

Lecture 18 overview

1. Goals of public participation
2. CEQ regulations
3. EA & EIS requirements
4. Issues & Challenges

Goals of public participation

1. Inform the public of planned activities
2. Provide opportunity for comments
3. Involve the public in decision-making
4. Focus on and resolve conflict

What is the public?

State agency staff
Local agency staff & elected officials
Citizen groups organized due to action
Residents & affected individuals
Local business organizations
Local civic & neighborhood organizations
Local chapters of public interest groups

§ 102(2)(c): Distribution

Prior to making any detailed statement:

- copies of statement and comments;
- shall be made available to:
 - the President;
 - the CEQ;
 - the public,
- shall accompany the proposal through the review processes;

NEPA Requirements

Unclear until 1978 CEQ regulations

§1506.6 Agencies shall –

- a) Make diligent efforts to involve the public in preparing and implementing their NEPA procedures;

CEQ Requirements

- b) Provide public notice of NEPA-related hearings, meetings, & the availability of documents to persons and agencies who may be interested or affected.
 1. Mail to those who have requested it
 2. Actions of national concern shall include publication in the *Federal Register* and notice by mail to national organizations reasonably expected to be interested in the matter.

CEQ Requirements

3. Actions of local interest only:

- Notice to State and area clearinghouses
- Notice to Tribes
- Local newspapers, newsletters & media
- Notice to community organizations
- Direct mailing to owners & occupants of property
- Posting of notice on and off action site

CEQ Requirements

- c) Hold or sponsor public hearings or meetings whenever appropriate or in accordance with other requirements

Criteria:

1. Substantial environmental controversy or interest in holding the hearing.
2. A request by another agency

CEQ Requirements

- (d) Solicit appropriate information from the public;
- (e) Explain where interested persons can get information or reports & other elements of the NEPA process;
- (f) Make EISs, comments, and any underlying documents available to the public without charge, or at a fee which is not more than the actual costs.

EA Requirements

Role of public participation unclear
before threshold determination
(FONSI or NOI)

Courts split on interpretation

EA Requirements

Hanley v. Kleindienst (1973, 2nd circuit):

- Agencies must affirmatively develop a reviewable environmental record for the purposes of a threshold determination under §102(2)(C).
- Before a determination, the agency must give public notice of the proposed action and an opportunity to submit relevant facts which might bear upon the decision.

EA Requirements

Richland Park Homeowners Association v. Pierce (1982, 5th circuit):

- Although NEPA and its implementing regulations do indeed encourage agencies to obtain public input regarding agency decisions, agencies are under no obligations to hold public hearings or give any form of public notice

EA Requirements

Public participation is strongly advisable, however, if determination is challenged

Courts accord greater weight to an agency's FONSI if public hearings were held

EA Requirements

EA & FONSI must be made available to the public:

1. Distribution per CEQ §1506.6
2. Special circumstances recommend FONSI publication 30-45 d before agency decision

EA Requirements

Special circumstances:

- Borderline cases
- Unusual cases (precedents)
- Public or scientific controversy
- Redefined with mitigation
- Agency adoption of an EA

EIS Requirements

Publish NOI in *Federal Register*

- Proposed action
- Scoping meetings
- Timetable for DEIS/FEIS
- Deadline for public comments
- Contact person

Represents minimal '*participation*'

EIS Requirements

To *enhance* participation:

- Press release
- Advertisement in local newspaper
- Mailing lists to local & national groups
- Web-sites postings
- E-mail list-serves to groups
- Informal networking

Scoping

Internal process:

- Agency devolves proposed action, alternatives
- Identifies baseline information

External process:

- Gather relevant information on alternatives or baseline information;
- Understands who may be affected, who opposes process & other issues

Scoping

Public process where an agency determines:

- The scope of issues to be addressed
- Identify significant issues that need to be dealt within-depth and those already covered in prior analyses
- Indicate relationships between environmental analyses & agency planning & decision-making schedule

Scoping

Also,

- Determination of lead & cooperating agencies
- Coordination with other required processes
- Setting page & time limit

EIS Requirements

Availability of DEIS in *Federal Register* (by EPA)

Must distribute & solicit comments from:

- Any agency with jurisdiction or expertise
- Appropriate State and local agencies;
- Indian tribes, when effects on a reservation;
- Any agency which has requested that it receive statements;
- The applicant and the public, *affirmatively* soliciting comments from those persons or organizations who may be interested or affected.

EIS Requirements

Focus of comments:

- Adequacy of document
- Merits of alternatives or analysis
- Adequacy of scientific or predictive methodology
- Any additional information

EIS Requirements

Overhead

Use of comment in FEIS:

- (a) Assess and consider comments individually or collectively, and shall respond by:
- Modifying alternatives, including proposed action
 - Develop and evaluate new alternatives
 - Supplement, improve, or modify analyses
 - Make factual corrections
 - Explain why comments do not warrant response
- (b) All substantive comments received on the DEIS (or summaries), should be attached to the FEIS.

EIS Requirements

Availability of FEIS in *Federal Register*
(by EPA)

FEIS made available to public

Agency decision (usually ROD):

1. > 90 d after FR notice of DEIS
2. > 30 d after FR notice of FEIS

EIS Requirements

Make public ROD: Record of Decision

- State the decision
- Identify alternatives considered, specifying the environmentally preferable alternative(s)
- How factors were balanced
- State means to avoid or minimize harm have been adopted, and if not, why not
- Summary of monitoring & enforcement program

Issues & Challenges

Federal approach very broad and often ineffective

Need slower, community-based, collaborative project development

Preister and Kent. 2001. *Using Social Ecology to Meet the Productive Harmony Intent of the National Environmental Policy Act*. NW Jour. Environ. Law & Policy. 7(3): 235-253.

Issues & Challenges

1. Insufficient issue scoping

- Mailings, meetings and scoping, if undertaken too late in the process, are inadequate to prevent surprise and avoid conflict
- Often fail to identify the full range of interests related to the geographic areas affected by a proposed action

Issues & Challenges

2. An overreliance on meetings instead of informal networking
- Meetings as the primary means to assess public interest are not reliable:
 - Set up dynamics of polarization (advocacy-based)
 - Attract organized groups or renegade voices that do not reflect the broader and often more practical interests of the community at large

Issues & Challenges

3. Issue stacking
- Issues tend to be catalogued and saved for analysis rather than resolved
 - Compounded by formal groups that continue to influence the process, thereby hardening positions and contributing to further entrenchment
 - Opportunities for dialogue, early issue resolution and building public support are precluded

Issues & Challenges

4. Insufficient time for citizens to develop ownership
- Internal deadlines impose constraints
 - Citizen participation and/or review is often shortchanged
 - Allow citizens to *own* the analysis, need time to understand the implications of the analysis and affect the project

Issues & Challenges

5. Lack of commitment to community-based solutions
 - Citizen-based partnership and stewardship efforts have proliferated during the last ten years
 - Often bottom-up driven
 - Need to create a collaborative, integrated approach to ecological restoration

Next Time. . .

- Makah EA stakeholder work
