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Dynamic Delivery –
America's Evolving Oil and Natural Gas Transportation Infrastructure
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Topic Paper #3-6

THE ASPEN INSTITUTE DIALOGUE ON ENERGY GOVERNANCE: STAKEHOLDER ENGAGEMENT BEST PRACTICES AND RECOMMENDATIONS
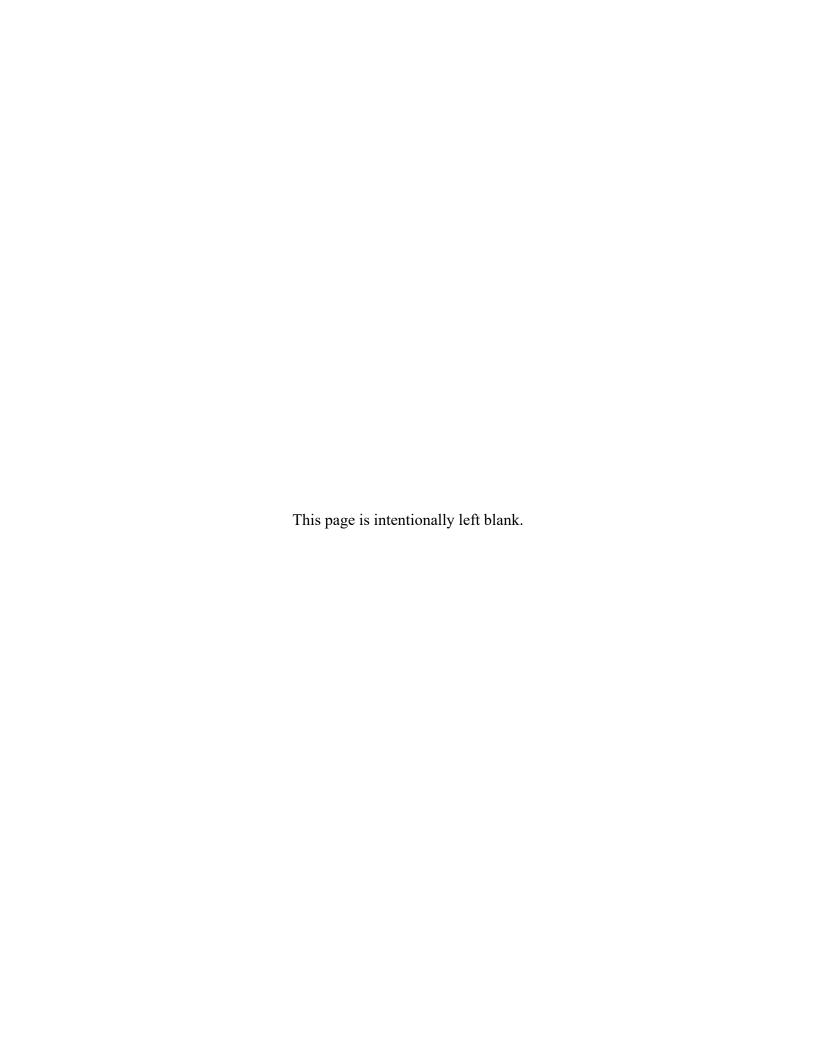
Prepared for the

Permitting, Siting, and Community Engagement for Infrastructure Development Task Group

On December 12, 2019 the National Petroleum Council (NPC) in approving its report, *Dynamic Delivery – America's Evolving Oil and Natural Gas Transportation Infrastructure*, also approved the making available of certain materials used in the study process, including detailed, specific subject matter papers prepared or used by the study's Permitting, Siting, and Community Engagement for Infrastructure Development Task Group. These Topic Papers were working documents that were part of the analyses that led to development of the summary results presented in the report's Executive Summary and Chapters.

These Topic Papers represent the views and conclusions of the authors. The National Petroleum Council has not endorsed or approved the statements and conclusions contained in these documents, but approved the publication of these materials as part of the study process.

The NPC believes that these papers will be of interest to the readers of the report and will help them better understand the results. These materials are being made available in the interest of transparency.

The attached paper is one of 26 such working documents used in the study analyses. Appendix C of the final NPC report provides a complete list of the 26 Topic Papers. The full papers can be viewed and downloaded from the report section of the NPC website (www.npc.org).

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Topic Paper

3-6	The Aspen Institute Dialogue on Energy Governance: Stakeholder Engagement Best Practices and Recommendations
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SUMMARY
This paper provides background on practices and recommendations of stakeholder engagement best practices, developed by the Aspen Institute's Energy Governance Dialogue.

The Aspen Institute Dialogue on Energy Governance: Stakeholder Engagement Best Practices and Recommendations

Beginning in October 2016, the Aspen Institute Energy and Environment Program convened the Aspen Institute Dialogue on Energy Governance. This effort was funded by the Cynthia and George Mitchell Foundation and the Alfred P. Sloan Foundation. This policy dialogue brought together a group of experts from the scientific community, industry, government, and other organizations focused on the governance of oil and gas development. Over the course of the Dialogue, the group examined the different evidentiary foundations and approaches used in making management, policy and regulatory decisions. One of the initial goals of the Dialogue was to bring forward research and lessons learned regarding the governance of energy resource development and production across various levels of government. The conclusions from the Dialogue, while emphasizing shale resources, are largely applicable to any segment of the energy and infrastructure development industry.

The Dialogue commenced from the following question: *How should the development and production of natural gas and oil from shale resources continue in the absence of generally recognized principles (or standards) to identify, prioritize, and respond to its potential human health and environmental risks?* As the dialogue progressed, it became apparent that stakeholder engagement was a critical issue to examine more deeply, so an additional workstream was formed to answer the question: ***How can stakeholders be more involved and better engaged throughout the process to address issues, discuss the management of potential risks and***

benefits, and seek to avert conflict? The findings and recommendations from the Aspen Institute Dialogue are summarized here.

PART I: FINDINGS

FINDING 1: EFFECTIVE STAKEHOLDER ENGAGEMENT IS NOT BEING PRACTICED SYSTEMICALLY BY REGULATORS OR THE INDUSTRY.

Principle 1.1 Effective stakeholder engagement processes are multi-directional, inclusive, and seek to build trust.

Principle 1.2 Processes require access to information and meaningful opportunities to influence both regulatory outcomes and industry decisions while recognizing the legal and economic limits that may restrict those outcomes and decisions.

Principle 1.3 Processes must clearly articulate a purpose for the stakeholder engagement, the rationale that motivates participation, and acknowledge participants' diverse roles and definitions of success.

Principle 1.4 Processes need neutral or trusted conveners and facilitators, especially if levels of trust among participants are low at the outset.

Principle 1.5 Processes must start early in the energy development process but adapt to the changing needs of stakeholders over the lifetime of energy development, from inception, through construction, operation, decommissioning, and land reclamation.

Consistent and widespread adoption of advanced principles of effective stakeholder engagement has not occurred in energy governance. This is particularly problematic for regulators and industry, as they bear primary responsibility for the ultimate decisions on how, where, and whether energy development takes place. Failure to establish effective stakeholder engagement processes can lead to increased tensions and conflict among stakeholders, as well as hamper industry's social license to operate.

By contrast, robust stakeholder engagement can play an important role in mitigating and addressing conflicts by new and ongoing development. As highlighted above, effective engagement requires the ability for stakeholders to engage in dialogue with one another ("multi-directional" communication), while making information accessible and affording affected stakeholders a genuine opportunity to inform decisions. Stakeholders can participate more fully when all participants have a common understanding of each other's roles and authorities, and of their different definitions of success. Finally, neutral or trusted conveners and stakeholders can assure participants of a fair outcome. The goals, participants, and structure of processes, however, need to be adaptive to the different contexts and issues that arise over the lifetime of shale development. When stakeholder processes apply these principles, they are more likely to

build trust among stakeholders with divergent interests and goals, foster learning, help identify creative solutions to previously intractable problems, and build governance capacity.

The dialogue participants recognized several challenges that can impede the implementation of effective stakeholder engagement. First, many of the decisions related to energy development and project siting are private in nature – involving industry, private land owners, and private mineral owners. These actors may not see the value of stakeholder engagement in early stages of development, when competition over leasing takes place. Once leases are in place, others suddenly affected by imminent development feel they have no voice in the process, reducing their incentive to engage in the process. Second, stakeholder engagement can be time-consuming and out of sync with the market forces that may dictate when development begins and ends. Third, real engagement is supplanted too often by one-way communication (e.g., industry or regulators informing communities that development will be occurring). Poorly designed one-way communication can increase distrust among stakeholders. Even where multi-directional communication occurs, it can be challenging to incentivize diverse participation if stakeholders do not trust the convening parties. In addition, power dynamics, and widely varying capacities and knowledge can strain effective engagement. Fourth, each "type" of stakeholder is not static or homogenous – regulators, industry, residents in a town, environmental groups, and others may hold divergent views with others in their "group."

Dialogue participants identified and discussed several examples of stakeholder engagement, both from experience and from academic research, which illuminate approaches that may overcome these barriers. These include formal or legal processes and informal or voluntary strategies, which have been employed by some operators, industry associations, regulators, local governments, and other stakeholders involved in shale development. Examples of effective stakeholder engagement outside of the shale arena, for instance in the mining and power sectors, also offer comparable best-practices from which energy governance stakeholders can learn. The recommendations and actions described later in this report build off these experiences and offer practical steps for building a governance system founded on these principles.

PART II: RECOMMENDATIONS

CREATE EFFECTIVE, EARLY ENGAGEMENT AMONG THE VARIOUS STAKEHOLDERS WHERE ALL THOSE INTERESTED IN, ABLE TO AFFECT, AND AFFECTED BY SHALE DEVELOPMENT – POSITIVELY AND NEGATIVELY – CAN RAISE ISSUES AND DISCUSS THE MANAGEMENT OF POTENTIAL RISKS AND BENEFITS.

Providing a meaningful opportunity for stakeholders to inform and influence on-the-ground practices may minimize later conflict. Given their central position in deciding whether and how development occurs, regulators and operators should play prominent roles in devising, improving, and implementing stakeholder engagement processes. At the same time, local

governments, non-profit groups, researchers, land-owners, mineral rights owners, and affected communities play a critical role in supporting these efforts, or potentially leading and facilitating processes. In addition, in some cases "stakeholders" might include those actors to whom the primary stakeholders are responsible – project investors, insurers, or organizational funders, for instance. Finally, neutral and trusted conveners may be necessary, to assuage fears of a biased process.

Relationship building is the overarching goal of effective stakeholder processes. Processes should enable multi-directional communication, facilitate openness between parties, and promote accessibility by taking into account differences in time availability and capacity to engage. Openness and accessibility means ensuring that those affecting or affected by shale development can have the opportunity to be involved. It is important not only for conveners of processes to conduct thorough stakeholder mapping and outreach, but also to take into account logistical challenges of geographic distance and scheduling of meetings.   Stakeholders from affected energy development communities should feel empowered in the process, particularly through clear expectation setting, recognition of the value of their input, and an understanding of their specific rights and roles in the process. In addition, all stakeholders should come to the table with a mindset of genuine and open engagement, and foster meaningful engagement. This requires those stakeholders with decision-making power to be willing to adapt policies and practices in response to the ideas that emerge within the engagement process, while communicating from the outset what cannot be changed given lease terms or other legal realities. Starting processes early, before development occurs, can also be critical for participants to feel they have a genuine voice in the process. At different phases of engagement, especially where trust is low, participants benefit from having a neutral and independent third party to guide the engagement process. Sustaining engagement over different phases of the life-cycle of shale development further fosters a culture of engagement and trust building, and enables parties to anticipate and generate proactive responses to new challenges.

To achieve these goals requires two specific actions: 1) build capacity and a culture that supports the principles of effective stakeholder engagement; and 2) enhance and adapt existing stakeholder engagement processes. These actions and illustrative examples for implementing them are described below.

- **Recommendation 1.1 Build capacity and a leadership culture** that embraces effective stakeholder engagement principles.

To foster genuine participation, regulators and industry should evaluate their commitment to stakeholder engagement, in which potentially affected community members, local governments, and NGOs are given a meaningful and enduring opportunity to participate in the development process from the earliest possible phases so that their input can influence on the ground decision-making. This requires leadership among industry, regulators, and other stakeholder organizations

to commit to the principles of stakeholder engagement and actively disseminate and operationalize these principles within and across their organizations and sectors.

Even absent a legal obligation to engage stakeholders, regulators and industry should voluntarily engage stakeholders in meaningful dialogue about development. Industry should provide more regular opportunities to discuss plans and operating practices, and work with stakeholders to establish best management practices that may eliminate or reduce impacts to the extent practicable. At the same time, regulators can take a more proactive role in engaging with diverse stakeholders to discuss concerns that arise before, during, and after development. To do this, both regulators and industry need trained staff who know how to effectively identify and communicate with stakeholders, and dedicated resources to sustain engagement processes. Creating industry-wide or agency standards for best management practices associated stakeholder engagement is also critical.

One strategy to enhance the capacity and culture for effective engagement within industry would be to establish a National Operator Advisory Board. This could help operators work collectively towards more effective engagement practices regarding energy, environmental, and related public policies that encourage responsible exploration, development, and production of oil and gas from shale resources. An entity such as the American Exploration & Production Council (AXPC) could help set standards and provide guidelines for operators to use in developing company-specific public engagement strategies.

Meanwhile, regulators could work more closely with local governments and the communities most immediately affected by shale development. This might be accomplished through a Local Government Engagement Training Resource focused on providing information about shale oil and gas production that can aid meaningful engagement and strategies for engagement such as a travelling or online training module. This resource could disseminate information about the initial steps involved in oil and gas development before landmen from oil and gas operators enter an area and would improve engagement before development begins. This resource could also help community leaders and citizens develop strategic investment plans to manage funds raised from local, state, federal, and private sources. Potential leads for this program might include ECOS or the National Association of Regional Councils (NARC). Regulators also might build better capacity and a culture that supports stakeholder engagement.

- **Recommendation 1.2 Enhance and adapt** stakeholder engagement processes.

Many existing energy governance processes already formally require or rely on informal mechanisms for stakeholder governance. Yet existing processes often do not meet the expectations of successful stakeholder governance or appear ill-suited to addressing new issues, or new stakeholders, as patterns of development shift.

First, effective engagement should begin by **embracing a broad understanding of stakeholders** to include relevant parties that may be affected by development, and carefully mapping relevant stakeholders. **Re-considering, and articulating the incentives for participation, and respective roles and responsibilities** of different participants, is also critical. As part of this adaption process, conveners of stakeholder engagement should pay attention to the collective decision-making power of the group, given legal and economic realities, and note how power dynamics shift over time in stakeholder processes.

Second, it is important to **link or connect existing engagement processes to each other**. For example, state-level engagement processes should link to community level engagement, perhaps by requiring that key stakeholders participate across both venues, or at a minimum, have mechanisms to inform each other. This builds a more robust overarching governance system by extending the relationships, experience, and knowledge across decision-making scales.

Third, conveners need to **incorporate periodic reviews of existing processes and requirements**. As the context and stages of shale development shift, the engagement process likewise will need to adjust. Different stakeholders may need to be brought into the process at different stages. As issues change, or conflicts arise in engagement processes, neutral facilitators or new ground-rules for who participates and what topics can be covered may also be critical.

When adapting stakeholder engagement processes, it is also critical to consider the scale and scope of issues. For issues that are statewide in scope, for instance, regulators or state governments might establish **Issue-Specific Task forces/Commissions** to bring together interests across the state and from diverse perspectives, focused on timely challenges. One successful example is the Oklahoma Coordinating Council on Seismic Activity. The state formed the council as a venue to bring together relevant stakeholders to discuss, share data, and identify proposed actions for understanding and mitigating problems associated with seismic events associated with oil and gas development.

Regional and basin-wide issues can also be tackled through broader stakeholder engagement venues. At the regional level, there are growing concerns about cumulative effects of development on a landscape, which highlights the need for planning and assessing these regional issues. We recommend that industry or governments develop **Regional/Basin Development Boards** to aid in creating local engagement strategies for operators of all sizes within a specific operating area. The boards could consist of operators and members of local government/communities in the region, and also include members of the national operator advisory board (see above) who operate in the region. An existing example is South Texas Energy & Economic Roundtable (STEER), which works with communities and local governments in the Eagleford Shale play.

Similarly, there are opportunities to tailor stakeholder engagement to local or community-level concerns, which are often the most visible, but also feed into larger-scale conflicts. One alternative is to create a **Local Government Designee Program**, which would identify a single point of contact within local governments to lead engagement with and between regulators, operators and residents about oil and gas development. The Local Government Designee Program in Colorado might provide a good model, especially if paired with the following additional features to further help ensure success in practice:

> ⇒ Operators could be required to register with the Local Government Designee in the local government counties, municipalities and special districts they operate in.
> ⇒ Operators could be required to provide a development plan to the Local Government Designee for use in local planning and investment decisions.
> ⇒ The state regulator could provide financial assistance for Local Government Designee training.

The state government could provide funding to assist local governments in the creation of Local Government Designee positions.