

Citizen engagement in public lands management: A NEPA tutorial

(Oregon Wild, March 2016)

Summary:

Our federal public lands are managed on our behalf by federal agencies that are required to make informed decisions and involve the public in the process. There are several stages to this process, and though it can seem rather complicated, it's not too hard to navigate when broken down. The key is to know the deadlines and submit your comments at the proper stage in the process. You can get as in depth (or not) as you want, but generally you need to submit comments during the early or middle stage of the process in order to remain involved in later stages closer to the final decision. Groups like Oregon Wild track and comment on projects across Oregon on a daily basis, and are happy to help people who care about their public lands get involved.

Land Management Agencies 101:

Federal public lands are largely managed by the U.S. Forest Service (USFS) or Bureau of Land Management (BLM). Other federal agencies like the U.S. Fish & Wildlife Service and National Parks Service also manage some lands and have to follow similar rules and processes as the USFS and BLM, but for the purposes of this tutorial, we'll focus on the Forest Service and BLM.

- **Forest Service**
 - o The USFS falls under the U.S. Department of Agriculture. National Forests and National Grasslands are divided into Regions of the country. Oregon is in Region 6 (along with Washington). The head of and decision maker for Region 6 is the Regional Forester, located in Portland.
 - o There are 10 individual National Forests/administrative units in Oregon. Each is headed by a Forest Supervisor. Each National Forest is broken down into Ranger Districts, where the District Ranger is the key decision maker on Forest Service timber sales and other projects within their District.
- **Bureau of Land Management**
 - o The BLM is housed in the U.S. Department of the Interior. Oregon's BLM lands are under the jurisdiction of the Oregon-Washington State Office of BLM, based in Portland.
 - o The BLM is broken up into Districts. There are 9 Districts in Oregon, each headed by a District Manager. Districts are further broken up into Resource Areas, where the Resource Area Manager is the key decision maker on BLM timber sales and other projects within their Resource Area.

Federal Laws that Apply to Public Lands:

Numerous laws and policies govern the management of federal public lands. Forest Service and BLM lands are subject to the **National Forest Management Act (NFMA)** and **Federal Land Policy & Management Act (FLPMA)**, respectively, which require comprehensive management plans; as well as

the **National Environmental Policy Act (NEPA)** which requires disclosure of environmental impacts, consideration of alternatives to a proposed action, and public input; and the **Endangered Species Act**. Other laws that can have management implications include Congressional designations under the **Wilderness Act** or **Wild & Scenic Rivers Act**, for example.

- **Management Plans**

Individual National Forests and BLM Districts are governed by Resource Management Plans. These plans are required under NFMA and FLPMA, and are developed under rules and policies set forth by the USFS or BLM. Management Plans include guidelines for where and how logging can take place, what areas are protected from resource extraction, how wildlife populations and habitat will be maintained, and balancing various uses of public lands.

These plans are also subject to NEPA, and must go through the public process under agency guidelines.

In addition to individual National Forest or District management plans, Forest Service and BLM lands that are home to the northern spotted owl in western Oregon and Washington and in northwest California also fall under the guidelines of the Northwest Forest Plan, created in 1994. In western Oregon, certain BLM lands fall also under the 1937 O&C Act, which calls for sustainable timber production and watershed protection.

- **Public Process**

The National Environmental Policy Act (NEPA) requires all federal agencies to complete an analysis of the significant impacts of logging (or other proposed activities) and associated activities and weigh and consider alternatives to proposed plans. The public has the opportunity to comment on documents and participate in agency decision-making.

Public agencies are legally required to consider public opinion in the development of plans and projects that impact the environment. They have to follow detailed guidelines for planning these projects and allowing for public participation, laid out in NEPA and subsequent rules and policies. Project analyses must state a “purpose and need” for the project, and any alternatives developed must meet that purpose and need.

Environmental review under NEPA can follow one of three alternate pathways listed below, which involve increasing levels of analysis and public involvement:

- **Categorical Exclusions (CE or CX):** A very rudimentary analysis that is used when the agency finds there are no “extraordinary circumstances” and if the proposed action falls under defined categories of activities. These categories can be quite broad.
- **Environmental Assessments (EA):** A mid-level of analysis for proposals that are unlikely to cause “significant impact.” Most projects follow this path. These can range from a few hundred to multiple thousands of acres of management activities.

- **Environmental Impact Statements (EIS):** The highest level of analysis for proposals expected to cause significant environmental impacts. These often have multiple alternatives.

Both EAs and EIS must analyze and compare the effects of the proposed action and all reasonable alternatives, including the “no action” alternative. These can also include alternatives put forward by citizens during the scoping phase. The analysis must include direct, indirect, and cumulative effects of the proposed action as well as any “connected actions” that are closely related. These environmental documents are intended to inform not only the decision-maker but also the public, so public comments should ask for clarification on anything not understood, and offer fresh perspectives that may help the decision-maker arrive at a decision that protects and restores the environment.

- **Endangered Species**

The National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) share responsibility for implementing Endangered Species Act (ESA) requirements. Land managers must avoid killing or harming listed species and their habitat and must consult with fish and wildlife biologists before conducting activities likely to adversely affect listed species such as northern spotted owls, marbled murrelets, and Pacific salmon.

How to Get Information About Projects:

- After identifying the area (National Forest, Ranger District, etc.) you are interested in, get on **mailing or e-mail notification lists** by contacting the local agency office
- Monitor **local newspapers** for legal notices of timber sales or decisions
- Monitor the EPA section of the **Federal Register** for notices for Environmental Impact Statements (as well as rules and regulations) (<https://www.federalregister.gov/>)
- Monitor **agency websites** for information
 - **Forest Service websites:**
 - The Forest Service is required to post legal notices and NEPA documents in a timely way.
 - Information on individual projects can be found on individual National Forest websites. Once at the NF site, click on “Land & Resource Management” on the left side, then click on “Projects” under that heading once it comes up.
 - Updates on projects and new planning efforts can be found in the Schedule of Proposed Actions (SOPAs), updated quarterly: <http://www.fs.fed.us/sopa/state-level.php?or>
 - **BLM websites:**
 - Information on individual projects can be found on the BLM’s E-planning site (https://eplanning.blm.gov/epl-front-office/eplanning/nepa/nepa_register.do). Click on Text Search (or Advanced Search at the bottom of that area) to try and find the project you’re interested in.

- Timber sale info can be found on individual BLM District sites. Click on “Plans & Projects” in the top bar menu, then on “timber sales” in the drop down.

Project Planning and Public Participation Process:

When an agency decides to “do something” to manage public lands, there is a specific set of steps it must take under NEPA and its handbook guidelines to involve the public and analyze what they are thinking about doing. In theory, the end result is NOT a foregone conclusion – the public CAN influence the direction the agency ultimately goes and what the on-the-ground activities end up being.

- **Scoping comments:**
 - “Scoping” is the process the agencies do to gather input about a project in the early phases of development. It is intended to identify significant issues and refine a project proposal before further analysis. Scoping can help determine what level of analysis a project will receive.
 - Sometimes a scoping notice has very little or vague information about the proposed project, while other times there is a map and detailed description of what is being planned.
 - For most projects, there is a 30 day scoping comment period, but this period is often not as hard and fast as later comment deadlines.
 - Scoping comments are a good place to express your hopes and desires for the project – e.g., that the agency will focus on restoration, not commodity extraction. You can also bring up ALL your concerns, opinions, and suggestions for how/if the project should develop.

- **Comments on a draft proposal**
 - The next step is for the agency to complete a CE, EA, or EIS analysis.
 - The public typically has 30 days* to review and comment on a CE proposal or draft EA, and 45 days for a draft EIS. This is the main public comment opportunity. You must submit comments here if you want to remain involved in later stages of decision-making.
 - **Note:** There is usually only one opportunity to comment on proposed CE projects – sometimes it is “scoping” and sometimes comments on a proposed action. There is no further review or objection period for CEs.
 - In theory, all comments are analyzed and addressed in the final NEPA document before a final notice is published. Response to comments can include modifying the proposed action, developing a new alternative, or explaining why comments don’t warrant further response.

- **Forest Service: Pre-decisional objection**
 - When the FS has completed an EA or EIS, they issue a *notice of proposed decision* which identifies a single course of action among the alternatives analyzed in the EA or EIS. Once published, you have 45 days* to “object” to that proposed decision.

- You can only file an objection if you submitted comments during the comment period, and you must object if you want to have standing to litigate the project or negotiate with the FS on any changes to the proposed decision.
 - The objection can be in the form of a letter or e-mail of any length but at a minimum, an **objection must include the following:**
 - Objector's name and address; and a signature
 - The name of the proposed project, the name and title of the responsible official, and the name(s) of the national forest(s) and/or ranger district(s) on which the proposed project will be implemented;
 - A description of those aspects of the proposed project addressed by the objection, including specific issues related to the proposed project; if applicable, how the objector believes the environmental analysis or draft decision specifically violates law, regulation, or policy; suggested remedies that would resolve the objection; supporting reasons for the reviewing officer to consider; and
 - A statement that demonstrates the connection between prior specific written comments on the particular proposed project or activity and the content of the objection.
 - The decision-maker has 30 days (45 if an EIS) to respond to your objection, during which time there may be a resolution meeting, where possible changes to the proposed decision can be negotiated. If the objection is resolved through negotiations, objectors might agree to withdraw their objection.
 - Once objections are resolved or rejected, a decision is made. At this point, if you still don't like the project, you can sue.
- **BLM: Timber sale protest**
- The key difference from the Forest Service process is that after the public comments on an EA that might describe several timber sales, separate "decisions" are then made on individual timber sales, not on the EA or EIS as a whole.
 - When a timber sale notice is published in the newspaper, the public has 15 days* to "protest" that decision.
 - You can only protest a decision if you commented during the public comment period, and only on issues that you raised in those comments.
 - **Protests of BLM sales must contain the following:**
 - The name, mailing address, telephone number and interest of the person filing the protest;
 - A statement of the issue or issues being protested;
 - A statement of the part or parts of the plan or amendment being protested;
 - A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the record; and
 - A concise statement explaining why the State Director's decision is believed to be wrong.
 - Protests must be delivered by mail (and received, not postmarked) before close of business on the deadline date. They can not be faxed or e-mailed.

- If the BLM rejects your protest, you have 30 days to “appeal” and request a *stay* of that decision to the Interior Board of Land Appeals (IBLA). If that appeal is rejected, you can sue.

** Comment timelines are calculated by counting from the day after the publication of the notice in the Federal Register or the newspaper. If the deadline falls on a federal holiday or a weekend, comments are due on the next work day.*

How to Write Comments:

Submitting comments on proposed projects is a great way to make your voice heard, show that the public is paying attention, and get to know how the process really works.

- Comment letters should always **be clear as to what project you are addressing, and focus on specific elements of the proposal and the environmental analysis** if at all possible – not just general issues. This way, the agency is required to respond whereas they often blow off general issues and can say they are outside the scope of the specific project. For example, saying that you want them to drop a specific proposed harvest unit(s) because logging there would harm wildlife/recreation/water/etc is better than just saying you don’t like the project and want them to stop planning it.
- Here are some questions to stimulate ideas for comments:
 - Did they follow the rules for the agency and the rules for the land area they are proposing to log? Are these rules outdated?
 - Did they consider the best science? Is there new information about climate change, wildlife, etc that they should be considering?
 - Did they fail to consider something important? For example, does the project impact a roadless area, but they failed to mention that?
 - Did they consider all reasonable alternatives? For example, could the project be done without building new roads?
 - Are the effects of the proposal potentially significant? If so, should they be doing a higher level analysis?
 - Did they acknowledge, weigh, and balance trade-offs for doing certain activities?
 - Did they consider the impacts of nearby management – either past or future?
- In general, it’s good to **raise specific issues as early in process as possible** to have standing later on to raise issues in objections, protests, appeals, or litigation.
- **Be supportive of activities and ideas in the proposals that you like.** This can give cover to agency staff who are trying to do the right thing.
- Visit the project area and embellish your comments with pictures of the good and bad of what you see, or otherwise make note of any personal connection you have to the area.
- **Address your letter/e-mail to the appropriate person or email address.** This can usually be found in the comment or project notice letter or other notice.

- Be sure to **include your contact information**, including address, so the agency can respond to your comments. But be aware that they are then part of the public record and could be made available publicly if requested.

What Else Can You Do?:

While participating in the NEPA public comment process is a great way to engage with the agencies making decisions about our public lands, comments and appeals can only go so far. If gaining public attention or outcry is important, or if more drastic action is needed to stop a bad project, there are other tools available.

- **Alerts to organizational networks:** Spreading the word to memberships/supporters over e-mail and social media is a great way to get many, many people to weigh in. Be sure the alert has a concrete action for people to take (like sending their own comment letter, or attending an informational session) and that the timing is appropriate (for example, there's not a lot of use asking people to weigh in only after the official comment period).
- **Earned media:** Get a reporter interested in the issue, area, and why the story is important. Let them know about a personal connection you have, offer concrete background information, and try to have a diversity of well-spoken groups or individuals available to speak with the reporter.
- **Letters to the editor:** A few printed letters in the local newspaper can raise the profile of an issue quite a bit. You can be sure that LTEs are read by the agency and Congressional staff.
- **Congressional action:** Though there's not always something your Congressional representative can do, or they might not agree with you about what needs to be done, they can have a lot of sway. Calling the local office to talk with staff about what's at stake can be helpful. Getting a staff person out to visit the area is even better.
- **Visit the place of concern:** It can be very helpful to visit the specific location in question, take pictures, and take other people with you. It's difficult to know what conditions are like on the ground unless you visit, and you might find something that can be used to dispute the agency's characterization of the area that can help change the proposal. If you visit, you also establish standing for litigation if that should become necessary.