BLM Land Use Planning in Western Oregon: A Case Study for Integrating Public Participation in Natural Resources Planning

Emily Ruth West

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BLM LAND USE PLANNING IN WESTERN OREGON:
A CASE STUDY FOR INTEGRATING PUBLIC PARTICIPATION IN
NATURAL RESOURCES PLANNING

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Professional Paper
presented in partial fulfillment of the requirements
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in
Resource Conservation

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TABLE OF CONTENTS

ACKNOWLEDGMENTS ................................................................. ii
LIST OF TABLES AND FIGURES ................................................. v
INTRODUCTION ................................................................. 1
CHAPTER ONE: PERSPECTIVES ON PUBLIC PARTICIPATION ......... 4
  Theoretical Perspectives on Public Participation ................. 4
    Purpose and Context for Public Participation in Planning and
    Decision-Making .......................................................... 4
    Purpose of Public Participation ...................................... 4
    Degrees of Public Participation ..................................... 9
    Paradigmatic Contexts for Public Participation .......... 13
  Critiques of Public Participation in Planning and Decision-Making .... 16
    Issues of Democratic Representation and Legitimacy ........ 16
    Constitutional Subdelegation ....................................... 18
    Net Costs of Public Participation .................................. 20
    Issues of Public Credibility and Capacity ................. 21
  Summary ................................................................. 21

CHAPTER TWO: FEDERAL NATURAL RESOURCES PLANNING ....... 23
  Public Participation in Federal Natural Resources Planning .... 23
    Core Suite of Federal Public Participation Statutes .... 23
      The Administrative Procedures Act (APA) of 1946 .... 24
      Freedom of Information Act (FOIA) of 1966 .............. 26
      Federal Advisory Committee Act (FACA) of 1972 ........ 27
      The National Environmental Policy Act (NEPA) of 1969 29
    Additional Federal Provisions for Public Participation .. 42
      Administrative Dispute Resolution Act (ADRA) of 1996 .. 42
      Secure Rural Schools and Community Self-Determination Act of 2000 . 42
      Executive Order (EO) 13352 “Facilitation of Cooperative Conservation” . 45

Bureau of Land Management Land Use Planning ................... 47
  A Brief History of the Bureau of Land Management (BLM) ...... 47
Public Participation in BLM Land Use Planning .......................... 54
  History and Purpose of BLM Land Use Planning .................. 54
  Statutory and Regulatory Mandates for Public Participation .... 57
  Steps of the BLM Planning Process ................................. 60
  Training and Administrative Support for Involving the Public ... 66
Summary ............................................................................. 68

CHAPTER THREE: BLM PUBLIC PARTICIPATION CASE STUDY .... 70
  Public Participation in the BLM’s Western Oregon Plan Revisions .... 70
     Case Study Methodology ............................................. 71
     Purpose and Need of the Western Oregon Plan Revision .......... 72
       History of the Western Oregon Plan Revisions ................ 72
       Goals and Strategies for Public Participation ................. 78
Summary ............................................................................. 85

CHAPTER FOUR: ANALYSIS OF WOPR PUBLIC PARTICIPATION .... 86
  Lessons Learned from the BLM’s Western Oregon Plan Revisions .... 86
     Means and Opportunities for Public Participation in the WOPR .... 86
     Barriers to Public Participation .................................... 92
       Political Context .................................................... 93
       Purpose and Need of the Planning Effort ...................... 94
       False Expectations for Public Involvement ................... 98
       Geographic Scope of the Planning Area ...................... 99
       Plan Timeline ....................................................... 101
       Federal Budgetary Pressure ..................................... 103
       Agency Culture and Individual Attitudes Towards Public Participation ... 104
       Limitations of Leadership ....................................... 107
Summary and Conclusions: Overcoming Barriers to Public Participation ... 107

LITERATURE CITED .......................................................... 112
APPENDIX A ................................................................. 118
APPENDIX B ................................................................. 120
APPENDIX C ................................................................. 122
APPENDIX D ................................................................. 123
LIST OF TABLES AND FIGURES

Figure 1. IAP2 Public Participation Spectrum ........................................... 12
Figure 2. BLM Required Planning Steps .................................................... 62
Figure 3. Map of the Land Area Covered by the WOPR ............................. 73
Figure 4. Steps in the WOPR Planning Process ........................................ 79
Table 1: BLM Public Processes for the WOPR ....................................... 81-82
INTRODUCTION

The public’s options for participation in environmental planning and decision-making under the National Environmental Policy Act (NEPA) of 1969 are generally limited to the attendance of public hearings and the submission of written comments. Within the formal steps of the NEPA process, public participation typically occurs during the scoping periods, the identification of preferred alternatives, and the announcement of draft Environmental Impact Statements (EIS). The purpose of such participation is information exchange between members of the public and agency personnel, and the establishment of legal standing for parties who later intend to litigate a proposed action. With such limited administrative channels for participation, the actual impact of public participation on agency decisions is often negligible or appears irrelevant to frustrated members of the public. Recently, some federal agencies, such as the Bureau of Land Management (BLM), began experimenting with more inclusive and innovative forms of public participation aimed at improving the quality and durability of environmental plans and decisions. These *ad hoc* approaches often expand the timing and substance of the public’s role in the NEPA and planning processes.

There is general consensus among NEPA experts and scholars that the statute has enhanced the role of the public in environmental decision-making and planning, especially when coupled with the participation and disclosure requirements of the Administrative Procedures Act. Newer, agency-specific environmental planning statutes have also led to increased public participation, and other statutes have even provided mandates for more inclusive public participation methods under specific and limited circumstances.

A growing number of critics, however, believe that the role of the public in environmental planning and decision making is still inadequate. These critics contend that public participation, as traditionally utilized by federal agencies, allows “agencies to nominally meet their statutory requirements for public involvement while effectively continuing to dispense predetermined management decisions.”1 Other specific criticisms include: 1) the current forums for participation are insufficient for representing the

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interests of the public; 2) the general public’s participation is limited in favor of the participation of polarizing interest groups; 3) marginalized and affected communities may be prevented from participating due to procedural and technical barriers; 4) the means of exchanging information between members of the public and agency personnel is inadequate; and 5) members of the public often disagree with the conclusions of federal agencies and are forced to pursue administrative or legal appeals.2

In recent years, a number of innovative and inclusive public participation tools and strategies have been developed.3 These tools and strategies are promoted by a number of nongovernmental organizations and are readily available to agency personnel through internet resources, journals, texts, conferences, and training programs. Many of these tools and strategies have even been tested by agencies on an ad hoc basis and have yielded successful results, including the following: 1) more durable decisions and plans, 2) increased technical, consensus-building, and decision-making capacity among members of the public; 3) increased levels of trust; and 4) improved relationships between agency personnel and members of the public.

Despite the proliferation of these new tools and strategies and their successful implementation, innovative and inclusive public participation methods have still not become widely integrated into the natural resources planning and administrative decision-making processes of federal agencies. This paper considers barriers to the regular inclusion of innovative and inclusive public participation methods in agency's planning and decision-making processes and provides some prescriptions for overcoming those barriers.

Toward this end, in Chapter One of this paper, I discuss the basic theoretical underpinnings of public participation in federal natural resources planning and decision-making making processes, specifically outlining the commonly cited purposes in the

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3 Please see http://www.iap2.org/associations/4748/files/toolbox.pdf The International Association for Public Participation (IAP2) Toolbox provides definitions and use ideas for some of the more common public participation strategies.
literature for public participation. I also clarify the term "public participation," providing
descriptions from the literature of various degrees of public participation. I explain that
the degree of public involvement and influence in planning and decision-making
processes and the purpose of such participation is dependent on the decision-making
model prevalent in an agency's culture or mandated by statute. I conclude Chapter One
with a discussion of four common criticisms of public participation strategies that provide
the public with a high-degree of involvement and influence.

Chapter Two provides the reader with a clear look at the legal sideboards and
constraints shaping public participation in federal natural resources planning and
administrative decision-making. The chapter begins with a broad review of the legal
space provided for public participation in U.S. natural resources management, focusing
primarily on the National Environmental Policy Act (NEPA) of 1969. In the second
section of this chapter, I provide a brief history of the BLM and discuss the agency's land
use planning process. I specifically outline the role of the public in each stage of the
planning process, setting the stage for the BLM planning case study that is presented in
Chapters Three and Four.

In Chapter Three, I use the BLM's Western Oregon Plan Revision (WOPR)
process as a case study to illustrate the characteristics, themes, issues, barriers and
problems in the current use of public participation in federal natural resources planning
and administrative decision-making, as well as to identify formidable impediments to
more innovative and inclusive participation strategies. Finally, in Chapter Four, I analyze
my finding from the BLM planning case study and provide several general prescriptions
for overcoming barriers to public participation in federal natural resources planning and
decision-making.
CHAPTER ONE: PERSPECTIVES ON PUBLIC PARTICIPATION

Theoretical Perspectives on Public Participation

Purpose and Context for Public Participation in Planning and Decision-Making

The concept of involving citizens both directly and indirectly in the day-to-day operations of their governments is an idea as old as the ancient world. In their book, *The Western Confluence: A Guide to Governing Natural Resources,* Matthew McKinney and William Harmon argue that a number of philosophers, including Aristotle, Jean-Jacques Rousseau, John Stuart Mill, and Thomas Jefferson, have argued for some level of citizen involvement in the affairs of government. Where these philosophers differed, and where modern-day theorists differ as well, is on the purposes citizens play in their governments' daily operations, the degree to which citizens should be involved, and the paradigmatic context for such participation.

In the first part of this chapter, I will analyze each of these issues and review the literature's varied presentation of public participation as it relates to federal land management agencies' environmental planning and administrative decision-making processes. In the second part of this chapter, I will discuss criticisms of public participation in natural resources planning and administrative decision-making, particularly those criticisms pertaining to participation strategies that afford the public a great deal of involvement and influence.

**Purpose of Public Participation.** When discussing the role of the public in federal land management agencies' environmental planning and decision-making processes, it is important to ask, "Why should the public be involved?" Rather than assuming that inclusion of the public is automatically positive or negative (depending on your...
perspective), it is important to evaluate carefully the reasons for including the public and the purposes their roles serve in agency planning and decision-making processes.

In the literature on public participation a myriad of reasons are presented for including the public in federal public land agencies' environmental planning and decision-making processes. The central premise behind all is that citizens have important purposes to serve in the government affairs of a "democratic polity." The most commonly presented purposes for involving the public in the operations of a democratic republic and, specifically, in the processes of federal public land management, include: 1) democratic legitimacy through fair and open processes; 2) government accountability and agency oversight; 3) improved information exchange between decision-makers and citizens; 4) the creation of civic "virtue" and community "responsibility;" and 5) sustainable solutions to values and resource conflicts. I discuss each of these in turn in the following section.

Democratic Legitimacy through Fair and Open Processes. One of the tenants of a democratic society is that citizens make decisions directly or indirectly (by elected representatives) through an open process of discussion and decision. As one report on public participation in NEPA argues, "It is a deeply rooted American value that citizens and their government at all levels should be in a continuous dialogue aimed at successfully reconciling our diverse interests and values." In this same theme, McKinney and Harmon make the argument that it is the act of citizens participating in the processes of governance that makes a democracy democratic. Public participation processes, particularly when used for complex land use plans or regulatory actions, can become a means to add democratic legitimacy to agency decisions. Law Professor Jim Rossi argues this point, noting:

Persons and entities subject to agency regulations are more likely to view agency decisions as legitimate if the procedures leading to their

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formulation provide for fair consideration of their views . . . Thus, participation may serve to reaffirm the procedural values that lie at the core of democratic institutions. Richard Roberts confirms Rossi's procedural argument, observing that by consulting the public, government is able to gather support for and commitment to its decisions. This "open government" increases the public's confidence in their leaders and lends credibility to government plans and decisions.

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Government Accountability and Agency Oversight. In addition to democratic legitimacy, public participation in planning and decision-making processes can provide government accountability and agency oversight. As some participation theorists argue, by participating in administrative decisions, citizens are actively holding their governing institutions accountable. Under our federal system, land management agencies like the Forest Service and the BLM "are not directly accountable to the political processes that are responsive to participation in electoral politics." Although Congress, the Executive branch, and the Courts certainly provide some measure of oversight and accountability, this type of oversight is often "imperfect to the extent that these institutions have scarce resources and are generally reactive rather than proactive with respect to agency action." McKinney and Harmon argue that public participation in governance helps ensure that "public decisions fulfill the will of the people." It also may prevent "agency capture," a situation where administrative processes favor one stakeholder or interest to the detriment of other stakeholders or interests.

Improved Information Exchange between Decision-makers and Citizens. At its most basic level, public participation facilitates the exchange of information between agency decision-makers and citizens. Through participation, members of the public can

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14 King, Felt, and Susel, "The Question of Participation: Toward Authentic Public Participation in Public Administration."
16 Ibid. p. 183.
18 Rossi, "Participation Run Amok: The Costs of Mass Participation for Deliberative Agency Decisionmaking."
learn about agencies' proposed actions before a final decision has been made and gain useful knowledge regarding policy processes. Participation also allows agency decision-makers to gain new, previously undiscovered information or creative solutions from members of the public. This reciprocal dialogue between agencies and citizens is becoming increasingly useful as agencies are confronted with more complex or "wicked problems" that cannot be solved through simple logic or common sense. McKinney and Harmon argue that information exchange allows for the development of "better policies and programs and improve[s] the quality of the final decision and outcome." They note that while most members of the public are not scientifically trained or natural resources experts, "they are familiar with the social, economic, and environmental dynamics of a particular place and have knowledge that is useful in solving public problems." Klijn and Koppenjan present a similar argument regarding participation strategies that provide the public with opportunities for considerable involvement and influence. They argue that public participation ensures that policy processes are informed by local knowledge, experiences, and preferences, thereby improving the quality and place-appropriateness of government policies.

A final benefit of information exchange is that land managers can utilize public participation to build support for and ownership of a particular decision or policy. Klijn and Koppenjan describe such action as "an attempt to maximize support for policies and to minimize resistance by involving potential veto-groups in the policy formation." More than a mere tool to reduce conflict, Jim Rossi sees information exchange and participation as means to create political support among unlikely constituencies. He argues that participation ensures agency responsiveness to public preferences, as well as presenting opportunities for decisionmakers "to mold the preferences of the public."

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19 King, Felt, and Susel, "The Question of Participation: Toward Authentic Public Participation in Public Administration."
21 Ibid. p. 99.
23 Ibid. p. 141.
The Creation of Civic Virtue and Community Responsibility. Related to the exchange of information is the idea that public participation can create a body of informed, and thereby "virtuous" citizens, capable of making community-oriented decisions. McKinney and Harmon cite philosophers Aristotle and Rousseau to argue, that "Citizen participation is essential for human fulfillment" because people cannot "fully realize their talents and abilities apart from the experience of sharing in governing." Similarly, Richard Roberts argues that a well-designed and implemented public process increases public commitment to a project and a sense of community ownership of a set of solutions. According to Jim Rossi, "Participation in agency decisionmaking may help to produce better citizens by inspiring a sense of civic responsibility. . . It makes citizens feel as if they are part of, and thus helps to encourage membership in, a political community." 

Sustainable Solutions to Values and Resource Conflicts. These same themes of membership and support-building are related to the final purpose of public participation that will be discussed here, the crafting of sustainable solutions to values and resource conflicts. In the field of natural resources management, where planning decisions are increasingly polarized, public participation is often held up as an alternative to or a substantial supplement to federal regulatory tools and processes. Viewed in this light, public participation may provide a road to less polarizing, longer-lasting solutions. Dan Kemmis makes this argument in his book, *This Sovereign Land: A New Vision for Governing the West*, where he examines experiments in highly-participatory forms of governance in the American West. Speaking specifically of participatory approaches that empower the public with a high degree of involvement and influence, Kemmis writes:

A steadily expanding number of westerners on both sides of the political fence are coming to believe that they can do better by their communities, their economies, and their ecosystems by working together outside the established, centralized governing framework (which had taught them only to be enemies) than by continuing to rely on the cumbersome, uncertain, underfunded, and increasingly irrelevant mechanisms of that old

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26 Roberts, "Public Involvement: From Consultation to Participation." p. 225.
27 Rossi, "Participation Run Amok: The Costs of Mass Participation for Deliberative Agency Decisionmaking." p. 188.
Referring particularly to participatory processes that are collaborative in nature, Julia Wondolleck and Steve Yaffee argue the merits of public participation from a sustainability standpoint: "In many circumstances collaboration can enhance people's understanding, narrow the range of disagreements, build concurrence about necessary direction, and produce on-the-ground environmental improvements."\(^{29}\) Similarly, McKinney and Harmon argue that for the federal land management system, "If you bring together the right people in constructive ways with good information, they will produce effective, sustainable solutions to the challenges and opportunities they face."\(^{30}\)

**Degrees of Public Participation.** Anyone who has ever observed a public meeting or participated in a collaborative process can testify to the fact that not all public participation is created equal. In fact, the term "public participation" is often used in the literature and in practice to describe very different *degrees* of public involvement and influence. The term can mean anything from allowing the public the opportunity to submit comments on a draft management plan to granting specific stakeholders the authority to craft a management plan. In turn, the *purposes* served by public participation (as discussed above) depend largely on the *degree* of involvement and influence the public is allowed in an agency's planning and decision-making processes. As noted earlier, I have opted to use a general definition of public participation when discussing the entire spectrum of public participation opportunities. At this point in the paper, it is time to use terminology that is more specific in order to indicate different degrees of public involvement and influence.

In the literature, degrees of public participation are presented in a variety of ways. Some authors choose simple categories to distinguish levels of involvement and influence. Richard Roberts\(^{31}\) describes two degrees of "public involvement": consultation and participation. Roberts describes the differences between the terms as follows:

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\(^{31}\) Roberts, "Public Involvement: From Consultation to Participation."
Public involvement is a process for involving the public in the decision-making process of an organization. This can be brought about through either consultation or participation, the key difference being the degree to which those involved in the process are able to influence, share, or control the decision-making process. While consultation includes education, information sharing, and negotiation, the goal being better decision making by the organization consulting the public, participation actually brings the public into the decision-making process.\(^{32}\)

Other authors prefer to utilize a conceptual framework when describing degrees of involvement and influence. In their article on public participation as it relates to the National Park Service, Force and Forester describe a framework that includes four levels of public activity: "(1) no formal public input, (2) information exchange between the public and the agency, (3) knowledge gain by both the public and the agency, and (4) total involvement in which agency authority is shared with the public."\(^{33}\) Force and Forester explain that as public activities progress from one level to the next, the public experience evolves. At the base levels of participation, the public may only "experience an awareness or recognition that some issue or problem is being discussed or an action proposed."\(^{34}\) After information is exchanged, and the public and the agency become more knowledgeable, comprehension occurs. Force and Forester note, "Comprehension is characterized by organized groups or individuals developing preferences and forming coalitions."\(^{35}\) In the final stage of the framework, the public provides "guidance, or the directing of a course of action toward a desired state by those people affected."\(^{36}\) In this stage, the public may even have "opportunities for sharing decision-making authority."\(^{37}\)

While both descriptive frameworks described above are helpful for teasing out various definitions of public participation, I find the "Public Participation Spectrum," developed by the International Association of Public Participation (IAP\(_2\)) to be a much more intuitive tool for describing degrees of the public's involvement and influence on

\(^{32}\) Ibid. p. 224.
\(^{34}\) Ibid. p. 6.
\(^{35}\) Ibid. p. 6.
\(^{36}\) Ibid. p. 6.
\(^{37}\) Ibid. p. 6.
planning and decision-making processes. An adaptation of this Spectrum can be found in Figure 1. Looking at the figure, one can see that the IAP\textsubscript{2} has classified public participation by increasing degrees of impact on decision-making processes. These degrees range from the least impact at "inform," up through "consult," "involve," and "collaborate," and finally conclude with the degree of greatest impact, "empower." Each degree of impact can be achieved through a different type of public participation strategy. For example, public comment periods and focus groups are listed under "consult." The purpose of participation is primarily information exchange, so the public's involvement and influence on planning and decision-making processes are relatively minor. Other participation strategies, such as "citizen advisory committees" are listed under "collaborate." The level of public participation for this strategy includes the actual development of alternatives and identification of preferred alternatives by members of the public. Obviously, the public achieves a rather high degree of involvement and influence through strategies listed in the "collaborate" category.

\textsuperscript{39} A similar and equally useful public participation spectrum can be found in McKinney and Harmon, \textit{The Western Confluence: A Guide to Governing Natural Resources}. p. 103.
# IAP2 Public Participation Spectrum

Developed by the International Association for Public Participation

<table>
<thead>
<tr>
<th>INFORM</th>
<th>CONSULT</th>
<th>INVOLVE</th>
<th>COLLABORATE</th>
<th>EMPOWER</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Public Participation Goals:</strong></td>
<td><strong>Public Participation Goals:</strong></td>
<td><strong>Public Participation Goals:</strong></td>
<td><strong>Public Participation Goals:</strong></td>
<td><strong>Public Participation Goals:</strong></td>
</tr>
<tr>
<td>To provide the public with balanced and objective information to assist them in understanding the problem, alternatives, opportunities and/or solutions.</td>
<td>To obtain public feedback on analysis, alternatives and/or decisions.</td>
<td>To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.</td>
<td>To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.</td>
<td>To place final decision-making in the hands of the public.</td>
</tr>
<tr>
<td><strong>Promise to the Public:</strong></td>
<td><strong>Promise to the Public:</strong></td>
<td><strong>Promise to the Public:</strong></td>
<td><strong>Promise to the Public:</strong></td>
<td><strong>Promise to the Public:</strong></td>
</tr>
<tr>
<td>We will keep you informed.</td>
<td>We will keep you informed, listen to and acknowledge concerns and aspirations, and provide feedback on how public input influenced the decision.</td>
<td>We will work with you to ensure that your concerns and aspirations are directly reflected in the alternatives developed and provide feedback on how public input influenced the decision.</td>
<td>We will look to you for direct advice and innovation in formulating solutions and incorporate your advice and recommendations into the decisions to the maximum extent possible.</td>
<td>We will implement what you decide.</td>
</tr>
<tr>
<td><strong>Example Techniques to Consider:</strong></td>
<td><strong>Example Techniques to Consider:</strong></td>
<td><strong>Example Techniques to Consider:</strong></td>
<td><strong>Example Techniques to Consider:</strong></td>
<td><strong>Example Techniques to Consider:</strong></td>
</tr>
<tr>
<td>- Fact sheets</td>
<td>- Public comment</td>
<td>- Workshops</td>
<td>- Citizen Advisory Committees</td>
<td>- Citizen juries</td>
</tr>
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<td>- Web sites</td>
<td>- Focus groups</td>
<td>- Deliberate polling</td>
<td>- Consensus-building</td>
<td>- Ballots</td>
</tr>
<tr>
<td>- Open houses</td>
<td>- Surveys</td>
<td>- Public meetings</td>
<td>- Participatory decision-making</td>
<td>- Delegated decisions</td>
</tr>
</tbody>
</table>

*Figure 1. IAP2 Public Participation Spectrum*^[40](http://www.iap2.org/associations/4748/files/spectrum.pdf)
When looking at models depicting degrees of public participation such as the "Public Participation Spectrum" it is important to remember that that they are descriptive, and may or may not prescribe a certain level of involvement and influence in planning and decision-making processes. The degree of public participation is determined by one's decision-making paradigm. Rossi makes this argument, noting that participation in agency decisions "does not occur in a vacuum," but rather is influenced by political circumstances, agency culture, the preferences of agency personnel, and the decision-making paradigm of individuals and agencies. These factors influence how an agency allocates resources and expertise and determines what influence public participation will have on final outcomes.41

Paradigmatic Contexts for Public Participation. In the public participation literature, three decision-making paradigms or models are generally presented: 1) rational comprehensive planning, which sometimes is called "expertocratic" decision-making, synopticism or consultation 2) pluralism, which sometimes is called interest group liberalism or representative democracy, and 3) civic republicanism, which sometimes is called deliberative democracy. Each paradigm has its own rational or purpose for public participation and each prescribes a particular degree of public involvement and influence in planning and decision-making processes. Law Professor Jim Rossi summarizes each paradigm's approach to public participation as follows:

The expertocratic model values participation primarily for providing information, although the model recognizes some other values from participation as well. Pluralist models depend upon participation to make the process of preference exchange fairer. Deliberative democratic models see participation as valuable for these reasons, but also for purposes of forging greater understanding and consensus about the common good among participations.42

All three of these models make appearances in federal statute, often in direct opposition to one another, as is the case with the National Environmental Policy Act (NEPA). These models will be discussed in much greater detail later through the context of federal land planning statutes. Right now, it is just important to be aware that these different decision-making models exist and that each provides its own paradigmatic

42 Ibid. p. 207.
context for public participation as it relates to planning and decision-making processes.

Rational Comprehensive Planning. The rational comprehensive planning model of decision-making first appeared in federal resource management during the Progressive era and has remained to this day as a dominant paradigm of federal land management agencies. Often called expertocratic decision-making, synopticism, or consultation, the rational comprehensive planning model can be summarized as “decision making through bureaucratic expertise.” The primary purpose of public participation in environmental planning and decision-making is information exchange between agencies of experts and a lay public. The target of such participation is the public-at-large, and planners expect the public’s expertise and time commitment to be minimal. Under this model, the public’s role is limited to pre-planning scoping and ex post decision participation (after a policy or policy alternative is formed or in place). The public's role in the development and selection of alternatives is minimal. Discourse is restricted to “advice, objection, and appeal.” A secondary purpose of participation in this model is not focused on the public-at-large, but rather at organized "publics," such as a resources user groups or advocacy groups. Agencies depend on these interest groups to help identify key planning issues during scoping, for the exchange of scientific and specialized information related to issue identification, and to ensure that the all possible ideas, issues, and possible problems are brought to the attention of the planner and plugged into the decision-making process. This use of interest groups helps to ensure that agencies have thoroughly investigated all potential issues and can make a "rational" decision.

43 Ibid.
44 Poisner, "A Civic Republican Perspective on the National Environmental Policy Act's Process for Citizen Participation."
45 Klijn and Koppenjan, "Rediscovering the Citizen: New Roles for Politicians in Interactive Policy Making."
Pluralism. With the passage of the Administrative Procedures Act, a new decision-making model, pluralism, was superimposed on a natural resources management system that had previously relied on rational comprehensive planning. The idea behind pluralism as a decision-making model is that there are competing interests, or factions, which government must arbitrate through fair and open processes. Under this paradigm, the primary purposes of public participation are political posturing among groups and the establishment of standing for litigation purposes. The focus of such participation is on representatives of various “publics” (interest groups, governments, citizens, etc.) rather than on the public-at-large. Because agencies' focus is on interest groups rather than the general public, the role of such participants is often greater than under rational comprehensive planning. Generally, the participation of public representatives is encouraged throughout all stages of the planning process. Public representatives may also be empowered with some decision-making authority, requiring that the representatives have a high level of expertise and ability to make long-term time commitments to the planning process.

Civic Republicanism. The final paradigm, civic republicanism, is less frequently seen in federal resources management. It has found many proponents in recent years among the ranks of watershed councils and community groups. Those promoting this decision-making paradigm, also known as participatory democracy and deliberative democracy see civic dialogue about public values as the primary purpose of participation. Like with rational comprehensive planning, the target of public participation is the public-at-large, although the voices of the affected and unaffiliated

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49 Also known as interest group liberalism or representative democracy. See Christine Overdevest, "Participatory Democracy, Representative Democracy, and the Nature of Diffuse and Concentrated Interests: A Case Study of Public Involvement on a National Forest District," *Society and Natural Resources* 13 (2000).
50 Poisner, "A Civic Republican Perspective on the National Environmental Policy Act's Process for Citizen Participation."
52 Overdevest, "Participatory Democracy, Representative Democracy, and the Nature of Diffuse and Concentrated Interests: A Case Study of Public Involvement on a National Forest District."
54 Poisner, "A Civic Republican Perspective on the National Environmental Policy Act's Process for Citizen Participation."
publics are often specifically sought out. Unlike with the previous two decision-making models, proponents of civic republicanism assume that an uninformed public can be educated and that it is actually the role of government to try to increase the capacity of its citizens to participate in planning and decision making processes. Participation is encouraged throughout the planning process, but is often ad hoc and focused on problem definition and the exploration of solutions. In keeping with the ad hoc nature of participation, there are cases when it is deemed appropriate to empower the public with decision-making authority and cases where the public participates through more passive means.

Critiques of Public Participation in Planning and Decision-Making

As discussed above, there are many views on the role of the public in federal natural resources planning and administrative decision-making processes. Depending on one's view, the purposes for including the public can range greatly, from mere information exchange to actual decision-making. Participation strategies that afford the public a great degree of influence and involvement often undergo the greatest scrutiny. In the literature, four primary critiques of public participation emerge: 1) issues of democratic representation and legitimacy, 2) Constitutional subdelegation, 3) the net costs of public participation, and 4) issues of public credibility and capacity. All four of these critiques are discussed below.

Issues of Democratic Representation and Legitimacy

In a democratic republic such as our own, issues of representation are often debated in the public sphere. In natural resources planning specifically, decision-makers must balance representation between "communities of place" and "communities of interest." Communities of place are often defined by their physical proximity to public lands. Such communities often have direct economic and social interests, such as grazing, forest products, and tourism, as well as adjacent land-owner concerns, such as fire, weeds, insects, endangered species, and other impacts which could spill onto their

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55 Poisner, "A Civic Republican Perspective on the National Environmental Policy Act's Process for Citizen Participation."
56 Klijn and Koppenjan, "Rediscovering the Citizen: New Roles for Politicians in Interactive Policy Making."
lands from public lands, giving them a legitimate place in public lands management. Communities of interest, often defined as citizens from cities and urban areas who value public lands for recreation, water supply, and habitat, also have a legitimate, albeit, more diffuse, interest in public lands management. Michael McClosky, the former chairman of the Sierra Club, one of the leading environmental interest groups in the U.S., fears that certain forms of public participation, such as collaborative resource management, which provide certain members of the public with a considerable degree of influence over government processes, illegitimately shift representation away from communities of interest, which tend to include the public-at-large, and towards communities of place, which tend to include narrow population segments with a concentrated interest. McClosky defines the problem as follows:

Those who theorize about collaboration admit that all stakeholders must be consulted for the process to have legitimacy. In the drive toward community partnering, such broad consultation is rarely accomplished. But expediency demands ignoring this disparity between theory and practice. As a consequence of this push toward expediency and community partnerships, a conflict is created between communities of place and communities of interest. The push toward localism exalts the interests of given communities of place (those in and around public forests) over more extended communities of interest.

McClosky is not alone in his concern that certain types of public participation can provide disproportionate representation to particular communities or interest groups. Legal scholar George Coggins blatantly disagrees with the collaborative forms of public participation advanced by proponents such as Kemmis, McKinney and Harmon, or Yaffee and Wondolleck. He calls preposterous the underlying theory "that a self-selected group of local people who promise to be civil with another can do a better job of allocating federal natural resources than the duly constituted federal authorities." He argues that collaborative forms of governance are appropriate for community issues revolving around private property, but are inappropriate for federal resources.

58 Ibid.
59 Ibid. p. 627.
management because they allow an unelected group of local citizens to make decisions about public lands that are important to the national interest.\textsuperscript{61}

Given the history of local groups exerting control over federal natural resources agencies, one can see why some scholars are concerned that public participation strategies may disproportionately favor dominant uses and local interests over national interests. In fact, the BLM is one of the most often cited examples of "agency capture."\textsuperscript{62} Political scientists Clarke and McCool note, "The ranchers' dominance over the BLM prevented the agency, for most of its existence, from developing new activities and new constituencies."\textsuperscript{63} The grazing advisory councils that were set up by the Taylor Grazing Act of 1934 have been called one of "the most egregious examples"\textsuperscript{64} of local interests dictating federal land management to the detriment of national interests and ecosystem health. Critics of public participation see highly devolved or collaborative strategies of participation as being equally destructive to federal lands. Legal scholar Michael Axline argues, "Those who wish to profit from federal resources are increasingly turning to city, county, and state governments, as well as 'consensus' processes involving local citizen organizations, for assistance in gaining access to federal resources."\textsuperscript{65} Similar to McClosky, Axline contends that communities physically proximate to natural resources are more likely to be economically dependent on those resources and less likely to make decisions that benefit those resources in the long term.\textsuperscript{66}

**Constitutional Subdelegation**

For critics of the collaboration and devolution movements, issues of Constitutional subdelegation with public participation are a major concern. As every student of U.S. government knows, ours is a system composed of three branches, each with its own powers. The legislative branch has the power of the purse and the power to enact and revise federal laws, the executive branch has the power to implement and enforce federal laws, and the judicial branch has the power to interpret laws and

\begin{footnotesize}
\textsuperscript{61} Ibid. p. 603.
\textsuperscript{63} Ibid. p. 164.
\textsuperscript{64} Coggins, "Regulating Federal Natural Resources: A Summary Case against Devolved Collaboration." p. 604.
\textsuperscript{66} Ibid. p. 619.
\end{footnotesize}
determine their compatibility with the Constitution. This separation of powers is a key principle of American governance and a means of institutionalizing checks and balances on the powers of government.

Under this system, Congress has the power to “delegate (share) the authority to fill in the details of open-ended statutes” to the executive branch, and thereby federal agencies, “so long as it provides an ‘intelligible principle’ upon which to act.” The key here is that the executive branch cannot subdelegate the final decision-making authority granted to them by Congress to another party, such as a group of stakeholders. This does not mean that agencies (as part of the executive branch) cannot utilize advisory groups or collaborative stakeholders. According to one legal scholar, "Case law illustrates that transferring power to private entities is proper so long as the agency head retains oversight, establishes guidance standards, and no conflicts of interest exist." The key is that when utilizing advisory groups or collaborating with stakeholders, the involved federal agency must retain final decision-making authority.

Opponents of devolution and collaborative decision-making question agencies’ ability to retain final decision-making authority. Legal scholar George Coggins argues that, “As a legal matter, devolution, or collaboration, as currently envisioned is simply abdication of responsibility and as such is unlawful.” Michael McClosky has similar concerns about extreme forms of public participation, noting that empowering collaborative groups with decision-making authority over federal lands would illegally shift power over federal lands to local interests, threaten the permanent preservation of those lands, and likely lead to conflicts with the national interest.

These critics do not intend to say that all attempts to incorporate the public in agency decision-making and environmental planning are violations of the Constitutional prohibitions against subdelegation, but rather, they are simply noting that there are

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69 Coggins, "Regulating Federal Natural Resources: A Summary Case against Devolved Collaboration." p. 603.
70 McClosky, "Local Communities and the Management of Public Forests."
boundaries on the federal government’s ability to share its authority over public resources with individual citizens. Indeed, as long as agencies retain the ultimate decision-making authority, there is a great deal of leeway for public involvement.

The Net Cost of Public Participation

Another common criticism of public participation is that its costs can often outweigh its benefits. Legal Scholar Jim Rossi calls for a balanced approach to public participation. He notes:

Increased participation enhances deliberation [reasoned discussion of management alternatives] by broadening the number of proposed solutions for each agenda item and giving agencies more information on which they can base their final decisions . . . At some point, however, the benefits of information provided by increased participation will begin to diminish at the margin and, eventually, level off.71

When the benefits of increased participation level off, agency decision-making is negatively impacted. First, the more interests or members of the public involved in a planning or decision-making process, the less control an agency will have to set its own agenda and meet its management goals. Rossi contends that this loss of agency control is a problem because "as the ability to supervise agendas and set priorities decreases, so will the deliberative quality of the process."72 A fruitful discussion of options is thus sacrificed in the name of inclusion.

Another problem of excessive public participation is information overload, leading to "poor analysis, superficial examination of alternatives, and a widening of the gap between complete, precise, and accurate, as opposed to vague and sloppy, heuristic analysis."73 While public participation often positively increases the information and policy options available to managers, in excess, it can lead to what some critics call, "analysis paralysis."

Finally, there is a tradeoff between the quantity of public participation and the quality of public participation in a planning process. Rossi notes, "Decisionmakers may lose the ability to meet and discuss items critically without backlash from the public, 71 Rossi, "Participation Run Amok: The Costs of Mass Participation for Deliberative Agency Decisionmaking." p. 213. 72 Ibid. p. 215. 73 Ibid. p. 216.
forcing superficial, cooled, or disingenuous discussion."74 A prime example of such a situation is a packed public meeting, where dialogue breaks down to the mere exchange of position statements between an angry public and overwhelmed agency personnel.

**Issues of Public Credibility and Capacity**

The final critique of public participation presented here relates to the ability of citizens to process complex information and make balanced decisions related to natural resources. Public participation advocate Ben Bradshaw argues that for communities to exercise a large degree of influence over natural resources planning decisions successfully, they must have management credibility, defined as a genuine, obvious commitment to resources protection, and the civic and intellectual capacity to realize management goals and objectives.75 Bradshaw notes that communities that are "empowered to manage local resources should do so, not only in their own narrow interest, but also in the interest of all stakeholders, including future generations and nonlocals."76 Critics, such as Coggins, Axline, and McClosky, doubt local communities of place can possess this management credibility.

The other piece that is critical to public participation success, according to Bradshaw, is civic and intellectual capacity to realize management goals and objectives. A common critique is that members of the public do not possess the scientific expertise or management experience to participate in more than a cursory role in natural resources planning and decision-making. Further, knowledge may not be distributed equally among members of the public, leading to inherent discrepancies in representation.

**Summary**

In this chapter, I discussed the basic theoretical underpinnings of public participation in federal natural resources planning and decision-making. Specifically, I outlined the literature's commonly cited purposes for public participation, including: 1) democratic legitimacy through fair and open processes; 2) government accountability and agency oversight; 3) improved information exchange between decision-makers and citizens; 4) the creation of civic "virtue" and community "responsibility;" and 5)

74 Ibid. p. 216.
75 Ben Bradshaw, "Questioning the Credibility and Capacity of Community-Based Resource Management," *Canadian Geographer* 47, no. 2 (2003).
76 Ibid. p. 140.
sustainable solutions to values and resource conflicts. Next, I clarified the term "public participation," providing descriptions from the literature of various degrees of public participation. I explained that the degree of public involvement and influence in planning and decision-making processes and the purpose of such participation is dependent on the decision-making model prevalent in an agency's culture or mandated by statute. I briefly described three common decision-making models used in federal natural resources management: 1) expertocratic decision-making, 2) pluralism, and 3) deliberative democracy. Finally, I concluded the chapter with a discussion of the four common criticisms of public participation strategies that provide the public with a high-degree of involvement and influence. These criticisms included: 1) issues of democratic representation and legitimacy, 2) Constitutional subdelegation, 3) the net cost of public participation, and 4) issues of public credibility and capacity.

The theoretical foundation presented in this chapter is important for understanding the actual means and opportunities for public participation presented in our federal statutes and regulations. Without a basic understanding of decision-making models and their relationship to purposes and degrees of public participation, it is impossible to analyze the use of public participation in federal natural resources planning and decision-making. For this reason, I will return repeatedly to the theoretical themes presented here in the following chapters.
Public Participation in Federal Natural Resources Planning

The purpose of this chapter is twofold. First, it provides an overview of key federal statutes and executive orders providing legal authority for public participation in agency decision-making and environmental planning. Second, it discusses the role of the public in the Bureau of Land Management's (BLM) land use planning process.

The statutory overview is not comprehensive, but rather a broad-brush look at the legal space provided for public participation in U.S. natural resources management. In this first section, the National Environmental Policy Act (NEPA) of 1969 is analyzed. In particular, I assess the implementation of NEPA’s public participation provisions and seek to identify areas where NEPA could be used or modified to better integrate public participation in natural resources planning and administrative decision-making.

The second section of this chapter is a brief history of the BLM and a discussion of the agency's land use planning process, primarily as applied to management of Oregon forest lands managed under the authority of the Oregon & California Railroad Act (O&C Act) of 1937. Specific attention is paid to the role of the public in each stage of the planning process. The intention of this section is to set the stage for the BLM planning case study presented in Chapter 3.

Overall, this chapter provides the reader with a clear look at the legal sideboards and constraints shaping public participation in federal natural resources planning and administrative decision-making.

Core Suite of Federal Public Participation Statutes.

The primary federal statutes allowing the American public to be informed about and participate in federal natural resources planning and decision-making are the Administrative Procedures Act (APA) of 1946, the Freedom of Information Act (FOIA) of 1966, the National Environmental Policy Act (NEPA) of 1969, and the Federal Advisory Committee Act (FACA) of 1972. Legal scholar Sarah Bates Van de Wetering describes these statutes as those “aimed at shedding more light on government decisions, opening them to public scrutiny and ensuring opportunities for public participation . . . At their core, these laws are meant to ensure that better decisions are made, with complete
information and without hidden influences or agendas.” The other statutes and executive orders related to public participation discussed in this chapter are included because of their relevance to the BLM’s land use planning process. These statutes, among others, are also generally key to public participation in natural resources planning and administrative decision-making. These statutes include the Administrative Dispute Resolution Act (ADRA) of 1996, the Secure Rural Schools and Community Self-Determination Act (the Payments to Counties Act) of 2000, and Executive Order (EO) 13352 “Facilitation of Cooperative Conservation.”

The Administrative Procedures Act (APA) of 1946. One of the first so-called "open-government" laws passed by Congress, the Administrative Procedure Act (APA) of 1946 strove to limit the power of Federal administrators in three ways: 1) by laying out strict guidelines for agency rulemaking, adjudication, and licensing processes; 2) by requiring public disclosure and publication of relevant information; and 3) by subjecting agency actions to judicial review. As implemented, the act provides baseline requirements for public participation in federal administrative decision-making processes.

In the first half of the 20th century, the decision-making discretion of federal agencies was unquestioned. In the 1940s, though, a post-WWII American public wary of “fascism and Soviet totalitarianism” viewed the unchecked agency discretion that had been proliferated throughout the Progressive Era as a threat to democracy. The public also began to doubt administrators’ ability to make public resource decisions free from the influence of powerful interest groups. Attempting to appease these threats of unchecked agency discretion and capture, Congress passed the APA in 1946, creating rigid processes through which neutral public administrators were intended to “discover

78 The Payments to Counties Act expired in 2006; however, the public participation provisions of this statute have been important to the BLM planning area discussed in the case study presented in Chapter Three of this paper.
the best (“optimal”) public policies.”\textsuperscript{82} For environmental planning and decision-making, the APA continues to be one of the most influential statutes governing agency behavior.

A few of the most important provisions of the APA\textsuperscript{83} include the following:

1. Federal agencies must provide information to the public. Government agencies are required to provide public access to and publish in the \textit{Federal Register} general agency information, rules, opinions, orders, records, and proceedings.\textsuperscript{84}

2. Federal agency meetings must be open to the public.\textsuperscript{85} Agency meetings,\textsuperscript{86} except those that are outlined in 5 USC 552b (c) as having purposes that would be counter to the public interest to disclose, such as matters of national security or agency personnel issues, are generally required to be open to the public. Agencies are also required to announce to the public, at least one week prior to the upcoming meeting, “the time, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting.”\textsuperscript{87}

3. Federal agencies must follow a strict public process for agency rulemaking.\textsuperscript{88} Specifically, the rulemaking process must follow a predetermined timeline that includes the publication of the proposed rule in the \textit{Federal Register}; the timely notice to the public of the proposed rule and the opportunity for the public to submit written comments and to participate in public hearings; and the careful collection and publication of records relating to the proceedings of the rule making.

4. Federal agencies must follow a strict public process for agency adjudication.\textsuperscript{89} The process required for agency adjudication and the

\textsuperscript{82} Ibid; Reich, "Policy Making in a Democracy." p.128.
\textsuperscript{83} 5 USC Subchapter II – Administrative Procedure and 5 USC Chapter 7 – Judicial Review
\textsuperscript{84} 5 USC § 552
\textsuperscript{85} 5 USC § 552b
\textsuperscript{86} 5 USC § 552b (a)(2)
\textsuperscript{87} 5 USC § 552b (e)(1)
\textsuperscript{88} 5 USC § 553; 5 USC § 556; 5 USC § 557
\textsuperscript{89} 5 USC § 554; 5 USC § 556; 5 USC § 557
issuance of orders is similar to the public disclosure and participation requirements outlined above for agency rulemaking.

5. Agency actions are subject to judicial review. According to U.S. Code, “A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.” However, it is important to note that for a federal action to be subject to judicial review it must first be a “final action” and there must be “no other adequate remedy in a court.” Other exceptions to the right of judicial review are outlined in 5 USC 701 (a).

6. An agency's decision or rule cannot be arbitrary and capricious. For every decision, an agency must examine all relevant information and make a rational, defendable argument connecting that data to the outcome. Under judicial review, if an agency fails to make this connection between information and decision or if the agency uses information that Congress never intended it to consider as the basis for a decision or rule-making action, the agency's action is arbitrary and capricious.

Freedom of Information Act (FOIA) of 1966. One of our most important Federal sunshine acts, the Freedom of Information Act (FOIA) of 1966 ensures disclosure of government documents to a requesting public. Although intended to be a proactive statute requiring agencies to “publish many of their documents in a form that is readily accessible to the public and provides the means by which citizens may obtain copies of documents,” it often serves as an accountability measure for citizens to use against uncooperative agencies.

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90 5 USC § 702
91 5 USC § 704
92 5 USC § 704
93 5 USC § 706 (e)(2)
95 5 USC § 552, As Amended by Public Law 104-231, 110 Stat. 3048, October 2, 1996.
The act received an important update in 1996 through Public Law 104 – 231: FOIA, as amended, now applies to records kept in an electronic format as well. This will be an increasingly important provision in our technological age, providing greater access for members of the public. Instead of going through time-consuming and sometimes costly requests for paper documentation, members of the public with access to a computer can now more easily and often less-expensively access government documents, such as draft environmental impact statements or scoping reports. It also allows Federal agencies to use more creative media types, such as slideshows, interactive GIS, and plan websites, for interfacing with the public in regards to natural resources planning decisions.

Federal Advisory Committee Act (FACA) of 1972. The Federal Advisory Act (FACA) of 1972 was originally passed to help isolate agency decision-making from the control of powerful interest groups by laying out strict procedural requirements for the formation and use of advisory bodies. The purpose of the act, according to the General Service Administration's regulations, is to:

. . . Govern the establishment, operation, and termination of advisory committees within the executive branch of the Federal Government. The Act defines what constitutes a Federal advisory committee and provides general procedures for the executive branch to follow for the operation of these advisory committees. In addition, the Act is designed to assure that the Congress and the public are kept informed with respect to the number, purpose, membership, activities, and cost of advisory committees.

FACA is often interpreted to apply "whenever a statute or an agency official establishes or utilizes a committee, board, commission or similar group for the purpose of obtaining advice or recommendations on issues or policies within the agency official's responsibility." The act further requires that any such advisory body be formerly chartered by the President or authorizing agency head. A group’s charter includes a detailed account of its purpose, duties, costs, usefulness and membership. In addition, under FACA, the chartered body must “have fairly balanced membership and follow
formal administrative procedures, such as publishing notice of meetings in the Federal Register, taking detailed minutes of meetings, and opening all meetings to the public.”102 In the 1990s, with the push for ecosystem management and increased agency coordination, FACA was amended to exempt interagency coordination and intergovernmental partnerships.103

**FACA and the Public Interest.** One of the most interesting aspects of FACA is that it requires all advisory committees to be established in the "public interest." In fact, an advisory committee can only be established "when it is essential to the conduct of agency business and when the information to be obtained is not already available through another advisory committee or source within the Federal Government."104 The three factors for deciding whether establishment of the committee are in the public interest include:

1. Advisory committee deliberations will result in the creation or elimination of (or change in) regulations, policies, or guidelines affecting agency business;
2. The advisory committee will make recommendations resulting in significant improvements in service or reductions in cost; or
3. The advisory committee’s recommendations will provide an important additional perspective or viewpoint affecting agency operations.105

**FACA as a Barrier to Public Participation.** FACA is often identified as a major barrier to increased public participation in environmental planning, particularly under newer paradigms such as ecosystem management. Cortner and Moote argue that “FACA may be a deterrent to federal efforts to meet the collaborative decision-making principles of ecosystem management.”106 Similarly, legal scholar Errol Meidinger contends, “FACA significantly constrains the organizational and coordinative options to ecosystem management efforts. As a result, its laudable purposes of increasing public access and agency accountability may be subverted in the ecosystem management context.”107

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103 Ibid.
104 41 CFR § 102-3.30
105 41 CFR § 102-3.30
In some cases, it is not FACA itself that hinders public participation, but rather the perception that FACA is an obstacle or a means of litigation that prevents agencies from including more participatory approaches to governance. Cortner and Moote observe, “Confusion over its legal restrictions has led to considerable ‘FACA phobia’ among federal agency employees, with the result that many refuse to participate in public forums that do not meet the structures of FACA advisory committees.”108 Sarah Bates Van de Wetering argues that there are certainly cases where FACA is a legitimate barrier to participation. She also notes that “though they [FACA requirements] appear to place roadblocks on the path to cooperative conservation, in most cases these procedural statutes are in fact consistent with creative approaches to involving the public and stakeholders in public resource management.”109 Beyond “FACA phobia,” sometimes agencies purposely invoke FACA as an excuse for limiting public involvement or for not choosing more participatory approaches.

The National Environmental Policy Act (NEPA) of 1969. Besides the APA, the National Environmental Policy Act is the primary vehicle for public participation in federal environmental planning and administrative decision-making. Before NEPA, the public's role in these processes was minimal. Within the formal steps of a full NEPA process, there are specific opportunities for inclusion of the public. The basic NEPA process includes the following: 1) the pre-proposal stage (when agencies internally consider an action or plan); 2) the issuing of a proposed action (what will be analyzed in the NEPA process); 3) scoping (a period for the public to help determine the issues relating to the proposed action that should be considered by the agency); 4) the development of draft plan alternatives (proposed solutions or steps to achieve a proposed action); 5) analyses of alternatives (released to the public as the Draft Environmental Impact Statement (DEIS)); 6) comment periods (opportunities for the public and interested agencies, groups, etc. to respond to the DEIS); 7) the issuing of a Record of Decision (ROD) and the Final Environmental Impact Statement (EIS) (includes agency responses to the DEIS and a selection of a preferred alternative); 8) judicial and/or administrative challenges (this is the opportunity for the public to formally appeal an

agency decision through the agency or the courts); and finally, 9) implementation and monitoring (agencies are responsible for implementing and evaluating the impacts of their decision). As implemented, the decision-making process established by NEPA facilitates a degree of public involvement in scoping, DEISs, Final EISs, and administrative and judicial challenges to agency decisions. I discuss these provisions for public participation in NEPA later in this chapter.

**NEPA: Process or Substance?** According to the Council on Environmental Quality implementing regulations, "The National Environmental Policy Act (NEPA) is our basic national charter for protection of the environment. It establishes policy, sets goals (section 101), and provides means (section 102) for carrying out the policy." Today, the National Environmental Policy Act (NEPA) of 1969 is largely viewed as a procedural statute. In court cases, in practice, and in popular media, NEPA is portrayed as the "process statute." In may ways, this is an accurate depiction of NEPA. The act has certainly set up a process for environmental review that agencies must follow for all major federal actions. As political scientist Paul Culhane argues:

> By the mid-1970s, the panoply of activities we call the "NEPA Process" – resource inventories, environmental assessments (EAs), negative declarations (later renamed FONSIs), intra-agency review, draft EISs, public meetings, informal consultation, interagency review, final EISs, records of decision, more interagency and intergovernmental politics, and NEPA litigation – had become standard operating procedures in natural resources management.112

Among its opponents, the NEPA process is often portrayed as a bundle of unnecessary red tape that agencies and the public must wade through. Its proponents often see the act as a useful litigation handle, a way to make sure that agencies are dotting all there Is and crossing all their Ts, as well as a convenient way to force environmental protection when no other statute has the teeth to do so. Some see NEPA as a tool for open-government and a means of fostering environmental and public values in agencies' day-to-day decision-making. In reality, all of these assessments of NEPA are correct.

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110 See "Reclaiming NEPA's Potential: Can Collaborative Processes Improve Environmental Decision Making?", (O'Connor Center for the Rocky Mountain West at the University of Montana and the Instute for Environment and Natural Resources at the University of Wyoming, 2000).

111 40 CFR §1500.1

**NEPA Purpose and Intent: Garbage Can Policy-Making.** As is the case with many national policies, NEPA emerged from a melding pot of political ideas. Paul Culhane argues that NEPA came from the "garbage can"\(^{113}\) of public policy, noting that "A wide range of individuals threw their disparate ideas about environmental reform into the debate about what NEPA meant."\(^{114}\) In his analysis of NEPA, Culhane identifies six different ideas that became institutionalized in NEPA during the time period between bill crafting in the late 1960s and the completion of the first set of Council on Environmental Quality (CEQ) regulations in 1973. These include:

1. a need for rational-comprehensive analysis to counter agencies' tendencies towards single-minded missions and interest-group capture;
2. a recognition that resources decisions were being made without acknowledging the complexity of ecosystems and the breadth of scientific knowledge that was emerging about those ecosystems;
3. Congressional frustration over the limited number of management alternatives agencies provided in their resource planning;
4. a desire to check agencies' rulemaking authority and to provide greater opportunity for judicial review;
5. the growing popularity of citizen participation in government that had emerged from "1960s radicalism"; and
6. agencies' desire to have a means to bring in alternate interests to build support for projects.\(^{115}\)

Culhane concludes, 'Given this mélange of 'intents,' we should not be too surprised that the consequences of NEPA in federal bureaucracy have been diverse and messy."\(^{116}\)

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\(^{113}\) Culhane describes garbage-can policymaking as a theory of organizational choice. He notes, "An important version of this theory for Washington, D.C. policymaking describes new federal policy innovations as products of (1) policy entrepreneurs who work over time refining their 'pet ideas' for new programs and policies; (2) streams of social conditions that become unstable and, hence, defined as 'problems'; and (3) a political stream that creates 'windows of opportunity' in which policy entrepreneurs' ideas may be combined with 'problems.'" Ibid. p. 683.

\(^{114}\) Ibid. p. 684.

\(^{115}\) Ibid. p. 684-688.

\(^{116}\) Ibid. p. 688.
**NEPA's Provisions for Public Participation.** In terms of public participation, the primary guidance is provided in NEPA Section 102.\(^{117}\) This section's mandates for public participation are minimal, however, stating only that:

*Copies of . . . [environmental impact] statement[s] and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes.*\(^{118}\)

Prior to the 1978 version of the Council on Environmental Quality (CEQ) NEPA-implementing regulations, little guidance besides Section 102 was provided to agencies for involving the public. After some key court cases in the 1970s,\(^{119}\) however, the CEQ updated its regulations to provide more-specific guidance for public participation.

In these regulations, the CEQ references public participation primarily in the context of drafting Environmental Impact Statements (EIS). Specifically, the regulations make two references to public participation. First, agencies must provide environmental information to the public before any major Federal action is taken or decision is made:

NEPA procedures must *insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken.* The information must be of high quality. Accurate scientific analysis, expert agency comments, and *public scrutiny are essential to implementing NEPA.* Most important, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail.\(^{120}\)

Second, the NEPA process should be *useful* to the public, and not just an excessive amount of paperwork.

Federal agencies shall to the fullest extent possible: . . . (b) Implement procedures to *make the NEPA process more useful to decisionmakers and the public;* to reduce paperwork and the accumulation of extraneous

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117 43 USC § 4332  
118 Emphasis added. 42 USC § 4332 (C)  
120 40 CFR § 1500.1 (b)
background data; and to emphasize real environmental issues and alternatives. Environmental impact statements shall be concise, clear, and to the point, and shall be supported by evidence that agencies have made the necessary environmental analyses.\textsuperscript{121}

The CEQ regulation's major section on public participation is titled "Public Involvement" and provides general guidance that supplements the notice and comment public participation procedures mandated by the APA and FOIA.\textsuperscript{122} Under this regulation, agencies must "make diligent efforts to involve the public in preparing and implementing their NEPA procedures."\textsuperscript{123} Agencies must notify the public of the availability of environmental documents and the locations and times of hearings and public meetings.\textsuperscript{124} Public meetings and hearings must be held "whenever appropriate or in accordance with statutory requirements applicable to the agency."\textsuperscript{125} Other agency requirements include soliciting "appropriate information from the public"\textsuperscript{126} and providing guidance regarding "where interested persons can get information or status reports on environmental impact statements and other elements of the NEPA process."\textsuperscript{127} The final requirement of the CEQ regulation's "Public Involvement" section relates to public availability of EIS documentation and comments.\textsuperscript{128} Agencies are instructed to "Make environmental impact statements, the comments received, and any underlying documents available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552)."\textsuperscript{129}

Additional guidance related to public participation is found in the CEQ regulation's section on agency planning. According to the regulations, agencies must include the public in the scoping process\textsuperscript{130} of environmental review:

As part of the scoping process the lead agency shall:

\textsuperscript{121} 40 CFR § 1500.2
\textsuperscript{122} 40 CFR § 1506.6
\textsuperscript{123} 40 CFR § 1506.6 (a)
\textsuperscript{124} 40 CFR § 1506.6 (b)
\textsuperscript{125} 40 CFR § 1506.6 (c)
\textsuperscript{126} The regulations give no indication of what is "appropriate information." 40 CFR § 1506.6 (d)
\textsuperscript{127} 40 CFR § 1506.6 (e)
\textsuperscript{128} 40 CFR § 1506.6
\textsuperscript{129} 40 CFR § 1506.6 (f)
\textsuperscript{130} "There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process shall be termed scoping." 40 CFR § 1501.7.
1. Invite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds).\textsuperscript{131}

Finally, guidance for public participation is also in the CEQ regulation's section on commenting. Under this regulation, after an agency has completed a draft EIS and before a final EIS is filed, the agency must "request comments from the public, affirmatively soliciting comments from those persons or organizations who may be interested or affected."\textsuperscript{132} The agency is further required to "assess," "consider," and "respond" to public comments made on a draft EIS.\textsuperscript{133}

In sum, the guidance related to public participation provided by both NEPA and its implementing regulations is rather narrow (guidance is only provided for the EIS process), although there seems to be implied potential for greater public involvement.\textsuperscript{134} As discussed in Chapter One, increased public involvement through NEPA is important because it could lead to institution-level improvements in environmental planning processes.

Next Steps: Improving Public Participation through NEPA. NEPA contains fundamental opportunities for public participation; albeit, such participation is generally limited to a small array of techniques with limited influence, such as public hearings and the submission of written comments. Within the formal steps of the NEPA process, public participation typically occurs during the periods of scoping, the identification of preferred alternatives, and the announcement of draft Environmental Impact Statements (EIS). The public can also participate through litigation and administrative appeals. Because of the limited degree of influence granted to the public through such forums, the purpose of public participation has been reduced to information exchange between members of the public and agency personnel and the establishment of legal standing for

\textsuperscript{131} 40 CFR § 1501.7 (a) (1)
\textsuperscript{132} 40 CFR § 1503.1 (a) (4)
\textsuperscript{133} 40 CFR § 1503.4 (a)
\textsuperscript{134} Specifically, there may be potential for greater public involvement in the processes for Environmental Assessment (EA) and categorical exclusions (CXs). See Solomon, Yonts-Shepard, and II, "Public Involvement under NEPA: Trends and Opportunities."
parties that later intend to litigate a proposed action. In addition, with such limited administrative channels for participation, the actual impact of public participation on agency decisions is often negligible or appears negligible to frustrated members of the public. In recent years, some federal agencies, such as the BLM, have begun experimenting with more inclusive and innovative forms of public participation aimed at improving the quality and durability of environmental plans and decisions. These *ad hoc* approaches often expand the timing and substance of the public’s role in the NEPA process.

There is near consensus among NEPA experts and scholars that the statute has enhanced the role of the public in environmental decision-making and planning, especially when coupled with the participation and disclosure requirements of the Administrative Procedures Act. The impact of NEPA on public participation, though, could be even greater.

Since the late 1990s several major reports have been issued by government and nonprofit panels and organizations calling for improved implementation of NEPA, particularly the provisions of Section 101. The basic argument presented by these reports is that the authority for improved environmental decision-making, including both an increased degree of influence and expanded timeframe for public participation, is already present in NEPA and its implementing regulations. Many of these reports provide specific guidance regarding the role of the public in NEPA processes, focusing on the purpose, degree, and timing of public participation in the NEPA process.

One of the first of these NEPA implementation reports was the CEQ's 1997 report, *The National Environmental Policy Act: A Study of Its Effectiveness After Twenty-five Years*. This report provides an assessment of the status of NEPA, its accomplishments, and its failures since its adoption. Specifically, CEQ looks at five elements believed to be critical for effective NEPA implementation: 1) strategic planning; 2) public information and input; 3) interagency coordination; 4) interdisciplinary place-based approaches to decision-making; and 5) science-based and

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135 Poisner, "A Civic Republican Perspective on the National Environmental Policy Act's Process for Citizen Participation."

136 Section 101 calls for a national dialogue about the environment and universal recognition "that each person has a responsibility to contribute to the preservation and enhancement of the environment." Emphasis added. 42 USC § 4331 (c)
flexible management approaches. Although, the CEQ believes that important gains have been made since NEPA’s adoption, much work remains to be done in the five focus areas. Two key deficiencies the CEQ found are that 1) agencies tend to see the EIS/EA process as an end in itself rather than a tool for better decision-making, and 2) agencies often have already made a decision before they even go through the consultation phase of the EIS/EA process. The result of these two deficiencies in agencies' use of NEPA is that public participation is largely irrelevant and members of the public are dissatisfied with agencies' ability to listen to and address their concerns. The CEQ (at the time the report was written) is concerned about these trends because "NEPA's most enduring legacy is as a framework for collaboration between federal agencies and those who will bear the environmental, social, and economic impacts of their decisions."

Another key report about public participation and NEPA is *Reclaiming NEPA's Potential: Can Collaborative Processes Improve Environmental Decision Making?* This report documents the proceedings of the 1999 workshop on NEPA held in Florissant, Colorado, co-sponsored by the O’Conner Center for the Rocky Mountain West at the University of Montana and the Institute for Environmental and Natural Resources at the University of Wyoming. At the workshop, participants reviewed the basic provisions of NEPA, discussed collaborative models and opportunities for public participation within NEPA, identified barriers to collaborative processes within NEPA, and began to develop strategies for addressing those barriers. Participants essentially agreed on four principles of NEPA:

1) "NEPA is basically sound; the Act itself does not need to be changed;"
2) "NEPA and its implementing regulations provide a solid basis for incorporating more, and improved, options for citizen involvement in NEPA implementation;"
3) "Innovative approaches to public participation, alternative dispute resolution, and collaboration have been tested on the ground and continue to evolve;" and
4) Instead of statutory mandates for collaborative processes, "the emphasis [with NEPA] should be on seeking appropriate opportunities to encourage, fund, and enable these diverse processes, and on evaluating the results to

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138 Ibid. p. iii.
139 Ibid. p. 7.
improve future work."140

With these principles in mind, workshop participants identified key barriers to integrating collaborative decision-making into NEPA. These barriers include: 1) lack of Presidential, CEQ, and agency leadership for collaborative or other types of participatory decision-making processes; 2) unwillingness on the part of agencies to engage State, local, and tribal governments as formal cooperators; 3) lack of confidence in the outcomes and results of collaborative/participatory decision-making; 4) failure to use NEPA strategically, particularly the provisions of Section 101; 5) lack of clear protocols for the inclusion of collaborative/participatory decision-making strategies in the NEPA process; 6) few agency incentives to utilize genuine and innovative public participation strategies; 7) uncertainty regarding the legal parameters for public participation; and 8) lack of resources for agencies to carry out innovative public participation under NEPA.141

Recommended strategies for addressing these barriers ranged from improved leadership, to additional training opportunities for agency personnel regarding public participation, to incentives for implementing Section 101, to improved financial support for innovative public participation processes. In sum, the workshop participants recommended three areas for further national discussion and clarification: 1) the role of national versus local interests in NEPA processes; 2) the extent of decision-making authority for collaborative groups; and 3) cooperating agency status for state and local governments.142

In 2003, the CEQ again revisited the topic of NEPA implementation, appointing a NEPA Task Force to develop recommendations. The report, Modernizing NEPA Implementation, makes several recommendations specifically related to public participation. First, the report calls for improved communication between agencies and members of the public. The Task Force argues that the CEQ should "develop guidance to clarify the appropriate role of communication and information dissemination technologies during the NEPA process to enhance public involvement techniques."143

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140 "Reclaiming NEPA's Potential: Can Collaborative Processes Improve Environmental Decision Making?" p. 4-5.
141 Ibid. p. 40.
142 Ibid. p. iii.
Similarly, the Task Force calls for improved collaboration and communication with agency partners, such as State, local, and tribal governments.144

Other key recommendations from the Task Force relate to education, training, and "lessons learned" from ad hoc public participation experiences. Specifically, the Task Force recommends, "Examining lessons learned by others through CEQ-sponsored meetings, workshops, and trainings" and the development of training courses that focus on early public involvement in NEPA processes, identification of barriers to participatory decision-making approaches, and strategies for overcoming participation barriers.145

Another key recommendation is the development of a "Citizen's Guide to NEPA" to explain "basic NEPA requirements, dispel common misinterpretations, and provide helpful tips about how to participate in the NEPA process."146

The Task Force also sees room within NEPA to expand the role of the public in agency decision-making, particularly in regards to alternative development, the use of adaptive management, the development of categorical exclusions, and Environmental Assessment (EA) processes. The Task Force recommends that the CEQ, "Explore the use of collaboration to develop and refine alternatives by working with a facilitator."147

In regards to adaptive management, the Task Force argues that the CEQ should define the concept, provide agency guidelines for implementing it, develop stringent monitoring standards, and ensure the inclusion of "adequate public involvement mechanisms."148 The Task Force notes, "A successful adaptive management approach to the NEPA process must include appropriate oversight and interaction with regulators and the affected public . . . a collaborative adaptive management process is particularly important when complex processes are involved, or the potential magnitude of the impacts is large."149 Regarding the development of categorical exclusions, the Task Force recommends that agencies "expand public outreach beyond the Federal Register notice and comment period to facilitate more public involvement in changing their categorical exclusions and to scale outreach to the extent of the proposed changes to the categorical

144 Ibid. p. ix.
145 Ibid. p. ix-x.
146 Ibid. p. x.
147 Ibid. p. xvii.
148 Ibid. p. 48-49.
149 Ibid. p. 51.
exclusions."\textsuperscript{150} The Task Force particularly sees room for improved public participation in EA processes, noting that, "EA public involvement activity ranges from none to formal scoping."\textsuperscript{151} Observing that the use of EAs and mitigated Finding of No Significant Impacts (FONSIs) are on the rise among agencies (as opposed to a full EIS process), the Task Force recommends that the CEQ encourage "improvement to EA public involvement processes." \textsuperscript{152}

In making its recommendations for increased public participation in the NEPA process, the Task Force acknowledges potential barriers. The barriers to public participation that the Task Force identifies include lack of a shared vision or ownership in a process; lack of trust among participants; failure on the part of agencies to share information, define common terms, or provide appropriate feedback to the public; inclusion of public participation too late in the NEPA process; lack of clear leadership; and agency personnel's lack of training in participation processes.\textsuperscript{153}

The most recent report making recommendations regarding NEPA implementation is the 2005 \textit{Report of the National Environmental Conflict Resolution Advisory Committee}. Completed at the request of the U.S. Institute for Environmental Conflict Resolution, the goal of this study was to examine the federal government’s implementation of Section 101 of the National Environmental Policy Act (NEPA). In this report, the National Environmental Conflict Resolution Advisory Committee (NECRAC) analyzes federal agencies’ use of environmental conflict resolution (ECR), reviews legislative history and court rulings regarding NEPA, surveys federal agencies regarding their implementation of Sec. 101, and interviews leaders and advocates from affected communities regarding their perceptions of NEPA implementation.

In the report, NECRAC argues that "Under the traditional model for NEPA implementation, agencies announce their plans, share their analyses of potential impacts of a range of options, solicit public comment, make decisions, deal with fallout, if any and move on to the next project."\textsuperscript{154} The Committee notes that this "announce and

\textsuperscript{150} Ibid. p. 63.
\textsuperscript{151} Ibid. p. 71.
\textsuperscript{152} Ibid. p. 72.
\textsuperscript{153} Ibid. p. 25-32.
\textsuperscript{154} "Final Report Submitted to the U.S. Institute for Environmental Conflict Resolution of the Morris K. Udall Foundation." p. 11.
defend" model does not live up to the spirit of NEPA's Section 101. NECRAC argues that the goals of NEPA's section 101 can be achieved with environmental conflict resolution (ECR) techniques\textsuperscript{155} that tap "human and American traits for the common good."\textsuperscript{156} The Committee notes, "The fundamental message of this document is that conflict resolution can no longer be considered an 'alternative' – its principles, conditions, and actions must be standard practice while staying within the statutory confines of the law and respecting legal rights of advocates.\textsuperscript{157}

From its analysis and review, NECRAC identifies a set of ECR “principles and practices” that are effective at increasing the public's role in the NEPA process, including the "commitment of time and energy of all parties, balanced representation among interests, appropriate use of third party neutrals, significant autonomy for the decision making group and procedural fairness."\textsuperscript{158} With these principles in mind, NECRAC makes eight primary recommendations to the U.S. Institute for Conflict Resolution, some of which include:

- Working "with the Council on Environmental Quality to develop approaches to implementing Section 101 of NEPA through environmental conflict resolution;"
- Developing "a 'toolkit' of management approaches for federal executives to transform agency culture in support of environmental conflict resolution and collaboration;"
- Developing "cross-agency training on environmental conflict resolution and collaboration;"
- Continuing "to foster networks and partnerships that promote the best environmental conflict resolution practices and promote the use of technology to facilitate sharing of lessons learned, science, literature and data;" and
- Recommending that "agencies of government, at all levels, take advantage of the resources represented by effective environmental conflict resolution techniques and the principles and policy of NEPA to improve the quality of agency decisions and earn broader support from affected interests."

\textsuperscript{155} "We use the term environmental conflict resolution (ECR) to encompass an array of interest-based, agreement seeking techniques and processes that serve to improve environmental decision making by directly engaging the parties at interest in a creative problem solving process." Ibid. p. 15.

\textsuperscript{156} Ibid. p. 15.

\textsuperscript{157} Ibid. p. 37.

\textsuperscript{158} Ibid. p. 14.

\textsuperscript{159} Ibid. p. 8.
In addition to these recommendations, NECRAC is concerned about ways to include members of "affected communities," which it defines as "traditionally underrepresented individuals and organizations whose interests may be impacted by the issue in conflict." The interests of these affected communities often include "quality-of-life concerns such as health, noise, odor, traffic, solitude, recreation, property values, livelihoods or tribal customs." NECRAC notes that "too often, and for many different reasons, the interests of these communities have not been adequately considered in agency decision making." As with the inclusion of the general public, NECRAC believes that the use of ECR in the NEPA process and specific implementation of the principles of Section 101 "can increase the likelihood that affected communities are adequately considered in the agency decision making process."

In sum, the three objectives of NECRAC's recommendations for NEPA include: 1) “advancing federal agency use of collaboration and environmental conflict resolution” in the NEPA process; 2) "advancing the ability of affected communities to participate effectively in environmental decision-making;” and 3) “advancing the U.S. Institute’s leadership role in assisting federal agencies and communities in resolving environmental conflicts.”

To recap the four NEPA reports presented above, the key arguments made in all is that environmental planning and decision-making could be vastly improved by implementing the substantive provisions of NEPA's Section 101 and by expanding the timing, extent, and influence of public participation in the NEPA process. Each report makes an argument for a high degree of public involvement in natural resources planning and decision-making, arguing that as implemented, public participation under NEPA is limited to information exchange and political posturing. In order to produce truly environmentally and socially sustainable planning decisions, the public must be given the opportunity to take some degree of responsibility for land use actions on federal lands. As these reports conclude, the authority to expand the degree of public involvement and

160 Ibid. p. 21.
161 Ibid. p. 21.
162 Ibid. p. 21.
163 Ibid. p. 8.
influence in natural resources planning and decision-making processes is already provided in NEPA and its implementing regulations.

Additional Federal Provisions for Public Participation.

Besides NEPA, FACA, and the APA, a number of Federal statutes, executive orders, and agency memorandum provide additional authorization and guidance for public participation. In this section, I present brief descriptions of three federal provisions for public participation that are most salient to the BLM planning case study found in Chapter Three.

Administrative Dispute Resolution Act (ADRA) of 1998. The Administrative Dispute Resolution Act,164 first passed by Congress in 1990 and amended in 1996, “explicitly authorizes and encourages federal agencies to use mediation, conciliation, arbitration, and other techniques for the prompt and informal resolution of disputes.”165 The ADRA is intended for application to both internal and external agency conflicts and has become a useful authorization tool for myriad forms of environmental conflict resolution.166 To meet the requirements of this act and similar statutes,167 the BLM created the Alternative Dispute Resolution (ADR)/Conflict Prevention Program in 1996. This program is discussed at the end of the chapter.

Secure Rural Schools and Community Self-Determination Act of 2000. In 2000, the U.S. Congress passed the Secure Rural Schools and Community Self-Determination Act (the Payments to Counties Act) of 2000168 to benefit both federal agencies and timber-dependent counties through the use of collaborative processes. Although this act expired in 2006, its effects can still be seen.

The two primary goals of the law were: 1) to stabilize payments to counties by providing a funding “safety net”169 and 2) to provide funding for the “backlogs in infrastructure maintenance and ecosystem restoration” projects on USFS and BLM O&C

\[164 \text{Public Law 104-320, as amended}\]
\[165 \text{Van de Wetering, "The Legal Framework for Cooperative Conservation." p. 10}\]
\[166 \text{Joshua Bolten and James L. Connaughton, "Office of Management and Budget and the President’s Council on Environmental Quality Memorandum on Environmental Conflict Resolution," November 28, 2005.}\]
\[167 \text{Alternative Dispute Resolution Act of 1998, Public Law 105-315.}\]
\[168 \text{Public Law 106-393, January 24, 2000.}\]
\[169 \text{Public Law 106-393 § 2 (a)(13)}\]
railroad lands.\footnote{170 Public Law 106-393 § 2 (a)(14)} The Payment to Counties Act\footnote{171 The Act’s sponsors were Senators Wyden and Craig of Oregon and Idaho, respectively, and Representatives Deal and Boyd of Georgia and Florida, respectively. The process was initiated by the National Forest Counties and Schools Coalition, a group which represents county governments, public schools and private organizations from “25 percent states.” See Robert Cantine and Rocky McVay, "The Secure Rural Schools and Community Self-Determination Act of 2000 (Hr 2389/Pl 106-393)—“the Oregon Experience”: A Toolbox for Use in Implementing the Safety-Net Legislation." (Association of O&C Counties and Association of Oregon Counties, May 15, 2001).} granted a sum of money each year (for a total of five years)\footnote{172 The Payments to Counties Act expired in 2006 after Congress failed to reinstate the act. See Public Law 106-393, title II, § 208 and Public Law 106-393, title III, § 303.} to counties equal to the average of their three highest \textit{“25 percent”} or \textit{“50 percent payments”} between 1986 and 1999.\footnote{173 Since 1908, 25 percent of the yearly revenues from timber sales on USFS lands have been returned to the county governments to fund schools and roads (See Public Law 106-393 § 2 (a)(6)), and since 1937, 50 percent of the yearly revenues from timber sales on BLM O&C railroad lands have been returned to the general funds of county governments where the timber was harvested (See Public law 106-393 § 2 (a)(7)). The drastic reduction in timber harvests on Federal lands in the 1990s significantly lowered the “payments to counties,” thereby negatively impacting funding for schools, infrastructure, and other county services.} Under the act, county governments had two options for receiving funds: they could either take their traditional portion of the \textit{“25 percent payment”} (\textit{“50 percent payments”} in the case of O&C counties) or they could choose the \textit{“full payment option.”} Counties that chose the \textit{“full payment option”} elected to put 80 – 85 percent of their payments in their school and road funds\footnote{174 Public Law 106-393, title I, § 102 (d)(1)(A)} (or general funds for BLM payments)\footnote{175 Public Law 106-393, title I, § 103 (c)(1)(A)} and 15 – 20 percent of their payments towards Title II or Title III projects.

\textit{Projects}. Title II projects were those which the Forest Service and BLM wanted to do on their respective lands but lacked the funding to do so or were projects that private citizens recommended for Forest Service or BLM lands. They included road repair and decommissioning, watershed restoration, and other forest-related projects on Federal lands (or that benefit Federal lands). Title II projects were selected by collaborative stakeholder groups, known as Resource Advisory Committees (RACs) and were approved by the Secretary of Agriculture (for USFS lands) or the Secretary of the Interior (for BLM lands).\footnote{176 Public Law 106-393, title II, § 201 (5)(A-B), § 204, and § 205}

Title III projects were projects chosen by individual county governments and included: search and rescue/emergency services, fire prevention and county planning
projects, forest-themed educational activities, and Community Forestry programs. A county’s Board of Commissioners selects these projects.177

Resource Advisory Committees (RACs). In terms of public participation, the section of the Payments to Counties Act that is most interesting was its provision for Resource Advisory Committees (RACs) to guide the Forest Service and the BLM in the expenditure of Title II projects.

According to the act, the purpose of RACs was "to improve collaborative relationships and to provide advice and recommendations to the land management agencies [Forest Service and BLM]."178 RACs were also intended to improve public participation in natural resources by providing "frequent opportunities for citizens, organizations, tribes, land management agencies, and other interested parties to participate opening and meaningfully, beginning at the early stages of the project development process under this title."179

Similar to the BLM's RACs discussed later in this chapter, the RACs established under the Payments to Counties Act had to have balanced membership. Specifically, each RAC had 15 members appointed by either the Secretary of Agriculture or the Secretary of the Interior to 3-year terms.180 Of the 15 members, five had to be from each of three categories.181 The first category included representatives of organized labor, recreation, energy and mineral development, the commercial timber industry, and Federal grazing and land use permit holders.182 Category two included representatives of nationally, regionally, and locally recognized environmental organizations, dispersed recreational activities, archeological and historical interests, and nationally or regionally recognized wild horse and burrow interest groups.183 Finally, category three included persons elected to state (or their designee), county, or local office, members of American Indian tribes within or adjacent to the RAC’s area, schoolteachers and school officials, and representatives of the public at large.184

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177 Public Law 106-393, title III
178 Public Law 106-393, title II, § 205 (a)(2)
179 Public Law 106-393, title II, § 205 (b)(4)
180 Public Law 106-393, title II, § 205 (c)(1)
181 Public Law 106-393, title II, § 205 (c)(1)
182 Public Law 106-393, title II, § 205 (c)(2)(A)
183 Public Law 106-393, title II, § 205 (c)(2)(B)
184 Public Law 106-393, title II, § 205 (c)(2)(C)
Any project recommended by Forest Service RACs to the Secretary of Agriculture or by BLM RACs to the Secretary of the Interior had to include specific elements, including: the project’s purpose, completion timeline, cost, funding source (if in addition to Title II funding), expected ecological outcomes, expected economic outcomes, a detailed monitoring plan, and a public interest assessment.\textsuperscript{185} The Secretaries of Agriculture and Interior accepted or rejected RACs' recommended projects based on the following: adherence to all Federal laws (this would include laws such as NEPA and the ESA), compatibility with current USFS and BLM resource management plans, and potential to “enhance forest ecosystems and restore and improve land health and water quality.”\textsuperscript{186}

\textbf{Effects.} Although the Payments to Counties Act expired in 2006, the effects of the RACs can still be seen in areas where they had been in place. For example, in the BLM planning case study presented in Chapter Three, BLM staff members continue to rely on the former members of RACs as points of contact with various interest groups and communities. The relationships formed through the Title II project selection process proved important when the BLM began public outreach and scoping for the Western Oregon Plan Revision (WOPR) process and will continue to be important as the agency attempts to build support for its draft alternatives and draft EIS.

\textbf{Executive Order (EO) 13352 “Facilitation of Cooperative Conservation”}.

The goal of this executive order is to improve conservation through the promotion of cooperation within federal agencies and among collaborating agencies and organizations, as well as to eliminate barriers to those cooperative processes that may currently exist in federal policy. Executive Order 13352 was issued by President George W. Bush on August 26, 2004. Under the order, Federal agencies are required to promote cooperative conservation, defined as:

Actions that relate to use, enhancement, and enjoyment of natural resources, protection of the environment, or both, and that involve collaborative activity among Federal, State, local, and tribal governments, private for-profit and nonprofit institutions, other nongovernmental entities and individuals.\textsuperscript{187}

\textsuperscript{185} Public Law 106-393, title II, § 203 (b)(1-7)
\textsuperscript{186} Public Law 106-393, title II, § 204 (a)(1-5).
\textsuperscript{187} 69 Federal Register 167, 30 August 2004, p. 52989
EO 13352 further ordered the Council on Environmental Quality (CEQ) to convene the White House Conference on Cooperative Conservation, which was held August 29-31, 2005 in St. Louis, Missouri. Conference participants included representatives of Federal, State, and Tribal governments as well as private and community actors. The purpose of the conference was to promote the concept of cooperative conservation among these participants and to begin the process of integrating collaborative approaches in environmental conservation initiatives. 

*Effects of Cooperative Conservation.* Since implementation in 2004, cooperative conservation has become a priority for many federal resource management agencies, particularly those in the U.S. Department of the Interior (DOI). The primary impact of cooperative conservation on federal natural resources policy has been as a funding mechanism. It has become the funding justification for many conservation efforts undertaken by federal resource agencies. DOI's FY 2007 budget included $322 million for "cooperative conservation programs." Programs funded under the title of cooperative conservation in this budget did include some new initiatives, such as the Cooperative Conservation Challenge Cost Share Program, but primarily consisted of ongoing initiative such as, North American Wetland Conservation Act Grants, the Land and Water Conservation Fund, and Healthy Forest Initiative fuels reduction projects.

In the summer of 2006, the Departments of Interior, Commerce, and Agriculture, along with the Environmental Protection Agency and CEQ, held a series of eight "listening sessions" throughout the country to promote cooperative conservation. Organized as public hearings, officials from these agencies sat while interested members of the public gave 3-minute comments. For many of these listening sessions, interest groups rallied their membership to make presentations at the sessions. The cooperative conservation listening sessions became venues primarily for prepared statements, either promoting or opposing,

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reform of the endangered species act, rather than providing an opportunity for any real dialogue between members of the public and key agency officials.

**Bureau of Land Management Land Use Planning**

A Brief History of the Bureau of Land Management (BLM)

Today, the BLM manages 264 million surface acres of public land and administers 700 million acres of mineral estate, but until 1946, the BLM, did not even exist as a discrete agency. In that year, President Harry S. Truman, through an Executive Reorganization, combined the General Land Office (GLO) and the Department of the Interior's Grazing Service. Both had been controversial organizations during their tenure.

The General Land Office (GLO). The General Land Office (GLO) was created in 1812 to oversee the disposal of the public domain in the Mid-West and West. In this capacity as the administrator of the various homesteading, settlement, and Statehood acts of the 19th century, the GLO facilitated the transfer of over 1 billion acres of public domain to state and private ownership. In the 1870s, it became apparent that the GLO had been "discharging its duties so as to benefit the vested interests of the time at the expense of the individual homesteader." To counter this abuse, the best tracts of land administered by the GLO were withdrawn from the public domain. Unfortunately, what land remained was primarily rangeland, and under the watch of the GLO, was severely depleted due to heavy, unregulated grazing. Making this free-reign use of the public domain even worse, competing cattle and sheep grazers entered into a bitter range war, leading to further depletion of the range resource. According to one author, "Cattle and sheepmen roamed the public domain, grabbing choice grazing areas for their exclusive use, but competitors cut the wire. Resorting to violence, shepherders and

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195 Ibid.
cowboys "solved" their disputes over grazing lands by slaughtering rival livestock and murdering rival stockmen."196

By the end of World War I the public domain administered by the GLO (about 160 million acres) was wrapped in controversy and in poor ecological condition. In 1929, President Herbert Hoover appointed a commission to study the situation. The Garfield Commission, as it came to be called, recommended that the remaining public domain be transferred to the states. This plan received wide criticism, especially from eastern congressmen and, surprisingly, from the western livestock associations. When the Democrats gained control of the House in 1930, they tabled the Garfield Commission's plan.197

The Taylor Grazing Act. In 1934, Congressman Edward Taylor, a rancher from Colorado, with the support of Secretary of the Interior Harold Ickes and President Franklin D. Roosevelt pushed through legislation to reform grazing practices on the public domain.198 The Taylor Grazing Act (TGA) of 1934 was intended "to have minimal impact on western grazing interests, implementing only a modicum of conservation and 'systematized' use of the range."199 Under the authority of the TGA, the Department of the Interior formed the Division of Grazing, later called the Grazing Service, to oversee the issuance of grazing permits and collection of AUM fees.200 In order to keep western livestock interests happy, the Director of the Grazing Service organized the agency as a network of local "Grazing Advisory Boards" rather than as a traditional top-down bureaucracy.201 The Grazing Boards were embraced by western livestock and sheep interests, who were concerned about extensive Federal oversight of the range, and came to be called "Home Rule on the Range."202 Unfortunately, as legal scholar Todd Olinger observes:

197 Ibid.
199 Ibid. p. 652.
202 Ibid. p. 653.
History has shown that Grazing Boards were dominated by large-scale cattleman and woolgrowers who were not able to place the interests of their communities and the environment above their own parochial interests. Small ranchers throughout the West complained that the Grazing boards were controlled by self-interested, locally powerful ranchers, who showed a lack of concern for smaller operators.\footnote{Ibid. p. 653.}

Despite their controversial role, the Grazing Boards would retain some element of power over range management until 1985 when their authority expired under the Federal Land Policy and Management Act (FLPMA) of 1976.\footnote{Ibid.}

The BLM Becomes an Agency. In the wake of continued deterioration of the public domain rangeland and the entanglement of the Grazing Service in the controversy of local control versus national interest, President Harry Truman made the decision in 1946 to reorganize the Grazing Service and the General Land Office into one new department, the Bureau of Land Management.\footnote{Clarke and McCool, \textit{Staking out the Terrain: Power and Performance among Natural Resource Agencies}.} Truman's decision never received Congressional backing, so the Bureau of Land Management would continue without an organic act for thirty years. The situation of the BLM as an agency was even more insecure because the lands it managed were relatively unwanted (except by livestock interests) and in extremely poor condition due to overgrazing. Political scientists, Jeanne Nienaber Clarke and Daniel C. McCool describe the BLM's position:

They received little support from non-Western congressman, who exhibited sustained interest only in the budgetary aspects of the Bureau's program; they more or less ignored rangeland conservation and other issues of potential salience to them. Because of this situation, for most of its history the Bureau was not able to efficiently manage its large land holdings; rather, it negotiated. Few changes were put through over strong ranching opposition.\footnote{Ibid. p. 162.}

The BLM also continued to be held hostage to local ranching interests due to its locally-based management system. Unlike hierarchical agencies such as the Forest Service, the BLM has traditionally left its field managers in one location for extended periods, making them susceptible to local pressures. Further, up until recently, the BLM has been dominated professionally by range managers, many of whom were already...

\footnote{Ibid. p. 653.}
\footnote{Ibid.}
\footnote{Clarke and McCool, \textit{Staking out the Terrain: Power and Performance among Natural Resource Agencies}.}
\footnote{Ibid. p. 162.}
Westerners and from ranching families.\textsuperscript{207} Prior to 1976, primary employment disciplines in the BLM consisted of Range Conservationists, Land Surveyors, Geologists, Foresters, and Administrative Assistants. Today, the number of disciplines has expanded to include Wildlife Biologists, Wild Horse and Burro Specialists, Recreation Specialists, Economists, Hydrologists, Archaeologists, Sociologists, and Land Use Planners as well.\textsuperscript{208}

The BLM Gets an Organic Act. In 1964, Congress authorized the Public Land Law Review Commission to review existing public land laws and to attempt "to find a permanent political and organizational solution for the remaining public domain."\textsuperscript{209} Most of the Commission's recommendations were in regards to the BLM. In 1976, Congress acted on some of the recommendations put forth in the Commission's 1970 report, \textit{One Third of the Nation's Land}, and passed the Federal Land Policy Management Act (FLPMA). They followed in 1978 with a complementary statute, the Public Rangeland Improvement Act (PRIA).\textsuperscript{210} These two statutes finally legitimized the BLM as an agency and clearly defined the agency's management responsibilities. As the BLM website explains:

> Many land and resource management authorities were established, amended, or repealed by FLPMA, including provisions on Federal land withdrawals, land acquisitions and exchanges, rights-of-way, advisory groups, range management, and the general organization and administration of BLM and the public lands. FLPMA also established BLM as a multiple-use agency — meaning that management would be accomplished on the basis of multiple use and sustained yield unless otherwise specified by law.\textsuperscript{211}

Finally, FLPMA mandated the first comprehensive land use planning for BLM lands.

The Sagebrush Rebellion. After it became apparent that under FLPMA the Federal government not only intended to retain possession of the remainder of the public domain, but also to regulate grazing, wildlife, native plants, and predators on those lands
as well, the western ranching community became outraged. In 1979, the Sagebrush Rebellion started when the Nevada Legislature passed a resolution calling for state control of BLM lands. Under the conservative Reagan administration, the Sagebrush Rebellion found additional support, particularly from Secretary of the Interior James Watt and Bureau of Land Management Director Robert Burford. The Reagan administration's FY 1982 budget reflected the priorities of the Sagebrush Rebellion. In order to reduce what Secretary Watt deemed, "analysis-paralysis," funding for planning, data collection, inventories, and EIS preparation was greatly reduced in the budget. In addition, the Reagan budget increased funding for oil and gas leasing programs. The Sagebrush Rebellion eventually lost steam as a movement in the mid-1980s due to several factors, including the increased public concern over Watt's offshore drilling policies and reduced environmental review, Congressional concern over increased budget requests for the BLM's oil and gas program, and the reorganization of the Department of the Interior, including the creation of the Mineral Management Service (MMS) from former BLM programs.

In the 1990s, as the rural West's demographics shifted from rural to suburban and urban, the Sagebrush Rebellion emerged again in the form of the Wise Use movement and the "County Supremacy Movement." These movements are being driven by traditional public land users' anxiety over the increasing presence of recreation and preservation interests on public lands. Traditional users see the increasing demand for public resources, as well as the growing power of alternative user groups, and fear that their traditional use and control of public range, forest, and water resources for ranching, logging and farming are threatened. Members of the Wise Use and County Supremacy movements argue for local control of resources and consider Federal management of public lands to be an incursion of state and private property rights. Although not as powerful as the Sagebrush Rebellion, these movements continue to apply pressure on federal resource agencies, and the BLM in particular.

212 Clarke and McCool, Staking out the Terrain: Power and Performance among Natural Resource Agencies.
213 Ibid.
214 Ibid.
Rangeland Reform. During the Reagan and the first Bush administration, the BLM regained its reputation as a captured agency. The commodity-focus of these administrations conflicted with the BLM's mandate for multiple-use management. In 1992, environmentalists latched onto the new Clinton administration, particularly Secretary of the Interior Bruce Babbitt, and once again called for rangeland reform. Babbitt's notice of proposed rulemaking, dubbed "Rangeland Reform '94" called for five key changes to BLM policy:

The proposal called for: (1) more than doubling the grazing fee to $4.28 over a three year period; (2) creating a new set of mandatory national standards and guidelines for ecosystem management; (3) reducing permit terms to less than ten years for ranchers who failed to meet national guidelines; (4) replacing the single-interest Grazing Advisory Councils with multiple-interest advisory boards; and (5) ending the assignment of water rights on public lands to grazing permittees.216

In the West, Babbitt's reforms were greeted with great opposition, leading members and allies of the Wise Use movement to call for a second Sagebrush Rebellion. Due to pressure from western ranching interests, Congress failed to pass appropriations for Babbitt's reforms. After a three year battle with Congress for statutory reform and some attempts to use collaborative processes, notably the Colorado Resource Roundtable and the Gunnison Group, in 1996 Babbitt was able to accomplish some limited administrative rangeland reform through revised regulations.217 In terms of public participation, the most important aspect of Babbitt's rangeland reform was the creation of FACA-chartered Resource Advisory Committees (RACs) to replace Grazing Advisory Boards. Unlike the Grazing Advisory Boards, RACs are purely advisory and must have a membership that represents diverse interests, including national environmental and recreation interests.218

The BLM Today. The BLM continues to struggle with issues of agency capture. Under the current Bush administration, it has received considerable criticism for its perceived catering to the will of the oil and gas industry, OHV users, and grazing interests, as well as for its extensive use of categorical exclusions from NEPA's

217 Ibid.
218 Ibid.
environmental review requirements. In particular, the agency's new grazing regulations have been widely criticized by environmental interests. After its 2005 proposed grazing regulations were litigated in July 2005, the agency issued an addendum EIS in March of 2006, which currently is also held up in court. Major controversies surrounding these new grazing regulations include the elimination of "conservation use" grazing permits; joint ownership of rangeland "improvements," such as fencing and watertanks; a narrowed definition of "interested publics;" a decrease in times the BLM must include interested publics in planning and administrative processes; and the modification of rangeland health monitoring standards.

The BLM is also receiving a great deal of criticism over its expedited process for writing Resource Management Plans (RMP). RMPs, which are discussed in detail later in this chapter, are the primary land use plans for the BLM. In a 2000 report to Congress, the BLM admitted that many of its existing RMPs are outdated and ill-equipped "to address areas with vulnerable, sensitive or at-risk resource values." Out of 162 existing RMPS, the BLM concluded that most were significantly outdated or quickly aging. In fact, the agency only identified 21 RMPS as "current." Congress appropriated nearly $25 million in FY 2001 and $33 million in FY 2002 for plan revisions. The BLM projects its annual budget needs for RMP revision will be $50 million per year for the next 10-15 years, but has yet to receive this level of funding from Congress. The BLM has identified 21 RMPs as high priority plans that need immediate revisions, often because of pending oil and gas development or increased OHV use. In

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222 Ibid.
Another criticism of the BLM is related to a larger criticism of the Bush Administration and its handling of lawsuits related to resource extraction on federal lands. Several recent law reviews, including one by legal scholar Michael Blumm,\textsuperscript{226} argue that the Bush administration has developed a sophisticated method for using the judicial system to subvert environmental statute and regulations that are considered costly or a hindrance to the interests of commodity groups. The accusation is that the Bush Administration encourages commodity groups to litigate a particular Forest Service or Department of the Interior (for example, BLM) regulation or plan. Then, instead of defending the litigated policy or plan, the Bush administration either fails to provide a strong defense or settles the lawsuit, often "promising to adopt reforms advocated by the commodity interest litigators."\textsuperscript{227} Michael Blumm calls this political maneuvering a "get sued and supply a sweetheart settlement" policy and claims the Bush administration has used it with the Roadless Rule, wilderness designations, snowmobiling in Yellowstone, and the Northwest Forest Plan. The settlement agreement regarding timber production on O&C lands that is the subject of my case study in Chapter Three is specifically cited by Blumm as an example of this "sue and settle" policy. The political nature of this settlement agreement will be discussed further in Chapter Four.

**Public Participation in BLM Land Use Planning.**

**History and Purpose of BLM Land Use Planning.**

**History of BLM Land Use Planning.** Many trace the origins of Federal natural resources planning back to Gifford Pinchot’s “working plans.”\textsuperscript{228} As chief of the Department of the Interior’s Division of Forestry\textsuperscript{229} (the predecessor to the Forest

\textsuperscript{225} Southern Utah Wilderness Alliance, the Wilderness Society, and the Natural Trails and Waters Coalition, "Bureau of Land Management Lax Management: The BLM Is Preparing a Policy That Would Leave Land Unprotected."


\textsuperscript{227} Ibid. p. 10397.


\textsuperscript{229} The Division of Forestry was established in the Department of the Interior by an act of Congress in 1886. Later, the agency was given management authority and administrative responsibility by the Organic
Service, Pinchot implemented these working plans, which were in actuality timber management plans, in 1899 to protect watersheds and to ensure a sustainable supply of timber from federal Forest Reserves and private forest lands. In 1900, also at the recommendation of Pinchot, Secretary of the Interior Ethan Hitchcock instructed the Division of Forestry to begin rangeland planning in order to protect watersheds from damage due to the overgrazing of sheep herds. In 1905, when the Division of Forestry transferred to the Department of Agriculture, Pinchot continued the grazing policies that had been adopted by the Department of the Interior.

Even after its establishment as an agency in 1946 through President Harry Truman's executive reorganization, the BLM's role in natural resources planning was minimal. It was not until 1964 when Congress passed the Classification and Multiple Use Act (CMUA) that any type of comprehensive planning occurred on BLM lands. Similar to the Forest Service's Multiple Use and Sustained-Yield Act (MUSYA) of 1960, the CMUA was not a true planning statute, but rather a new directive for management that forced the BLM to begin to consider new uses (or in some cases non-use) of federal lands. The act expired in 1970 and was largely unsuccessful in regards to classification and inventorying of BLM lands. However, it did lay the groundwork for the planning mandates of the Federal Lands Policy and Management Act (FLPMA) of 1976. Today, the principle statutes authorizing the BLM to plan and manage its

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230 The Forest Service became the new name of the Division of Forestry shortly after the passage of the Transfer Act of March 3, 1905, ch. 1405, 33 Stat. 872.
231 Forest Reserves (predecessors to National Forests) were authorized by Congress under the General Land Law Revision Act of 1891. Later, the Department of the Interior was given the authority to administer the Forest Reserves and regulate their use with the Organic Administration Act of 1897. Red Lodge Clearinghouse, "National Forest Management," Accessed on December 4, 2006, http://www.redlodgeclearinghouse.org/nationalforestmanagement.html
233 Before 1946, the Department of Interior's Grazing Service was responsible for non-national forest grazing districts and the administration of the Taylor Grazing act. The Grazing Service and the General Land Office were combined in 1946 to form the Bureau of Land Management. Coggins, Wilkinson, and Leshy, Federal Public Land and Resources Law. p.138.
234 43 USC Sec. 1411-1418 (expired 1970)
235 16 USC Sec. 528-531
236 Rasband, Salzman, and Squillace, Natural Resources Law and Policy. p. 916; Public Law 94-579, October 21, 1976, as amended (43 USC § 1701-1785)
237 The Department of Interior planning regulations (43 CFR Subpart 1601 and Subpart 1610) also cite planning authority from section 3 of the Federal Coal Leasing Amendments Act of 1976 (30 USC 201(a));
designated federal lands are FLPMA and the Public Rangelands Improvement Act (PRIA) of 1978.\textsuperscript{238}

The BLM land use plans examined in this paper are Resource Management Plans (RMPs), which usually encompass a BLM District or Resource Management Area.\textsuperscript{239} FLPMA mandates that each RMP address nine issues: 1) multiple use and sustained yield; 2) integrated, interdisciplinary considerations of physical, biological, economic, and other sciences; 3) areas of critical environmental concern; 4) public land inventories of resources and values; 5) present and potential uses of federal lands; 6) relative scarcity of values associated with particular sites; 7) long-term versus short-term benefits; 8) compliance with applicable state and federal statutes; and 9) coordination with other federal, state and tribal statutes, plans, inventories, and management activities.\textsuperscript{240} Given the scope of an RMP, these plans are considered a major Federal action and must undergo full-NEPA review in the form of an Environmental Impact Statement (EIS).\textsuperscript{241}

Whenever possible, the EIS and RMP are published as a single document.

Besides meeting the mandates of FLPMA, PRIA, and NEPA, a RMP must meet the requirements of a host of other statutes, listed in detail in the BLM 1601 Land Use Planning Manuel, Section 3. At present, the BLM has 162 RMPs that are supposed to be updated every 15-20 years and amended as needed; however, as discussed earlier in this chapter, the agency is far behind this revision schedule. Each plan typically covers 1-2 million acres of public land and is generally written at the District level.\textsuperscript{242} It typically takes 3 or more years to complete a comprehensive RMP, and the cost of each can range

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\textsuperscript{240} 43 USC 1712 (c)(1-9)


\textsuperscript{242} "Land Use Planning Overview: Background and Purpose," Accessed on March 8, 2008.
from $2.5 million to over $4 million. In FY 2001, the BLM began the process of updating all its RMPs, beginning with 21 high priority plans.

**Purpose of BLM Land Use Planning.** There are several challenges that natural resources planning processes, such as those outlined by FLPMA and PRIA, seek to address. Scientific uncertainty and values conflicts are two of these challenges. Planning seeks to address the former through data collection requirements. The underlying assumption is that agency experts armed with the best available scientific information can make rational management decisions regarding our natural resources that best meet the needs of the American public. A second purpose of planning, and one that can often conflict with the rational comprehensive nature of planning as described above, is the resolution of values conflicts. For agencies with multiple use mandates, such as the BLM, planning processes can become bargaining opportunities where competing interest groups jockey for accommodation. In addition, most planning efforts must address biophysical problems and issues that extend beyond the political boundaries of federal agencies, leading agencies, such as the BLM, to attempt to accommodate the values and interests of other political jurisdictions, such as state and local governments, through natural resources planning.

Regarding BLM planning specifically, the Supreme Court's ruling in the *Norton v. SUWA* (June 2004) case created some ambiguity relating to the purpose and binding nature of RMPS. In this case, the Supreme Court's conclusion was that RMPs are simply a statement of priorities and that, "People cannot generally compel the agency to implement discretionary actions or pursue goals in their plans."

**Statutory and Regulatory Mandates for Public Participation.** Besides the mandates for public participation from such acts as the APA, FOIA, FACA, and NEPA, the BLM also has agency-specific mandates for public participation. As the agency's principle planning statute, FLPMA is the primary authorization for public participation in BLM land use planning. Statute alone does not provide the only guidance for the BLM's

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land use planning process and the role of the public. BLM employees are also required to utilize the BLM Planning Regulations,\textsuperscript{247} which implement FLPMA.

\textit{Federal Land Policy and Management Act (FLPMA) of 1976:} Although in the Federal Land Policy and Management Act (FLPMA) Congress explicitly mandates the Bureau of Land Management to include the public in its planning and decision-making processes, calls for specific types of public participation strategies (beyond notice and comment periods) are not made. Rather, FLPMA provides a rather broad definition:

The term 'public involvement' means the opportunity for participation by affected citizens in rule making, decision making, and planning with respect to the public lands, including public meetings or hearings held at locations near the affected lands, or advisory mechanisms, or such other procedures as may be necessary to provide public comment in a particular instance.\textsuperscript{248}

Later in the act, Congress directs the Secretary of the Interior to “establish procedures, including public hearings where appropriate, to give the Federal, State, and local governments and the public adequate notice and an opportunity to comment upon the formulation of standards and criteria for, and to participate in, the preparation and execution of plans and programs for, and the management of, the public lands.”\textsuperscript{249}

In the section specific to planning, FLPMA reiterates this broad call for public participation, mandating “meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions.”\textsuperscript{250} This section also requires the BLM to coordinate its planning efforts with other governments, including state, local, and tribal entities, and to attempt to maintain some plan consistency across such geopolitical boundaries.\textsuperscript{251}

The FLPMA regulations’ only other considerations for public participation can be found in the section on advisory councils.\textsuperscript{252} This regulation authorizes advisory councils of 10-15 members appointed to represent “the various major citizens’ interests

\textsuperscript{247} 43 CFR 1600; Mandates for public participation are found specifically in 43 CFR, Chapter II, § 1610.2.
\textsuperscript{248} 43 U.S.C.A. § 1702 (d)
\textsuperscript{249} 43 U.S.C.A. § 1739(e)
\textsuperscript{250} 43 U.S.C.A § 1712(c)(9)
\textsuperscript{251} 43 U.S.C.A. § 1712(c)(9)
\textsuperscript{252} FLPMA also addresses cooperative agreements and studies in 43 U.S.C.A. § 1737. Although public participation may be included through such agreements, primary forms of participation are not authorized through this part of the statute.
concerning the problems relating to land use planning or the management of the public lands located within the area for which an advisory council is established."\(^{253}\) The purpose of such councils is to "furnish advice to the Secretary with respect to the land use planning, classification, retention, management, and disposal of the public lands within the area for which the advisory council is established."\(^{254}\)

**BLM Planning Regulations.** The BLM planning regulations do not provide a definition for "participation," but define the "Public" as "affected or interested individuals, including consumer organizations, public land resource users, corporations and other business entities, environmental organizations and other special interest groups and officials of State, local, and Indian tribal governments."\(^{255}\) The section of the planning regulations specific to public participation provides a broad mandate similar to FLPMA, calling for "meaningful" public participation.\(^{256}\) The regulations, however, also add that, "Public involvement in the resource management planning process shall conform to the requirements of the National Environmental Policy Act and associated implementing regulations."\(^{257}\) In addition, it is interesting to note that the planning regulations call for location-specific public participation strategies: "Public notice and opportunity for participation in resource management plan preparation shall be appropriate to the areas and people involved."\(^{258}\)

The additional sections of the planning regulations dedicated to public participation outline the timing of public notice and comment periods in the RMP process,\(^{259}\) call for the notification of interested parties prior to beginning the RMP process,\(^{260}\) and mandate the publication and public availability of planning documents.\(^{261}\) These sections of the BLM planning regulations are not detailed here, but rather, will be discussed below in the section, "Steps of the BLM Planning Process."

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\(^{253}\) 43 U.S.C.A. § 1739(a)  
\(^{254}\) 43 U.S.C.A. § 1739(d)  
\(^{255}\) 43 CFR, Chapter II, § 1601.0-5(h)  
\(^{256}\) 43 CFR, Chapter II, § 1610.2  
\(^{257}\) 43 CFR, Chapter II, § 1610.2 (a)  
\(^{258}\) 43 CFR, Chapter II, § 1610.2 (f)  
\(^{259}\) 43 CFR, Chapter II, § 1610.2 (b,c,e,f)  
\(^{260}\) 43 CFR, Chapter II, § 1610.2 (d)  
\(^{261}\) 43 CFR, Chapter II, § 1610.2 (g,h)
Steps of the BLM Planning Process. The following section describes the steps of the BLM land use planning process. As discussed above, the BLM has planning regulations to ensure that the agency meets the mandates of FLPMA. The following section relies primarily on these planning regulations. In addition to the planning regulations, BLM personnel rely on policy guidance from 516 Department Manual, Chapter 11, the BLM H-1790-1 National Environmental Policy Act Handbook, the BLM 1601-Land Use Planning Manual, and the BLM H-1601 Land Use Planning Handbook. All of these documents help flesh out the meaning of public participation in the BLM's RMP process.

In January 2006, the BLM issued proposed revisions to the agency's NEPA manual. Specific changes related to public participation were proposed as new sections, "Public Involvement" and "Management Training (Alternative Dispute Resolution (ADR), Negotiation, or Facilitation)." The proposed manual additions are below:

E. Public Involvement:

(1) The importance of involving the public early at the time, level, and phase of the NEPA analysis process, decision, and implementation stage, cannot be overstated. Therefore, the public shall be involved early and continuously as appropriate throughout the NEPA process. The type and level of public involvement shall be commensurate with the NEPA analysis needed to make the decision at hand. Management training for BLM employees hosting a public meeting is addressed in Section “H” below.

(2) Where feasible, implement consensus based decision making. However, when consensus cannot be reasonably reached, the Bureau has the exclusive responsibility for making the decision and shall exercise that responsibility in a timely manner.

H. Management Training (Alternative Dispute Resolution (ADR), Negotiation, or Facilitation)

Departmental guidance contained in Environmental Statement Memorandum Number “ESM03-4”, dated July 2, 2003, makes it mandatory that within three years of the date of this memorandum, any...
BLM employee hosting a public meeting for the purpose of addressing NEPA compliance must have participated in some form of training listed in ESM03-4, Section 5 “Management Training”. The training can be separate or a combination of course topics as listed above at some stage in their career.  

Typical RMP Process. The process for writing a typical BLM RMP consists of nine steps, which simultaneously incorporate the NEPA process: 1) identification of issues,\textsuperscript{268} 2) development of planning criteria,\textsuperscript{269} 3) inventorying of data and information collection,\textsuperscript{270} 4) analysis of the management situation,\textsuperscript{271} 5) formulation of alternatives,\textsuperscript{272} 6) estimation of the effects of the alternatives,\textsuperscript{273} 7) selection of the preferred alternative,\textsuperscript{274} 8) selection of the Resource Management Plan,\textsuperscript{275} and 9) monitoring and evaluation.\textsuperscript{276} For some of these steps, specific forms of public participation are mandated; for other steps, agency personnel are granted a great deal of discretion to experiment with public participation techniques. In addition, if there are one or more Resource Advisory Councils (RACs)\textsuperscript{277} for the planning area, the BLM is required to keep them informed and seek out their views for consideration throughout the planning process.\textsuperscript{278} The role of public participation in each of these steps is outlined in the section below. Please see Figure 2 below for a visual depiction of the BLM planning process.

\textsuperscript{267} Federal Register 16, 25 January 2006, p. 4163.
\textsuperscript{268} 43 CFR, Chapter II, § 1610.4-1
\textsuperscript{269} 43 CFR, Chapter II, § 1610.4-2
\textsuperscript{270} 43 CFR, Chapter II, § 1610.4-3
\textsuperscript{271} 43 CFR, Chapter II, § 1610.4-4
\textsuperscript{272} 43 CFR, Chapter II, § 1610.4-5
\textsuperscript{273} 43 CFR, Chapter II, § 1610.4-6
\textsuperscript{274} 43 CFR, Chapter II, § 1610.4-7
\textsuperscript{275} 43 CFR, Chapter II, § 1610.4-8
\textsuperscript{276} 43 CFR, Chapter II, § 1610.4-9
\textsuperscript{277} 43 USC 1739; Here, I am referring to both BLM RACs and RACs created under the authority of the Secure Rural Schools and Community Self-Determination Act of 2000.
\textsuperscript{278} 43 CFR, Chapter II, § 1610.3-1(f)
**Step 1: Identification of Issues.** This step coordinates with the scoping requirements of NEPA. At this stage, the BLM announces its intention to initiate a planning process, beginning with scoping and issue identification, in the *Federal Register*. The announcement must include the following: 1) "proposed planning action;" 2) the geographic planning region; 3) the "types of issues anticipated;" 4) the disciplines used in plan preparation; 5) the opportunities for public participation; 6) "the times, dates and locations scheduled or anticipated for any public meetings, hearings, conferences, or gatherings;" 7) the contact information for the available BLM official; and 8) "the location and availability of documents relevant to the planning process." In addition, at this stage of the planning process, "The public, other Federal agencies, State and local governments and Indian tribes shall be given an opportunity to suggest concerns, needs, and resources use, development and protection opportunities for consideration in the

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279 http://www.blm.gov/planning/images/process.jpg

280 43 CFR, Chapter II, § 1610.2(c)
preparation of the resource management plan. The BLM is also required to create and maintain "a list of individuals and groups known to be interested in or affected by a resource management plan." As public participation opportunities occur throughout the planning process, the BLM is required to notify members of this list, as well as any additional members of the public who requested to be added.

**Step 2: Development of Planning Criteria.** The BLM District Manager in charge of the RMP process is mandated to develop the planning criteria based in part on the results of public participation. Further, after the planning criteria have been developed, they must be made available for public review prior to final approval. As public suggestions and comments are received during the planning process, these criteria can be modified to reflect the public's concerns.

**Step 3: Inventorying of Data and Information Collection.** The BLM planning regulations for this step do not make any mandates related to public participation. This, however, does not preclude the BLM from utilizing *ad hoc* public participation techniques, such as joint fact-finding or scientific field trips, at this step in the planning process.

**Step 4: Analysis of the Management Situation.** As with step 3, The BLM planning regulations do not make any mandates related specifically to public participation. In the analysis, however, the District Manager must consider "opportunities to resolve public issues and management concerns," as well as the "degree of local dependence on resources from public lands." Again, the BLM is not precluded from utilizing *ad hoc* public participation techniques at this stage in the planning process.

**Step 5: Formulation of Alternatives.** Again, no mandates for public participation are made for this step. District Managers, however, if they chose, could initiate public participation through their RACs, collaborate with a stakeholder group to develop plan

281 43 CFR, Chapter II, § 1610.4-1
282 43 CFR, Chapter II, § 1610.2(d)
283 43 CFR, Chapter II, § 1610.2(d)
284 43 CFR, Chapter II, § 1610.4-2
285 43 CFR, Chapter II, § 1610.4-3
287 43 CFR, Chapter II, § 1610.4-4 (f)
288 43 CFR, Chapter II, § 1610.4-4 (g)
290 43 CFR, Chapter II, § 1610.4-5
alternatives, or utilize some other type of ad hoc public participation technique, such as a citizen jury.

**Step 6: Estimation of the Effects of the Alternatives.** The regulations instruct District Managers to utilize the planning criteria and NEPA implementing procedures to estimate the effects of each proposed alternative. As noted earlier, the planning criteria and NEPA implementing procedures should be based on the results of public participation. Beyond this mandate, this regulation offers no further guidance for the inclusion of the public. As with earlier steps, District Managers could utilize public participation strategies at their own discretion.

**Step 7: Selection of the Preferred Alternative.** For this step, the District Manager is again instructed to utilize the public-informed planning criteria in the selection of the preferred alternative. Further, the preferred alternative is to be included in the draft EIS/RMP and "provided to the Governor of the State involved, and to officials of other Federal agencies, State and local governments and Indian tribes." According to the regulations, the draft EIS/RMP must be filed with the Environmental Protection Agency (EPA). When the EPA files the draft, it publishes a notice in the *Federal Register* to notify the public that their minimum 90-day comment period for the draft EIS/RMP has begun. The BLM is required to give the public an opportunity to comment on the draft EIS/RMP, as well as an opportunity to comment on the recommendations made by the Governor of the involved State.

**Step 8: Selection of the Resource Management Plan.** After the publication of the draft EIS/RMP and the conclusion of the public comment period, "the District Manager shall evaluate the comments received and select and recommend to the State Director, for supervisory review and publication, a proposed resources management plan and final environmental impact statement." Next, the State Director is required to file the final

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291 43 CFR, Chapter II, § 1610.4-6
292 43 CFR, Chapter II, § 1610.4-7
293 43 CFR, Chapter II, § 1610.2 (e)
294 43 CFR, Chapter II, § 1610.2 (f)(3)
295 43 CFR, Chapter II, § 1610.3-2 (e)
296 43 CFR, Chapter II, § 1610.4-8
EIS with the EPA and publish the proposed RMP. Both of these actions trigger the opportunity for protest.\textsuperscript{297}

After the EPA publishes receipt of the final EIS in the Federal Register, "any person who participated in the planning process and has an interest which is or may be adversely affected by the approval or amendment of a resource area plan\textsuperscript{298} has 30 days within which to file a written protest with the BLM Director.\textsuperscript{299} The Director is required to promptly review the protest and provide the protestor with a written decision and explanation.\textsuperscript{300} According to the regulations, "The decision of the Director shall be the final decision of the Department of the Interior."\textsuperscript{301} If, because of a protest, there is "any significant change made to the plan," the BLM is required to allow a period of public notice and comment on the revised plan.\textsuperscript{302}

Finally, "copies of an approved resource management plan and amendments shall be reasonably available for public review."\textsuperscript{303} The regulations specify that copies of the RMP must be available "at the State Office for the District, the District Manager's Office, the Area Office for lands directly involved and additional locations determined by the District Manager."\textsuperscript{304}

**Step 9: Monitoring and Evaluation.** According to the regulations, "The proposed plan shall establish intervals and standards, as appropriate, for monitoring and evaluation of the plan."\textsuperscript{305} Beyond the opportunities for public participation during the planning process, there is no additional mandates for public participation in this step. As with other steps, District Managers have the discretion to include the public in this aspect through processes such as citizen monitoring. Ultimately, though, "The District Manager shall be responsible for monitoring and evaluating the plan."\textsuperscript{306}

**Steps of the RMP Process and Public Participation.** Although opportunities for public participation are certainly built into key phases of the BLM RMP process, there

\begin{enumerate}
\item \textsuperscript{297} 43 CFR, Chapter II, § 1610.2 (f)(4)
\item \textsuperscript{298} 43 CFR, Chapter II, § 1610.5-2 (a)
\item \textsuperscript{299} 43 CFR, Chapter II, § 1610.5-2 (a)(1,2)
\item \textsuperscript{300} 43 CFR, Chapter II, § 1610.5-2 (a)(3)
\item \textsuperscript{301} 43 CFR, Chapter II, § 1610.5-2 (b)
\item \textsuperscript{302} 43 CFR, Chapter II, § 1610.2 (f)(5)
\item \textsuperscript{303} 43 CFR, Chapter II, § 1610.2 (g)
\item \textsuperscript{304} 43 CFR, Chapter II, § 1610.2 (g)
\item \textsuperscript{305} 43 CFR, Chapter II, § 1610.4-9
\item \textsuperscript{306} 43 CFR, Chapter II, § 1610.4-9
\end{enumerate}
are many other steps where public participation is not addressed at all. In some regards, this silence regarding public participation in the BLM planning regulations could be very empowering for agency personnel. An agency manager who wishes to provide more inclusive and innovative forms of public participation in a BLM planning process certainly has the discretion to do so. Conversely, because such practices are not the agency "norm," a manager may be faced with many barriers, such as agency culture, expected planning time-frames, and budgetary considerations, that may hinder efforts to expand public involvement in planning processes. These issues will be revisited in the BLM case study presented in Chapter Three.

Training and Administrative Support for Involving the Public. In recent years, there has been some top-down support within the BLM for collaborative public participation strategies and alternate dispute resolution. The creation of the BLM Alternative Dispute Resolution (ADR)/Conflict Prevention Program, the addition of several public participation and collaboration courses offered through the BLM's National Training Center Partnership Series, and the launch of the BLM's E-Gov for Planning and NEPA (ePlanning) are evidence of this growing internal support.

BLM Alternative Dispute Resolution (ADR)/Conflict Prevention Program. The purpose of the BLM ADR/Conflict Prevention Program is to "assist external stakeholders such as the public, other government agencies, and non-governmental organizations, as well as Bureau employees in obtaining advice and assistance in using these conflict management strategies to improve working relationships and increase opportunities for early public involvement in Bureau decision-making." The program was established by the BLM in 1996, through Instruction Memorandum 2004-159, in order to meet the requirements of the Administrative Dispute Resolution Act (ADRA) of 1990 and its amendments in 1996. The program's primary staff of four (Director, two Presidential Management Fellows, and one legal intern) is located in Washington D.C., but BLM employees throughout the Western states work on the program as well. In creating the program, the BLM hopes to realize goals that include the following:

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308 Public Law 104-320, as amended
Identifying, assessing, and developing common ground and shared interests and objectives; reconciling or mitigating the impacts of any differences; denoting issues on which agreement is attainable at the outset; resolving issues through early communication and cooperation; and preventing, resolving, or mitigating adverse impacts to the BLM where possible and to address all parties’ interests.\textsuperscript{309}

\textit{NTC Partnership Series.} The Partnership Series is a public-private partnership started in 1995 by the BLM National Training Center, the Sonoran Institute, the Rural Planning Institute, and Natural Borders. It is described as "[A] dynamic suite of classes designed to address the critical issues of building capacity in times of budgetary constraint, enhancing land stewardship and creating the partnerships that can sustain our mission into the future."\textsuperscript{310} The website for the class series lists nine guiding principles: transformational leadership, ecosystem integrity, institutional changes, inclusiveness, capacity building, citizen empowerment, applied science, cultural absorption, and collaboration. Five classes are available to BLM employees and members of the public, including the following: 1) community-based stewardship, 2) learning community, 3) community economic assessment, 4) place-based NEPA, and 5) community-based friends groups.\textsuperscript{311}

\textit{E-Gov for Planning and NEPA (ePlanning).} In the fall of 2003, as part of a federal government initiate towards e-governance, the BLM launched the E-Gov for Planning and NEPA (ePlanning) pilot program. A partnership with ESRI, ePlanning "focuses on the delivery of planning information consisting of fully integrated text with intelligent and interactive maps and map layers."\textsuperscript{312} The BLM has set up a public-access website as part of the pilot project.\textsuperscript{313} Through the website members of the public can read planning and NEPA documents, navigate interactive maps of planning areas, and submit comments. The tool also allows users to click on a map and then pull up land use text, proposed plan text, and NEPA documentation that is relevant to that particular point on the map. The goals of the pilot project are:

\begin{footnotesize}
\begin{itemize}
  \item \textsuperscript{309} "BLM Alternative Dispute Resolution (ADR)/ Conflict Prevention Program," Accessed on March 9, 2007.
  \item \textsuperscript{311} Ibid. Accessed on March 9, 2007
  \item \textsuperscript{312} "E-Gov for Planning and NEPA: Pilot Project Completed," \textit{ArcNews Online} (Fall 2003), http://www.esri.com/news/arcnews/fall03articles/egov-planning.html.
  \item \textsuperscript{313} http://www.blm.gov/eplanning/
\end{itemize}
\end{footnotesize}
To provide a common look, feel, and functionality for BLM planning and NEPA documents through enterprise solutions; a new and efficient method for public participation and collaboration in the planning process; a consistent and supported technology implementation across BLM; common and reproducible work flow processes; reusable data for processing postplanning actions; and the transition of land use planning from a project to a process.\textsuperscript{314}

Currently, the scope of ePlanning is limited: only two planning projects are available on the website, but the BLM hopes that in the near future, ePlanning will establish "a new mechanism for land use planning that allows for an openly participative, collaborative, and community-based land use planning system."\textsuperscript{315} If the pilot projects prove successful, ePlanning may also expand to other Federal agencies.

**Summary**

In this chapter, I provided an initial overview of the key federal statutes and executive orders providing legal authority for public participation in agency decision-making and environmental planning. I also discussed specifically the role of the public in the Bureau of Land Management's (BLM) land use planning process.

The statutory overview was not comprehensive, but rather a broad-brush look at the legal space provided for public participation in U.S. natural resources management. In this first section, I focused primarily on the National Environmental Policy Act (NEPA) of 1969, assessing the implementation of NEPA's public participation provisions and identifying areas where NEPA could be used or modified to better integrate public participation in natural resources planning and administrative decision-making.

In the second section of this chapter, I provided a brief history of the BLM and discussed the agency's land use planning process. I specifically outlined the role of the public in each stage of the planning process, setting the stage for the BLM planning case study that is presented in the following chapter.

Overall, this chapter provided the reader with a clear description of the legal sideboards and constraints that shape public participation in Federal natural resources planning and administrative decision-making.

\textsuperscript{314} "E-Gov for Planning and NEPA: Pilot Project Completed."
\textsuperscript{315} Ibid.
The primary conclusion of this chapter is that there is considerable legal space and opportunity for the inclusion of more innovative forms of public participation in natural resources planning. Inclusion of the public, beyond a few specific mandates, is largely discretionary and dependent on the decision-making paradigm of a specific agency or planning staff. Because of the discretionary nature of public participation in our system of natural resources planning and decision-making, there can be considerable barriers to the regular inclusion of public participation beyond the minimum requirements of the APA and NEPA. Some of these barriers were already identified in the discussion of NEPA implementation. The case study presented in the following chapter further expands on potential barriers to innovative public participation in planning and decision-making processes.
CHAPTER THREE: PUBLIC PARTICIPATION CASE STUDY

Public Participation in the BLM’s Western Oregon Plan Revisions

Currently, the BLM is in the process of revising its six Resource Management Plans (RMPS) for its five divisions and one resource management area in Western Oregon that fall under the jurisdiction of the Northwest Forest Plan and the Oregon & California Railroad Land Act (O&C Act) of 1937. Collectively, this process is known as the Western Oregon Plan Revisions (WOPR). Historically, land use planning processes for the BLM's Western Oregon districts have been politically contentious, often resulting in legal action. The impetus for the WOPR is a Settlement Agreement from the court case, American Forest Resource Council, et al. v. Clark, Civil No. 94-1031 TPJ (D.D.C.). When the plan revision process began in the fall of 2004, the agency developed guidelines for increased levels of public participation in the WOPR process. The BLM also organized a “learning session” with public involvement and dispute resolution professionals to discuss innovative and alternative methods for incorporating the public and key policy actors in the WOPR NEPA process. By utilizing public participation strategies in the WOPR beyond its legal mandates, the agency hopes to avoid further litigation and build public support for the WOPR. The BLM currently is in the middle of this planning process and has utilized several non-conventional public participation strategies, some successfully and some not so successfully. For this reason, the WOPR makes an interesting case study for examining the role of the public in natural resources planning and decision-making.

The objectives of this case study include the following: 1) to analyze the actual means and opportunities for public participation in the WOPR (in comparison to the BLM's legal mandates and stated goals for public participation); 2) to identify the institutional barriers and drawbacks to utilizing increased levels of public participation in planning processes; and 3) to look for lessons learned regarding new ways of including the public in natural resources planning and decision-making.

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Case Study Methodology

This case study used two primary research methods: 1) a review and analysis of relevant statutes, court cases, planning documents, newspaper articles, and websites; and 2) purposive sampling and semi-structured interviews with key agency personnel to supplement the information found through the first research method.

In November 2006, I conducted a total of 13 supplementary interviews with state and district level BLM planning, management, and public affairs staff members. Most interview participants previously had been interviewed regarding public participation in the WOPR process for the BLM-commissioned report, Engaging People in the BLM Western Oregon Planning Process, conducted in the fall of 2005.317

Whenever possible, interviews were done in person; however, because of the large geographic scope of the planning region and my limited time and budget, seven interviews were conducted over the telephone. Interviews lasted anywhere from 20 minutes to a little over 1 hour: most were approximately 30 minutes long. On three occasions, two individuals were interviewed together. In addition, when permission was granted, interviews were tape-recorded.

Prior to each interview, interviewees were contacted by e-mail and supplied with a brief synopsis of my research and the interview questions. The e-mail letter of introduction and interview guide can be found in Appendix A and Appendix B, respectively. Interview questions addressed three basic content areas: 1) level of involvement in the WOPR planning and public participation processes, 2) means and opportunities for public participation, and 3) agency culture and attitude towards public participation.

As noted earlier, interviews were used to supplement information gained from text and electronic sources. Information from all interviews is included in my findings, but I did not use quotations from every interview. When an interview quotation is used in this paper, it is because that particular quotation succinctly captured opinions that had been expressed in other interviews or because that interviewee brought up a point that had not been addressed in my other sources but seemed relevant to the case as a whole.

317 This report was commissioned by the BLM. Ibid.
Purpose and Need of the Western Oregon Plan Revisions

History of the Western Oregon Plan Revisions. The WOPR planning area contains approximately 2,557,700 acres of public land in Western Oregon that are distributed among six BLM Districts (Salem, Eugene, Roseburg, Medford, Coos Bay Districts and the Klamath Resource Area of the Lakeview District). Of the total acreage, the BLM manages 84 percent (2,151,200 acres) under the authority of the Oregon & California Railroad Lands Act (O&C Act) of 1937. The remaining 16 percent of acres are either managed as public domain under the authority of the Federal Land Policy and Management Act (FLPMA) of 1976 (394,600 acres) or are managed specially according to the authority of various other statutes (12,000 acres). The six existing RMPs for the WOPR planning area were completed in 1994 as part of the Northwest Forest Plan (NWFP). Under the NWFP, 1.6 million acres within the WOPR planning area are designated as late-successional and riparian reserves.

Management of the O&C Lands has been a source of great contention between the public and the BLM, particularly since the development of the Northwest Forest Plan. Below is a discussion of the major issues related to the management of the O&C lands and a brief history of the resulting conflicts.

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319 43 USCA § 1181a-1181j
320 BLM, "Western Oregon Plan Revisions: Analysis of the Management Situation."
321 See "The 1994 Final SEIS and Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents within the Range of the Northern Spotted Owl"
322 "Engaging People in the BLM Western Oregon Plan Revision: Final Report."
323 In March 2007, a coalition of seven regional environmental organizations unveiled a proposal to transfer BLM O&C lands to the U.S. Forest Service. The proposal cites a savings of $55 million if the O&C lands are managed as one unit with Forest Service lands under the authority of the Northwest Forest Plan. The coalition proposes that any savings from this new management scheme be placed in a fund to provide a safety-net for Western Oregon counties (since those counties no longer receive funding through the Secure Rural Schools and Community Self-Determination Act). Several member organizations of this coalition submitted "citizens' alternatives" to the BLM for the WOPR process that they felt were largely ignored. This may be one impetuous for their recommendation that management authority be transferred from the BLM to the Forest Service. In addition, the Forest Service is not scheduled to revise its forest plans in Western Oregon for another couple of years, so there will still be time for interest groups to participate in that process. See "Conservation Groups Offer Plan to Break Timber Payments Logjam," Accessed on April 17, 2007, http://www.oregonwild.org/press-room/press-releases/conservation-groups-offer-plan-to-break-timber-payments-logjam.
Figure 3. Map of the Land Area Covered by the WOPR$^{324}$

$^{324}$ http://www.blm.gov/or/plans/wopr/woper_map.php
The O & C Railroad Lands Act (O&C Act) of 1937. As was discussed in Chapter Two, the public domain managed by the BLM is primarily rangeland. In Western Oregon, though, the majority of the land managed by the BLM is coniferous forest formerly owned by the Oregon and California Railroad Company.

In 1866, Congress granted 4 million acres of alternate land sections325 to the Oregon and California Railroad Company for the construction of a railroad from Portland, Oregon to the California border near Ashland.326 The lands were granted to the Company on the condition that the portions not used for the railroad were to "be sold in 40 acre parcels to 'actual settlers' for no more than $2.50 an acre."327 The Company built the railroad, but failed to sell the remaining lands as they had promised.

In 1916, due to this violation, Congress took 2.9 million acres of O&C lands back through the O&C Revestment Act.328 This law established within the U.S. Treasury the "Oregon and California Land Grant Fund" to distribute income from timber production on O&C lands to Oregon state and local governments. To the disappointment of the 16 Oregon counties with O&C lands, very little harvest actually occurred.

In 1926, under the authorization of the "Stanfield Act" Congress began making "payments in lieu of taxes" from the U.S. Treasury general fund to the Oregon O&C counties.329 Under this act, the 16 O&C counties received $7 million dollars, distributed in increments of $500,000 each year. From the counties' perspective though, the revenue stream from the O&C lands was still insufficient.330

Congress changed the payment and administration of the O&C lands again in 1937 through the Oregon & California Railroad Lands Act (O&C Act). This act allowed for "active federal management"331 of the O&C lands and established a payment formula for Oregon counties. Under the act, 50 percent of the revenue received from timber

326 BLM, "Western Oregon Plan Revisions: Analysis of the Management Situation."
328 BLM, "Western Oregon Plan Revisions: Analysis of the Management Situation."
329 Van Natta, "The O&C Lands: A Short History of a Unique Oregon Asset."
331 BLM, "Western Oregon Plan Revisions: Analysis of the Management Situation."
receipts is paid out to the 16 O&C counties,\textsuperscript{332} 25 percent is used for management and administration of the O&C lands, and 25 percent is used for road building and capital improvements in the O&C counties.\textsuperscript{333} Since 1937, the formula for county payments has been changed several times, most notably through the Secure Rural Schools and Community Self-Determination Act (the Payments to Counties Act) of 2000. \textsuperscript{334} After the Secure Rural Schools legislation expired in 2006, though, the payment schedule returned to the 1937 guidelines.\textsuperscript{335}

Also under the Act, the BLM is required to manage the O&C lands for:

\begin{quote}
. . . Permanent forest production, and the timber thereon shall be sold, cut, and removed in conformity with the principal of sustained yield for the purpose of providing a permanent source of timber supply, protecting watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries, and providing recreational facilities.\textsuperscript{336}
\end{quote}

This management provision of the O&C Act has been a source of considerable controversy and litigation. The argument centers around the BLM's management of the O&C lands for a dominant use (sustainable yield timber production) as opposed to the multiple-use mandates of FLPMA and the environmental protection mandates of NEPA and the Endangered Species Act (ESA).\textsuperscript{337} Up until the implementation of the Northwest Forest Plan (discussed below), the BLM managed primarily for sustainable yield timber production on O&C Lands, concluding that FLPMA's statutes were secondary to the mandates of the O&C Act and that NEPA and the ESA did not apply to O&C timber sales. In 1994, after the court cases, \textit{Portland Audubon Society v. Lujan} and \textit{Seattle Audubon Society v. Lyons}, management of the BLM lands changed. Due to the courts ruling in \textit{Lujan}, the BLM could no longer exempt O&C timber sales from NEPA and ESA requirements.\textsuperscript{338} Under \textit{Lyons}, O&C lands had to be included under the

\begin{footnotesize}
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\item \textsuperscript{332} "O&C Lands," Accessed on March 12, 2007.
\item \textsuperscript{333} Van Natta, "The O&C Lands: A Short History of a Unique Oregon Asset."
\item \textsuperscript{334} For more information on this act, please see Chapter 2.
\item \textsuperscript{335} "Legal History of O&C Lands," Accessed on March 12, 2007.
\item \textsuperscript{336} 43 USC §1181a
\item \textsuperscript{338} Ibid. Accessed on March 12, 2007
\end{itemize}
\end{footnotesize}
management authority of the Northwest Forest Plan. Specifically, the court ruled in the *Lyons* case that "LSRs [late-successional reserves] and RRs [riparian reserves] on O&C lands were an integral part of the NWFP." 339 This ruling was significant to the management of O&C lands because under the NWFP, reserves are closed to "intensive forest management." 340

**O&C Lands and the Northwest Forest Plan (NWFP).** The Northwest Forest Plan was created against the backdrop of the 1990 listing of the northern spotted owl as a threatened species under the Endangered Species Act by the U.S. Fish & Wildlife Service. This listing required all federal agencies, primarily the Forest Service and the BLM, to update their resource management plans to provide protection for the species and their old-growth forest habitat in Oregon, Washington, and northern California. A series of court cases related to the listing virtually eliminated any timber production on affected federal lands in the Pacific Northwest. In April of 1993, in an attempt to do what federal agencies and Congress had failed to do, President Clinton convened a forest conference in Portland, Oregon, to devise a solution to the controversy over the spotted owl and old-growth timber production. Because of the conference and related efforts, specifically the work of the Forest Ecosystem Management Assessment Team (FEMAT), *The Forest Plan for a Sustainable Economy and Sustainable Environment* (the Northwest Forest Plan) was released on July 1, 1993. 341

In terms of the O&C lands, the key aspect of the Northwest Forest Plan was the creation of late-successional reserves and riparian reserves. The designation of these types of reserves on BLM-managed lands greatly limited timber production, and thus the revenue generated for counties, on former O&C railroad lands. 342

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342 Prather and Hoffmeister, "Draft 2: Preparing for Public Involvement in the BLM's Western Oregon Plan Revision Process - Background and Issue Paper."
Settlement Agreement. In 1996, several stakeholders filed suit claiming that the creation of forest reserves and the reduction of timber harvests on former O&C Railroad lands under the provisions of the Northwest Forest Plan and the 1994 BLM RMPs was a violation of the O&C Act of 1937. Although this initial case (Association of O&C Counties v. Babbitt, Civ. No. 94-1044 (U.S.D.C. D.C.)) was settled in 1997, litigation continued under American Forest Resource Council, et al. v. Clark, Civil No. 94-1031 TPJ (D.D.C.). In September 2001, this second case was referred to the U.S. Court of Appeals for the District of Columbia Circuit (appeal pending No. 02-5024 (D.C. Cir.)). In August 2003, the BLM entered into a Settlement Agreement for this case with the litigating parties. This agreement requires the agency to revise its six Western Oregon RMPs to meet the O&C Act’s timber production mandates as interpreted by the 9th Circuit in Headwaters, Inc. v. Bureau of Land Management, 914 F.2d 1174 (1990). In the Headwater case, the 9th Circuit ruled:

The O & C Act envisions timber production as a dominant use, and that Congress intended to use ‘forest production' and 'timber production' synonymously. Nowhere does the legislative history suggest that wildlife habitat conservation or conservation of old growth forest is a goal on a par with timber production, or indeed that it is a goal of the O & C Act at all. The BLM did not err in construing the O & C Act as establishing timber production as the dominant use.

Further, under the Settlement Agreement, the BLM is also required to consider plan alternatives that do not create any reserves on O&C lands, except to avoid Section 7 jeopardy requirements under the Endangered Species Act (ESA). For the revision process, the BLM is writing a single Environmental Impact Statement (EIS) that encompasses all six RMPs.

343 The suit claimed the RMPs violated these laws as well: Federal Advisory Committee Act (FACA), National Environmental Policy Act (NEPA), Federal Land Policy and Management Act (FLPMA), and the Federal Records Act (FRA)
345
The Settlement Agreement is the key to decisions that will be made in the WOPR. Unlike the drafting of completely new RMPs, the WOPR process is only revising existing RMPs. As discussed above, those revisions must meet the difficult objective of ensuring timber production on O&C lands without jeopardizing the threatened and endangered species that frequent those lands.

As noted in Chapter Two, the Settlement Agreement is not without controversy. Some legal scholars and environmental organizations suspect that this Settlement Agreement is part of a larger Bush administration strategy to undermine environmental regulations and plans through the use of a "sue and settle" policy.346 In the case of this Settlement Agreement, the controversial terms of the Northwest Forest Plan, such as late-successional and riparian reserves, are being removed in favor of the more timber production-friendly management terms of the O&C act. The political context of the Settlement Agreement and its potential impact on public participation in the WOPR will be discussed further in Chapter Four.

Goals and Strategies for Public Participation. Preparations for the Western Oregon RMP revisions (WOPR process) began in September of 2004. The BLM hopes to complete the WOPR in the spring of 2008 (June at the latest) before the next presidential election. The figure below is the WOPR timeline taken from the BLM planning website.

346 Blumm, "The Bush Administration's Sweetheart Settlement Policy."
Figure 4. Steps in the WOPR Planning Process

http://www.blm.gov/or/plans/wopr/process.php
Early Public Participation Goals. As was discussed in Chapter Two, BLM managers possess a great deal of discretion regarding the inclusion of the public in planning processes. From the beginning of the WOPR process, Elaine Marquis-Brong, the Oregon/Washington BLM State Director, expressed enthusiasm for more participatory approaches for including the public in the WOPR NEPA process. Under her leadership, the agency outlined the "Philosophy and Principles for Public Involvement" in the WOPR process. This document is unusual for planning processes similar to the WOPR. Unlike the public involvement goals of many planning processes that tend to focus on narrowly defined interests and passive public participation techniques, the WOPR public participation philosophy calls for the inclusion of "diverse interests and publics" and the use of "a diverse set of public involvement tools and techniques to meet the needs of diverse publics, as well as to engage as many viewpoints as possible."

Before the planning process began, the agency also took steps to develop proposed public participation strategies for each of the nine phases of the EIS/RMP revision process. In the report, *Preparation Plan for the Western Oregon Resource Management Plan Revisions and Environmental Impact Analysis*, the BLM outlined expectations for public participation in the WOPR. Generally, the report stated:

The overall planning process will be open and transparent, with key materials posted on the web for ready access. The BLM will provide a wide array of opportunities to be informed and involved in the process and will utilize a variety of media to reach people of varying abilities and preferences. Innovative approaches will be considered.

The actual strategies presented by the WOPR planning staff in this document do not vary greatly from those required by the planning regulations and statutes for a typical BLM planning process. The WOPR public participation strategies presented in the following table are communication heavy, relying on face-to-face meetings with key

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348 This document can be found in Appendix C.
351 Ibid. p. 25.
interest groups and the use of snappy public affairs publications such as a planning newsletter and summary documents.

**Table 2: BLM Public Processes for the WOPR\textsuperscript{352}**

<table>
<thead>
<tr>
<th>Planning Step</th>
<th>BLM Actions</th>
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</thead>
<tbody>
<tr>
<td>Plan Preparation</td>
<td>&quot;Internal education and public outreach efforts will be designed to get broad buy-in and understanding of what the planning process is (and isn't) and how it will work. This step includes initial dialogue/relationship building with stakeholders and an aggressive information campaign using broad types of media.&quot; p. 25</td>
</tr>
<tr>
<td>Step 1: Issue Scoping/Step 2: Planning Criteria Identification</td>
<td>Federal Register notices, consultation with Tribal governments, cooperation with PACs\textsuperscript{353} and RACs, establishment of MOUs with cooperating agencies, face-to-face meetings with key stakeholders, open houses and other public gatherings to provide &quot;opportunities for offering written input and for discussion with planning team members.&quot; p. 26</td>
</tr>
<tr>
<td>Step 4: Analysis of the Management Situation/Step 5: Alternative Formulation</td>
<td>&quot;A summary of the AMS [Analysis of the Management Situation] will be distributed to the mailing list with the option provided of receiving a CD or accessing it on the Internet site. The full AMS will be made available on the Internet and CD, and limited hard copies will be provided to those who request it.&quot; p. 26 This step will also include &quot;collaborative data gathering/analysis methods . . . to help engage governmental and public partners in the early stages of the planning process.&quot; p. 26 &quot;Informal meetings will be offered to key stakeholders. More formal work sessions with advisory councils [PACs and RACs] and cooperating agencies will be conducted to seek their advice and guidance on selection of the preferred alternative.&quot; p. 27</td>
</tr>
</tbody>
</table>

\textsuperscript{352} Ibid. p. 25-27.  
\textsuperscript{353} PACs are the Province Advisory Committees established under the authority of the Northwest Forest Plan. They are similar in form and function to RACs. Please see Chapter Two for a discussion of RACs.
<table>
<thead>
<tr>
<th>Planning Step</th>
<th>BLM Actions</th>
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| **Step 7: Draft Resource Management Plan and Draft Environmental Impact Statement** | Public notice of availability of the draft RMP/draft EIS documents through notices such as "the Federal Register notice of availability, press releases, briefings, mailings and Internet postings." P. 27.  
90 day public review period with "public workshops and other forums to inform and assist publics with their written comments." P. 27  
Key stakeholders "will be provided the opportunities for briefings on the draft plans. Following comment analysis, employees and key stakeholders will again be provided with feedback on the comments and potential changes to analyses and to the proposed plan." p. 27 |
| **Step 8: Proposed Plan and Final Environmental Impact Statement** | As with the previous step, the public will be notified of the availability of the proposed RMP/FEIS documents through the methods described above.  
"Briefing opportunities will be offered to the Governor and staff, as well as to all other key stakeholders." p. 27 |
| **Approved Plan/Record of Decision** | "Final records of decision will be published and distributed . . . Opportunities to appeal any implementation-level decisions contained in the plans will be advertised at this point . . . briefings will be provided for key stakeholders." p. 27. |
| **Step 9: Implementation Strategy** | "A plan implementation strategy will be collaboratively developed with stakeholders and the public to establish and schedule implementation priorities . . . The planning newsletter, website, and letters will be used to invite partners to participate in the process." p. 27 |
Purpose of Public Participation in the WOPR. According to BLM staff members interviewed for this case study, the BLM views public participation in the WOPR as a means to achieve several important purposes, namely public buy-in and support for the revised RMPs, avoidance of litigation, and the inclusion of new and/or better information in the plans. As one BLM District staff member commented:

Early on there was general interest in expanding the extent of public participation as compared with the last rounds of RMPs and the Northwest Forest Plan. There was the hope that if we had an expanded participation process that there might be the opportunity for better information at the table, but certainly greater than that there was a hope for public buy-in to the process and to the final decision.354

A BLM State Office staff member noted, "We want folks to feel that they have a real opportunity to participate and comment."355 This staff member expanded on why public comment is critical to the WOPR process:

One of the things that occurred with the Northwest Forest Plan was that there was very minimal interaction. Clinton put a bunch of scientists in a room and said this is going to be science-based – it was very top-down. Nobody got to play. The enviros said that, the timber folks said that, and the public agencies said that – they got a plan stuck in their lap. By the time they could comment on the plan, it was too far down the road.356

Another BLM State Office member stressed the importance of utilizing public participation as an education tool, explaining, "We want to educate and inform, so that hopefully, when they do see a draft they have the framing for what this planning process is all about."357

The Learning Session. In December of 2004, the BLM Western Oregon RMP Revision Planning Team drafted a background paper to specifically address the issue of increasing the degree of public participation opportunities in the WOPR beyond the "notice and comment" approach to participation that is typically found with natural resources planning processes. The background paper, Preparing for Public Involvement in BLM’s Western Oregon Plan Revision Process, called for the convening of a “learning session” to bring together public involvement and dispute resolution professionals who could discuss and recommend methods for incorporating the public and key policy

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354 Personal Communication. Eugene District BLM, November 1, 2006
355 Personal Communication. Interviewee 1 State BLM Office, November 2, 2006
356 Personal Communication. Interviewee 1 State BLM Office, November 2, 2006
357 Personal Communication. Interviewee 2 State BLM Office, November 2, 2006
actors\textsuperscript{358} in the WOPR NEPA process. The BLM State Director hoped that by consulting with public participation experts, a regimen of innovative participation strategies could be developed for the WOPR. The Public Involvement Learning Session occurred mid-February 2005 when the agency was still in its pre-planning phase. Building on the foundation of that meeting, the BLM hired the University of Montana Public Policy Research Institute (along with RESOLVE and the Consensus Building Institute) to conduct a situation assessment and to outline strategies for engaging the public in the WOPR NEPA process.\textsuperscript{359}

_**WOPR Situation Assessment.**_ The situation assessment was first delivered to the BLM in November of 2005. It contained a "menu of options to engage people in the WOPR" that went above and beyond the rather basic public participation strategies outlined by the BLM in its report, *Preparation Plan for the Western Oregon Resource Management Plan Revisions and Environmental Impact Analysis.* The full menu can be found in the report, *Engaging People in the BLM Western Oregon Planning Process,*\textsuperscript{360} and its highlights are recreated in Appendix D of this paper. The menu includes progressive strategies for engaging members of the general public, stakeholders with diverse interests, and Native Americans, as well as strategies for addressing scientific and technical information in the BLM WOPR process. So far, the BLM has implemented only a few of the public participation recommendations of the *Engaging People* report.

\textsuperscript{358} Major policy actors identified include the following: Federal resource agencies (BLM, U.S. Forest Service, NOAA Fisheries, FWS, Environmental Protection Agency, and the Army Corp of Engineers), Oregon State government (resource and transportation agencies (10 agencies) and the Governor’s Office), Tribal governments, County governments (16 O&C Counties), environmental and industry advocacy groups, private businesses, and community leaders.

\textsuperscript{359} The BLM directive for the situation assessment outlined four objectives: 1) "Clarify what key stakeholders expect from the plan revision process." 2) "Identify possible challenges and constraints to public and stakeholder involvement, and strategies to overcome such challenges and constraints." 3) "Present reasonable recommendations and alternatives for engaging these diverse publics and organizations in a meaningful way, given the expected timeframes and resources available." 4) "Spell-out the need for neutral facilitation assistance, identification of appropriate partners, appropriate roles and responsibilities for key participants in the process, and recommendations for what needs to be done, continued, or changed to create an effective public involvement process." "Engaging People in the BLM Western Oregon Plan Revision: Final Report." p. 6.

\textsuperscript{360} The report can be found on the BLM’s website for the WOPR process. http://www.blm.gov/or/plans/wopr/files/PI_assessment.pdf
Summary

In this chapter, I introduced the WOPR case study, providing the context for this planning process and the initial public participation strategies outlined by and recommended to the BLM. The question remains as to whether the public participation processes used by the BLM in the WOPR are fundamentally different from the agency’s usual approach to public participation outlined in Chapter Two. If the approach to public participation is different, it important to explore those differences and how the agency achieved increased public involvement. If the approach to public participation in the WOPR is the same as a usual BLM planning process or very similar, it is important to examine the barriers that prevented innovation in public participation. These issues relating to public participation in the WOPR case study are addressed in the following Chapter.
CHAPTER FOUR: ANALYSIS OF WOPR PUBLIC PARTICIPATION

Lessons Learned from the BLM’s Western Oregon Plan Revisions

Means and Opportunities for Public Participation.

In November 2006, when BLM staff members were interviewed for this case study, the agency had just completed Step 5, "the formulation of alternatives," in the WOPR process and was moving into Step 6, "estimation of effects of alternatives." During the interviews, BLM staff members were asked to discuss and assess the public participation strategies that had been used in the WOPR process so far, any planned public participation for future steps of the WOPR process, and the difference, if any, between public participation in the WOPR process and other planning processes, specifically other BLM planning processes.

Generally, BLM staff members were upbeat about the provisions for public participation in the WOPR process. Many felt that there were greater opportunities for public participation in this process, even if the actual inclusion of innovative public participation strategies was somewhat less than anticipated in the pre-planning stages or proposed in the Engaging People report. One BLM District staff member observed, "There are two places under NEPA where public participation is required – during scoping to identify issues and alternatives and between the draft and final Environmental Impact Statements. This time, the planning team has gone way beyond the requirements." One interesting aspect about the WOPR is the large geographic scale of the planning process: 6 District-level RMPs are being wrapped into one planning and NEPA process. This has interesting implications for public participation. As one District staff member pointed out, "The scope of the plan is larger geographically, but narrower in issues covered. As a result, public participation is coordinated at the state level, rather than the usual District approach."

In the section below, I outline the specific public participation strategies discussed during the interviews with BLM staff members and their corresponding training steps. After discussing the actual public participation strategies used in the WOPR, I will

361 To review the 9 steps of BLM planning, see Chapter 2 "Steps of the BLM planning process"
discuss the barriers that prevented the inclusion of more innovative and influential public participation strategies.

Pre-planning. In the pre-planning steps of the WOPR process, the BLM began its public outreach efforts. Outreach efforts were coordinated by a statewide communication plan:

We set up a communication process and a communication plan to facilitate comments and participation in the planning process . . . It's our goal to be communicating at every level – the local level, regional, state and national levels all simultaneously. Specific people [within the agency] have been assigned to communicate with different levels and set up the framework for communication before, during, and after the planning process.364

Part of these early communication efforts included outreach to past cooperators and interest groups the agency knew had a stake or interest in the WOPR process: "We contacted major players – folks that we normally interact with through other environmental documents and a list of stakeholders we've been dealing with on other issues here in Oregon. We had an established list and we built on it"365 One District staff member assessing this approach stated, "I think there was an effort that was reasonably successful to meet with groups that had been collaborative with us in the past – the watershed councils, the Provincial Advisory Committees, and organizations with which we have a history of being able to find some common ground."366

In many ways, the BLM's pre-planning strategies are typical of a large-scale planning process. One state BLM staff member noted, "The WOPR is not that different from normal planning processes. We identified key publics and did one-on-one meetings. We met with the enviros and the industry groups, the gladiators on either side of the issue, to avoid litigation."367 A District staff member commented, "The methods for including the public in the WOPR process have not really been new or different – we've been using public meetings, workshops, etc – but the scale of participation and numbers of opportunities to participate are significantly greater."368 This staff member

365 Personal Communication. Interviewee 1, State BLM Office, November 2, 2006
366 Personal Communication. Eugene District BLM, November 1, 2006
went on to state that "it is rare to have a single full-time public participation manager [as there is with the WOPR]."

Other aspects of the BLM's WOPR communication strategy are unique. One such aspect is the *Western Oregon Plan Revision News*, a newsletter issued periodically by the BLM and sent to members of the WOPR mailing list (see Table above). The point behind the newsletter is "to generate constant feedback loops with members of the public."\(^{369}\)

**Step 1: Identification of Issues.** Step one of the planning process encompasses scoping, and as was discussed in the sections on NEPA and BLM planning in Chapter Two, public participation is required in this step. Following the same methods of their pre-planning communication efforts, the BLM utilized small group settings and one-on-one meetings with stakeholders, cooperators, and interested members of the public to identify issues. One District staff member described the process:

> We had few of what I would call "open public meetings." We did identify those groups we knew would be interested and we went to them. For example, we scheduled meetings with watershed councils, with some of the environmental groups, with some of the industry groups. Open public meetings have often been very confrontational. We thought it would be better to go to folks on there turfs and explain to them what is going on and listen to their feedback.\(^{370}\)

When the BLM did have public scoping meetings, "attendance varied greatly, depending on location."\(^{371}\) A total of 6 such meetings were held, one in each of 5 the Districts and one in Klamath Falls. BLM staff members were "not impressed by the turnout at the meetings. There was a great deal of apathy on the part of the public."\(^{372}\) Comments generated from the scoping period numbered greater than 2,500, although according to one state BLM staff member, "2,000 alone were form letters from the Wilderness Society."\(^{373}\) After the scoping period, the BLM summarized the comments in a report and sent it to its entire mailing list (see Table above). According to one state BLM staff

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\(^{370}\) Personal Communication. Eugene District BLM, November 1, 2006.
\(^{372}\) Personal Communication. Interviewee 1, Salem District BLM, November 6, 2007.
\(^{373}\) Personal Communication. Interviewee 4, State BLM Office, November 7, 2006.
member, "This scoping report is unique and not required by NEPA or the planning regs."

**Step 2: Development of Planning Criteria.** In order to meet the public participation requirements of NEPA and the BLM planning regulations, the BLM had to make the planning criteria available to the public and consider public comment in the criteria formulation. The BLM went beyond these requirements by hosting another round of public meetings in each of the 5 Districts and in Klamath Falls to discuss the plan criteria and ideas for what plan alternatives might encompass. The meetings were opened with a series of two Power Point slideshows presented by members of the State BLM planning staff. BLM staff members refer to this round of meetings as "the road show."

During this stage of the process, two proposed "citizens" alternatives were presented unsolicited to the BLM. One, titled the "Natural Selection Alternative" calls for the removal of only those trees that are already dead and dying and would utilize small equipment and minimal road building. The BLM eliminated this alternative from its analysis because it did not meet the purpose and need of the WOPR process. The second citizen alternative, titled the "Citizens Conservation Alternative" was presented to the BLM by a coalition of environmental organizations. This alternative calls for the protection of old growth stands and the harvest of only small diameter trees. The primary focus of this alternative is on fuels reduction, ecological restoration, and the maintenance of the Northwest Forest Plan's species and habitat protections. Again, the BLM removed this alternative from its analysis because it did not meet the WOPR purpose and need. According to the BLM's website and newsletter, though, "Many of the elements of these alternatives are incorporated into the current range of alternatives and will be analyzed and their effects displayed in the Draft Environmental Impact Statement." At this time, the DEIS has not been issued, so the degree to which the BLM included these citizen alternatives cannot be determined.

**Step 3: Inventorying of Data and Information Collection.** Few of the interviewees mentioned the use of public participation strategies in the inventorying of data and information collection step. Several staff members did mention that the agency worked

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376 BLM, "Western Oregon Plan Revision News," April 2006. p. 2
with the Sonoran Institute to conduct a social economic assessment. This information was later utilized in the *Analysis of the Management Situation*.  

One way the BLM did attempt to use more participatory strategies was through a "State-of-the-Science" review. In its planning newsletter, the BLM invited "scientists, forest managers, interested citizens, interest groups, and plan cooperators" to observe and make comments at its "State-of-the-Science" review on June 15, 2006 at Oregon State University. The stated purpose of the review was to "include a survey and synthesis of the literature, identify questions that are the subject of ongoing scientific investigations, and suggest a range of reasonable assumptions and interpretations relevant for RMP revision." Several reviews were planned, but at this time, only one has been held. Over 150 members of the public attended the review, but it is not clear from BLM documents regarding the review what the affiliations (if any) of the participating public were.

*Step 4: Analysis of the Management Situation.* According to members of the state BLM staff that I spoke with, "the publication of the *Analysis of the Management Situation* is unique to the WOPR planning process. It's bigger, more readable, and in full color. It’s meant to catch the public's eye." The BLM sent compact discs of this report to members of its mailing list. It also made hard copies available in its District and State offices and posted electronic versions of the document on the website.

*Step 5: Formulation of Alternatives and Step 6: Estimation of the Effects of the Alternatives.* In my interviews, BLM staff members spent a considerable amount of time explaining the public participation opportunities that revolved around the formulation of alternatives. For this step, the BLM decided to make the draft alternatives available to the public before the publication of the draft RMPs and the draft EIS, which are slated to be released in March 2007. One State BLM office staff member explained the strategy behind this early release of the draft alternatives:

We're getting ready to issue a draft alternative in March, and this is a time in the typical NEPA planning process where things are fairly quite in

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378 BLM, "Western Oregon Plan Revision News." April 2006. p. 1
379 Ibid. p. 4
381 At the time of this writing, the release of the draft EIS has been delayed until July 2007.
regards to the public. For this process, we want to take advantage of these quiet times to continue to dialogue with the public. We're trying to continually communicate with people and say "here's what we're thinking, here's an outline of our alternative, and here's where we're headed." Typically, in a process like this, the first time the public would even see an alternative is when the draft is issued, but we're talking about them now.382

This perpetual dialogue with the public is continuing right now as the agency internally estimates the effects of alternatives.

**Step 7: Selection of the Preferred Alternative.** For the selection of the preferred alternative, the BLM anticipates utilizing some type of "collaborative" process. At the time of my interviews, the agency was in the selection process for a private contractor to accomplish three tasks during the 90 day comment period following the publication of the draft RMP and draft EIS: 1) design a strategy for broad public involvement, 2) initiate collaborative processes in specific districts utilizing FACA-friendly groups, perhaps the NWFP Provincial Advisory Committees (PACs), and 3) collect and summarize all public comments.383

In early 2007, the BLM selected Daylight Decisions, a mediator and facilitator team under contract with the U.S. Institute for Environmental Conflict Resolution, to coordinate the public participation for the draft RMP and draft EIS. For the public comment period following the release of the drafts, Daylight Decisions has designed a web-based utility to collect public comments and provide the public with an interactive forum to explore and learn about the WOPR alternatives. Daylight Decisions and the BLM utilized two public workshops in February 2007 in Medford and Salem to assist the design of the web-based utility, named the "WOPR Web Forum."384

The BLM posted online a test version of the WOPR Web Forum in spring 2007.385 The full version will be available when the draft RMP/EIS is issued, probably sometime in July 2007. To use the WOPR Web Forum, members of the public must set up a user profile that collects personal contact, group-affiliation, residency, and forest-use

information. After registering, the user is assigned an i.d. number to use at each login.\textsuperscript{386} Once logged in to the forum, users are presented with a toolbox, which includes such things as an interactive map explorer, the VIBE (values and interests-based explorer), the WOPR narrative, WOPR documents, frequently asked questions, a plan calendar, contacts, and a help utility. The interactive map explorer and the VIBE are both survey utilities and will be the preferred way for the public to submit comments regarding the WOPR draft RMPs/EIS. The BLM anticipates that the WOPR Web Forum will be used both individually and in community-group settings to provide comments and feedback.

\textit{Additional Steps in the WOPR Process.} In my interviews, BLM staff members did not comment on public participation strategies beyond the selection of a preferred alternative. Thus far, the agency's attempts to include members of the public in the WOPR planning process seem fairly similar to the agency's usual practices (See discussion below). It will be interesting to follow this plan over the next year and a half to see if the agency makes any additional attempts to include the public in the process.

\textbf{Barriers to Public Participation.}

From my interviews and my analysis of WOPR documents, it is apparent that the actual means and opportunities for public participation has fallen somewhat short of the BLM's proposed means and opportunities for public participation in the WOPR process. As one interviewee noted, "Public participation processes are certainly not being carried out to the extent that we had talked about a year ago."\textsuperscript{387} Interviewees were asked to comment specifically on what they perceived to be barriers to public participation in the WOPR process. Eight "barriers to participation" emerged from these discussions and my review of WOPR documents, including: 1) political context, 2) the purpose and need of the planning effort, 3) false expectations for public involvement, 4) geographic scope of the planning area, 5) the plan timeline, 6) federal budgetary pressure, 7) agency culture and individual attitudes towards public participation, and 8) the limitations of leadership. These barriers are discussed in the following section.

\textsuperscript{386} When I registered, the user id number assigned to me was a staggering 32-digit series of numbers and letters. The BLM encourages users to write down their id number, e-mail it to a personal e-mail account, or copy and paste the id number into a word document.

\textsuperscript{387} Personal Communication. Eugene District BLM, November 1, 2006.
Political Context. For the WOPR case, one of the greatest road blocks to effective public participation is the political context surrounding the Settlement Agreement. As discussed in Chapter Three, there has been a great deal of controversy and litigation surrounding the management of the O&C lands. In particular, the controversy has revolved around issues of timber production, community stability, the preservation of old-growth habitat, and endangered/threatened species protection. The Northwest Forest Plan has often been at the center of these controversies. Opponents of the Northwest Forest Plan view the Settlement Agreement as a means to renew a vital timber industry supported by O&C lands and an opportunity to regain the much-needed revenue counties lost when the Northwest Plan was implemented in the 1990s and the Secure Schools and Community Self-Determination Act of 2000 expired in 2005. Supporters of the Northwest Forest Plan view the Settlement Agreement with suspicion, suspecting a sophisticated strategy using the judicial system to subvert the ecosystem protections of the Northwest Forest Plan in favor of commodity production. Given the extensive use of settlement agreements by the Bush administration, their suspicions may be well-founded.

Members of the public may be especially cynical about the value of participating in the WOPR process if they contrast this alleged "sue and settle" policy with the Bush Administration's rhetoric of Cooperative Conservation. As discussed in Chapter Two, Cooperative Conservation is intended to improve conservation through the promotion of cooperation within federal agencies and among collaborating agencies and organizations, as well as to eliminate barriers to those cooperative processes that may currently exist in federal policy. With the dichotomous positions of Cooperative Conservation and "sue and settle" emerging from the actions of the current administration, the public is left to guess the true intentions of federal resource management agencies. In the case of the WOPR, are the plan revisions a means to subvert current policy or are they an opportunity to collaborate with a federal agency to meet public values and interests for the O&C lands? Given the history of agency capture associated with the BLM, a

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388 See Chapters Two and Three for further discussion of the Bush administration's "sue and settle" policy; Blumm, "The Bush Administration's Sweetheart Settlement Policy."

389 See Chapter Two
cynical public may be more inclined to believe that for the WOPR the former is the true intent of the BLM.

Purpose and Need of a Planning Effort. Nearly all interview participants mentioned the WOPR's purpose and need as one of the fundamental obstacles to meaningful public participation in the planning process. As outlined at the beginning of this chapter, the BLM has determined that the purpose and need for the WOPR process is narrow: the revised RMPs must "incorporate the land use allocations and Standards and Guidelines from the Norwest Forest Plan,"390 while meeting the conditions of the Settlement Agreement. As stated in the WOPR scoping report, "The Settlement Agreement requires the BLM, contingent on funding, to consider in each proposed revision at least one alternative that will not create any reserves on O&C lands excepts as required to avoid jeopardy under the Endangered Species Act."391 The Settlement Agreement also requires the BLM and Forest Service to attempt to meet the adjusted annual probable sale quantity (PSQ) of the Northwest Forest Plan.392

In most cases, interviewees held the opinion that the BLM had done a good job of presenting the reason behind the RMP revisions, but that members of the public failed to see the narrow focus of the WOPR and therefore failed to provide meaningful comments or feedback to the agency. Part of the problem, as discussed above, is that certain "publics" fundamentally disagree with the Settlement Agreement, and therefore, see its restrictions on the WOPR's purpose and need as a political decision, rather than a true constraint.

During the WOPR scoping period, the agency received over 3,000 comments, many of which were regarding the preservation of old growth timber stands on O&C lands, the continued enforcement of the Northwest Forest Plan, economic stability for rural Oregon communities, the consideration of a wide array of resource values (besides timber production), and the maintenance of adequate habitat for threatened and

391 Ibid. p. 5
392 The original annual PSQ of the NWFP was 958 million board feet. That figure was later adjusted to an annual PSQ of 805 million board feet off of BLM and Forest Service lands. See BLM, "Western Oregon Plan Revisions Scoping Report."
According to one State BLM employee, "The planning process is very clear. The focus of this plan is much more narrow than for others." A BLM District staff member made a similar comment:

The purpose and need was a little more narrowly defined than some of these processes have been in the past. The purpose and need for O&C lands is a little narrower in scope and that tended to constrain the range of alternatives that we could consider. What we receive from the public has to be viewed through that filter. There were lots of publics wanting to participate and to recommend alternatives well outside the purpose and need, so we couldn’t accept those.

From these comments and others, it appears that one fundamental barrier to meaningful dialogue between the public and the BLM planning staff is the purpose of the RMP revision and the scope of that revision. As discussed in Chapter Three, the BLM sees the WOPR purpose and need as narrow and rigid: the point is to meet the terms of the Settlement Agreement, which includes mandates for timber production on O&C lands and considerations for some reserves for threatened and endangered species. The general public perception of the WOPR process is broad and flexible: if the agency is going to take the time and trouble to revise the RMPs, why not open up the process and make fundamental changes to the RMPs? Certain "publics" also argue for plan revisions that take Forest Service lands into consideration as well, particularly since those lands are included in the NWFP's annual PSQ figures and because the Forest Service plans will soon be revised as well. Referring to the different opinions regarding the WOPR's purpose and need one District staffer commented, "Some of the public, despite the fact that we said this was a revision, wanted to know why we couldn’t open up and look at everything. Some of the green groups fundamentally disagreed with the need to do a revision. They felt that the Settlement Agreement was improper. There was also lots of disagreement over what various court decisions actually mean."

Environmental groups, such as Oregon Wild (formerly Oregon Natural Resources Council), the Klamath-Siskiyou Wildlands Center, and Oregon Heritage Forests (a consortium of environmental and community organizations) have been particularly

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393 Ibid. p. 6.  
394 Personal Communication. Interviewee 1, State BLM Office, November 2, 2006  
dissatisfied with the stated purpose and need of the WOPR process. These groups have favored a broader approach to RMP revisions and stated their goals for protection of threatened and endangered species (and their habitats) in several citizens' alternatives. In particular, these groups argued for an alternative that strives for species recovery rather than mere avoidance of jeopardy. As noted earlier in this chapter, the BLM considered these alternatives to be beyond the purpose and need of the WOPR process, but did promise to include elements of the alternatives in the draft RMPs/EIS. Perhaps in response to this BLM decision, a coalition of seven regional environmental organizations recently unveiled a proposal to shift management of O&C lands from the BLM to the Forest Service.

In my analysis, the plan "purpose and need" is an unnecessary barrier to increased public participation. The Settlement Agreement called for the 6 Western Oregon RMPs to be revised. It also outlined goals for timber production and the avoidance of reserves on O&C lands. The Settlement Agreement, however, did not preclude the BLM from taking on the challenge of broader RMP revisions, especially if one considers the fact that the Forest Service is soon to begin plan revisions for its lands bordering the BLM WOPR area. As discussed in Chapter Two, by its own assessment, the BLM acknowledges that many of its RMPs are outdated and fail to address areas of vulnerable, sensitive or at-risk resource values. Several environmental groups made specific reference to outdated inventories on O&C lands, particularly for wilderness study areas and vulnerable resources areas.

In the case of the WOPR, the agency made a political (and probably financially pragmatic) choice to limit the WOPR process to the narrow revisions outlined by the Settlement Agreement. Assuming that the narrow purpose and need chosen for the WOPR is suitable, the agency still did not need to allow it to become a barrier to increased public participation. The agency could have done a better job of clarifying the

401 Please see scoping comments from the Wilderness Society, Klamath-Sikiyou Wildlands Center, Oregon Natural Resources Council, and the Oregon Chapter of the Sierra Club.

www.oregonheritageforests.org/resources/WOPR.doc
actual decision space. Even this far into the planning process, the public still does not have a "fat fuzzy gray line," let alone a bright line to designate what is and is not eligible for revision in the WOPR process.\textsuperscript{402} In many ways, the plan purpose and need has become a convenient excuse the agency can use to deal with unwelcome public comment. As one State BLM employee remarked, "We have been very clear that we will work with any suggested alternatives they provide us, but we will only entertain alternatives that meet the purpose and need of our document."\textsuperscript{403} Given the context, this comment seems to be aimed particularly at the citizens' alternatives proposed by several environmental organizations.

The purpose and need of a planning process is often a barrier to public participation. As several public administration scholars have observed:

The administrative structures and processes are the politically and socially constructed frameworks within which the administrator must operate. These frameworks give the administrator the authority to formulate decisions only after the issue has been defined . . . Participation in this context is ineffective and conflictual, and it happens too late in the process, that is, after the issues have been framed and most decisions have been made. Therefore, rather than cooperating to decide how best to address issues, citizens are reactive and judgmental, often sabotaging administrators' best efforts.\textsuperscript{404}

When members of the public cannot participate in the formulation of the purpose and need of a planning process, they have no opportunity to ensure that their values and needs will be addressed in the process. Failure to jointly name problems leads to public dissatisfaction with opportunities for participation. By the time members of the public can participate, the agency considers their comments and needs to be beyond the scope of the planning process' purpose and need. If, however, members of the public are able to jointly name the problems to be addressed, or at minimum, name problems within certain parameters established by the agency to meet their statutory or regulatory obligations, the public's ability to provide meaningful, substantive comments that directly address "purpose and need" can be vastly improved.

\textsuperscript{403} Personal Communication. Interviewee 2, State BLM Office, November 2, 2006.
\textsuperscript{404} King, Felt, and Susel, "The Question of Participation: Toward Authentic Public Participation in Public Administration." p. 320
As discussed in Chapter Two, several well-known reports on NEPA implementation have identified plan "purpose and need" as a major barrier to public participation as well. In the CEQ's 1997 report, the agency found that in the NEPA process, agencies often have already made a decision before they even go to the consultation phase of the EIS/EA process.405 The 2003 NEPA Task Force made similar conclusions, noting that the lack of a shared vision or ownership in a plan process can lead to a lack of trust among members of the public.406

From my review of the BLM's participation strategies earlier in this chapter, I found the primary change in public opportunities available in the WOPR process is the agency's use of numerous points of communication and information media. The agency's communication efforts failed, however, to inform the public regarding the purpose and need of the WOPR. One BLM District staff member acknowledged this failure, "Because of the relatively narrow purpose and need, we wanted to ensure that the public participation process didn’t create any false expectations. I'm not certain that we did a particularly good job with that."407

False Expectations for Public Involvement. From the beginning, the public was set up to believe they would have the opportunity for increased involvement in the WOPR process. The BLM made a point of advertising this new emphasis on public participation in the WOPR. Also, as noted in Chapter Three, the BLM even commissioned a situation assessment, Engaging People in the BLM Western Oregon Revision, to provide a summary of the level of involvement different "publics" wanted to have in the WOPR and to provide participation strategies for accommodating these different levels of involvement. As it has turned out, some groups of the public have been as involved in the WOPR as they wanted. Others, have been disappointed by the level of involvement they have been able to attain in the WOPR, especially given the BLM's early enthusiasm about increased public participation.

Recalling the IAP2 Public Participation spectrum presented in Chapter One, some members of the public, such as the Coquille Tribe and environmental organizations,

405 "The National Environmental Policy Act: A Study of Its Effectiveness after Twenty-Five Years."
expected to be involved at the collaborate level, helping throughout the process to develop alternatives and identify solutions. Others, such as timber and community groups, realizing the agency has to comply with the terms of the Settlement Agreement expected to be consulted at minimum, and involved at most. Such groups expected to provide comments from time to time and then see their feedback reflected in the development and selection of alternatives.

As the planning process has progressed, the BLM has trimmed down the public participation means and opportunities from what they originally proposed. Some groups, such as the Coquille Tribe, which was able to receive formal cooperating agency status as a sovereign nation, have not really been impacted by this reduction. Other public groups, such as environmental organizations, feel that their opportunity to participate has been more limited than promised. These groups are particularly frustrated by the BLM's failure to include their citizen alternatives in the EIS process. Now that the BLM has launched its WOPR Web Forum, it will be interesting to see if members of the public will feel listened to and involved in the WOPR or if it will be too little participation, too late in the process.

**Geographic Scope of the Planning Area.** Another barrier to a greater degree of public involvement in the WOPR has been the large geographic scope of the planning area. Public participation processes for an RMP are generally done at the District level. Because only one EIS is being written for the 6 RMPs revisions included in the WOPR, public participation is being coordinated from the State BLM office. This state coordination provides both opportunities for and barriers to increased levels of public participation. Because there is a full-time State Public Participation Coordinator, a great deal more financial and personnel resources are available for participation strategies than with typical RMP processes. Also, there is one consistent contact person for members of the public to work with and go to for information. 408 On the other hand, Districts have lost the relative autonomy they are used to having regarding public participation strategies. District level staff members are still expected to coordinate with their local

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stakeholders and community members, but the tools they are given to use have been
ddictated by the State BLM office.409

As with other planning processes, the issue with the WOPR is balancing public
participation opportunities between the regional and local levels. A number of scholars
have addressed regional planning efforts.410 Many see regional plans as a way to address
landscape level issues, such as old-growth habitat for endangered species or regional
economic stability in the case of the WOPR, and a means to include multiple-scales of
public participation strategies. In the case of the WOPR, the regional planning effort was
somewhat hindered by statewide coordination of public participation strategies.
Although efforts have been made to cater participation opportunities towards particular
communities, such as the "road show" presentation discussed earlier in this chapter, for
the most part, BLM Districts were expected to adopt uniform participation techniques
that conformed to the communication plan. The agency's insistence on using one EIS for
6 RMP revisions may be one reason the BLM thought such process conformity was
necessary for the WOPR.

Another issue related to the geographic scope of the WOPR is that the large scale
of the planning area also increases the number of value conflicts. Instead of smaller,
localized conflicts associated with District-level RMP processes, the WOPR magnifies
these issues to a regional scale. As discussed earlier in this chapter, a number of values
conflicts emerged around the Northwest Forest Plan. Resulting litigation left many
stakeholders sour and distrustful of each other and involved federal agencies. Although
the WOPR's geographic scope is not as large as the entire region encompassed by the
Northwest Forest Plan, the same issues, such as preservation of old growth habitats and
regional economic stability, are present. In many ways, the values conflicts are
compounded because of the history of the Northwest Forest Plan process and the political
context of the current Settlement Agreement. As one interviewee noted, "There are more
people participating in this process because it is such a high stakes game. Federal forest
management is important to so many different people for so many different reasons.

409 Personal Communication, Interviewee 2, Salem District, November 6, 2006.
410 See Kemmis, This Sovereign Land: A New Vision for Governing the West and Matthew McKinney,
Craig Fitch, and William Harmon, "Regionalism in the West: An Inventory and Assessment," 23 Public
There aren’t many interest groups that this won’t affect.\textsuperscript{411} Similar to the net benefits critique of public participation presented in Chapter One, many agency staffers are concerned about too much public comment and fear that the WOPR could be a repeat of the Northwest Forest Plan process if the conflict is not properly contained.\textsuperscript{412} In the opinion of BLM staff members, smaller scales are often easier to deal with than large scales for participatory processes.\textsuperscript{413}

**Plan Timeline.** A typical BLM planning process can take years to complete: some BLM plans, in fact, have never been completed. In Chapter Two, I discussed the outdated condition of many BLM RMPs and the backlog of revisions. The BLM cites the time needed to complete RMPs as one of the primary reasons for this backlog. With the WOPR, the Settlement Agreement dictated that the planning process be completed by December 2008. The BLM, fearing that the WOPR may become a campaign issue if stretched through to November elections decided early on to complete the process by June 2008. By late 2006, the BLM decided to move up the timeline again, this time to March 2008, in the hope that any litigation or appeals would not drag into January 2009 (and a new Presidential administration).\textsuperscript{414} After more delays, however, including moving the release of the draft RMPs/EIS until July 2007, the BLM is now aiming to complete the process by July 2008.\textsuperscript{415}

Because of the shortened and ever-changing timeline, the BLM has chosen not to pursue many of the innovative public participation strategies proposed earlier in the planning process by both agency officials and participation consultants. One BLM District employee explained the time crunch and its effect on public participation:

> What really did us in was the timeline. We were finding that certain things were taking much longer than we thought. We ended up moving the timeline up a little bit. Originally we thought that we would have a record of decision in June or so of 2008 and that ended up getting moved to March of 2008. Modeling and developing the alternatives was taking much more time than anticipated and it short-circuited some of our chances for public participation. We don’t have the time to do all the things that you want [steering committee] unless you're willing to change

\textsuperscript{413} Personal Communication. Interviewee 1, State BLM Office. November 2, 2006.
\textsuperscript{415} BLM, "Western Oregon Plan Revision News." April 2007, p. 6.
the timeline. The completion date was driven from the top – the state level. It is best to start and complete these document under the same leadership cadre. New leadership just lends complications. There was a desire to get it done before the 2008 elections.\footnote{Personal Communication. Eugene District. November 1, 2006.}

As discussed in Chapter Two, the BLM has received a great deal of criticism recently regarding expedited timelines for RMP processes. In its effort to revise its outdated RMPs, the BLM has embarked on a campaign to shorten and streamline the planning process.\footnote{"Land Use Planning Overview: Priorities," Accessed on March 8, 2008.} Some interest groups are concerned that the BLM's expedited processes are leaving out critical steps of the NEPA process.\footnote{Southern Utah Alliance, the Wilderness Society, and Natural Trails and Waters Coalition, "Bureau of Land Management Lax Management: The BLM Is Preparing a Policy That Would Leave Land Unprotected."} Many fear the loss of opportunity for public participation, as was the case with the WOPR, and suspect the agency is trying to push through a resource-extraction friendly agenda.\footnote{Please see Chapter Two for a discussion of some of the controversies surrounding the BLM today and Chapter Three for a discussion of the Bush administration's "sue and settle" policy.}

Although public participation opportunities have been cut from the WOPR process, the shortened timeline, in some ways, may have facilitated some public participation. A State BLM employee noted, "BLM plans can typically take up to 8 years and people can't hang on that long. It takes too much time, so we had a three-year window, where we have the opportunity, if we're good at it, to keep our interested parties at the table and participating in a way that they have the feeling that they had the chance to truly participate."\footnote{Personal Communication. Interviewee 1, State BLM Office. November 2, 2006.}

Beyond BLM planning, many federal agencies are trying to expedite their NEPA processes. Agencies are accomplishing this through the use of categorical exclusions and the use of Environmental Assessments with mitigated FONSI s instead of full-EIS processes. Several NEPA implementation reports and scholarly works have identified expedited NEPA processes as a troubling trend.\footnote{Please see the NEPA section in Chapter Two. Also see Bradley C. Karkkainen, "Toward a Smarter NEPA: Monitoring and Managing Government's Environmental Performance," \textit{102 Columbia Law Review} \textbf{903} (2002).} Although, there is certainly support for timely and efficient planning processes, the use of categorical exclusions and EAs/mitigated FONSI s may lead to lower-quality environmental decision-making and the
exclusion of the public. The 2003 NEPA Task Force focused particularly on these trends. As noted in Chapter Two, this report calls for agencies to "expand public outreach beyond the Federal Register notice and comment period to facilitate more public involvement in changing their categorical exclusions and to scale outreach to the extent of the proposed changes to the categorical exclusions."\textsuperscript{422} The Task Force particularly sees room for improved public participation in EA processes, noting that, "EA public involvement activity ranges from none to formal scoping."\textsuperscript{423} Observing that the use of EAs and mitigated Finding of No Significant Impacts (FONSI$s$) are on the rise among agencies (as opposed to a full EIS process), the Task Force recommends that the CEQ encourage "improvement to EA public involvement processes."\textsuperscript{424}

Federal Budgetary Pressure. Related to the time-crunch barrier, is the issue of funding for agency planning processes. As discussed earlier in this paper, BLM plans cost millions of dollars to complete. Those that drag on for years take more money to complete. The agency has requested annual budgets of $50 million over the next few years to facilitate plan completion; however, the agency has yet to receive their full funding request. A State BLM employee noted, "Congress has made it very clear that they are sick and tired of giving us money for plans that take years to complete and are irrelevant by the time they are done."\textsuperscript{425} As with most BLM RMP processes, the WOPR has yet to be fully funded by Congress. Under such circumstances, innovative and costly (at least in the short run) public participation strategies are eliminated or greatly reduced.\textsuperscript{425} NEPA implementation reports, such as the 2000 \textit{Reclaiming NEPA's Potential} report, have also identified federal budget pressure as a potential barrier to public participation.

On the other hand, the 2000 \textit{Reclaiming NEPA's Potential} report also recognized an opportunity for increased collaboration in NEPA processes because of federal budgetary pressure and the need to find alternative funding sources.\textsuperscript{426} Initiatives such as Cooperative Conservation can provide funding sources for processes that utilize

\textsuperscript{423} Ibid. p. 71.
\textsuperscript{424} Ibid. p. 72.
\textsuperscript{426} "Reclaiming NEPA's Potential: Can Collaborative Processes Improve Environmental Decision Making?" p. 14.
collaborative forms of public participation. The WOPR has received some funding under Cooperative Conservation.\textsuperscript{427} Although part of this funding is coming from the federal government, a great deal of funding for "cooperative conservation" is coming through private, foundation, and state and local government revenue streams.\textsuperscript{428} This reality has led some critics to see Cooperative Conservation as another means to privatize government functions of natural resources management and a dangerous opportunity for federal agencies to be captured by interests with a great deal of financial capital. With this in mind, the role of funding in a planning process can be critical to success or failure, particularly in regards to opportunities for public participation.

Also in regards to funding, a major shortfall identified in several NEPA implementation reports is the failure of lead agencies to coordinate and collaborate with other agencies and organizations impacted by a planning process. In the case of the WOPR, the BLM has entered into Memorandums of Understanding (MOUs) with an unprecedented number of formal cooperating agencies, including 16 Oregon counties, the USDA Forest Service, the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State of Oregon.\textsuperscript{429} Also for the first time, "the Coquille Tribe has been engaged directly because, by law, their tribal land management must be consistent with the surrounding federal land management."\textsuperscript{430} All of these formal cooperators are providing funding for aspects of the WOPR process.\textsuperscript{431} Still, the WOPR has not received full funding, and this has been a hindrance to including additional public participation processes.

Agency Culture and Individual Attitudes Towards Public Participation. Another barrier to innovative public participation processes in the WOPR process is agency culture and attitudes towards public participation. Earlier in this paper, I discussed the appearance of increased support for public participation among BLM leadership, particularly through Cooperative Conservation and training initiatives. This trend seemed to be reflected in the State BLM Office as well. Interviewees noted repeatedly that the leadership for increased public participation in the WOPR has come from the

\textsuperscript{428} See http://cooperativeconservation.gov/ for more information regarding shared funding schemes.
\textsuperscript{429} BLM, "Western Oregon Plan Revisions Scoping Report."
\textsuperscript{430} Ibid. p. 6.
State BLM Director Elaine Marquis-Brong. Interviewees also noted that there has been general support for participatory processes among members of the plan steering committee. Resistance to innovation came primarily from planning staff members, skilled at cranking out NEPA documents, but unfamiliar with new ways of including the public in the process. A State BLM employee observed:

> I think everyone on the steering committee intellectually and philosophically buys into the process. Those with a lot of experience in planning have a hard time shifting from their cultural paradigm that revolves around our typical planning process to doing something new. They feel that the agency shouldn’t go out to the public before the draft and so they didn't really grasp the thought process behind a communication process that called for public dialogue now. It's a paradigm shift that they have to make. It's not that they are opposed to it, they just didn't know that we could do that or that it was legal. It's not what we usually do.

Agency culture and individual attitudes towards public participation is not a barrier unique to the WOPR process. As discussed in Chapter Two, several NEPA implementation reports identify this barrier as one of the primary ones preventing greater inclusion of the public in planning and administrative decision-making processes. The 2000 Reclaiming NEPA's Potential report noted that agencies are resistant to include the public in planning and decision-making processes beyond explicit statutory or regulatory mandates. By doing this, agencies are failing to use NEPA strategically to build early buy-in and support among the public for a planning process. Instead, agencies wait until required periods to include the public when it is too late to integrate public values and needs into the planning process' purpose and need. As a result, the public loses faith in the process and feels any input they are able to contribute to the plan is ignored or irrelevant.

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432 In November 2006, Elaine Marquis-Brong left the BLM. Her replacement, Ed Shepard, began his career in the Oregon BLM, but most recently came from a position with the BLM in Washington, D.C. So far, it is unclear if he will be as much of a supporter of public participation as the previous State Director.
434 "Reclaiming NEPA's Potential: Can Collaborative Processes Improve Environmental Decision Making?."
The NEPA Task Force and the NECRAC reports also note that many agency personnel lack training in specific public participation strategies.\(^{435}\) Agency personnel may also be uncertain of the legal parameters for including the public or receive little incentive from the agency to investigate new ways to include the public (beyond the usual process steps). These reports highly recommend that agency personnel receive training in public participation and environmental conflict resolution techniques and strategies.

Realizing that unfamiliarity with public participation processes and resistance to trying new things might be a problem for the WOPR process, the State BLM Office did attempt to offer some training for BLM staff members. One interviewee notes:

> We had a couple of sessions with all of our leadership team regarding how to keep multiple stakeholders engaged throughout the process. We also had a two-day training session with all of our managers regarding thorough communication tactics. On-the-job, we're trying to make sure that all our managers know what their responsibilities are regarding outreach. We've also sent a couple of people to training sessions with the Sonoran Institute.\(^{436}\)

In addition, as noted earlier in this chapter, the BLM Steering Committee for the WOPR did participate in the "Learning Session" with several experts in the fields of public participation and mediation in order to gain information regarding innovative ways for including the public in the WOPR process.

Although the BLM leadership of the WOPR process did receive some training regarding public participation techniques and strategies, members of the planning staff were passed over for training opportunities in this area. This may be one reason BLM planners have been especially resistant to new participation processes in the WOPR. Another reason for this resistance identified by one interviewee is that, "We have a rigorous NEPA process that we have to live up to or we are subject to litigation. The public participation process is not as rigorously defined."\(^{437}\)

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Limitations of Leadership. Finally, despite the leadership of inspired individuals, such as the BLM State Director, Elaine Marquis-Brong, sometimes leadership alone is not sufficient to expand the role of the public in natural resources planning. Director Marquis-Brong possessed greater than average knowledge of public participation processes and showed great enthusiasm for integrating such processes into the WOPR. However, as discussed in the sections above, other pressures presented formidable obstacles to public participation. If, as speculated, the Settlement Agreement is an attempt to subvert the Northwest Forest Plan, then Director Marquis-Brong may have been receiving pressure from her superiors in the BLM and at the Department of the Interior to implement the terms of that Agreement as a priority over other requirements, such as those for cooperative conservation. Also, as previously noted, not everyone on the Oregon BLM staff is supportive of increased public involvement. Director Marquis-Brong also had time and budgetary pressures to consider. As a manager, Director Marquis-Brong was required to balance a number of different issues, from politics, to staff, to budgets and timelines. Including the public in the WOPR was just one out of many management issues. In November 2006, Elaine Marquis-Brong left the BLM and was replaced by Ed Shephard. It remains to be seen what leadership skills Director Shephard will bring to the table, particularly in regards to public participation.

Many of the NEPA reports discussed in Chapter Two make arguments for improved agency leadership regarding public participation. As the WOPR case demonstrates, though, good leadership is necessary, but not always enough to improve public participation in natural resources planning. Also, as seen in the WOPR, there is no guarantee either of consistent leadership in a planning process.

Summary & Conclusion: Overcoming Barriers to Public Participation

Summary.

The purpose of this paper was to consider the barriers to the regular inclusion of innovative and inclusive public participation methods in natural resource agency's planning and decision-making processes, given current statutory and regulatory authority, and to extract lessons for overcoming those barriers. In the final two chapters, I used the BLM's Western Oregon Plan Revision (WOPR) process as a case study to illustrate the characteristics, themes, issues, barriers and problems in the current use of public
participation federal natural resources planning and administrative decision-making. Using two primary research methods, 1) a review and analysis of relevant statutes, court cases, planning documents, newspaper articles, and websites and 2) interviews with key agency personnel, I analyzed the revision of six Resource Management Plans (RMPs) for the BLM's Western Oregon districts. Through this process, I discovered eight potential roadblocks to integrating innovative forms of public participation in natural resources planning and decision-making, including: 1) political context, 2) the purpose and need of the planning effort, 3) false expectations for public involvement, 4) geographic scope of the planning area, 5) the plan timeline, 6) federal budgetary pressure, 7) agency culture and individual attitudes towards public participation, and 8) the limitations of leadership.

The barriers to public participation found in the BLM's Western Oregon Plan Revision process are similar to those examined in the NEPA implementation reports discussed in Chapter Two. These barriers are similar because the BLM approached public participation in the Western Oregon Plan Revisions using the pluralist decision-making paradigm (as described in Chapter One). The agency's primary motives for including the public in the planning process did not include a desire for civic dialogue about public values or a desire to explore creative solutions to complex problems. Rather, the BLM's desire to include the public stemmed primarily from a fear of litigation and a pragmatic need to arbitrate the needs of competing interest groups. Because the BLM utilized a pluralist perspective, the public participation strategies the agency chose to focus on and use represented a different degree of public involvement than if the agency had been utilizing a civic republican decision-making framework. In fact, the means and opportunities for public involvement (up until this point in time) have not been fundamentally different from the usual methods employed in "announce and defend" planning efforts.

Despite these criticisms, the WOPR case presents solutions to some common participation barriers presented in some NEPA Implementation Reports. In particular, the BLM was able to address some barriers that often can be problematic, including: 1) lack of agency leadership for higher degrees of public participation; 2) failure to establish cooperative relationships with other impacted federal, state, local, and tribal agencies and
governments; 3) failure to learn from previous participation processes; and 4) failure to share planning information with the public.438

In the case of the WOPR, the State BLM Director provided strong leadership and support for increased levels of public participation in the planning process. The WOPR steering committee was also, for the most part, supportive of increasing public involvement in the WOPR.

As discussed earlier, the BLM made an extra effort to establish formal relationships with cooperating agencies. As a result, the agency has gained considerable financial and administrative support from these agencies and improved buy-in for the WOPR process.439

At the beginning of the WOPR process, the BLM made an attempt to learn from previous experiments with public participation in planning processes. The agency hosted a learning session with participation and mediation experts and commissioned a report outlining innovative ways for engaging the public in the WOPR process.

The BLM also made communication with the public a high priority for the WOPR. The agency utilized an aggressive communication plan and sought to ensure information feedback loops with interested members of the public.

The BLM's efforts in these four areas (leadership, formal relationships with cooperating agencies, lessons learned, and communication) did positively impact public participation in the WOPR. Although at this point in the planning process, the degree of public participation in the WOPR has not been greatly different from a typical planning process, the BLM has made some small, but important improvements in public participation opportunities.

Recommendations and Take-Home Lessons.

As discussed in the Introduction and in Chapter One, public participation can fundamentally improve natural resources planning and decision-making. On an ad hoc basis, it has been shown that public participation improves the durability and sustainability of plans and decisions; it increases the technical, consensus-building, and

decision-making capacity of the public; it increases levels of trust; and it improves relationships between agency personnel and members of the public. This paper examined barriers to the regular integration of public participation in natural resources planning and decision-making processes. From my analysis of the WOPR case study, I offer the following prescriptions for overcoming those barriers and improving natural resources planning and decision-making. This list of recommendations is not exhaustive but does prescribe a good starting point for reform.

- **Involve the public early and often.** Public participation should begin in the pre-planning stages of planning. This allows agencies to be strategic in their use of the public and the resources that members of the public have to offer. It also avoids problems such as confusion over the purpose and need of a planning process.

- **Jointly name the problems that will be addressed in the planning process.** If the public is involved in the process early enough, they can have a hand in identifying the problems to be addressed. Problem identification should occur during scoping. This way, scoping becomes a forum for focusing on what problems can be addressed through planning and which cannot, rather than a hasty, and oftentimes, inadequate presentation of what an agency intends to do in a planning process.

- **Agencies need to be clear, honest, and forthcoming about the decision-making space of a planning effort.** In most cases, agencies have very specific statutory and regulatory obligations to meet in a planning process. To avoid false expectations, agencies need to clearly articulate what the legal parameters for a planning process are and identify the areas that are open for negotiation and revision. There should not be any confusion about what aspects of a plan the public can influence or how the public will be able to participate in the planning process.

- **Involve the public in the development of public participation strategies.** Different members of the public have different interests in and reasons for being involved in a planning process. Some may want a high degree of involvement, where others will only want to be consulted. Allow the public to define their degree of
involvement (given legal parameters, of course) and invite the public to identify the timing and means of their involvement.

- **Follow through on commitments.** Once a public participation strategy has been developed and agreed upon, agencies need to keep their commitments to the public regarding participation opportunities. Not following-through on proposed participation opportunities can lead to mistrust and ultimately threaten the durability of a plan.

- **Provide public participation training and incentives for agency employees.** All agency personnel should have some degree of training in public participation processes. Public participation can help make agency personnel's jobs easier, but they need to know how, when, and why to include the public. Additionally, there needs to be a system of incentives, such as financial bonuses or professional recognition, to encourage personnel to engage the public in planning processes. This is one area where Cooperative Conservation has made some improvements. Further efforts should be made to recognize exceptional leadership in this area.


BLM. "Western Oregon Plan Revision News." April 2006.


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


APPENDIX A

Letter of Introduction

October 17, 2006

Alan Hoffmeister,
Public Involvement Coordinator
U.S. Bureau of Land Management
1300 Airport Lane
North Bend, OR 97459

Dear Mr. Hoffmeister:

My name is Emily West, and I am a graduate student at the University of Montana (UM) College of Forestry and Conservation studying natural resources policy and conflict resolution. I am in the process of writing my professional paper on public participation in environmental planning and decision making.

In the fall of 2005, you or a representative of your choice participated in a public participation situation assessment for the Bureau of Land Management’s (BLM) Western Oregon Plan Revision (WOPR) process. This assessment, Engaging People in the BLM Western Oregon Plan Revision Process, was commissioned by the BLM and was prepared by the University of Montana Public Policy Research Institute, the Consensus Building Institute, and RESOLVE.

I am contacting you now because I am conducting follow-up interviews to assess the state of public participation in the WOPR process since the initial situation assessment was completed last fall. The WOPR process is one public participation case study I will be examining in my professional paper, so your participation in my follow-up interviews would be greatly appreciated. My supervising UM graduate committee for this project includes my committee chair, Dr. Martin Nie, Associate Professor of Natural Resource Policy, and faculty members, Dr. Jill Belsky, Professor of Rural & Environmental Sociology/Director of the Bolle Center for People and Forests, and Dr. Matthew McKinney, Director of the University of Montana Public Policy Research Institute.

For your information, I have included a copy of my interview questions. I estimate that this interview will take approximately 30 minutes. If you are willing to participate in this study, there are several ways you may respond to my questions. My preference is an in-person interview. I will be in the Portland/Salem area November X-X. If this option works with your schedule, please let me know what your availability will be so we can schedule an appointment. If you are not available for an in-person interview during the week of November X, a second option is a telephone interview. Again, please let me know your availability so we can schedule a call time. If you are not available for an in-person or telephone interview, a final option is for you to send me an e-mail with your responses to my interview questions. My e-mail address, along with my other contact information, can be found below.
I thank you for your consideration and hope I will have the opportunity to work with you on this study. Please do not hesitate to contact me with any questions.

Sincerely,

Emily West  
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College of Forestry and Conservation  
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APPENDIX B

BLM Employee Interview Guide for WOPR Process Public Participation Study

Introduction: Thank you for agreeing to participate in this study. In my research, I am examining the means and opportunities for public participation in the BLM’s Western Oregon Plan Revision (WOPR) process. Today, I would like to talk to you the BLM’s efforts to include the public in the WOPR process. This interview should take approximately 30 minutes.

Though the general information gathered in this interview may be used for publication purposes, your name will be kept confidential and will not be used in any publication or presentation unless you grant me explicit permission to do so.

Interviewee Info:

Title:

District/Location:

To start, I would like learn a bit about your role to date in the WOPR Process.

Role of the Interviewee in the WOPR Process

1. What has been your specific role in the WOPR process?

2. How involved have you been in efforts to include the public in the WOPR process?

Means and Opportunities for Public Participation

1. From your experience, are the means and opportunities for public participation that have been offered through the WOPR process different from those that are generally offered in similar planning processes?

   A. If yes, how are they different?

      i. Where has the impetus for different forms of public participation come from?

      ii. Compared to other planning experiences you have had, are the public participation methods being employed for the WOPR process successfully including needed opinions, knowledge sources, and perspectives?

         a. If yes, how are the WOPR public participation methods successfully including needed opinions, knowledge sources, and perspectives?
b. if no, are there any specific reasons why the public participation methods being employed in the WOPR process are not successfully including needed opinions, knowledge sources, and perspectives?

ii. Are these different means and opportunities for public participation improving the WOPR planning process?

a. If yes, in what specific ways are these public participation methods improving the planning process?

b. If no, in what specific ways are these public participation methods failing to improve or degrading the planning process?

B. If the means and opportunities for participation were not different, were you ever under the impression (either through your own assumptions or by information provided to you by other BLM personnel) that the means and opportunities for public participation in the WOPR process would be different than with other planning processes?

i. If yes, are you disappointed with the actual means and opportunities for public participation (compared to your impressions of what they would be)?

Agency Culture and Attitude towards Public Participation

1. In your opinion, what has been the attitude of BLM personnel towards public participation in the WOPR planning process?

2. How does this attitude compare to previous planning experiences you have had while working for the BLM?

Wrap-up:

1. Overall, how would you characterize your experience to date with public participation in the WOPR process?

2. How do you think the BLM will proceed with public participation in the WOPR process?
APPENDIX C

Western Oregon Plan Revision
BLM Philosophy and Principles for Public Involvement

Philosophy

Public involvement during the Western Oregon Planning Revision will be conducted with sincerity and integrity in the true spirit of collaboration. To us, collaboration involves working at multiple levels with diverse interests and publics to understand each other, and share knowledge and resources. The goal of our collaborative efforts is to find solutions to the social challenge we face, how to meet the needs of local communities while also meeting our legal responsibilities to ecosystem health and protect sensitive species.

Guiding Principles for Successful Public Involvement

1. Design public involvement activities to establish a foundation for lasting relationships that will facilitate plan development and plan implementation.
2. Design early public involvement activities to identify and share common values among participants.
3. Acquaint stakeholders with the RMP Revision process and how it links to future site-specific decisions.
4. Identify what is fixed and what is open for input and influence by the public, based on legal sideboards national strategies and policies, court decisions.
5. Be clear, focused and consistent.
6. Encourage and maintain opportunities for communication and participation with diverse interests and publics.
7. Use a diverse set of public involvement tools and techniques to meet the needs of diverse publics, as well as to engage as many viewpoints as possible.
8. Ensure we have a process in place to demonstrate how we addressed the input received from the public (feedback loops).
9. Develop and implement a process to continually communicate the results from public involvement activities at the multiple scales,
10. Actively engage employees seeking their input and building their support for the plan to empower them to be advocates for public involvement, and for development and implementation of the plan.
11. Realistically match internal capacity with our commitments for public involvement activities,
12. Follow through on commitments, both procedural and substantive.

Appendix D

A Menu of Options to Engage People in the WOPR

A. Options to Engage the General Public
   1. Continue Publishing the Newsletter
   2. Use Existing Social Networks
   3. Use Effective Web Technologies
   4. Convene Open Meetings of the Steering Committee, Science Advisory Team, and Cooperating Agencies
   5. Provide a Public Comment Period at Each Meeting of the Steering Committee, Science Advisory Team, and Cooperating Agencies
   6. Encourage Written Public Comment on Draft Documents
   7. Engage in Responsive Decision-making
   8. Convene 21st Century Town Meetings
   9. Conduct Deliberative Polling and/or Citizen Jury
   10. Convene a Study Circle

B. Options to Engage Stakeholders with Diverse Interests
   1. Create a Multi-stakeholder Group
      Create a multi-stakeholder group similar to how the “Cooperating Agencies” work together. The options here include, but are not necessarily limited to:
      a. Creating one or more FACA-charted groups.
      b. Create an independent forum for deliberative dialogue.
      c. Build on existing work groups to the extent possible.
   2. Use Shuttle Diplomacy
   3. Create Place-based Pilot Projects

C. Options to Engage Native Americans
   1. The special federal trust relationship with Indian tribes requires a different involvement approach than used with the general public. Government-to-government consultation is the appropriate method of engaging Indian tribes.
   2. Build on the existing relationship between the Coquille Tribe and the Coos Bay BLM District.
   3. In regard to the Coquille Forest, use a strategy for addressing the BLM/tribal forest nexus which recognizes tribal sovereignty and federal Indian self-determination policy.
   4. Create a “standard and guideline” that gives tribes some flexibility, consistent with the principle of accountable autonomy.

D. Options to Address Scientific and Technical Information
   1. Create a Science Advisory Team
   2. Employ Joint Fact Finding
   3. Use Multiple Experts

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