NEPA Success Stories: Celebrating 40 Years of Transparency and Open Government

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Stephanie Young of the Partnership Project, Mary O'Brien of Grand Canyon Trust, and Jim McElfish of Environmental Law Institute acted as project coordinators. They extend their sincere thanks to the many authors who contributed their stories, and for the hard work they do every day to make NEPA work for better decisions and better outcomes for all stakeholders. Special thanks go to Russell Train for contributing the Foreword to this volume and for his foresight and dedication to creating an enduring statute to serve the best interests of the nation and her environment. Many thanks as well to Joyce McCarty for her editing assistance.

The Partnership Project, a non-profit incorporated in Washington, D.C. in 1999, currently has 20 groups participating, including the largest environmental advocacy groups in the country. By uniting their members and contributors on coordinated actions, the participating groups are creating a sum of citizen participation and advocacy greater than they could generate acting apart.

Grand Canyon Trust is a conservation organization advocating for science-based solutions to energy, water, public lands, and Native American community issues throughout the Colorado Plateau.

Environmental Law Institute makes law work for people, places, and the planet. With its non-partisan, independent approach, ELI promotes solutions to tough environmental problems. The Institute's unparalleled research and highly respected publications inform the public debate and build the institutions needed to advance sustainable development.

FOREWORD

It is not often that one has the opportunity to review an experiment in governance with the perspective of 40 years of experience. The National Environmental Policy Act (NEPA), signed into law by President Nixon on January 1, 1970, brought about, I think, a revolutionary change in governmental decisionmaking that is important to this day.

As President of The Conservation Foundation in 1968, I was involved in discussions with Senator Henry "Scoop" Jackson, Chair of the Senate Committee on Interior and Insular Affairs. These discussions led, among other things, to helping that Committee hire Lynton Keith Caldwell to assist in developing the legislation that became NEPA. Professor Caldwell's contribution was as the principal originator of the concept of the Environmental Impact Statement, which very soon became central to NEPA and its effect on governmental decisions. After NEPA's enactment, President Nixon asked me to be the first chairman of the Council on Environmental Quality. We at CEQ soon set about familiarizing federal agencies with their new responsibilities—to identify environmental impacts of their actions and to consider reasonable alternatives to their proposals.

It is fair to say that NEPA brought the environment front and center to federal agencies, and that this can be deemed a success brought about, in no small part, by the many federal employees and citizens who have applied the law over these decades. It also opened up the federal decision making process. No longer could federal agencies say "we know best" and make decisions without taking environmental consequences into account. Nor could they simply pick one outcome or project and deem all others unworthy of consideration. NEPA democratized decisionmaking. It recognized that citizens, local and state governments, Indian tribes, corporations, and other federal agencies have a stake in government actions—and often unique knowledge of hazards, consequences, and alternatives that can produce better decisions.

During CEQ's early days, there were two particularly dramatic examples of the effectiveness of the environmental analysis process—the Tocks Island Dam and the Cross-Florida Barge Canal.

Tocks Island was an Army Corps of Engineers project that involved damming the Delaware River at the Delaware Water Gap, creating a 37-mile long lake. In April 1971, we returned its EIS for the project to the Corps stating that it had inadequately addressed the problem of rapid eutrophication of the lake resulting from the runoff of agricultural wastes from the four neighboring states. The Corps' reply was totally inadequate, simply assuring CEQ that the states involved would address the problem. Finally, the Corps withdrew the project, the Congress removed the money for the project and it was dead. Never once did the White House interfere in the slightest with CEQ's management of the process.

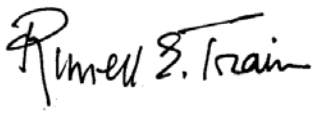
The Cross-Florida Barge Canal was also an Army Corps of Engineers project. Construction had gotten underway in 1964 with the approval of President Kennedy. CEQ studied the project and concluded that the potential damage to the ecology of northern Florida far outweighed any potential benefits. The White House gave us full support and, based on our recommendation, President Nixon on January 19, 1971, ordered a halt to further construction on the project, effectively killing it—all of this despite the unanimous opposition of the entire Florida congressional delegation. While the Cross-Florida Bridge Canal project did not technically involve the EIS process, it demonstrated most effectively the potential power of environmental analysis in decisionmaking.[1]

This brief publication by the Environmental Law Institute, the Grand Canyon Trust, and the Partnership Project shows just how this transformation in government decisionmaking has affected governance for

1 For a more detailed discussion of both the Tocks Island and Cross-Florida Barge Canal projects, see Russell E. Train, *Politics, Pollution, and Pandas, an Environmental Memoir*, pp. 88-93 (2003).

the better. The case studies that follow use ordinary government decisions from various federal agencies to show that NEPA matters. These quiet NEPA success stories look not to celebrated environmental litigation collected elsewhere, but more fundamentally examine how public involvement and careful consideration of alternatives has produced better outcomes—for the agencies themselves, for the nation, and for the human environment.

NEPA is America's most-imitated environmental legislation around the globe. What we launched in 1970 has become a contribution to the planet not less than to our citizenry. As this publication shows, NEPA's legacy is that what the people know has great value to a government that seeks their knowledge and takes it seriously.



Russell E. Train
Washington, D.C.
August 2010

INTRODUCTION: RECOGNIZING NEPA'S VALUE TO THE AMERICAN PEOPLE

The National Environmental Policy Act (NEPA) is often characterized as an environmental impact review law, and it is that – but it is more than that. It is a law that has made informed decisionmaking about the environment a key component of every major federal action or approval. NEPA also enlists the participation of the public in sharing its wisdom and knowledge to assist federal agencies in making informed decisions that seek to improve rather than degrade the environment.

NEPA established the process by which federal agencies must systematically consider the environmental and health and safety consequences of choosing one option over alternatives, and enables agencies to identify particular options that could reduce, mitigate, or eliminate significant environmental impacts. The NEPA process derives its power and usefulness from the way in which it provides other agencies, tribes, local governments, independent scientists, companies, and citizens an opportunity to actively participate in and contribute to these considerations.

This publication recognizes the 40th anniversary of NEPA. In 1969, Senator Henry M. Jackson of Washington introduced S. 1075, a bill intended to articulate a national policy to include the environment in government actions. Lynton K. Caldwell, who is considered one of the principal architects of NEPA, was working as a consultant to Senator Jackson, who was head of the Senate Interior and Insular Affairs Committee at the time. Professor Caldwell's staff report following a Senate hearing was instrumental in laying the groundwork for creating a "system" to ensure that relevant information would be considered by governmental decisionmakers. The key to that system was an "action-forcing mechanism"—what became in the final legislation the requirement for

> a detailed statement by the responsible official on (i) the environmental impact of the proposed action, (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented, (iii) alternatives to the proposed action, (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented. NEPA §102, 42 U.S.C. §4332(2)(C).

Senator Edmund Muskie of Maine insisted on requiring that federal, state, and local agencies consult with one another and provide public disclosure throughout the process. The resulting "environmental impact statement" requirements and related provisions were designed to ensure rigorous consideration of the national environmental policy by agencies throughout the federal government. NEPA passed both houses of Congress by large bipartisan majorities.

Senator Jackson described the importance of this process in a floor statement just before passage of the law:

> The basic principle of this policy is that we must strive in all that we do to achieve a standard of excellence in man's relationships to his physical surroundings. If there are to be departures from this standard of excellence they should be exceptions to the rule and the policy. And as exceptions they will have to be justified in light of the *public scrutiny as required by Section 102*. 115 Cong. Rec. 40416 (Dec. 20, 1969).

On January 1, 1970, President Nixon signed NEPA into law and launched the "environmental decade" of the 1970s. The influence of NEPA has extended far beyond that decade and has changed governmental decisionmaking in fundamental ways for the better. In a 1970 Executive Order, President Nixon directed the Council on Environmental Quality (CEQ) to prepare guidelines for federal agency implementation. The CEQ published several sets of guidelines that, along with a number of judicial deci-

sions, influenced agency practice. In 1977, President Carter issued an Executive Order directing CEQ to prepare regulations for the implementation of NEPA. These regulations were informed by agencies' experiences with NEPA over the preceding years and reflect a considered approach to make NEPA an integral part of the decisionmaking process. As stated in the regulations:

> Ultimately, of course, it is not better documents but better decisions that count. NEPA's purpose is not to generate paperwork—even excellent paperwork—but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment. 40 C.F.R. § 1500.1(c).

NEPA Recognizes That When the Public and Federal Experts Work Together, Better Decisions Are Made

NEPA recognizes that the public can make an important contribution by providing information, perspective and, in some cases, unique expertise to assist the many public servants and experts who ultimately make decisions affecting the environment. NEPA and its implementing regulations require government officials to consider the recommendations of other government entities and countless citizens, who have reasonable solutions or alternative approaches that may work better. It requires the government to address environmental issues and alternatives that its own employees or advisers may have overlooked. It requires the agencies to seek out and encourage public awareness of actions and engage the public in the process.

For example, NEPA regulations provide for public participation in scoping, a process that determines what issues should be addressed related to a proposed action. NEPA also provides for public review and comment on draft environmental impact statements and authorizes agencies to seek public comment on environmental assessments. Federal agencies are required to respond to all substantive comments, either by making appropriate adjustments in their analysis or by explaining why the comments do not warrant further agency response.

The result of these regulations is that *alternatives* are considered that government officials may not have identified on their own, that *data* are discovered that government agencies may not have otherwise identified, and that *environmental issues* are studied that government agencies may not have identified or studied. Mitigation measures are also identified and may be implemented, thus minimizing environmental impacts and improving public acceptance of the proposal. In other words, because of NEPA, bad decisions have sometimes been avoided and good decisions often have been made better.

Public Participation Really Matters

Public participation has in many cases made a real difference. For example, in numerous cases, portions of or entire NEPA alternatives proposed by individuals, municipalities, tribes, organizations and others have been selected by federal agencies as a result of the NEPA review. These alternatives have related to land management, roads and infrastructure, use of pesticides, disposal of radionuclides and management of genetically modified organisms, among other areas of interest.

In other cases, the public has identified errors in the underlying data or analysis. For example, in 2009 a 1500-page draft EIS carefully prepared over several years by the Corps of Engineers with the assistance of several state agencies was found by a citizen commenter to contain mathematical errors that substantially understated the risk profile of introducing nonnative oysters into the Chesapeake Bay. The citizen, a retired test pilot, delved into the tables and models used by the lead agency and its cooperators. The agency had inadvertently underestimated the risk of certain alternatives by several orders of magnitude. This citizen involvement led to a revision in the final EIS, and ultimately a decision that the risk was too great to approve the proposed action.

NEPA Requires the Government To Explain Itself

The NEPA regulations' requirements for considering and providing responses to comments have been upheld in court decisions noting that a primary objective of NEPA is *informed* decisionmaking. More than thirty years ago, the U.S. Court of Appeals for the District of Columbia Circuit observed:

> NEPA was intended to ensure that decisions about federal actions would be made only after responsible decisionmakers had fully adverted to environmental consequences of the actions… . Thus, the harm with which courts must be concerned in NEPA cases is not, strictly speaking, harm to the environment, but rather the failure of decision-makers to take environmental factors into account in the way that NEPA mandates. Jones v. District of Columbia Redev. Land Agency, 499 F.2d 502, 513 (D.C. Cir. 1974), *cert. denied*, 423 U.S. 937 (1975).

NEPA thus imposes a standard of accountability that is somewhat different, and in some ways a higher standard, than that of notice and comment rulemaking under the Administrative Procedures Act (APA). The APA focuses on the final decisions and requires that the final decision not be "arbitrary and capricious" or otherwise not in accordance with law. In contrast, NEPA focuses on the decisionmaking process and imposes on federal officials a duty to explain which environmental issues are addressed and why certain alternatives are not being considered. The duty to engage in an appropriate procedure for decisionmaking exists independently of whether the ultimate decision can be justified.

The governmental agency must also respond to all substantive comments by members of the public on draft environmental impact statements. The agency has to consider information provided by the public on its merits – and explain what changes in its analysis were made as a result or why no changes were warranted.

Judicial Review Has Played an Important Role in NEPA's Success

The prospect of judicial review helps ensure that the federal agencies have appropriately implemented NEPA procedures. Perhaps more importantly for the typical NEPA process, the prospect of litigation has, in some cases, enabled federal officials *within* agencies to convince their colleagues and supervisors that particular information is really needed or that a superficially less attractive alternative deserves a more substantial look.

There have been relatively few cases challenging agency decisions on NEPA grounds. Typically there have been fewer than 100 per year nationwide in the last decade, even though the NEPA review process is applied to 50,000-70,000 government actions each year and tens of thousands of actions have been classified as exempt from review based on categorical exclusions. (CEQ's year-end report on NEPA compliance under the American Recovery and Reinvestment Act of 2009 showed over 161,000 NEPA reviews completed in one year, including 6,300 EAs and 715 EISs.)

The fact that courts are available to ensure that government plays by the rules encourages government agencies to take public involvement seriously; this is unlike governmental officials in some countries that have environmental impact statement requirements but no enforcement mechanisms. The result, as the examples in this publication show, can be better and more accountable decisionmaking.

NEPA Successes—Why They Matter

NEPA is generally discussed by politicians and commentators when it results in the perception of delaying a controversial decision. In contrast, this publication is focused on reflecting upon the effectiveness of NEPA in making government responsive through brief summaries of illustrative examples of decisions that were improved by the NEPA process.

NEPA successes are varied, and the perception of success may depend upon who is doing the reflecting. One measure of success from an agency's point of view may be in completing a NEPA process with real public involvement in a timely manner. Another measure of success may be when NEPA-prompted consideration of environmental and health consequences helps the agency make a decision that is recognized as being better than the initial proposal.

This publication selects a few examples from the large universe of NEPA successes. These experiences illustrate the diverse routes by which NEPA successes are achieved.

- Many NEPA successes (e.g., "Expansion of an Army National Guard Readiness Center") are achieved easily because both the proposed action and environmental review process are sound from the beginning.

- Other NEPA successes require a serious reconsideration of the original plan (e.g., "A Highway, a Wetland, and a Divided Community" and "Protecting Drinking Water from Uranium Mill Wastes") and demonstrate that an agency rethinking its choices can accomplish the project purpose with more benefits for the environment.

- Sometimes (e.g., "Los Alamos Wildfire") one federal agency helps the lead agency think about an environmental scenario it had not initially considered. In the Los Alamos story, that almost-missed scenario materialized soon after, and NEPA prevented a serious mistake.

- Often (e.g., "Preserving a Historic Brick Highway," and "Joshua Tree National Park," "Ashland and the Rogue River," "Rethinking Routes and Roads on a National Forest," "Hells Canyon Comprehensive Management Plan") local communities have formed multi-sector groups to suggest improvements to the initial proposal, improving both the outcome and the public's satisfaction with the project.

- Some NEPA processes (e.g., "The Point Project, Klamath National Forest," and "Changing a Highway to a Parkway") have initially involved a court judgment and more work by all parties before success could be claimed by all involved.

- Projects may be adjusted to protect endangered species due to community involvement (e.g., "West Alsea Landscape Management Project").

- Changing political environments can result in a positive impact from careful consideration of new alternatives (e.g., "Tritium Production Requirements").

As illustrated, NEPA reviews may vary in duration. In reviews that take a relatively long time to complete, the governmental action usually involves a major, long-term commitment of resources with significant trade-offs, and the action agency has not sufficiently anticipated the concerns that might arise. Often the process could have been shorter if NEPA procedures had been more carefully observed from the outset; or there had been better or earlier communication with affected parties; or more environmentally defensible alternatives had been proposed. Agencies also often lack adequate resources to carry out their NEPA activities, often leading to challenges for agencies to produce NEPA documents in a timely manner. In some cases, the process has been lengthy because NEPA is working as it was designed, for example, by challenging a long-held perspective or approach that no longer is regarded as acceptable or as sustainable by the public or other governmental agencies. Changes in well-established patterns and ways of doing business seldom take place quickly. However, through a collaborative NEPA process, an agency may begin to see that it can adjust its approach and still achieve important goals. This may result in a revamping of a project, or it may simply mean a series of small changes to a project that result in improved environmental outcomes. The stories in this publication have been selected both to demonstrate multiple routes by which NEPA successes are achieved and the significant value of those successes—for social health, for environmental health, and for the health of our participatory democracy.

EXPANSION OF AN ARMY NATIONAL GUARD READINESS CENTER

Public Comments Lead to Mitigated Impacts

Successful implementation of mitigation measures can further NEPA's goal of protecting the environment. In this case, the use of mitigation measures not only helped ease the environmental consequences of a proposed action but also helped to mitigate traffic congestion.

In September 2005, the Defense Base Realignment and Closure Commission recommended that all military personnel then operating at a facility in Crystal City, Arlington, Virginia, be relocated to the Army National Guard Readiness Center (ARNGRC), which is also in Arlington, and to the Andrews Air Force Base in Maryland. The Defense Base Realignment and Closure Commission recommendations became law shortly after they were proposed, and the Army National Guard began planning the necessary expansion of the ARNGRC to accommodate approximately 1,200 relocated personnel.

In order to accommodate the relocated staff, the Army National Guard Bureau determined that it would need to construct office space and a new parking structure. Preparation of an Environmental Assessment (EA) for construction and operation of the new facilities was commenced.

During the preparation of the EA, cooperating agencies, Arlington County, local community leaders and the general public expressed significant concerns regarding traffic congestion resulting from the proposed expansion, as well as potential transportation management challenges. In response to these concerns, the Army National Guard, Arlington County and the National Capitol Planning Commission held public meetings and briefings to more fully identify and address these concerns. In order to analyze the impact the relocation would have on traffic, the Army National Guard conducted a Traffic Impact Analysis in February 2008 and developed a corresponding Transportation Management Plan.

The Traffic Impact Analysis found that without mitigation, the proposed expansion would result in significant long-term adverse traffic and offsite parking impacts. To address these impacts, the Transportation Management Plan designed an aggressive program to educate, encourage, and support mass transit usage by Army National Guard Bureau personnel. This resulted in dedicated shuttle bus routes between the ARNGRC, JP-1 in Crystal City, the Pentagon, Ft. Myer, and the Ballston mass transit station. Education of personnel and information outreach have been addressed through development of the ARNG Transportation webpage called "NCR Express Lane". This webpage provides alternate commuting information, an electronic carpool matching program, and other useful information for the concerned commuter. These measures led to a Mitigated Finding of No Significant Impact, signed in August 2008.

Because of public response to NEPA comment periods, the Army National Guard Bureau was able to better identify and understand adverse effects that would result from its project. Of equal importance, the Army National Guard Bureau was able to offer solutions that would mitigate these impacts, helping to ease the burden on the community and environment. The ARNG continues to address project-related concerns with Arlington County and the community through written correspondence and attendance at various local meetings.

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More information is also available at http://www.ng.mil/features/ENV/default.aspx

A HIGHWAY, A WETLAND, AND A DIVIDED COMMUNITY

Stepping Beyond an EIS to Collaborative Partnerships

One of the major strengths of NEPA is its requirement to consider alternatives, which is often the key to breaking stalemates. In this case, a NEPA process unlocked a twenty-year standoff between a transportation agency and a land management agency with this NEPA alternatives key.

For more than twenty years, officials in Eugene, Oregon pursued two initiatives with competing objectives: (a) building a highway with federal funds through a major wetlands area to relieve traffic on the major surface street in and out of west Eugene; and (b) establishing, expanding, and protecting the West Eugene Wetlands. These objectives were pursued by different agencies with different sources of funding and with planning processes that did not overlap. NEPA provided a way to resolve the fundamental mismatch.

To meet the goal of building a highway to relieve traffic in and out of west Eugene, the Oregon Department of Transportation (ODOT) and Federal Highway Administration published a draft Environmental Impact Statement (EIS) in 1985. In 1997, a supplemental draft EIS was published, recommending construction of the West Eugene Parkway (WEP), a four-lane bypass that would cross through the wetlands. Unfortunately, the Statement of Purpose and Need in the draft EIS and supplemental draft EIS was narrowly drawn and did not consider a non-wetlands-crossing alternative to improve transportation in and out of west Eugene. Despite the passage of time and the growing recognition by other federal agencies in the early nineties of the value of West Eugene Wetlands, the transportation approach had remained static.

In an attempt to respond to both highway and wetlands advocates, the local county and city governments prepared a transportation plan in 2001 that included only one of the four segments of the full WEP, a portion that did *not* cross wetlands, as a priority transportation project.

In 2001, however, WEP advocates on the Eugene City Council initiated a ballot referendum on whether the full highway should be built. By a vote of 51% to 49%, the voters favored building the full highway, including the portion crossing the wetlands. An ODOT recommendation to build all four segments of the WEP was subsequently approved (amid much debate) by four jurisdictions: the Eugene City Council 5-3, Lane County Commissioners 3-2, Springfield City Council 4-2, and the Lane Transit District board of directors unanimously.

In 2004, however, several events changed the tone of this ongoing debate. By summer 2004, both the US Army Corps of Engineers and the Bureau of Land Management indicated they had not been given adequate information during the NEPA analysis. Before they would issue permits under the Clean Water Act to fill wetlands and construct a highway across federally-protected West Eugene Wetlands, the two agencies determined that they needed to analyze information on potential non-wetland-crossing alternatives. In the same year, Eugene citizens elected a mayor who had campaigned in part on opposition to the WEP on the basis that alternatives had not been considered during the NEPA analysis.

By early 2007, pro-highway business people and pro-wetlands community members began jointly discussing options for transportation in and through West Eugene. These discussions led to the formation of the professionally-facilitated West Eugene Collaborative, with equal numbers of business, neighborhood, environmental, and government representatives. The Collaborative's purpose explicitly allowed for consideration of alternatives to the WEP and encouraged development of an integrated land use and transportation solution that would be broadly supported by stakeholders. The Collaborative established evaluation criteria for recommendations to be considered during its two years of meetings. These criteria required that the project would likely receive broad community support; be

economically feasible; facilitate both the movement of people and commerce through the region; minimize greenhouse gas emissions; avoid wetlands loss; support sustainable business; and enhance both the community and the environment.

In 2007, the Federal Highway Administration issued a "no-build" final EIS decision, meaning that the WEP would not be built through the wetlands. In March 2009, the West Eugene Collaborative published *A New Vision for West Eugene*, its set of recommendations for short, medium, and long-term actions that would simultaneously address environmental, transportation, and community concerns and needs.

NEPA enabled the community of Eugene, Oregon to organize and collaboratively pursue NEPA's goals: a public process with clear needs and a positive purpose; consideration of the social and environmental impacts of a full range of alternatives for addressing those needs and purpose; and an informed community and decisionmakers. Further NEPA analyses may be required in the process of implementing one or more of the West Eugene Collaborative recommendations.

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Additional information is available in *A New Vision for West Eugene* at: http://www.odrc.state.or.us/documents/WEC_Report_Final_3_18_09.pdf

The West Eugene Wetlands include about 3,000 acres of conservation land nestled amongst existing urban uses, cooperatively protected by the members of the West Eugene Partnership, from the BLM to the Nature Conservancy. This unique remnant habitat area, home to the great blue heron and the endangered Fender's blue butterfly, was planned for many years to be cut through by a four-lane highway. More recently, a citizen-driven community design process has united diverse stakeholders around an alternative, consensus vision for growth in West Eugene that fully preserves natural areas.

Photo credit: © Kevin Matthews / ArtificeImages

PROTECTING DRINKING WATER FROM URANIUM MILL WASTES

Avoiding Risks of Massive Drinking Water Contamination Via a Suggested Alternative

Decisions that adversely affect the natural environment may also create potential adverse public health impacts. NEPA's purpose is to not only protect the environment but also to protect and promote public health. This case shows how a robust NEPA review can achieve more productive results.

The Moab Uranium Millsite site is located on the west bank of the Colorado River near Moab, Utah and adjacent to Arches National Park. The site covers approximately 400 acres and contains almost 16 millions tons of uranium mill tailings, the radioactive residue from processing uranium. The uranium mill tailings are piled within the floodplain of the Colorado River, which serves as a primary drinking water supply for Phoenix, Las Vegas, San Diego and Los Angeles, raising concerns of contaminating the drinking water of millions of people.

In 1986 the Nuclear Regulatory Commission (NRC) issued a single-alternative Environmental Assessment (EA) approving mill-owner Atlas Minerals' plan to cap the tailings in place on the riverbank. The EA only contained one alternative because the NRC asserted that they could not evaluate alternatives not proposed by their licensee. In 1993 NRC issued a Finding of No Significant Impact (FONSI) on Atlas' plans to cap the tailings pile. The EA did not take into account geometric considerations at the site which required steeper sideslopes than allowed by regulation. The local county government wrote a letter of protest stating that the cap-in-place option met none of the long term objectives for tailings disposal and did not include an alternative of moving the wastes to a safer site away from the river. Convinced by the letter, Senator Orrin Hatch intervened, requesting NRC to prepare a full Environmental Impact Statement (EIS) on disposal options.

Still constrained by its interpretation that it could only analyze alternatives proposed by its licensee, NRC again prepared an EIS with just one alternative. The EIS noted that relocating the tailings would be preferable in every respect except it would cost more. The EIS did not address ground and surface water contamination because the NRC determined there was no risk of contamination.

This final EIS position was contradicted by the Utah Division of Drinking Water, which measured high levels of contaminants in the Colorado River in direct association with the tailings pile. Oak Ridge National Lab next confirmed extreme contamination of groundwater at the site, and the U.S. Geological Service demonstrated that near shore waters in the river were lethal to fish. This compelled the U.S. Fish and Wildlife Service to issue a "biological opinion" after issuance of the final EIS, stating that the plan to cap the tailings in place would jeopardize the endangered Colorado pikeminnow. Atlas, which had never planned any groundwater remediation, filed for bankruptcy, leaving behind a reclamation bond worth just $4.25 million.

The Atlas bankruptcy left the site in a legal void. In 2001, Congress assigned responsibility for cleanup at Moab to the Department of Energy (DOE). DOE, as the lead agency, held public scoping meetings for the EIS in January 2003 and issued a draft EIS in November 2004 for public comment. The draft EIS explored whether the tailings should be moved or stored in place, but did not include a preferred alternative. On April 6, 2005, DOE announced that the final EIS would recommend moving the 12 million tons of radioactive waste by train to Crescent Junction, thirty miles north of Colorado River. The final EIS was published in July 2005, and the Record of Decision was issued in September 2005. In 2008 the EIS was amended to allow a change in transportation options to provide greater flexibility.

During the public comment period on the draft EIS, diverse stakeholders submitted comments on the proposals for final storage of the tailings. Comments were submitted by a bipartisan coalition of governors from Arizona, California, New Mexico,

Nevada and Utah, as well as a bipartisan western congressional coalition, which included members of the House Resources Committee. The U.S. EPA also filed comments stating that storing the waste onsite would be environmentally unacceptable and should be dropped from consideration in the final EIS. The National Park Service and U.S. Fish and Wildlife Service also participated in the NEPA process, recommending that the waste to be moved to a safer place. DOE heard from 12 cooperating federal agencies, states, and several local units of government, as well as the Ute Mountain Ute Tribe. Many individuals and conservation groups filed comments as well.

Because of NEPA's requirement for review of reasonable alternatives and consideration of environmental consequences of the alternatives, citizens and other governmental commenters were successful in encouraging careful consideration of the alternatives of mine tailings removal and capping the tailings in place, including consideration of the comparative environmental and public health risks, as well as costs. The cooperative work between all the parties involved ultimately led to better analysis and decision making. Based on the public input it received during the NEPA process, DOE decided to give greater weight to risks of drinking water contamination, alternatives for active ground water remediation, and the benefits and risks of off-site disposal of the tailings pile using predominantly rail transportation.

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The final EIS and ROD can be found at: http://www.gjem.energy.gov/moab/eis/eis_info.htm

Train moves Atlas tailings from Moab to Crescent Junction.

Aerial view of Atlas tailings pile next to Colorado River.

LOS ALAMOS WILDFIRE

The Importance of Inter-Agency Comments

A benefit of the NEPA process is that it informs agency decisionmaking. Often, this occurs by an agency receiving comments not only from the public but also from other governmental agencies. This case is an example of how inter-agency comments helped the Department of Energy respond to an emergency situation.

When the Department of Energy (DOE) issued its draft site-wide EIS (DEIS) for the Los Alamos National Laboratory (LANL) in 1998, wildfire was not identified as a plausible risk in its accident scenarios. However, at a public hearing for the DEIS, a U.S. Forest Service forester on the nearby Santa Fe National Forest urged the DOE to consider wildfire in its post-DEIS analysis. A written comment from the Department of Interior similarly urged consideration of a wildfire. Both commenters referred to a recent Forest Service report about the threat of wildfire.

Through evaluating the inter-agency comments on the DEIS, DOE recognized that wildfire was not only plausible, but likely. DOE estimated in its final EIS (FEIS) that such a fire would likely occur once in ten years and that the possibility of a fire warranted careful analysis.

In the FEIS, DOE included an accident scenario of an extensive wildfire initiating southwest of the LANL near its border with the Bandelier National Monument. The September 1999 FEIS Record of Decision committed to develop, by December 1999, a plan for comprehensive wildfire mitigation, including construction and maintenance of strategic fire roads and fire breaks, creation of defensive space around key facilities, and forest management to reduce fuel loadings. The October 1999 Mitigation Action Plan stated that the LANL was already taking steps to reduce hazards of a wildfire, such as cutting some trees and replacing wooden pallets on which waste drums were stacked with aluminum.

Less than one year after the FEIS, in May 2000, a prescribed fire ignited by the National Park Service in Bandelier National Monument broke out of control, burning 50,000 acres of forest and residential land and 7,650 acres (approximately 30%) of the LANL site. The "Cerro Grande Fire" closely mirrored the FEIS accident scenario that DOE had already analyzed. The severity of the Cerro Grande Fire impacts were reduced within the LANL boundaries because DOE was able to immediately implement steps that had been outlined in the FEIS to reduce the fire impacts. Additionally, the DOE relied on the FEIS analysis to answer public inquiries and concerns during the fire, and the analyses in the site-wide EIS proved useful in planning recovery programs.

In the wake of the May 2000 fire, DOE for only the third time in its history invoked a NEPA provision that allows an agency in consultation with the Council on Environmental Quality to take actions without preparing an EIS if emergency conditions exist. One of the immediate post-fire emergency actions taken at LANL was to construct a 70-foot-high water retention structure in Pajarito Canyon to protect the LANL nuclear facilities and downstream communities from rainstorm flooding. Other emergency actions included the immediate removal of contaminated soils from canyon reaches to reduce possible contaminant transport during storm events.

Ultimately, DOE undertook the preparation of a Special Environmental Assessment for the emergency actions it implemented at LANL and continued to provide for public involvement by soliciting public comment on the Notice of Emergency Action and on monitoring results and prospective mitigation.

Because of NEPA, DOE was able to meet the challenges the Cerro Grande Fire presented in a timely, informed manner. Without the inter-agency com-

ments DOE received during the draft EIS stage, DOE may have not had the foresight to consider and prepare for the possibility of a fire, resulting in more severe damage to LANL and the surrounding area.

It is noteworthy that since 1994, the DOE has maintained a public website for quarterly reports on *NEPA Lessons Learned*: http://www.gc.energy.gov/NEPA/lessons_learned.htm. The lessons learned from the Los Alamos site-wide EIS and Cerro Grande fire were reported in the *NEPA Lessons Learned* quarterly reports of June and September 2000.

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The 1999 site-wide EIS is available at http://www.gc.energy.gov/NEPA/927.htm. A more recent site-wide EIS has also been completed.

PRESERVING A HISTORIC BRICK HIGHWAY

Public Input Helps Preserve the Historical Integrity of a Community

This case demonstrated how a NEPA process may begin with uncomfortable distance between a federal agency and a local community and end with agreement and lasting, mutually-supportive relationships between the same agency and community. A U.S. highway made out of bricks led one agency and community down this path.

U.S. 180 in Breckenridge, Texas is one of the few remaining brick roadways located on the U.S. highway system across the United States. The section of U.S. 180 between McAmis Avenue and Gonzales Creek bridge was paved in 1923 with bricks produced locally in Thurber, Texas.

Beginning in the early 1960s, local officials began to hold meetings to discuss concerns with the brick highway. The first several meetings between Texas Department of Transportation (TxDOT) and concerned citizens were not congenial, with TxDOT officials attending these meetings being booed. TxDOT engineers were concerned that the bricks were too slick to allow for safe stopping distances, that numerous utility cuts had caused the surface to be very rough and the sub-grade under the bricks was unstable. TxDOT recommended overlaying the roadway with modern asphalt pavement for proper ride quality and safety. Local residents did not support this idea, feeling the historic bricks needed to remain.

TxDOT undertook a NEPA scoping period to analyze alternatives and recognized that the community's participation was paramount, both because of the historic nature of the bricks and the potential disruption to the community's daily lives and businesses during any construction. TxDOT involved the city administration, business owners, and other concerned citizens in the scoping period, which resulted in productive discussions of construction alternatives. After TxDOT determined that the skid factor was not as bad as originally thought, they were able to select an alternative that would rehabilitate this section of roadway instead of replacing the brick highway.

The final proposal was for rehabilitation of this section of deteriorated brick roadway. This achieved roadway rehabilitation and preserved the integrity of the brick street so that it met eligibility criteria for the National Register of Historic Places through a process that fostered a partnership between TxDOT and the City of Breckenridge. The result was a plan that improved safety and preserved the history and nostalgia of the old brick street.

After selection of the rehabilitation alternative, officials from TxDOT and other agencies continued to involve the public in this project. For example, TxDOT met with business owners to discuss how the construction project might affect each business. City officials kept the public informed about the latest project information through public meetings, newspaper articles, and radio addresses. Discussions and coordination with the Texas Historical Commission ensured that the project would be sensitive to the preservation of historic buildings adjacent to the roadway and that the bricks and their removal and replacement would be acceptable to the historic context of downtown Breckenridge.

The concerns that were voiced by the community regarding this project chiefly related to historic preservation, but time, safety, and money were also concerns. It was unknown whether enough of the bricks could structurally withstand the removal, cleaning, and storage process in a condition that permitted them to be reused, which was necessary for a successful project. The overall economic impact of the project on the local community was of great concern because the time and disruption of the construction could be devastating to some businesses located in the main district section of the town, which was on the highway. Interruption of transportation services and the safety of workers in the construction zone during the construction were also of concern.

Eventually the Federal Highway Administration, TxDOT, the City of Breckenridge, the Texas Historical

Commission, local utilities, local business owners and the contractor, J.L. Steel, L.P., all contributed to the rehabilitation of the brick roadway.

At each phase, TxDOT employees involved with the project gained greater appreciation for the importance of public participation and stakeholder collaboration. Innovative ideas were developed and implemented in the project's design and construction. The result was a low maintenance roadway with improved longevity, increased safety and better ride quality.

Through the NEPA processes (including scoping, public participation, and alternative analysis), TxDOT selected an alternative that would not have a significant negative effect on the human environment. Because of NEPA, a new level of trust between all of the stakeholders was formed. In the end, much- needed upgrade of the downtown Breckenridge area was achieved while preserving the integrity of the antique brick street that was so important to local residents and was a historical landmark of the Texas State Highway System.

TxDOT received recognition through awards from the Associated General Contractors of Texas for design and construction and also received the highest agency award (Environmental Achievement Award) presented annually by TxDOT's Environmental Affairs Division.

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Photos courtesy of the Texas Department of Transportation.

JOSHUA TREE NATIONAL PARK

NEPA Helps Improve Military Training and Park Visitors' Experience

This case demonstrated the operation of NEPA as a process designed to consider competing demands on the environment and explore the potential for solutions to demands that might initially seem irreconcilable.

Joshua Tree National Park (Park) lies at the junction of three distinct ecosystems in southern California. The Colorado and Mojave Deserts merge with piñon and juniper forests of the San Bernardino Mountains to form a unique landscape about 140 miles east of densely-populated Los Angeles. Over a million people visit the Park each year to enjoy the scenery and one of the clearest night skies in the southern United States.

For many years, military aircraft followed visual route (VR) 1257 over the Park en route from military installations in California and Arizona. However, eight of the Park's nine campgrounds, the visitor center, many picnic grounds, and the Park's main road were directly below the military aircraft's VR 1257. Visitors and Park staff frequently complained about the extreme noise created by military fighter aircraft that flew low altitude training missions. Military leaders agreed to maintain a minimum altitude of 1,500 feet over the Park, which sub-optimized their training, but they were reluctant to make any other changes.

A proposal to locate a new type of aircraft at Lemoore Naval Air Station in the mid-1990's prompted the U.S Navy to prepare an Environmental Impact Statement, which provided a formal opportunity for the National Park Service to submit comments. A Record of Decision was signed without addressing the Park's concerns regarding noise from VR 1257 or addressing the limitations on the military training. The Deputy Superintendent of the Park and a military environmental manager undertook the preparation of an 80-page draft Environmental Assessment (EA) that analyzed where VR 1257 should be located. The EA developed and analyzed alternatives and formulated a workable solution for the flight route for consideration by military and National Park Service decision makers. Both the Park visitor experience and the military training opportunities benefited from public comment.

In addition to public comment, extensive data in the Park's geographic information system was used to map sensitive areas and find a new location for VR 1257 within the boundaries of the Park. Desert tortoise and Coachella Valley fringe-toed lizard habitat, archeological sites, picnic areas, campgrounds, and recreation areas were also taken into consideration. The end result was that a suitable location was found in an area of the Park where impacts to visitors and natural and cultural resources were either eliminated or drastically reduced. Because a portion of the route floor was returned to 200 feet above ground level, the pilots were also able to receive enhanced training opportunities as a result of the change. Lastly, a wayside exhibit was erected near the area of the Park where the overflights are

most visible, to inform the public as to the benefit of the military training.

Because of NEPA, the public and government decision makers were able to analyze the need for action, compare environmental impacts associated with alternatives, and bring together organizations and individuals with competing interests. The draft EA formed a basis for government officials and the public to exchange ideas and develop a consensus solution. The end result was a win-win solution for the National Park Service, the military, the general public, and the environment.

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ASHLAND, OREGON AND THE ROGUE RIVER — SISKIYOU NATIONAL FOREST WATERSHED PROTECTION PROJECT

NEPA Allows Communities to Propose Creative Solutions

This case demonstrates that when an agency undertakes an action that raises concerns within a community, NEPA provides the public and other agencies an opportunity to put forward proposed improvements.

The city of Ashland, in southern Oregon, is surrounded by 14,500 acres of the Rogue River-Siskiyou National Forest and another 1,000 contiguous forest acres owned by the city. Besides being home to a Research Natural Area, isolated roadless area, and significant botanical diversity, the forest is also essential to the protection of the city's drinking water.

In 1998**,** the U.S. Forest Service (FS) proposed the HazRed Project, which had the objective of maintaining a healthy water supply for the community and expanding the existing fuel break, a ridgeline cleared of trees. The project proposed logging large fire resilient trees as much as three feet in diameter within the watershed, and selling the resulting four million board feet of lumber.

After reviewing the proposal, the community of Ashland raised concerns about the impact of the proposed logging on their water quality. Several groups and individuals appealed the project. A diverse group of residents formed the Ashland Watershed Stewardship Alliance, which met twice a week for six months. The alliance included representatives from the mayor's office, small-business owners, forest workers, members of the Society of American Foresters, environmental groups, and other concerned citizens.

In December 2000, the FS published a Draft Environmental Impact Statement (DEIS) for the logging and timber sale. During the public comment period for the DEIS, the Alliance took advantage of NEPA's public engagement opportunities and produced a 95-page alternate proposal. This alternate proposal became the basis for the development of an alternative that was approved by the FS and included in the Final EIS that was published in May 2001. The alternative included treatment methods to improve community wildfire protection through the thinning of small diameter trees and brush but left larger diameter, fire-resistant trees. The alternative also created local jobs through labor-intensive manual brush-cutting, small tree thinning, and controlled burning. Furthermore, the manual treatments would be done directly within the Wildland Urban Interface zone near homes and community infrastructure, and in areas proposed for understory control burning within the interior of the watershed.

Because of NEPA, the public became involved in the Ashland Watershed Protection Project and helped improve the project. NEPA's requirement that a range of alternatives be considered provided the community of Ashland with an opportunity to propose an alternative that addressed the community's needs and concerns, and allowed the FS to move forward with public support as the public and the FS were able to work together to collaboratively develop a forest management plan.

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RETHINKING ROUTES AND ROADS ON A NATIONAL FOREST

A Model NEPA Process Amid Intense Debate

This case illustrates that a flexible NEPA process can facilitate agency decisions involving both potential significant impacts and intense debate and disagreement among diverse stakeholders.

The capability of off-road vehicles (ORVs) to travel on any terrain and mushrooming ORV use have led to intense debate as to what, where, and how much ORV use is appropriate and sustainable on public lands. In light of potential conflicts (a) between motorized and non-motorized recreationists; (b) varying impacts on fish and wildlife; (c) concerns about generation of dust, noise, and invasive species; and (d) varying visions of stakeholders as to what would constitute a desirable economic future, no one federal agency can feasibly make ORV decisions without consulting its stakeholders. In November 2005, the U.S. Forest Service (FS) published a travel planning rule, requiring each national forest to designate what routes and roads would be open to what types of vehicles.

Southern Utah is one of several areas in the nation in which ORV use of public lands is particularly contentious. As the FS had moved away from its former policy of allowing ORVs to drive cross-country in the forests, the question arose as to what to do with routes that were not officially recognized by the FS during the years when cross-country driving was allowed. These so-called "unauthorized" routes plus "authorized" ORV routes, dirt bike routes, roads, and non-motorized trails have proliferated along with the growth of the off-road motorized industry.

In 2004, FS managers of the 1.9 million acre Dixie National Forest (Dixie NF) in south central and southwestern Utah began asking the public and cooperating agencies, including the County Commission and State of Utah, to review the Dixie NF's inventory of roads and routes.

In December 2006, the FS began its formal NEPA process with a scoping period and published a draft Environmental Impact Statement (EIS) in May 2008. Early in the NEPA process, the FS sought public input on the review of the Dixie NF inventory of roads and routes and sought to provide to the public useful information gathered during the inventory. For example, the FS used interactive website maps that allowed a computer user to click on any route in the Forest and obtain a detailed description of the conditions of that route. By using this interactive website, a user could access data as to the number of times a route crosses a stream, its proximity to sensitive wildlife, its potential for erosion, and current uses.

In order to receive public input, the FS held numerous sessions with members of the public, government representatives, commercial and inholder users, and others. At these sessions, maps were presented and staff were available for consultation to gather suggestions about retaining or closing specific routes. Candor at all public meetings was emphasized; plans to close numerous routes, protect wildlife and sensitive and roadless areas, and close even more routes post-decision if abuse occurred on open routes were discussed.

The FS extended consideration of scoping comments by a year before issuing a draft EIS in order to have in-depth conversations with commenters who had offered substantive comments, including proposals for individual routes.

In April 2009, the FS issued the final EIS. The Record of Decision required the closing of 48% of the current 5,200 miles of forest roads and routes, leaving 2,700 miles of motorized system routes open for public use. In addition, 73% of unauthorized routes would be closed, as well as 27% of roads and routes that had formerly been classified as forest system routes.

The FS utilized several features of NEPA to reach a decision that has been broadly accepted by those

who are concerned about ecological impacts of ORV users as well as those who supported increased motorized routes in the forests. Most notably, the NEPA process gave the public an opportunity to directly affect, and thus more readily accept, the final Record of Decision.

Although travel planning is occurring throughout the national forest system, the publication of a broadly-accepted final EIS and Record of Decision to close routes and roads in a state known for its vocal social divisions regarding public lands ORV use is a testament to an effective NEPA process.

Based on public comment, the Dixie NF is implementing a long-term, diverse-stakeholder Dixie Travel Plan Implementation Task Force to track implementation of the EIS and Record of Decision commitments, and to assist in recommending priority road closures, educational outreach, monitoring and evaluation.

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The final EIS and ROD can be found at http://www.fs.fed.us/r4/dixie/projects/MTP/.

Implementation of plan

Before implementation

After implementation

HELLS CANYON COMPREHENSIVE MANAGEMENT PLAN

A Public Alternative Prompts a Different Approach to Managing our Natural Resources

This case illustrates how a revision of comprehensive federal land management plans under NEPA can facilitate a fresh, in-depth look at current management, leading to significant changes in management of Hells Canyon National Recreation Area (HCNRA).

The HCNRA covers 652,000 acres across three national forests and three U.S. Forest Service regions in northeastern Oregon and western Idaho. It includes 67 miles of Wild and Scenic-status Snake River, and the 214,000-acre Hells Canyon Wilderness. With an elevation gain of more than 6,000 feet from desert conditions on the Snake River to alpine ecosystems in Idaho's Seven Devils Mountains, the HCNRA is the deepest river-cut canyon in North America.

In September 1993, the Wallowa-Whitman National Forest (NF) Supervisor agreed to revise, on schedule, the original 1982 HCNRA Comprehensive Management Plan (CMP). In January 1994, ten people representing two tribes; eight national, regional, state, and local conservation organizations; and two individual experts formed the Hells Canyon CMP Tracking Group. In a three-day marathon, the Tracking Group began drafting a comprehensive "Native Ecosystem Alternative" in response to the draft Environmental Impact Statement (EIS). This alternative, along with 116 scientific documents and a 60-page bibliography summarizing each document, was submitted before the end of the scoping period.

In February 1996, the first draft EIS was released -- without the Native Ecosystem Alternative. A new Supervisor declined to issue a new draft EIS with the alternative, but six days before the final EIS was to be printed, the Washington Office of the Forest Service notified the Forest Supervisor that a new draft EIS should be issued that included the Native Ecosystem Alternative. The Washington Office of the Forest Service had determined that the Native Ecosystem Alternative was both reasonable and different from the other alternatives.

In December 1999, a second draft EIS was released. This draft EIS included the Native Ecosystem Alternative. The Supervisor then convened a multi-stakeholder Hells Canyon Subcommittee to the federal Snake River Resource Advisory Committee, which met for 18 months, made field visits to Hells Canyon, and examined the comparative merits of each competing alternative in detail. The Supervisor attended nearly every meeting.

On July 22, 2003, the Supervisor and her interdisciplinary team released the final EIS and Record of Decision. The final EIS contained numerous features from the Native Ecosystem Alternative. Under the final EIS one-third of HCNRA's roads and user-created routes would be closed to increase wildlife and watershed integrity, wildlife-sensitive ridges would be closed to motorized vehicles during hunting season, and cross-country off-road vehicle use was ended. Half of the HCNRA, from which domestic sheep had been recently removed due to causing native bighorn sheep die-offs, would remain closed to future livestock grazing by cattle. This alternative had the support of the livestock representative on the Subcommittee, a Hells Canyon cattle permittee. The Nez Perce Tribe also supported this decision, as it would enhance native wildlife on their ceded lands. Natural and prescribed fires were to be encouraged, and prevention of invasive species was to be emphasized along side treatments that include elimination of or restrictions on weed-favoring uses "where appropriate."

The Wallowa-Whitman NF was able to settle all six minor appeals that were filed on particular points in the final EIS, and no litigation ensued.

NEPA provided a forum for the Forest Service to consider two diverse, reasonable alternatives submit-

ted by the public and, as a result, make long-term, fundamental changes in their land management.

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The final EIS and ROD are available at http://www.fs.fed.us/hellscanyon/about_us/planning/cmp/index.shtml

THE POINT PROJECT, KLAMATH NATIONAL FOREST

NEPA Supports Collaborative Solutions to Old Growth Logging Conflicts

This case provides an example of how, as forest management on federal lands in the West has changed from old-growth logging to restoration of natural forest resilience, NEPA has facilitated site- and community-sensitive innovations.

In 2005, Westpoint, an old-growth timber sale held in the Scott River watershed near the Marble Mountains Wilderness on the Klamath National Forest in northern California, was halted by litigation. The Westpoint timber sale was largely focused on logging the oldest, biggest, most fire-resistant trees in the watershed and clear cutting native forests for replanting with dense, young, commercial fiber plantations. This plan was problematic in part because young plantations are widely known to increase fuel hazard and fire severity.

In response to the court's ruling, the U.S. Forest Service (FS) developed a new project, the Point Project, and re-started the NEPA process to focus exclusively on thinning small-diameter conifers. During the NEPA process, the FS worked collaboratively with concerned locals to address their comments and concerns. For instance, the FS collaborated with the Lower Scott River Fire Safe Council to develop an alternative that would help implement their Community Wildfire Protection Plan by thinning young small-diameter trees in strategic locations.

The final Environmental Assessment, published in March 2008, favored a "thin-from-below" project that left standing large old trees and old-growth stands while removing some smaller-diameter trees that had encroached into the forest stands due to the long absence of natural fire events. This thinning would be focused on strategic ridges to lessen the potential effects of wildfire on nearby homes and communities. As part of the Point Project, the FS proposed a light burn of 1,800 acres in the Scott River watershed to help return these forests to a more sustainable and natural condition.

The success of the Point Project demonstrates how engaging the public in the NEPA process through collaboration can result in decisions that are ecologically appropriate and serve the interests of communities. In this instance, local citizens worked collaboratively with the FS during the NEPA process to develop a project that protects the community from wildfire without disrupting natural forest processes.

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Photos illustrating small-diameter fuels thinning units that will be thinned via the Point project. Photos of beneficial Point treatments:

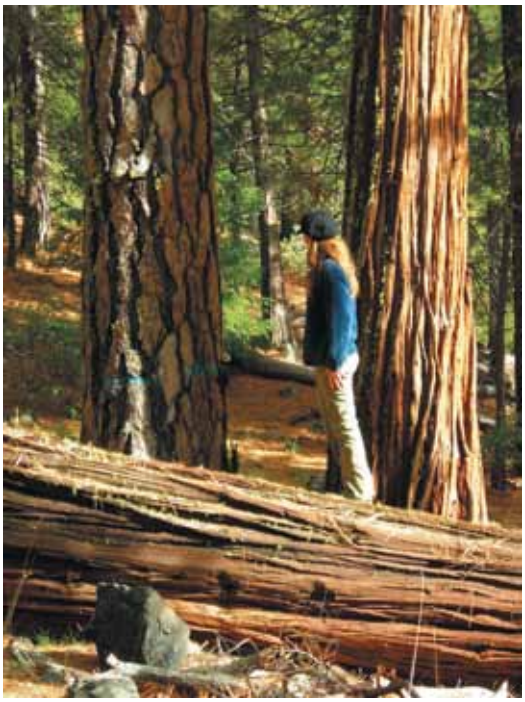
Extremely dense young stand that will be thinned from below to increase fire resiliency and allow for the re-introduction of fire.

Example of the effects of fire suppression. Young conifer encroachment on meadow habitat. Will be thinned via Point.

Large fire resilient pine to be retained, small conifers that are the result of fire suppression to be removed.

Photos of destructive old-growth logging that were part of the initial Westpoint project that were eliminated via the NEPA planning process.

Fire resilient old-growth ponderosa pine stand that was marked for logging.



Ancient pines and cedars in Westpoint logging unit that was dropped through the NEPA process.

Old-growth pine unit that was initially planned and then dropped via public NEPA oversight.

CHANGING A HIGHWAY TO A PARKWAY, AND A ROAD TO A MULTI-MODAL TRANSPORTATION SYSTEM

A Judicial Remand and Citizen Alternative Lead to a Successful Citizen/State Project

NEPA litigation is often portrayed as obstructionist and combative. But going to court can sometimes result in parties appreciating the merits of each other's positions. This case shows how settlement of litigation can result in an improved outcome.

David County, Utah lies north of Salt Lake City and includes various communities located between the northern Wasatch Mountains and the Great Salt Lake. In July 1996, then Utah Governor Michael Leavitt announced that the state would build a highway, the "Legacy Project," to serve as an alternative route to Salt Lake County through Davis County. Legacy Parkway, a 14-mile segment of a much longer proposed road, would run from Brigham City to Lehi.

In 1997, the Utah Department of Transportation undertook the preparation of an Environmental Impact Statement for the Legacy Project. The Federal Highway Administration (FHWA) and the U.S. Army Corps of Engineers (ACE) issued a draft EIS (DEIS) on September 4, 1998 that focused on potential impacts on the Great Salt, Lake alignment. Within the Great Salt Lake alignment, the DEIS selected a preferred alternative that would require the filling of about 111 acres of wetlands and create as mitigation 570 acres of wetlands within a total Legacy Nature Preserve of approximately 1,089 acres.

Citizen groups and several federal and state agencies criticized the DEIS on multiple grounds. EPA rated the DEIS "environmentally unsatisfactory" due to failure to properly assess impacts to wetlands, wildlife, and existing land uses; failure to select the least damaging feasible alternative as required by the Clean Water Act; and failure to properly and fairly evaluate other alternatives, including other highway alignments, mass transit, and land use planning. Negative comments also were submitted by the U.S. Fish and Wildlife Service, the Utah Division of Wildlife Resources, and the Utah Division of Air Quality.

On June 26, 2000, the FHWA and the ACE issued a final EIS (FEIS). The FEIS rejected transit and other alternatives to the proposed road and recommended an alignment that would require filling of approximately 114 acres of wetlands. Although filling 114 acres was less than the filling of 188 acres under the most damaging proposed route, it was more than under the least damaging alternative identified in the DEIS. The FEIS also included mitigation in the form of preservation, restoration or enhancement of 776 acres of wetlands within an expanded Legacy Nature Preserve (about twice the size of the original proposed preserve in the DEIS). The FEIS analysis was improved by the extensive comments received. For example, the comments included identification by outside experts of serious deficiencies in the travel demand models used both to justify the project purpose and need and to compare alternative means of meeting regional travel demand. Because of these comments, significant changes to the models where made during the NEPA process.

Environmental and transportation advocacy groups feared that the proposed road would unacceptably impact internationally-significant wetlands adjacent to Great Salt Lake, and they asserted that the state and federal agencies failed to consider mass transit, land use changes and other options to reduce travel demand. In January 2001, a coalition of environmental groups filed a lawsuit alleging violations of NEPA and other environmental laws. The U.S. Court of Appeals for the Tenth Circuit found both deficiencies in the FEIS and non-compliance with section 404 of the Clean Water Act.

The Tenth Circuit's decision inspired the parties to work together to forge a project that combined aspects of the state's proposal with ideas proposed

in public comments. As a result of the collaboration, the agencies were able to prepare a Supplemental EIS (SEIS). The SEIS ratified the original project in most respects but included a narrower right-of-way to reduce impacts to wetlands and other habitats and included additional features to integrate roads and transit and provide more wetland mitigation within the Legacy Nature Preserve. In response, the coalition of environmental and transportation groups worked with consultants to develop the Citizens' Smart Growth Alternative to the Legacy Parkway. The coalition members conceded that some additional road capacity was appropriate, but only in combination with transit and other new transportation strategies. They proposed that the road be relocated farther east which caused fewer impacts to wetlands, and be designed as a boulevard or parkway rather than a freeway. The proposal included some variation of either light rail or bus rapid transit and a new regional bikeway.

Photo courtesy of Charles Uibel GreatSaltLakePhotos.com. Reprinted with permission.

Photo courtesy of Charles Uibel GreatSaltLakePhotos.com. Reprinted with permission.

The environmental coalition and UDOT successfully negotiated an alternative all parties were willing to support, which was a parkway rather than highway design along the state's preferred right-of-way. As a parkway, the road was designed to meander around wetlands and other sensitive areas, to prohibit most trucks, and have a speed limit of 55 mph. The significance of slower speeds and the absence of trucks is that highway noise and disturbance to birds and other species in the adjacent Legacy Nature Preserve will be reduced. The settlement also provided for another addition to the Legacy Nature Preserve and funding to initiate the light rail EIS for the corridor.

On November 14, 2005, Utah Governor John Huntsman, Jr. approved a settlement of this long-standing controversy. Construction began in March 2006, the Parkway opened in 2008, and planning for the transit system is ongoing.

Because of NEPA, the Legacy Project was made more environmentally sound, but still served its intended purpose. The judicial redress that citizens sought for the project inspired the parties to work together and improve the result. Ultimately, NEPA helped bring the various parties together and combined the best aspects of the state's original proposal with the public's best ideas.

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This summary is based on Robert W. Adler, *In Defense of NEPA: The Case of the Legacy Parkway*, 26 J. Land, Resources & Envt'l L. 297 (2006).

The Settlement Agreement is available at http://www.dot.state.ut.us/index.php/m=c/tid=1/item=18194/d=full/type=1.

WEST ALSEA LANDSCAPE MANAGEMENT PROJECT

NEPA as an Early and Ongoing Public Dialogue

This case illustrated how pre-NEPA conversations by agencies with interested publics can lead to successful, efficient NEPA processes from a formerly-contentious area of the Pacific Northwest: national forest lands with threatened species.

In the summer of 2006, the Forest Service (FS) proposed the West Alsea Landscape Management Project. The West Alsea Landscape Management Project planning area includes 40,000 acres in the Oregon Coast Range, encompassing the lower portion of the Alsea River watershed, located just inland of Waldport, Oregon on the Siuslaw National Forest. Diverse habitats support a variety of plant and animal species, including the northern spotted owl and marbled murrelet, both listed as threatened under the Endangered Species Act. The purpose of this project was to restore ecological conditions and processes in the West Alsea area by encouraging the development of old-growth habitat, improving habitat diversity and watershed function, and providing timber resources to local businesses.

Early on in the NEPA process, the FS Central Coast Ranger District sought public input on this project, including actively involving the Alsea Stewardship Group (ASG), a collaborative group with diverse representation working to promote stewardship contracting and restoration projects on both public and private lands within the Alsea watershed. The FS first informed ASG about the project nearly a year before formal scoping began in 2007. The FS also held two field tours and met with a subset of ASG several times to gain input and spread understanding of the proposal.

During the development of this project, the FS took recommendations from the ASG and other involved individuals very seriously. The FS incorporated suggestions and concerns into the proposed action both prior to scoping and before the draft Environmental Assessment (EA) was available for comments. The FS also shared detailed maps and made resource specialists available to work with interested citizens who had recommendations or who wanted a better understanding of what the project would do.

The involvement of the public, both before and through the NEPA process, led the FS to consider al-

ternatives to the proposed action and improvements to the design criteria that it might not have considered otherwise. For example, local residents shared their knowledge about historic meadow locations and conditions to help the FS understand appropriate project locations. Others advocated for minimizing road building, which led the FS to develop a new alternative that would build no new roads. Public involvement also resulted in the FS changing its initial proposal to create five-acre openings within plantation stands to instead prioritizing retention of old-growth habitat and structure in those areas. The public also put forth specific suggestions on in-stream wood placement, thinning techniques, and road decommissioning locations that helped inform the project design criteria. In April 2008, the FS issued a final EA that had the support of the public.

The FS outreach and involvement of the public established a strong trust between FS staff and involved citizens and groups, gained greater community buy-in and support for the project, and developed a more comprehensive, integrated landscape restoration project, resulting in fewer negative environmental impacts and more ecosystem benefits than the original proposal. In addition, a true measure of success of the West Alsea Landscape Management project is that the FS has since used a similar process and level of engagement to develop the East Alsea project.

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Additional information is also available at http://www.fs.fed.us/r6/siuslaw/projects/nepa/west-alsea/index.shtml

TRITIUM PRODUCTION REQUIREMENTS

NEPA Helps the Department of Energy Respond to Historic Changes

A key to NEPA's success is that alternatives to a proposed action are analyzed and studied by agencies. As illustrated by this case, the analysis of alternatives provides an opportunity to compare options and helps define relevant issues.

The end of the Cold War led to dramatic reductions in the size of the U.S. nuclear weapons stockpile. This changed the U.S. Department of Energy's (DOE) focus regarding the types of facilities necessary to support the stockpile. One aspect of this support is the production of tritium, a radioactive gas used in U.S. nuclear weapons, which must be replaced periodically in nuclear weapons, due to its decay rate of about 5.5 percent per year.

DOE began preparation of an Environmental Impact Statement (EIS) in 1989 to evaluate alternative reactor technologies to produce tritium based on Cold War planning efforts [EIS for Siting, Construction, and Operation of New Production Reactor Capacity, DOE/EIS-0144]. Three years later, the Cold War had ended, and DOE was considering that tritium requirements could drop by 75 percent.

In testimony before the House Armed Services Committee in 1992, then-Secretary of Energy Admiral (Retired) James Watkins explained that the analyses performed for the tritium production reactor EIS helped him avoid making a bad decision. "[T]hank God for NEPA because there were so many pressures to make a selection for a technology that might have been forced upon us and that would have been wrong for the country," he said.

Secretary Watkins described that, in the last years of the Cold War, national security demands were pressing DOE to accelerate certain interim actions before the tritium production reactor EIS was completed. DOE expected to select two technologies and to locate a new reactor at each of two sites. DOE also was making safety upgrades to an existing reactor that would provide tritium until the new reactors were operating. But world events provided new opportunities, as Secretary Watkins said, "to really look seriously at alternatives" previously rejected because they could not provide sufficient quantities of tritium.

DOE did not complete the tritium production reactor EIS, and Secretary Watkins' successor, Energy Secretary Hazel O'Leary, eventually cancelled plans to restart the existing production reactor. DOE prepared a programmatic EIS to consider new alternatives for the recycling of existing tritium supplies and for the production of new tritium. It also prepared tiered project-specific EISs on the favored alternatives. In 1999, DOE announced that it would meet requirements for new tritium production by irradiating tritium-producing rods in existing nuclear power reactors operated by the Tennessee Valley Authority. Compared to the plans being pursued a decade earlier, DOE's final decision saved taxpayers billions of dollars in construction costs and tens of millions of dollars per year in operating costs while still meeting national security needs.

The close involvement of Secretaries Watkins and O'Leary in the NEPA process resulted in substantial improvements to DOE's NEPA process as they appreciated the value of the process.

Secretary Watkins told the House committee that he "quickly learned that the NEPA process was not being used to provide complete and unbiased information that top-level managers needed to make the best decisions. Therefore, I established new policies to enhance and reinvigorate the DOE NEPA process." These changes provided for state and tribal review of Environmental Assessments (EAs), greater focus on mitigation in certain EAs and EISs, incorporation of NEPA milestones earlier in the planning process, and senior officials to be responsible for the quality and sufficiency of EAs and EISs.

Secretary O'Leary strengthened the process further to enhance public participation in DOE's NEPA

process, make the process more useful for decision-makers, emphasize teamwork in document preparation while minimizing cost and time, and collecting lessons learned in the NEPA process.

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