Fish and Wildlife Service (cooperator) entered into interagency agreement which enabled them to jointly develop EIS, including Purpose and Need and subsequent steps of process (Appendix C, page 60).
Issuing Notice of Intent (NOI)	Delineate and publicize agency commitment to collaboration.	Clarify goals and initial plans for collaborating with other agencies/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.  Applicability of FACA	<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 (Appendix C, page 60).

NEPA Activity	Collaboration Goal	Commitment	Options/Tools	Issues	Case Examples
Conducting 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.	Are all interests represented? Is issue ripe /ready for collaboration? Time constraints. Resources required. Is all relevant information available, accessible, being used? Applicability of FACA.	<i>Spring Mountain National Recreation Area:</i> In 1994, Forest Service (lead) and Fish and Wildlife Service (cooperator) entered into interagency agreement which enabled them to jointly develop EIS, including scoping and subsequent steps of process (Appendix C, page 60).
Developing Alternatives	Jointly develop reasonable 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.	Does range of alternatives reflect full spectrum of views? Are all interests represented and concerns taken into account? Applicability of FACA.	<i>Wisconsin Karner Blue Butterfly:</i> In mid 1990's multi-stakeholder group developed combined Habitat Conservation Plan/EIS. Group discussed all alternatives. Group's preferred alternative became basis for ROD (Appendix C, page 60).

NEPA Activity	Collaboration Goal	Commitment	Options/Tools	Issues	Case Examples
Assessing Affected Environment and 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 can analyses and findings be communicated to lay people?  Applicability of FACA.	<i>San Juan National Forest, Southern Colorado — USDA Forest Service:</i> 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 (Appendix C, page 57).
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 publishing the EA, final EIS, ROD or FONSI.  Build internal and interagency leadership commitment.  This goal can also include joint selection of a preferred alternative.	Shared process for review of and response to public comments with other agencies and parties in collaboration, ensuring comments 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.  Applicability of FACA.	<i>Wisconsin Karner Blue Butterfly:</i> Multi Stakeholder group (Fish and Wildlife Service lead) collaboratively considered comments on draft EIS to jointly produce final EIS (see Appendix C, page C-15).  <i>Everglades:</i> Interagency group refined preferred alternative based on comments to EIS for purpose of protecting endangered Cape Sable seaside sparrow (Appendix C, page 46).

NEPA Activity	Collaboration Goal	Commitment	Options/Tools	Issues	Case Examples
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.	<p><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 was set up to address this uncertainty (Appendix C, page 60).</p>

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# VII. Addressing Challenges to NEPA Collaboration

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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 environmental conflict — whether it involves property rights, the economic health of communities, endangered species, or fragile ecosystems — often involve complex facts and trigger deeply held views. 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 to assess the relevance and significance of the data (as in a joint fact-finding process). 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 a preferred action that can be implemented, increased trust and social capital, and improved working relationships on this and future projects. For help in weighing these factors, Federal agencies can turn to the U.S. Institute for Environmental Conflict Resolution, 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.

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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 conflicts, 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 other potentially affected parties who have not yet 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 basic principles for engaging others in 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 is really important to them. An emphasis on *inclusivity and balance of interests* can give comfort to parties who might be concerned that the process will favor one side over another on an issue. 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) (Appendix D, page 63).

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

## 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.

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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 of time or costs associated with a collaborative approach. However, the time savings an agency might achieve by forgoing a collaborative process are often illusory, particularly when the failure to collaborate exposes the NEPA process and decision making to subsequent challenges and implementation delays.

**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 appropriate use of collaborative processes.

Ultimately, the principles of collaboration need to seep into the everyday work environment before they can be incorporated into an agency's culture. As the CEQ NEPA Task Force noted, "if 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 fosters collaboration.

To this end, the Joint Memorandum discussed above directs Federal agencies to increase their 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 Government employees if the group is established, managed, or controlled by a Federal agency (individually or jointly with others) 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 groups established, managed, or controlled by a Federal agency to obtain collective advice 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

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under FACA several questions need to be answered, including what is the proposed 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 either individually or jointly with others?). The answers to these questions, addressed in more detail in Appendix F, 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 well. Because FACA provides for many of the best practice recommendations for collaborative problem-solving, FACA committees can be effective means for carrying out a collaborative process. There are a number of ways to approach the administrative challenges posed by FACA, particularly if they are viewed as opportunities for designing a productive collaborative process. These concepts are discussed in greater detail in Appendix F.

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# VIII. Conclusion

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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 to better inform governmental decisions and to enhance 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.

In order to effectively accomplish agency missions and improve environmental decision making, federal managers need more tools to help them turn competing interests into constructive engagement. The information provided in this handbook provides a starting point for those federal managers considering ways to enhance their NEPA processes through collaboration.



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# APPENDIX A:

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## STRATEGIES FOR PREVENTING CONFLICTS

Challenging and controversial issues arise throughout the NEPA process, many of which ripen into conflicts or are pre-existing 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 does arise.

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## 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 collectively serving the public interest and, as appropriate, accept shared 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

- ❖ Jointly develop 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 prior to gathering the necessary 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 validity of information provided by the agency with jurisdictional authority.

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

- ❖ Participate in training to understand different communication styles, information-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 different personal styles.
- ❖ Build relationships through opportunities for informal conversation and interaction.
- ❖ Avoid making assumptions about the motives of others. Examine assumptions before reacting.

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- ❖ 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 summaries 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.
- ❖ Circulate meeting summaries that are signed off on by all participants.
- ❖ Establish signed written agreements upon completion of negotiations.



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# Appendix B:

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## ATTITUDES AND BEHAVIORS THAT ENHANCE COLLABORATION

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

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## Attitudes

- a. Being open to others' views that may differ with ones own professional judgment.
- b. Embracing a wider range of needs and concerns than ones own or ones agency.
- 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 the other (agency/entity) roles.
- c. Spending time talking with people — whether individually, 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, and 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.

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- 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 on small sticking points 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 allowing 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.



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# APPENDIX C:

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## CASE STUDIES

This appendix provides some case examples of situations in which collaboration has been used in the context of NEPA

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**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**

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### 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 Cape Sable seaside sparrow. The IOP would be effective 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. The initial assessment 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. 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 for the FEIS and then for the ROD.

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. 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 clarifications that are required in implementing the plan. Specific on-the-ground improvements have resulted, with the Corps expediting the construction of some features to enhance the existing water delivery system. Institutionalized interagency teams have been established, which has resulted in much improved working relationships among agency staff.

Agency leadership and staff at the Federal, State, and local levels were committed to making the collaborative process work. The four agencies are currently engaged (Fall 2007) in a multi-stakeholder EIS process for the longer-term CSOP that also actively involves 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.

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## Themes of Interest

Conflict emerged in a NEPA process.

Interagency conflict arose 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 are being addressed as part of the process. The parties expect to publish a collaborative multi-stakeholder EIS 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

## 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. 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 together on developing alternatives 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.

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## 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> at page 113.

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

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### 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. The St. Croix River is 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; however, it 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 Minnesota and Wisconsin Depts. of Transportation, Depts. of Natural Resources, and State Historic Preservation Offices.

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

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- 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 bluff-land 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.

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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.”* Nonetheless, one stakeholder did not officially endorse the final recommendations that became the Record of Decision and has chosen to pursue litigation.

## Contact Information

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

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**Case: US 93 Evaro to Polson Corridor — Montana —  
U.S. Department of Transportation, Federal Highway  
Administration**

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### Brief Case Description

The US 93 Evaro to Polson Corridor consists of a series of complex reconstruction projects along the existing US 93 Corridor between Evaro and Polson, Montana. The highway traverses the Flathead Indian Nation located within the Rocky Mountains in one of the most beautiful valleys in western Montana. The area is bordered by Flathead Valley on the north, the Salish Mountains on the west, and the Mission Mountains on the east. It is inhabited by the Salish, Kootenai, and Pend d' Oreille peoples, and also by wildlife such as grizzly and black bear, white-tailed deer, mule deer, pronghorn antelope, elk, western painted turtles, eagles and other raptors, bighorn sheep, mountain lion, and many migratory fish and birds. The US 93 corridor provides links from the Interstate to major recreational areas such as Flathead Lake and Glacier Park to the north.

Montana began work on upgrading US 93 from Evaro to Polson in the 1980s, and key issues to resolve 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 (Evaro to Polson Corridor) is a section of the 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. The environmental impact statement for the Evaro to Polson corridor segment has been superseded by the December 2000 Memorandum of Agreement (MOA) for US 93 Evaro to Polson between the Confederated Salish and Kootenai Tribes, the Federal Highway Administration and the Montana Department of Transportation. This MOA memorializes the three governments’ shared vision and common 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)

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while providing safety and additional capacity for the motoring public. Rebuilding trust, honor, and mutual respect among the governments allowed place-sensitive design strategies to be successful.

With the “Spirit of Place” in mind, initial goals were established in the process:

- Develop an understanding of the land and the relationship the Salish, Kootenai and Pend d’ Oreille people have with the land;
- Design and build a safer road that will hopefully reduce deaths on the corridor;
- Develop concepts that respect the integrity and character of the place, people, and wildlife;
- Provide for regional mobility;
- Restore and connect habitat areas that have been fragmented by the road and surrounding development;
- Respect and enhance the way of life in small communities along the highway; and
- Create a better visitor understanding of the place that the Salish, Kootenai, and Pend d’ Oreille people call their homeland.

## Key Stakeholders

Confederated Salish and Kootenai Tribes, Montana Department of Transportation (MDT), and FHWA were the key stakeholders for the MOA. During specific project design and development other stakeholders including the USFS, EPA, USACE, BIA, USFWS, counties, environmental advocacy groups, and the general public are also continuously informed via the distribution of monthly status reports on corridor progress.

## Results and Accomplishments

The process that led to the Memorandum of Agreement between the three governments enabled an on-going collaborative partnership that is continuously aligning efforts to solve emerging issues in finalizing design, obtaining permits, and ensuring the financial package is in place to move the project forward. Without on-going trust-engendered collaboration, corridor progress in addressing safety, community values, and capacity would not have been made. US 93 provides an excellent example of a highly collaborative process that resulted in a highway that fits harmoniously into the landscape while also addressing corridor safety and capacity needs. For example, during the discussions, the connection between the tribal culture and wildlife habitat preservation became very evident; which led to innovative wildlife crossings being incorporated into the project. The US 93 Evaro to Polson corridor is a progressive and unprecedented collaboration of Native American peoples and Federal and State governments, one that can be duplicated in highway projects across the United States.

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### Contact Information:

Dwane Kailey, Missoula District Engineer, 406-523-5802, [dkailey@mt.gov](mailto:dkailey@mt.gov); website:  
<http://www.mdt.mt.gov/pubinvolve/us93info>.

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

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### 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. In 1996, to streamline the review process, 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, 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. An elevation process was developed for this disagreement, 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.

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## Key Stakeholders

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

## 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:

Michelle Eraut, FHWA OR Division Office, 503-587-4716, [michelle.eraut@fhwa.dot.gov](mailto:michelle.eraut@fhwa.dot.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> at page 109.

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

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### 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 volunteer 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.

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## 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

## 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

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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](mailto:twilson02@fs.fed.us); or Mike Preston, Associate Director, Office of Community Services, Fort Lewis College, Durango CO; phone: (970) 565-8525; email: [mpraston@co.montezuma.co.us](mailto:mpraston@co.montezuma.co.us).

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> at page 131.

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## 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>.

CAL FED Bay Delta program available at <http://www.calwater.ca.gov>.

Channel Islands Marine Reserve Working Group 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>.

Golden Gate National Recreation Area Dog Management available at <http://www.nps.gov/goga/parkmgmt/dog-management.htm>.

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>.

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>.

Grand Canyon National Park, Colorado River Management Plan available at <http://www.nps.gov/archive/grca/gmp>.

Hanford Comprehensive Land Use Plan 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>.

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

Mississippi National River and Recreation Area Bureau of Mines Project available at <http://www.nps.gov/miss/parkmgmt/bomback.htm>.

Spring Mountains National Recreation Area of Toiyonbee 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>.

Tuolumne River Management Plan available at <http://www.nps.gov/archive/yose/planning/trp>.

Uncompahgre Plateau Project, available at [http://www.upproject.org/plaqtteau/main\\_plateau.htm](http://www.upproject.org/plaqtteau/main_plateau.htm).

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>.

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# APPENDIX D:

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## RESOURCES

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

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## FEDERAL ENVIRONMENTAL CONFLICT RESOLUTION PROGRAM WEBSITES

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>.

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://www.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 proposed "Citizen's Guide to the National Environmental Policy Act — Having Your Voice Heard," (2007), available at <http://ceq.eh.doe.gov/ntf/implementation.html>.

Council on Environmental Quality, "NEPA Task Force Compendium of Useful Practices," (2005), available at <http://ceq.eh.doe.gov/ntf/compendium/toc.html>.

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Council on Environmental Quality, “NEPA Task Force Report to the Council on Environmental Quality — Modernizing NEPA Implementation,” (September 2003) available at <http://www.ceq.eh.doe.gov/ntf>.

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), available at <http://www.ecr.gov/necrac/reports.htm>.

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

U.S. Department of Energy Guidance on Public Participation, (August 1998), available at <http://www.eh.doe.gov/nepa/tools/guidance/volume2/4-1-pubpart.html>.

U.S. Government Accountability Office Report on Interagency Cooperation, (October 2005), available at <http://www.gao.gov/new.items/d0615.pdf>.

University of Montana, O’Connor Center for the Rocky Mountain West, and University of Wyoming, Institute for Environment and Natural Resources, “Reclaiming NEPA’s Potential — Can Collaborative Processes Improve Environmental Decision-Making?” (March 2000), available in part at <http://www.uwyo.edu/enr/ienr/Projects/NepaExecSum.htm>.

## SELECTED WEBSITES ON PUBLIC INVOLVEMENT

American Lands Alliance. Collaboration Best Practices for the Conservation Community: <http://www.americanlands.org/issues.php?subsubNo=1148069142>.

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](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://oepec.doi.gov/ESM/ESM03-7.pdf> and <http://www.doi.gov/cadr>.

U.S. Forest Service, Partnership Resource Center:  
<http://www.partnershipresourcecenter.org/index.shtml>.



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# APPENDIX E:

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## EXAMPLE MEMORANDA OF UNDERSTANDING

Appendix E contains Memoranda of Understanding from several projects that used a collaborative approach for conducting and solving problems that arose during the NEPA process. These samples are not intended to be templates or to demonstrate appropriate MOU language. Agency counsel should be consulted regarding appropriate content and legal issues.

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## APPENDIX E-1

**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.

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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.

### C. 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

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- 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.

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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

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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.

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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

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- 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.

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## 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

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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.

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## 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*

*Everglades National Park*

Signed \_\_\_\_\_ 10/15/02

Signed \_\_\_\_\_ 9/4/02

Col. Greg May          Date  
Jacksonville District Commander

Maureen Finnerty      Date  
Superintendent

*South Florida Water Management District*

*U.S. Fish and Wildlife Service*

Signed \_\_\_\_\_ 8/15/02

Signed \_\_\_\_\_ 8/29/02

Trudi Williams          Date  
Chair, SFWMD Governing Board  
SFWMD PROCUREMENT APPROVED:

Jay Slack                  Date  
Florida Field Supervisor

Signed \_\_\_\_\_ 8/7/02

SFWMD OFFICE OF COUNSEL APPROVED:

Signed \_\_\_\_\_ 8/7/02

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## APPENDIX E-2

### 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

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- 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\*  
U.S. Army Corps of Engineers\*  
U.S. Coast Guard\*  
U.S. EPA\*  
Advisory Council on Historic Preservation\*  
U.S. Fish and Wildlife Service\*  
Preservation Alliance of Minnesota  
Stillwater Historic Preservation Commission  
St. Croix River Association

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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.

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## 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.

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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

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

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**APPENDIX E-3**

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

**Between**

**(Lead Agencies)**

**And**

**(Cooperating Agencies)**

**And**

**(Applicant)**

BP Exploration (Alaska) Inc., prepared this draft MOU available at  
[http://ceq.eh.doe.gov/ntf/inputreceived/BP\\_Exploration\\_Alaska.pdf](http://ceq.eh.doe.gov/ntf/inputreceived/BP_Exploration_Alaska.pdf).

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## 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)

### I. 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.

### II. 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.

### III. Authorities

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

### IV. Lead and Cooperating Agencies and Applicants

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

### V. 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;

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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:

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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.

## **VI. 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;

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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.



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# APPENDIX F:

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FEDERAL ADVISORY COMMITTEE ACT

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## What Is The Federal Advisory Committee Act?

The Federal Advisory Committee Act (FACA or Act),<sup>1</sup> 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.<sup>2</sup>

Although FACA has had a profound influence on participation in government decision-making, agencies can be reluctant to form advisory committees under the Act.<sup>3</sup> 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 following chart 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.

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<sup>1</sup> 5 USC App. 2.

<sup>2</sup> For more information on federal advisory committees, see the general services Administration's Committee Management Secretariat's website at: <http://www.gsa.gov/>.

<sup>3</sup> 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
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
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.)

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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)

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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* (Section IV. B., page 14) 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

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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 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.

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# APPENDIX G:

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## ACRONYMS

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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

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# APPENDIX H:

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## ACKNOWLEDGMENTS

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